

STATE OF MAINE

YORK, ss.

STATE OF MAINE,
DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiff

v.

ORDER

WINTERWOOD ACRES, INC.,
WINTERWOOD FARMS, LLC and
BELTIE, INC.,

Defendants

DONALD L. GARBRECHT
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MAY 16 2007

This is a Rule 80K, M.R.Civ.P. action whereby the State seeks both injunctive relief and monetary sanctions for alleged violations of Maine's Water Pollution Control Act, 38 M.R.S.A. §413 and other environmental protection statutes. The Defendants have requested a jury trial and the State has moved to remand to the District Court, asserting that, because it seeks primarily injunctive relief, the Defendants do not have a right to jury trial.

In its memorandum, the State argues that the issue is controlled by *Department of Environmental Protection v. Emerson*, 616 A.2d 1268 (Me. 1992), but does not address the effect of the more recent case of *City of Biddeford v. Holland*, 2005 Me. 121, 886 A.2d 1281 on the issue *sub judice*. The Defendants argue that the *Holland* case controls the issue, but they do not address the *Emerson* case, wherein a civil sanction of \$191,000 was imposed, as well as substantial injunctive relief.

Because the Law Court does not explicitly overrule *Emerson* in *Holland*, and because the availability of a jury trial in fairly complicated environmental cases marks a

significant change from past procedure, I request that the parties file supplemental memoranda addressing the issue of whether *Holland* overrules *Emerson sub silentio*.

May I request that the parties respond by March 9, 2007.

At the direction of the Court, this Order shall be incorporated into the docket by reference, Rule 79(a).
Dated: February 9, 2007



G. Arthur Brennan
Justice, Superior Court

Carol A. Blasi, AAG - PL
Laura K.S. Welles, AAG - PL
Michael I. Montembeau, Esq. - DEF