

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

May 6, 2010

A meeting of the Board of Environmental Protection was held on Thursday, May 6, 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: Elizabeth Ehrenfeld, Richard Gould, Susan M. Lessard, Lissa Widoff, Frank Woodard and Nancy Ziegler

Absent: M. Wing Goodale, Don Guimond, P. Andrews Nixon, and Matt Scott

Staff: Bryce Sproul, Bureau of Air Quality
Kurt Tidd, Bureau of Air Quality

Others: David P. Littell, DEP Commissioner
Cynthia S. Bertocci, BEP Executive Analyst
Jan McClintock, Assistant Attorney General, deliberative session only
Peggy Bensinger, Assistant Attorney General, afternoon session only
Terry Hanson, BEP Administrative Assistant
Robert Gerber, BEP Technical Consultant

(Meeting adjourned at approximately 6:30 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Climate Action Plan: Maine's third biennial report regarding the climate action plan has been completed. For the first time, we did a quantitative evaluation using Maine data and Environmental Protection Agency models (all sectors except forestry, land use, and biomass combustion were modeled). The report concludes that Maine is on target to meet its 2010 goal of 1990 emissions levels. The modeling includes data on the increase in gross domestic product and results show greenhouse gas reductions. We need to achieve 75 to 80 percent reductions by 2050. This data illustrates that Maine is currently at a 16% reduction compared to the goal measured from a 2005 baseline in the federal bills of a 17% reduction goal by 2020.

Note: Commissioner Littell specifically noted that (to his knowledge) Maine is only state to have this tracking picture.

The Department also reported on the work of the adaptation stakeholder work group. The report was well received and the Legislature has authorized us to proceed to a full adaptation plan.

Regional Greenhouse Gas (RGGI) Auction: The 7th RGGI auction was held in March and the price per carbon allowance was \$2.07, which was a small increase. There is a continued demand with a majority of the allowances being purchased by compliance entities.

Utilities Committee: The Utilities Committee initially asked the DEP to report back to them on noise issues related to wind power projects. After further consideration of the matter, the Committee asked the Governor's Office of Energy Independence and Security (OEIS) to provide any information needed to conduct an evaluation of Maine's noise regulations and any potential associated health effects due to wind power projects. The Department will work with OEIS on this matter.

Legislation:

- Pharmaceutical product stewardship bill died. There was a strong vote in favor in the House, but the Senate did not act on it. This initiative may return in a future Legislative session.
- Product stewardship bill passed. This bill establishes the overall structure, and the Legislature has authorized the Department to report back to it on proposals for new categories. Maine has maintained its leadership role in product stewardship with more product stewardship programs than any other state.
- Air Quality Class I Area Improvement Act: This legislation requires a reduction in sulfur levels for number 4, 5, and 6 fuel oil. Maine has more Class I areas than any other state in the northeast (3), and is required to reduce sulfur emissions to comply visibility standards under the Clean Air Act Amendments of 1990. Maine worked hard with environmental interest groups and the regulated community to

achieve a consensus bill. The bill is focused on visibility, but will provide health improvements through reductions in particulates. By 2018 these reductions could save 23 lives a year in Maine and save 149 million dollars in health care costs just in Maine.

- Residential Wood Stove: A residential wood stove replacement program initiative passed with a sunset provision on general fund monies. Maine will use this fund to gain additional federal funding for a program to replace non-compliant outdoor wood boilers or older dirty wood stoves.
- Solid Waste Order: An Act to expedite solid waste odor rulemaking was passed. This act changes the rule from major substantive to routine technical. The rule will target hydrogen sulfide (rotten egg smell).
- Overboard Discharge Improvement Act: passed
- Closing Regulatory Loop Holes: This bill address a loop hole in environmental regulation. Exempted roadways constructed initially for forest management activities and later used as subdivision roads without environmental review will no longer occur. Another provision impacting subdivisions in shoreland areas did not pass.
- Act to Establish Lake Water Levels: not passed. The proposed bill recommended streamlining the process by eliminating Board oversight.
- Ocean Energy Bill: This bill passed with an amendment to remove the provision for expedited environmental review.
- Fish Passage Rules: This bill moved forward with passage of the new construction component only. Existing construction will require the Department to undergo a stakeholder process with the Maine Municipal Association and Department of Transportation to develop standards. This effort will include consultation with the Army Corps which is revising its general programmatic permit.

QUESTIONS:

Board member Elizabeth Ehrenfeld asked about the key items related to the climate change plan that drove Maine's performance.

Commissioner Littell explained that several industries switched from heavy petroleum to natural gas because of economics which provided much by way of greenhouse gas reduction.

B. COMMENTS FROM THE BEP CHAIR: NONE

C. EXECUTIVE ANALYST COMMENTS: None

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: None

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS:

The Board voted (6-0-0-4) on a motion to approve consent agenda item 1 as presented. The vote was taken pursuant to 38 M.R.S. §341-D(6).

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

1. PIKE INDUSTRIES, INC. Westbrook – Administrative Consent Agreement (BAQ)

Board member Elizabeth Ehrenfeld asked for additional detail related to the cost associated with training and development for the supplemental environmental project (SEP), noting that the Pike employees are being paid and that the cost appeared to be inflated for a 3-hour program. Ms. Ehrenfeld also expressed concerns related to the development of a training program for implementation by a company as a result of its violation of environmental laws and the potential future economic benefit if the continues to offer training sessions for others state-wide.

Department staff explained that the amount for training and development was consistent with the cost of engineers and the hiring of experts (Ted Johnston) to implement certain portions of the program. Pike resources were paid out at a reduced rate. The training program for Northern Maine represents a structured, targeted education not existing anywhere else in Maine representing an improvement from the ad hoc training currently available.

II. Regular Agenda

1. UNITED STATES SURGICAL CORP. – MALLINCKRODT LLC / APPEAL OF DESIGNATION OF UNCONTROLLED HAZARDOUS SUBSTANCE SITE AND ORDER, HOLTRACHEM FACILITY (Board Deliberative Session)

Staff: Cynthia S. Bertocci, BEP Executive Analysis

The Board conducted a deliberative session, which is an opportunity for Board members to discuss the record with staff and provide staff with direction on the development of a draft Board Order.

2. CALAIS LNG PROJECT COMPANY LLC – Site Location of Development Act and Natural Resources Protection Act (NRPA) applications (#L-24843-26-A-N, #L-24843-TG-B-N, #L-24843-IW-C-N, #L-24843-L6-D-N, #L-24843-4P-E-N, #A-1029-71-A-N, and #W-9056-5O-A-N). (Motion to return / appeal of Second Procedural Order)

Staff: Cindy Bertocci, BEP Executive Analyst

Motion to Return

The Board voted (6-0-0-4) on a motion filed by the Conservation Law Foundation (CLF) to return the application to Calais LNG Project Company LLC arguing that the application was not complete for processing. CLF argued that the proposed facility should be reviewed under provisions of 38 M.R.S. Section 542 as an oil terminal

facility, and that the applicant lacks sufficient title, right or interest associated with connection to the Maritimes and Northeast Pipeline and vessel transportation through Head Harbor Passage.

Appeal of the Second Procedural Order

The Board voted (6-0-0-4) on a motion to amend the second procedural order by incorporating language from the Downeast LNG Second Procedural Order related to the expansion of Maritimes and Northeast Pipeline and to clarify the ruling concerning the submission of evidence related to spills 4(G).

Specifically: New Section 4(N)

N. Expansion of Maritimes & Northeast Pipeline. There are no applications to expand the Maritimes & Northeast Pipeline, which may be used to accommodate the natural gas from the proposed facility, currently before the Board or the Department; therefore, the potential impacts of such an expansion are not being reviewed in this proceeding.

Section 4(G) clarify by including language – “evidence associated with potential impacts, or lack thereof, to water quality...”

The Board voted (6-0-0-4) on a motion deny the appeals filed by Calais LNG Project Company LLC, Conservation Law Foundation, Save Passamaquoddy Bay-US/ NN, Industrial Energy Consumer Group, Sierra Club, Citizens for Safe and Secure Energy related to the schedule and Section 4 of the procedural order concerning relevant review criteria and issues to be addressed at the hearing; and affirm the Second Procedural Order as amended to include: a correction to the citation in 4(B), to clarify the ruling concerning the submission of evidence related to potential for spills 4(G), and incorporate new 4(N).

Specifically: Section 4(B) correction to statutory citation – 486-A(1).

Section 4(G) clarify by including language – evidence associated with potential impacts, or lack thereof, to water quality...

The votes were taken pursuant to 38 M.R.S. Section 341-D(2), and 06-096 CMR Chapter 30 Special Regulations for Hearings on Applications of Significant Public Interest.

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

Next Regular Meeting –Thursday, May 20, 2010 – Augusta Civic Center