

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR

Susan M. Lessard, Chair

William F. Hinkel
Executive Analyst

Ruth Ann Burke
Board Clerk

September 26, 2023

SENT VIA ELECTRONIC MAIL ONLY

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Re: Recent filings in the Nordic remand

To The Service List:

In letters dated July 26, 2023, August 16, 2023, and September 12, 2023, I outlined the process to be followed by parties and defined the scope of the Board proceedings on remand from the Law Court and the Superior Court. Those letters continue to govern this Nordic remand proceeding. This letter addresses two recent filings submitted by Attorney Kimberly Ervin Tucker and Lawrence Reichard.

I previously notified all parties to the Law Court appeal and intervenors from the underlying Board licensing proceeding that: 1) they may file a brief, of no more than 10 pages in length, on the limited legal question before the Board; 2) such briefs may not include attachments, appendices, or reference evidence not in the underlying licensing record or noticed by the Board; and 3) no additional reply briefs or other filings would be permitted.

On September 20, 2023, Attorney Tucker, on behalf of her clients Jeffrey R. Mabee and Judith B. Grace, the Maine Lobstering Union, commercial crab and lobster license holders David Black and Wayne Canning, and Friends of the Harriet L. Hartley Conservation Area (collectively "MGLF"), submitted a filing – the third following the submission of written briefs by the parties. In this most recent filing, a 118-page document that includes a 21-page memorandum and 11 exhibits, MGLF primarily makes arguments in the nature of a reply brief, and references and attaches evidence that is not in the record to be considered by the Board on remand. This fails to adhere to the process set forth

in my prior letters and is unauthorized; it is rejected and will not be circulated to or considered by the Board.

On September 24, 2023, Lawrence Reichard, an intervenor in the underlying licensing proceeding, submitted directly to me a request that he be allowed to make oral argument before the Board at the meeting on October 19, 2023, despite his failure to submit a written brief. Mr. Reichard's September 24, 2023 email to me is the second time he has directly contacted me and requested he be allowed to make an oral argument on October 19, 2023. To ensure fairness to all participants, my September 12, 2023 correspondence informed the service list that oral argument on October 19, 2023, would be limited to those who filed a brief on the limited remand question. Those who did not file briefs will not be permitted to make an oral argument. The email communication from Mr. Reichard fails to adhere to the process set forth in my prior letters and is unauthorized; it will not be circulated or considered by the Board, and Mr. Reichard will not be permitted to make oral argument before the Board.

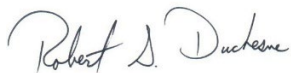
As a reminder, Board members – myself included – should not be contacted directly by any party to this proceeding. All filings in this matter must be sent through the Board's Executive Analyst and the Board's Clerk, Ruth Ann Burke, and copied to the Service List.

Filings with the Board must be directed to:

Robert Duchesne, Presiding Officer
Board of Environmental Protection
c/o Ruth Ann Burke
17 State House Station
Augusta, ME 04333-0017
ruth.a.burke@maine.gov

If you have any questions, you may contact Board Executive Analyst William F. Hinkel at bill.hinkel@maine.gov or (207) 314-1458 or Assistant Attorney General Peggy Bensinger at peggy.bensinger@maine.gov (207) 626-8578.

Sincerely,



Robert Duchesne
Presiding Officer
Board of Environmental Protection

cc: Service List (August 16, 2023)