

**BOARD OF ENVIRONMENTAL PROTECTION  
Meeting Minutes**

January 7, 2010

A meeting of the Board of Environmental Protection was held on Thursday, January 7, 2010 at the Civic Center, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

**Board:** M. Wing Goodale, Richard Gould, Susan M. Lessard, P. Andrews Nixon, Lissa Widoff, Frank Woodard, and Nancy Ziegler

**Absent:** Elizabeth Ehrenfeld, Don Guimond, and Matt Scott

**Staff:** Carolyn Wheeler, Bureau of Air Quality  
Don Witherill, Bureau of Land and Water Quality  
Jeff Crawford, Bureau of Air Quality  
Matthew Sica, Dept. of Health and Human Services  
Hetty Richardson, Bureau of Land and Water Quality  
Mike Mullen, Bureau of Land and Water Quality  
John James, Bureau of Remediation and Waste Management  
Ginger Jordan-Hillier, Office of the Commissioner

**Others:** David P. Littell, DEP Commissioner  
Jan McClintock, Assistant Attorney General  
Cynthia S. Bertocci, BEP Executive Analyst  
Terry Hanson, BEP Administrative Assistant

***(Meeting adjourned at approximately 4:00 p.m.)***

The Board opened the meeting with two public hearings.

- (1) Chapter 123, Control of Volatile Organic Compounds from Paper, Film and Foil Coating Operations / Amendments
- (2) Chapter 521, Application for Waste Discharge Licenses // Section 9. Storm Water Discharges / Amendments

**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:**

Ocean Energy Task Force: The Ocean Energy Task Force report is available for review at the State Planning Office's website:

[http://www.maine.gov/spo/specialprojects/OETF/Documents/finalreport\\_123109.pdf](http://www.maine.gov/spo/specialprojects/OETF/Documents/finalreport_123109.pdf)

The report recommends an ocean energy goal of 5,000 megawatt by 2030, establishment of a permitting process for offshore wind projects similar to land based wind energy projects (expedited permitting by the Commissioner with an ability to appeal to the BEP), and that DEP be the primary permitting agency throughout the state. The Land Use Regulation Commission (LURC) would retain permitting authority over small community wind power projects in the unorganized areas of the state.). The University of Maine has received a 9-million dollar grant for deepwater ocean energy pilot studies in the Gulf of Maine. This grant award is one of three issued to qualifying universities nationally. Lastly, a Memorandum of Understanding with Federal Energy Regulatory Commission (FERC) will allow for short-term testing of the off-shore pilot studies as envisioned by Maine statute.

**QUESTIONS:**

Board member Nancy Ziegler asked for clarification concerning permitting authority between the DEP and LURC.

*Commissioner Littell explained that the Ocean Energy Task Force is recommending that if a community within LURC jurisdiction proposes a small wind power project with the power generated intended for local consumption, jurisdiction over permitting would remain with LURC. Power generation projects larger than 3 megawatt would fall under DEP jurisdiction regardless of where they are located in the state. New language to amend the Site Law is being developed to clarify the jurisdictional issue.*

Board member Lissa Widoff asked about the role the Dept. of Marine Resources (DMR) would have with permitting of deep-water ocean wind power projects.

*Commissioner Littell noted that the DMR would play an important role, consulting on fisheries resources and sea bird issues. Additionally, the Conservation Law Foundation Maine Director is co-chair of a group looking at natural resource impacts including impacts to the right whale. It will be several years before we are able to look at grid scale proposals based on projected testing by UMO and financing needing to fund a large project.*

Climate Conference: The Commissioner told Board members that he attended the climate conference in Copenhagen where he discussed Maine's efforts to address climate change. He noted that a group called Environment America has evaluated state actions and determined that state actions detailed in 34 Climate Action Plans will result in a national reduction of 7% in greenhouse gas emissions in the U.S. by 2020. He commented that it was beneficial to see what other countries are doing to address climate change, including efforts to reduce energy use. Specifically, the Danes are moving ahead with wind power - the production of wind power facilities and infrastructure has supported economic growth in Denmark with one quarter of all wind turbines produced by companies in Denmark. Denmark currently gets 20% of its electricity from wind. Lastly, a Canadian official communicated that Canada will be closing 5 coal fired power plants in Ontario; this represents a significant change in Canada's position on energy generation from as recently as 4-year's ago.

QUESTIONS: Board member Nancy Ziegler asked if the wind power projects were land based.

*Commissioner Littell replied that the Denmark wind power facilities are both land and ocean based. There are single units throughout the city of Copenhagen and two or three cluster facilities (shallow water wind power facilities).*

Carbon Reductions: At a news conference yesterday Efficiency Maine announced awards of approximately 8.9 million from the Energy and Carbon Reduction Trust to 16 industrial and commercial projects which could result in great gains in overall carbon reduction. The 8.9 million dollars will leverage 90 million in private investment and, if the projects are implemented as proposed, potentially create 1000 jobs and yield 200,000 tons of carbon reduction. The investment of ¼ of RGGI auction proceeds along with some federal stimulus money for these projects may produce results in a shortened timeframe.

Legislative Session: The Department is busy covering several matters today with a third budget session and three work sessions scheduled for this afternoon.

Bills moving forward to work session are: Pharmaceutical Product Stewardship, amendments to Site Law to include consideration of greenhouse gas emissions, and Toxic Use Reduction Act revisions.

Other legislative matters include consideration of major substantive rules provisionally adopted by the BEP, specifically, Fish Passage Rules, Groundwater Protection Rules, Sand Dune Rules.

Pharmaceutical Product Stewardship – This bill seeks to establish a structure for the DEP to implement product stewardship for pharmaceuticals similar to that for electronic waste.

Deca – proposed bill seeking to ban use of Deca in pallets and food containers.

Questions: Board member M. Wing Goodale asked about movement on a national Deca ban.

*Commissioner Littell commented that Congresswomen Pingree has proposed a Deca ban. Commissioner Littell noted that shortly thereafter several chemical companies announced the phasing out of this chemical.*

Wood Stove Change-out Program: The Maine air toxics initiative has identified improper wood burning as #1 air toxics source in Maine. The Department is proposing a program to create incentives for individuals to upgrade to EPA certified wood stoves. The DEP will look for federal funding or funding through supplemental environmental projects to encourage the replacement of old wood stoves.

Regional Haze: The goal of the 1990 Clean Air Act Amendments addressing regional haze is to achieve “natural background” conditions in Class One areas by 2060. A plan to address this goal was discussed among 14 tribes and Mid-Atlantic and Northeastern states to reduce visibility impairing pollutants. Maine has more Class One areas than the other states (Moosehorn, Campobello and Acadia)

Androscoggin: The Androscoggin River discharge permits issued to Verso, Rumford Paper, Livermore Falls Wastewater Treatment Plant and FPL Energy Gulf Island Pond Dam are in the last year of their 5-year permits. Modeling shows that modifications implemented by the partnership to pipe air in at Lower Narrows will eliminate the need for the second bubbler. The Department wants to collect water quality data in summer of 2010 before working on revisions to the permits.

Landfills:

Hampden: Commissioner Littell noted that the last truck taking waste to Hampden passed through the gates today. They will soon proceed to closure.

Juniper Ridge, Old Town: The Department has reviewed the request for public benefit determination for a proposed expansion of the landfill and has issued a draft denial. The denial is based on the fact that the facility will not reach capacity for another 10 years and there were unanswered questions related to recycling and sources of the waste stream.

Oakfield Wind Power: The Department has circulated a draft permit approval for comment.

Ozone Standard: The U.S. Environmental Protection Agency has examined the national ambient air quality standard for ozone and an announcement of consideration of a more stringent standard is anticipated later today.

QUESTIONS: Board member Richard Gould asked about the status of Calais LNG project. *Commissioner Littell noted that the company is meeting with DEP next week to discuss filing their application. Calais LNG has already filed with FERC.*

**B. COMMENTS FROM THE BEP CHAIR:** Chair Lessard thanked Board member Nancy Ziegler for chairing the December 17<sup>th</sup> Board meeting which included a lengthy public hearing on Chapter

**C. EXECUTIVE ANALYST COMMENTS: NONE**

**D. BOARD CALENDAR: REVIEWED**

**E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:** No questions.

**F. EXECUTIVE SESSION:** None

**II CONSENT AGENDA ITEMS:**

The Board voted (7-0-0-3) on a motion to approve consent agenda items 1, 2, 3, 4, 5, 6, and 7 as presented.

The vote was taken pursuant to 38 M.R.S. A. §341-D(6).

*Board members M. Wing Goodale, Richard Gould, P. Andrews Nixon, Susan M. Lessard, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Elizabeth Ehrenfeld, Don Guimond, and Matt Scott were absent.*

1. FREIGHTLINER OF MAINE, INC., Westbrook - Administrative Consent Agreement (BAQ)
2. CORINTH WOOD PELLETS, L.L.C., Corinth - Administrative Consent Agreement SITE (BAQ)
3. TOWN OF ANSON - Administrative Consent Agreement (BLWQ)
4. GLEN DUBE EXCAVATION, INC., Sabattus - Administrative Consent Agreement (BLWQ)
5. DONALD HOLDSWORTH and THOMAS TARDIFF, Wells - Administrative Consent Agreement, (BLWQ)
6. WILLIAM P. FANNING AND DEBRA A. DOLLOFF, Kennebunk - Administrative Consent Agreement - (BLWQ)
7. N.S. GILES FOUNDATION, INC., Dedham - Administrative Consent Agreement - (BLWQ)

The Board voted (5-0-2-3) on a motion to approve BEP minutes from October 1, 2009 as presented.

The vote was taken pursuant to 38 M.R.S. §341-D.

*Board members M. Wing Goodale, Richard Gould, Susan M. Lessard, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members P. Andrews Nixon and Lissa Widoff recused. Board members Elizabeth Ehrenfeld, Don Guimond, and Matt Scott were absent.*

The Board voted (5-0-2-3) on a motion to approve BEP minutes from November 5, 2009 as presented.

The vote was taken pursuant to 38 M.R.S. §341-D.

*Board members Richard Gould, Susan M. Lessard, P. Andrews Nixon, Frank Woodard, and Lissa Widoff voted to support the motion. Board members M. Wing Goodale and Nancy Ziegler recused. Board members Elizabeth Ehrenfeld, Don Guimond, and Matt Scott were absent.*

### III. Regular Agenda

1. CHAPTER 154 - CONTROL OF VOLATILE ORGANIC COMPOUNDS FROM FLEXIBLE PACKAGE PRINTING / New (post to 30-day written public comment)  
Staff: Jeff Crawford, Bureau of Air Quality

The Board voted (7-0-0-3) on a motion to post to 30-day written public comment new proposed Chapter 154, Control of Volatile Organic Compounds (VOC) From Flexible Package Printing. This proposed rule seeks to include EPA's Control Technique Guideline. Language in the proposal limits emissions of VOCs (greater than 25 tons per year) from flexible package printers and would establish work practice and recordkeeping requirements. Written comment deadline will be April 12, 2010.

The vote was taken pursuant to 38 M.R.S. §341-D(1-B) and 585-A.

*Board members M. Wing Goodale, Richard Gould, P. Andrews Nixon, Susan M. Lessard, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Elizabeth Ehrenfeld, Don Guimond, and Matt Scott were absent.*

2. CHAPTER 400 – SOLID WASTE MANAGEMENT RULES GENERAL PROVISIONS, CHAPTER 401 – LANDFILL DISPOSAL FACILITIES, CHAPTER 409 – PROCESSING FACILITIES (post to public hearing)  
Staff: Paula Clark, Bureau of Remediation and Waste Management

The Board voted (7-0-0-3) on a motion to post amendments to Chapters 400, 401 and 409 to public hearing. The proposed changes include a definition of "maximum extent practicable" to apply to recycling, provisions for waste characterization and reporting requirements to assess recycling performance, and specific standards for the use of process residues from construction and demolition debris for daily cover or grading materials at landfills. A February 18, 2010 public hearing was set with a March 1, 2010 deadline for submission of written comments.

The vote was taken pursuant to 38 M.R.S. §341-D(1-B), and §1310-N(5-A)(B).

*Board members M. Wing Goodale, Richard Gould, P. Andrews Nixon, Susan M. Lessard, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Elizabeth Ehrenfeld, Don Guimond, and Matt Scott were absent.*

3. LD 330 SECTION 23 – REPORT TO LEGISLATURE RELATED TO PROCEDURES FOR WATER RECLASSIFICATION (Briefing)  
Staff: Susan Davies, Bureau of Land and Water Quality

The Department is proposing changes to the statute governing procedures for the reclassification of waterbodies. The changes are needed to reflect changes in practice since the initial classification of waterbodies in the 1980s and 1990s including the fact that the public also proposes changes for reclassification and some changes are proposed by staff in response to noted improvements in water quality. The proposed changes are included in a Department bill, LD 330. No vote taken.

4. MICHAEL E. TRAPHAGEN AND DIANNE W. TRAPHAGEN, NATURAL RESOURCES PROTECTION ACT APPROVAL #L-24420-4P-A-N (Appeal Submitted by Todd Merolla and Christopher O. Bursaw)

Staff: Beth Callahan and Marybeth Richardson, Bureau of Land and Water Quality

The Board voted (7-0-0-3) on a motion to deny the appeal submitted by Mr. Todd Merolla and Mr. Christopher O. Bursaw and approve the draft proposed Board Order as presented. The vote affirms the Commissioner's decision to approve a Natural Resources Protection Act application (issued in Department Order L-024420-4P-A-N) for the construction of a residential pile-supported pier and seasonal ramp and float in Southport.

The vote was taken pursuant to 38 M.R.S. Sections 341-D(4) and 480-A through 480- HH and 06-096 CMR Chapter 2, Section 24 (B) and Chapter 310 Wetland and Waterbodies Protection Rules.

*Board members M. Wing Goodale, Richard Gould, P. Andrews Nixon, Susan M. Lessard, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Elizabeth Ehrenfeld, Don Guimond, and Matt Scott were absent.*

5. UNITED STATES SURGICAL CORP. - MALLINCKRODT LLC // HOLTRACHEM site (appeal of Eleventh Procedural Order)

Staff: Cindy Bertocci, BEP Executive Analyst

The Board voted (6-0-1-3) on a motion to deny the appeal submitted by Mallinckrodt and affirm the Presiding Officer's ruling permitting testimony and evidence related to the Penobscot River Mercury Study presented in the Phase I Report and the update to the report.

The vote was taken pursuant to 5 M.R.S. sections 9051 – 9064 and 38 M.R.S. sections 1361-1371.

*Board members, Richard Gould, Susan M. Lessard, P. Andrews Nixon, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale recused. Board members Elizabeth Ehrenfeld, Don Guimond, and Matt Scott were absent.*

6. LEGISLATIVE REPORT // ANNUAL SUMMARY OF ACTIVITIES (Discussion)

Staff: Cindy Bertocci, BEP Executive Analysis

The Board resumed discussion of the report which included Permit-By-Rule under the Natural Resource Protection Act (NRPA), impacts of temporary structures in coastal wetlands not reviewed under NRPA, and agency noise regulations as applied to wind energy projects.

*Next Regular Meeting –Thursday, February 18, 2010 – Augusta Civic Center*