

**BOARD OF ENVIRONMENTAL PROTECTION  
Meeting Minutes**

September 2, 2010

A meeting of the Board of Environmental Protection was held on Thursday, September 2, 2010, at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

**Board:** Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Susan M. Lessard, P. Andrews Nixon, Paul Paydos, Matt Scott, and Lissa Widoff

Board members M. Wing Goodale and Frank Woodard were absent.

**Staff:** Jeff Crawford, Bureau of Air Quality  
Andrea Lani, Bureau of Remediation and Waste Management  
Dawn Hallowell, Bureau of Land and Water Quality  
Beth Callahan, Bureau of Land and Water Quality  
Marybeth Richardson, Bureau of Land and Water Quality

**Others:** Beth Nagusky, Office of the Commissioner  
Cynthia S. Bertocci, BEP Executive Analyst  
Peggy Bensinger, Assistant Attorney General  
Terry Hanson, BEP Administrative Assistant

***(Meeting adjourned at approximately 02:30 p.m.)***

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Beth Nagusky briefed the board on behalf of Commissioner Littell on the following:

Public Utilities Commission Appointment: Commissioner David Littell was nominated by the Governor to serve as a Commissioner on the Public Utilities Commission. Mr. Littell received a unanimous vote from both the Joint Standing Committee on Utilities and Energy and the Senate in support of the nomination. Commissioner Littell will be sworn in on September 8<sup>th</sup>. The Department's Acting Commissioner will be announced and will be sworn in that same day.

Gulf Oil Spill: All DEP teams have returned from Panama City. The Department deployed four teams on a 16-day rotation schedule. The Department provided high value to the oil cleanup / containment efforts in Florida. This experience was an excellent opportunity for learning and training for DEP response staff.

NESHAP Standards: DEP's Bureau of Air Quality sent guidance material to 250+ businesses this week to inform them of obligations under EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) for Metal Fabrication and Finishing Operations. NESHAP requires best management practices and/or controls to minimize the release of hazardous air pollutants from dry abrasive blasting, grinding and polishing, machining, spray painting and welding by July 25, 2011.

Winterwood Compost Facility: The Department entered into a consent agreement in 2006 related to the discharge of leachate into a brook from the Winterwood Composting Facility. An order was issued by the Tenth District Court ordering the company to come into compliance with environmental laws. The order was violated. Winterwood was later found in contempt and again ordered to come into compliance in 2008. The contempt order was violated. In 2009 the District Court issued an order to enforce the previous order; then the Attorney General's Office issued an order prohibiting the facility from accepting material at the facility. That order was violated. The York County Superior issued an order finding the owner guilty of criminal contempt and issued a sentence of 6 months in jail with all but 50 days suspended.

Environmental Council Of States (ECOS): The Environmental Council of States held a meeting earlier this week in New Hampshire which resulted in the adoption of approximately 12 resolutions including support for TSCA reform, the national vehicle mercury switch removal program, and state adoption of the California LEV (low emission vehicle) standards. This meeting was a good opportunity to network with EPA and other states on regional efforts to reduce the cost of enforcement and permitting.

Ocean Energy Task Force: The Public Utilities Commission recently issued a request for proposals for up to 25 megawatts of deepwater offshore wind greater than 10 miles from shore and up to 5 megawatts of tidal power. This represents the first of this type in the country.

Peggy Bensinger noted that an appeal has been filed in court disputing one of the identified sites for the testing and demonstration of offshore wind, wave and tidal power materials and technologies project development.

Ms. Nagusky advised that Legislature charged the State Planning Office and the Department of Conservation with identifying up to 5 sites off the coast of Maine where demonstration projects could receive a 60-day general permit pursuant to monitoring and adaptive management guidelines for wave and wind projects. The site off Monhegan Island was appealed by Mr. Ron Huber.

Cindy Bertocci asked if the request for proposals was for a demonstration project or for actual construction.

Ms. Nagusky explained that the request for proposals was for the selection of grid scale wind and tidal projects. It was noted that wind generation projects would be located in federal waters (10 miles from shore or an inhabited island).

## QUESTIONS

Board member Matt Scott asked if staff from the Maine Center for Disease Control (CDC) would be presenting testimony on the priority chemical rulemaking.

Ms. Nagusky noted that the law requires that any listing of a chemical include concurrence of the CDC. She pointed out that the Board's review materials included documents from the CDC which evaluated health risks associated with nonylphenol. Ms. Nagusky also explained that the Department's Project manager can provide a full response concerning the role of the CDC in priority chemicals rulemaking.

**B. COMMENTS FROM THE BEP CHAIR:** NONE

**C. EXECUTIVE ANALYST COMMENTS:** None

**D. BOARD CALENDAR:** Reviewed

**E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:** Reviewed.

**F. EXECUTIVE SESSION:** None

## II CONSENT AGENDA ITEMS:

The Board voted (8-0-0-2) to approve consent agenda items 1 and 2 as presented.

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

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

1. MARK JENSEN and CHARMAINE JENSEN, Belfast – Administrative Consent Agreement (BLWQ – Land)
2. NORTHEAST PACKAGING CO., Presque Isle – Administrative Consent Agreement (BRWM)

## II. Regular Agenda

1. CHAPTER 118, GASOLINE DISPENSING FACILITIES VAPOR CONTROL – AMENDMENTS (post to public hearing)

Staff: Jeff Crawford, Bureau of Air Quality

The Board voted (8-0-0-2) on a motion to post amendments to Chapter 118 Gasoline Dispensing Facilities Vapor Control to public hearing. Amendments to this regulation propose the repeal of Stage II vapor recovery controls in York, Cumberland and Sagadahoc counties, clarify the requirements for both federal NESHAP and Chapter 118 rules, and require pressure/vacuum vent caps on all medium-sized sources. Amendments also include language to establish Stage II closure and/or discontinuance protocols. The hearing date is November 4, 2010 with the deadline for submission of written public comment of November 15, 2010.

The vote was taken pursuant to 38 M.R.S.A. §341-D(1-B), § 585-A and § 585-E, 40 CFR Part 63 Subpart CCCCC, and the 1990 Clean Air Act Amendments Section 110(1), and Section 184(b)(2)

*Board members Elizabeth Ehrenfeld, Lissa Widoff, Richard Gould, P. Andrews Nixon, Don Guimond, Susan Lessard, Paul Paydos and Matt Scott voted in support of the Motion. Board members M. Wing Goodale and Frank Woodard were absent.*

2. CHAPTER 129, SURFACE COATING FACILITIES – AMENDMENT (post to 30-day written comment)

Staff: Jeff Crawford, Bureau of Air Quality

The Board voted (8-0-0-2) on a motion to post amendments to Chapter 129, Surface Coating Facilities to a 30-day written public comment period. This rule establishes requirements for testing, evaluating and limiting the emissions of volatile organic compounds and hazardous air pollutants from selected surface coating operations. The amendments incorporate Control Technique Guidelines for flat wood paneling and metal furniture. The Board vote established a deadline for submission of written public comment of November 12, 2010.

The vote was taken pursuant to 38 M.R.S.A. §341-D(1-B) and § 585-A and Section 184 of the Clean Air Act

*Board members Elizabeth Ehrenfeld, Lissa Widoff, Richard Gould, P. Andrews Nixon, Don Guimond, Susan Lessard, Paul Paydos and Matt Scott voted in support of the Motion. Board members M. Wing Goodale and Frank Woodard were absent.*

3. CHAPTER 883, DESIGNATION OF THE CHEMICAL CLASS NONYLPHENOL AND NONYLPHENOL ETHOXYLATES AS A PRIORITY CHEMICAL – NEW (post to public hearing)

Staff: Andrea Lani, Bureau of Remediation and Waste Management

The Board voted (8-0-0-2) on a motion to post to public hearing new Chapter 883, Designation of the Chemical Class Nonylphenol and Nonylphenol Ethoxylates as a priority chemical. This proposed rule seeks to designate this chemical class as a priority chemical requiring reporting for certain consumer products that contain nonylphenol or nonylphenol ethoxylates. The vote established a public hearing date of October 7, 2010 and a deadline for submission of written public comment of October 18, 2010.

The vote was taken pursuant to 38 M.R.S. A. § 341-D(1-B) and §§1691 through 1699-B.

*Board members Elizabeth Ehrenfeld, Lissa Widoff, Richard Gould, P. Andrews Nixon, Don Guimond, Susan Lessard, Paul Paydos and Matt Scott voted in support of the Motion. Board members M. Wing Goodale and Frank Woodard were absent.*

4. CENTRAL MAINE POWER COMPANY – MAINE POWER RELIABILITY PROGRAM (appeal by Mary and David Fournier)

Staff: Dawn Hallowell, Bureau of Land and Water Quality

Staff: Beth Callahan, Bureau of Land and Water Quality

Staff: Marybeth Richardson, Licensing Coordinator Bureau of Land and Water Quality

The Board voted (8-0-0-2) to deny the request of Mary and David Fournier to further supplement the record with appellants' Attachment A-18 identified as Department of Inland Fisheries and Wildlife Figure 14-23 and affirm the Chair's ruling in the letter dated June 18, 2010 disallowing evidence pertaining to a prior licensing matter.

The Board voted (8-0-0-2) on a motion to deny the appellants' request for a public hearing.

The Board voted (8-0-0-2) on a motion to deny the appeal submitted by Mary and David Fournier regarding Department Orders L-24620-26-A-N, L-24620-TG-B-N, L24620-VP-C-N, L24620-IW-D-N and L-24620-L6-E-N issued to Central Maine Power Company for construction and development of the Maine Power Reliability Program (MPRP). The vote affirms the Commissioner's Orders and approves the draft proposed Board Order which includes provisions for vegetation management requirements in the area of the Fournier well and includes language to require additional third party inspectors if determined necessary by the Department.

The votes was taken pursuant to 38 M.R.S.A. §§ 480 to 480-HH, §§ 481 to 490, and 06-096 CMR Chapters 2, 315, 335, and 375.

*Board members Elizabeth Ehrenfeld, Lissa Widoff, Richard Gould, P. Andrews Nixon, Don Guimond, Susan Lessard, Paul Paydos and Matt Scott voted in support of the Motion. Board members M. Wing Goodale and Frank Woodard were absent.*

*Next Regular Meeting –Thursday, October 7, 2010 – Holiday Inn / Ground Round*