

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

October 21, 2010

A meeting of the Board of Environmental Protection was held on Thursday, October 21, 2010, at the Department of Environmental Protection Response Building, 4 Blossom Lane, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Susan M. Lessard, P. Andrews Nixon, Paul Paydos, Matt Scott, and Frank Woodard.

Board members Lissa Widoff and Don Guimond were absent

Staff: William Hinkle, Bureau of Land and Water Quality

Others: Beth Nagusky, Acting DEP Commissioner
Cynthia S. Bertocci, BEP Executive Analyst
Peter LaFond, Assistant Attorney General
Terry Dawson, BEP Administrative Assistant

(Meeting adjourned at approximately 11:30 a.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Presque Isle: Acting Commissioner Nagusky traveled to Presque Isle to meet with the northern Maine regional office staff. While there she met with the public safety and community leaders working on the county's drug take back program, and visited the wind project at the Mapleton Elementary School. Ms. Nagusky also addressed a class at the Northern Maine Community College about state regulation and legislation on wind power development.

Regional Greenhouse Gas Initiative (RGGI): The RGGI directors participated in a conference call recently to discuss the draft economic analysis which was developed by NESCAUM relating to a low carbon fuel standard. It is anticipated that additional follow-up on this topic will be on a future meeting agenda.

General Permit for Wetland Activities: The Army Corp of Engineers has issued a new general permit for wetland activities. The general permit includes a 750 foot protection zone around vernal pools and culvert replacement guidelines that require a 1.2 bank full width. The DEP's culvert rules are undergoing review for a report back to the Legislature. On Monday staff will begin a series of stakeholder meetings with the environmental community, Maine Municipal Association, the Department of Transportation and road project engineers to discuss culvert replacement standards. The Army Corps has indicated it may modify its general permit to adopt Maine's different standards.

Gasoline Waiver (15% ethanol (E15)): The U.S. Environmental Protection Agency (EPA) approved a waiver allowing the sale of fuel that contains up to 15 percent ethanol (the current allowable ethanol content in gasoline fuels is up to 10%) for model year 2007 and newer cars and light trucks. ***Note: This waiver is not a federal mandate; instead, the waiver allows fuel supply distributors the option to offer for sale the E15 gasoline fuel.***

The sale of E15 gasoline fuels in Maine is unlikely. However, we expect several states in the mid-west will take advantage of the waiver.

QUESTIONS:

Board member Elizabeth Ehrenfeld asked if the general permit issued by the Army Corp was a national initiative or specifically directed at Maine.

Acting Commissioner Nagusky explained that the Army Corps has regulatory authority over activities affecting navigable waters of the United States, which includes wetlands and stream crossings. The Army Corps general permit issued October 13th is for activities in Maine.

Board member M. Wing Goodale asked if discussions associated with the E15 have taken into consideration possible negative impacts on small engines (e.g. outboard engines, snowmobiles).

Ms. Nagusky noted that there has been much discussion around the issue of engine performance. The DEP understands that EPA is continuing with its fuel/engine compatibility testing and analysis. She noted that use of E15 is voluntary, and it is anticipated that the mid-western states may opt for the 15% Ethanol fuel.

Board member Matt Scott commented on the positive aspects associated with the new culvert standards, noting improvements in fish passage in some Downeast rivers for Atlantic Salmon and Eastern Brook Trout.

B. COMMENTS FROM THE BEP CHAIR: None

C. EXECUTIVE ANALYST COMMENTS:

The Board's Executive Analyst noted the volume of rulemaking tentatively scheduled for the winter 2010 / 2011. She also noted that the Board's report to the Legislature is due in January. At the Board's November 18th meeting she will seek input from members on the content of that report.

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:

Board member Elizabeth Ehrenfeld asked for additional details associated with a general permit for mosquito control.

*Staff member William Hinkel explained that the DEP's response to the confirmed cases of **Eastern Equine Encephalitis (EEE)** resulted in the development of a general permit process for municipalities that need to treat areas known to be breeding habitat for the mosquito species responsible for EEE disease transmission. Specific areas known to breed the EEE infected mosquito are mapped and priority treatment locations identified by the municipality (e.g. schools, hospitals, etc.). The treatment consists of two species of bacteria which target the mosquito larvae. The bacteria are applied directly to the water source. Permits for applications of this treatment need to demonstrate that the treatment would not impact other insect species.*

Board member Frank Woodard asked about the half life of the treatment bacteria.

Mr. Hinkel noted that the bacteria breakdown is rapid. The bacteria used are naturally occurring in the soil but at much lower concentrations than in the treatment medium.

Mr. Hinkel confirmed that treatment in streams or free flowing habitats is not allowed and that treatment focus is on wetlands where these mosquitoes breed.

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS:

The Board voted (7-0-1-2) to approve consent agenda item 1 as presented (BOARD MINUTES OF AUGUST 5, 2010).

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

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

The Board voted (7-0-1-2) to approve consent agenda item 2 as presented (BOARD MINUTES OF AUGUST 19, 2010).

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

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

The Board voted (7-0-1-2) to approve consent agenda item 3 as presented (BOARD MINUTES SEPTEMBER 2, 2010).

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

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

II. Regular Agenda

1. ALBERT SIRIOS – RESIDENTIAL OVERBOARD DISCHARGE PERMIT RENEWAL – DEP APPROVAL #W-003648-5A-D-R (appeal submitted by Herman Turndorf)

Staff: William Hinkel, Bureau of Land and Water Quality

The Board voted (8-0-0-2) on a motion to vacate Department Order W-003648-5A-D-R dated February 3, 2010, finding that the applicant Mr. Albert Sirois lacked sufficient title, right or interest. The motion approves the Draft Proposed Board Order as amended to correct minor typographical errors as follows:

Page 3 of 4 Paragraph 3. STANDING AND TIMELINNESS

Page 3 of 4 Paragraph 4. DISCUSSION

... The Department's administrative record contained evidence of Albert Sirois' ownership...

... the Department processed the January 13, 2010 application as a straightforward application for renewal...

The vote was taken pursuant to 38 M.R.S.A. § 341-D(4) and 06-096 CMR Chapter 2 Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR Chapter 521 Application Processing Procedures for Waste Discharge Licenses, and Chapter 522, Overboard Discharges.

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

Next Regular Meeting – Thursday, November 4, 2010 – Maple Hill Farm, Hallowell