

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

May 20, 2010

A meeting of the Board of Environmental Protection was held on Thursday, May 20, 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. Board members P. Andrews Nixon and Matt Scott arrived at noon for the afternoon session

Absent: M. Wing Goodale and Don Guimond. Board member P. Andrews Nixon departed at approximately 4:00 p.m.

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, morning session only
Peggy Bensinger, Assistant Attorney General, afternoon session only
Terry Hanson, BEP Administrative Assistant
Robert Gerber, BEP Technical Consultant

(Meeting adjourned at approximately 5:00 p.m.)

III. REGULAR AGENDA

1. UNITED STATES SURGICAL CORP. - MALLINCKRODT LLC // APPEAL OF UNCONTROLLED HAZARDOUS SUBSTANCE SITE AND ORDER, HOLTRACHEM FACILITY (Board Deliberative Session)
Staff: Cindy Bertocci, BEP Executive Analyst

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

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Maine Power Reliability Project: The Department issued a permit to Central Maine Power Company for the Maine Power Reliability Project. This project represents a \$1.4 billion dollar investment. One direct abutter has appealed this permit. In addition to DEP review, the Public Utilities Commission has considered this project and recently approved a settlement among the parties that makes some changes to the proposed spur lines.

Business Regulation: Recent press indicates a public shift in attention from taxes to business regulation. The Department is developing a list of projects approved over the past 10 years in anticipation of inquiries about permitting.

Utilities Committee: The Utilities Committee requested that the Governor's Office of Energy Independence and Security (OEIS) conduct an evaluation of Maine's noise regulations and associated health affects related to wind power projects. The DEP has had an initial meeting with OEIS and learned that the National Renewable Energy Laboratory (NREL) (a federal lab dedicated to research, development, commercialization and deployment of renewable energy and energy efficiency technologies) will assist with this evaluation. NREL will provide assistance from national noise experts. OEIS is developing a plan to obtain input from interested persons in Maine for possible incorporation into the issues list for examination by OEIS and NREL. Commissioner Littell said OEIS could provide the Board with an outline of the study at a time when there are no pending wind power appeals before the Board.

Regional Offsets: Commissioner Littell has been participating in what is called the "Three Regions" discussion to look at how they might work together on multiple areas associated with greenhouse gas reduction efforts. The three regions include the Regional Greenhouse Gas Initiative (RGGI) states, the Western Climate Initiative States and the Mid-Western States. This group has reached agreement on some basic offset criteria for carbon offset projects. The Western Climate Initiative is also establishing criteria and they are consulting with RGGI states as well.

RGGI Plus Transportation: This initiative seeks to achieve reductions in greenhouse gases from transportation. The RGGI states are including Pennsylvania in these discussions. Discussions on action at the national level will begin during a summit in Delaware this June. The summit will include the commissioners' transportation counterparts. Transportation is the second largest greenhouse gas emission sector on a national basis after electrical plants. It is the largest sector in some states.

Senate Bills: Last week Kerry/Lieberman bill was made available and the Department is currently reviewing the language to identify important provisions for Maine. The Cantwell/Collins bill has also been attracting attention and the Department is reviewing this as well. We want to advance a strong national bill.

QUESTION(S):

Board member Lissa Widoff asked if the OEIS study would look at health impacts of noise from wind power projects.

Commissioner Littell explained that research would include consideration of infrasound issues and would help to determine what an appropriate noise level is if different from current levels and whether current regulations are sufficient.

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) on a motion to approve consent agenda items 1, 2, 3, 4, and 5 as presented.

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

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

1. ADVANCED POWER TECHNOLOGIES, LLC, Westbrook. Administrative Consent Agreement (BRWM)
2. GEORGE RICHARDSON III, Westport Island. Administrative Consent Agreement (BLWQ-Land)
3. GORDON LUMBERING LLC, Industry. Administrative Consent Agreement (BLWQ-Land)
4. LAST RESORT HOLDINGS, LLC, Cushing. Administrative Consent Agreement (BLWQ-Land)
5. INLAND FISHERIES AND WILDLIFE, Augusta, Casco, Embden, Enfield, Grand Lake Stream Plantation, Gray, New Gloucester, Palermo and Phillips. Administrative Consent Agreement (BLWQ-Water)

II. Regular Agenda

2. CHAPTER 881 FEES; CHEMICAL USE IN CHILDREN'S PRODUCTS / new (final adoption)*
Staff: Andrea Lani, Bureau of Remediation and Waste Management

The Board voted (8-0-0-2) on a motion to finally adopt Chapter 881, Fees; Chemical Use in Children's Products as amended by the Legislature to include a sunset provision set for February 1, 2013. Chapter 881 allows the Department to cover some of its review costs through fees paid by product manufacturers.

The vote was taken pursuant to 38 M.R.S. §341-D(1-B), §§1691 through 1699-B and PL 2007, c. 643.

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

3. JOHN GILMAN – DENIAL OF APPLICATION FOR PIER / (appeal)
Staff: Beth Callahan, Bureau of Land and Water Quality

The Board voted (8-0-0-2) on a motion to deny the appeal filed by John A. Gilman seeking to reverse the Department decision of January 21, 2010. The vote affirms the denial of the after-the-fact application for a permanent boat lift in Department Order L-24660-2B-N.

The vote was taken pursuant to 38 M.R.S. §480-A to 480_HH, 06-096 CMR Chapter 310, Wetland and Waterbodies Protection Rules, and Chapter 2 Rules Concerning the Processing of Applications and Other Administrative Matters.

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

4. 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). (appeal of Third Procedural Order)
Staff: Cindy Bertocci, BEP Executive Analyst

The Board voted (7-0-0-3) on a motion to grant, in part, the appeal filed by Citizens for Clean and Secure Energy Inc. (Citizens) and the joint appeal filed by Industrial Energy Consumer Group, Maine Chamber and Maine Workers for a Healthier Environment Inc. and remove Citizens from the Industrial Energy Consumer Group, Maine Chamber and Maine Workers intervenor group and to amend the Third Procedural Order to consolidate Citizens with intervenor group Professional Mariners.

The vote was taken pursuant to 38 M.R.S.A. 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, Matt Scott, Lissa Widoff, Frank Woodard and Nancy Ziegler voted to support the motion. Board members M. Wing Goodale, Don Guimond and P. Andrews Nixon were absent.

Note: *Calais LNG Project Company LLC sought to further consolidate intervenors Save Passamaquoddy Bay (SPB) and the Conservation Law Foundation (CLF), arguing that they share similar issues and interests. This filing was acknowledged; however, no vote was taken by the Board as it was not properly before them in the context of an appeal associated with rulings contained in the Third Procedural Order.*

Next Regular Meeting – Thursday, June 3, 2010 – Augusta Civic Center