Board of Environmental Protection
Recommendations and Summary of Activities
Calendar Year 2008

Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

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Contact: Cynthia S. Bertocci, Executive Analyst 287-2452

REPORT TO THE JOINT STANDING COMMITTEE ON NATURAL RESOURCES
SUMMARY OF ACTIVITIES – 2008

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Board of Environmental Protection
Report to the Joint Standing Committee on Natural Resources

Summary of Activities for Calendar Year 2008

I. Introduction

Title 38 section 341-D(7) requires the Board of Environmental Protection to report to the Joint Standing Committee on Natural Resources by January 15 of the first regular session of each Legislature on the "effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the board." In addition to providing recommendations, it is customary for the Board to provide a summary of its activities for the preceding calendar year. An update on Board membership, recommendations for your consideration, and a summary of the Board's activities in calendar year 2008 follow.

II. Membership

Chairmanship

Ernest Hilton completed his second term, including a year as Chair of the Board, in November 2008. Mr. Hilton's curiosity, careful questioning of witnesses, desire to listen to and understand the views of all persons appearing before the Board, and sense of fair play earned him the respect and appreciation of the public we serve. His background in law and engineering, coupled with the practical knowledge of his self-described status as a hard-scrabble farmer, brought a unique perspective to the Board which will be a challenge to replace. In addition to his many talents, Mr. Hilton brought an unmatched commitment, missing only one meeting in nine and a half years of service.

Governor John Baldacci has appointed Susan M. Lessard of Hampden as the new Chair of the Board. Ms. Lessard, who is currently the Town Manager of Hampden, has more than 25 years of service in local government. As such she brings a wealth of experience to the Board on issues of importance to Maine people.

Appointments

In February 2008, Governor Baldacci reappointed Donald Guimond of Fort Kent to a second term on the Board, and appointed Lissa Widoff of Freedom and P. Andrews Nixon of Brunswick to fill the vacancies created when Virginia Plummer of Turner and Nancy Anderson of Cumberland Foreside completed their service on the Board.

Donald Guimond has served as the Town Manager of Fort Kent since 1993. Mr. Guimond received a B.S. degree in Business Administration from Husson College and a Masters degree in Business Administration from Norwich University in Northfield, Vt. He is also a partner and operator of a family farm.

Lissa Widoff is Executive Director of the nonprofit Robert & Patricia Switzer Foundation, located in Belfast, which focuses on environmental leadership development. Ms. Widoff has also worked for the Maine Community Foundation, the State Planning Office, and The Nature Conservancy, Maine Chapter. She received a B.S. degree in Forest Biology from SUNY College of Environmental Science and Forestry in Syracuse, N.Y. and a Masters in Public Administration from Harvard University.

P. Andrews Nixon recently retired from his position as Chair and Chief Executive Officer of the Dead River Company, where he was employed for 38 years. Mr. Nixon has served on a number of Boards and Commissions, and currently serves on the Board of Directors for the Center for Prevention of Hate Violence and the Board of Directors for Common Good Ventures. He was also recently appointed by Governor Baldacci to serve as a trustee of the Energy and Carbon Savings Trust which was established to receive and expend revenue resulting from the sale of carbon dioxide allowances as part of the State's participation in the Regional Greenhouse Gas Initiative (RGGI).

III. Recommendations and Issues for Consideration

The Board considers a significant number of matters each year. These matters are summarized in Section V below. While each matter presents important issues for consideration and resolution, the Board would like to comment on the following matters.

A. 2008 Proposed Water Quality Reclassification of Specific Waterbodies

Title 38 § 464(2) establishes a procedure for recommending to the Legislature changes in the classification of State waters. In accordance with this procedure, Department staff proposed 17 upgrades in water quality classification for the Board's consideration: (1) marine Class SB to Class SA, (2) Class A to Class AA, (12) Class B to Class A, and (2) Class C to Class B. Staff also recommended changes to clarify the water quality classification of six waterbody segments. Staff did not recommend three citizen initiated proposals for upgrade: Androscoggin River main stem from Worumbo Dam to Merrymeeting Bay, Aroostook River from Washburn to Caribou, and Aroostook River from Caribou to the international border. Additionally, staff recommended that a Use Attainability Analysis be conducted to determine the level of water quality that can be attained in Jepson Brook in Lewiston.

Following a public hearing and review of all comments received, the Board finalized the majority of its recommendations at its December 18, 2008 meeting. The Board's recommendations are being forwarded to the Joint Standing Committee on Natural Resources under separate cover, and will be incorporated into a Department bill for the Committee's consideration. While a separate submission will address all waterbodies considered for reclassification, the Board has the following additional comments on the water quality classifications of the Lower Androscoggin River and the Kennebec River.

Lower Androscoggin River: Board members recognize that there is strong support from communities along the river to upgrade the lower Androscoggin River (from Worumbo Dam in Lisbon and Durham to Merrymeeting Bay) from Class C to Class B; however, the Board is not recommending an upgrade to Class B at this time due to insufficient data. While the Friends of Merrymeeting Bay and others have expended considerable resources to document water quality in the river, more data is needed to support a change in the classification. The Board believes that the upgrade of this segment of the river to Class B standards should be an important state water quality goal, and improved water quality would bring both environmental and economic benefits to the communities along the river. We urge the regulated community, municipalities, citizen groups, and the Department to work cooperatively to obtain the data necessary to more fully document water quality in this river stretch and to identify watershed management strategies that could be employed to allow reclassification of this segment of the river to Class B standards.

Kennebec River: The Board is proposing an upgrade of the main stem of the river from the Shawmut Dam to Messalonskee Stream, excluding impoundments, from Class C to Class B. Insufficient data precludes an upgrade of the impounded areas at this time. The Board believes that upgrade of the main stem of the Kennebec River, including the impoundments, from Class C to Class B between Skowhegan and Messalonskee Stream in Waterville and Winslow should be a state water quality goal. As with the Lower Androscoggin, the Board urges a cooperative effort to obtain the data necessary to more fully characterize water quality in the impounded segments and complete the upgrade of the Kennebec River below Skowhegan to Class B standards.

B. Significant Wildlife Habitat – Shorebird Feeding and Roosting Areas

In recent years the Legislature has enacted important laws to improve the protection of significant wildlife habitat under the Natural Resources Protection Act (NRPA), including shorebird nesting, feeding and staging areas (38 M.R.S. § 480-B(10)). While these laws have done much to protect critical habitat for vulnerable shorebirds that rely upon these coastal habitats for their survival, the Board is concerned that the current exemption under the NRPA for temporary structures may undermine efforts to protect shorebird feeding and roosting areas. Existing law (38 M.R.S. § 480-C(2)(D)) requires the licensing of permanent structures; however, it does not regulate the placement of temporary structures (which may be in place for up to 7 months within any 12 month period) including their placement in, on or over significant wildlife habitat. Placement of temporary structures in, on or over significant wildlife habitat may diminish and, in some instances, effectively eliminate the use of the habitat by the species the habitat designation is intended to protect.

While the Board generally supports the statutory permitting exemption for temporary structures, the placement of temporary structures in coastal wetlands, and hence their environmental impact, has historically been limited. However, improvements in technology are leading to placement of an increasing numbers of temporary docking systems in low energy intertidal areas. These areas are often the same areas (significant wildlife habitat) relied upon by migratory shorebirds to gain the body weight needed to successfully complete their migration from northern habitats to South America. Data collected by the Department of Inland Fisheries and Wildlife indicates that shorebirds demonstrate high site fidelity; and birds displaced from their feeding area cannot readily find replacement habitat. Such displaced shorebirds are at risk of increased mortality due to decreased food supply.

The placement of permanent piers or other permanent structures in, on or over significant wildlife habitat requires review and approval by the Department, while the statutory exemption for temporary structures allows placement of temporary docks in precisely the same areas for up to seven months per year, including during peak shorebird migration periods, without any review whatsoever. This discrepancy in regulatory oversight between placement of permanent and temporary structures, without consideration of location or time of placement, is not scientifically supportable and leads to situations where permanent structures regardless of size are carefully regulated, but temporary ones with potentially significant impact on the protected natural resource are exempt from review. The Board does not have data on the magnitude of the impact such temporary structures may pose to significant wildlife habitat in coastal systems, but anecdotal information suggests that the number of such structures is growing and the public may be shifting from permanent to temporary structures where feasible in part to avoid permitting requirements. The Board is concerned about this situation and believes that it warrants further investigation.

C. Petitions to Modify, Suspend or Revoke a License (38 M.R.S. § 341-D(3)

Over the past three years, the Board has received several petitions to modify, suspend or revoke a license. In response to a number of petitions related to requests to modify the water quality certifications of several hydro power projects to provide for upstream and downstream passage for migratory species, including American eel, the Legislature, in Resolve 2007, Chapter 109 (LD 1528) "Resolve, To Require State Agencies with Jurisdiction over Dams to Review and Update Plans for the Passage of Diadromous Fish" directed the Board to review its timelines for processing petitions. In response to this directive, the Board submitted a report to the Joint Standing Committee on Marine Resources and the Joint Standing Committee on Natural Resources on January 17, 2008. In that report, the Board identified a number of potential revisions to the Department's Chapter 2 Rules Concerning the Processing of Applications and Other Administrative Matters to address issues with the petition process, but stated its view that such rule changes should await a decision by the Maine Supreme Judicial Court (Law Court) in a pending case that would clarify the nature of the petition process.

The Law Court issued its decision on October 9, 2008 (*2008 ME 156, Ed Friedman et al. v. Board of Environmental Protection*). The Law Court ruled that statute (38 M.R.S. §341-D(3)) authorizes the Board to act to modify a license, but does not compel the Board to do so. Rather, "[t]he decision to grant or deny a petition for modification lies in the agency's sole discretion" and may not be appealed to court. In response to this ruling, the Board will be working with Department staff in 2009 to modify Chapter 2 to clarify the petition process and address other needed amendments to the rule.

D. Appeals 38 M.R.S. § 341-D(4). Authority to Remand a Matter to the Commissioner

While the Office of the Attorney General has stated its view that the Board has inherent authority to remand a matter on appeal to the Commissioner for further proceedings, the authority to do so has been challenged in at least one proceeding. To date, the Board has only remanded one matter to the Commissioner. Staff has drafted language for possible inclusion in a Department Omnibus Bill that would add the term "remand" to the list of actions the Board may take in response to an appeal of a Commissioner's licensing decision. The proposed change would make the authority to remand explicit. The option to remand a matter to the staff may provide for more efficient resolution of an appeal by providing a mechanism to efficiently resolve factual disputes or to simplify the issues to be addressed on appeal.

IV. Noteworthy Events: Regional Greenhouse Gas Initiative (RGGI)

The Board would like to take this opportunity to applaud the work of Department staff in developing the rules needed to implement the Regional Greenhouse Gas Initiative. Due to the hard work of Department staff, Maine was prepared to participate in the first auction of carbon allowances on September 25, 2008. This auction generated approximately $2.6 million for Maine's Energy and Carbon Savings Trust for use, among other things, on energy efficiency projects. Development and implementation of the Regional Greenhouse Gas Initiative is a significant achievement and an important step in our efforts to address Global Climate Change.

V. Summary of Matters before the Board in 2008

The Board's statutory responsibilities are established in 38 M.R.S.A. § 341-D. These responsibilities include the following: rulemaking; decisions on selected permit applications; review (appeals) of Commissioner licensing decisions; consideration of petitions to revoke, modify or suspend a license; review of enforcement consent agreements; and recommendations to the Legislature for changes to law. This section summarizes the major actions of the Board in 2008.

A. Rulemaking and Related Matters

During 2008, the Board conducted 19 rulemaking proceedings. Of these, one draft rule, Chapter 342 Significant Groundwater Wells, was withdrawn by staff. Five remain pending: Chapter 127 New Motor Vehicle Emission Standards, Chapter 150 Control of Emissions from Outdoor Wood Boilers/Amendments, Chapter 160 Outdoor Wood Boiler Replacement and Buy Back Program, Chapter 335 Significant Wildlife Habitat, and Chapter 555 Standards for the Addition of Transported Wastes to Wastewater Treatment Facilities. Rulemaking proceedings are summarized below.

- Chapter 127 New Motor Vehicle Emission Standards (Amendments to Low Emission Vehicle and Zero Emission Vehicle Programs). The proposed amendments update the State's rules for compliance with the California Low Emission Vehicle Program including, among other things, a requirement that new cars beginning with model year 2010 display a label which scores the vehicle's global warming and smog emissions, and a new requirement that heavy-duty diesel engines be equipped with an automatic shutdown system or certification to meet NOx idling emissions standards. A public hearing is scheduled for January 15, 2009.

- Chapter 137 Emissions Statements (amendments). The proposed amendments included changes to clarify definitions, apply emission inventory reporting requirements to licensed facilities only, update the rule concerning data elements and standards for consistency with the National Emissions Inventory, and change the reporting date. A public hearing was held on July 17, 2008. The rule amendments were adopted on October 16, 2008.

- Chapter 149 General Permit Regulation for Non-Metallic Mineral Processing Plants (new) and Chapter 115 Major and Minor Source Air Emissions License Regulations (amendments). The proposed rule streamlined the permitting of portable and stationary rock crushers. A public hearing was held on May 15, 2008. The rule was adopted on July 17, 2008.

- Chapter 150 Control of Emissions from Outdoor Wood Boilers (amendments). The rule establishes particulate emission standards, siting criteria, and labeling requirements for outdoor wood boilers. Resolve 2007, Chapter 190 directed the Department to amend the rule (by April 1, 2009) to include provisions to control the sale, installation, use and siting at residences and businesses of outdoor wood boilers that combust biomass pellets as a fuel source. A public hearing was held on October 16, 2008. A decision on the proposed rule amendments is anticipated in early 2009.

- Chapter 156 CO_2 Budget Trading Program (amendments). The rule, which was adopted on December 6, 2007, established, among other things, Maine's CO_2 emissions budget, consumer benefit account allocation, budget source licensing and reporting requirements, provisions for account certification, and an allowance tracking system. The rule was proposed for amendment to clarify definitions and clarify that the Department had authority to initiate licensing of CO_2 budget units and participate in auctions in 2008. These amendments were authorized by the Legislature in Public Law 2007, Chapter 608 (LD 1945) "An Act to Update the Regional Greenhouse Gas Initiative." A public hearing was held on June 5, 2008. The amendments were adopted on July 17, 2008.

- Chapter 157 CO_2 Budget Trading Program Waiver and Suspension (new). The rule provides the Commissioner with the authority, under exceptional circumstances, to waive or suspend the requirements of the CO_2 Budget Trading Program. A public hearing was held on September 6, 2007. The rule was provisionally adopted on December 6, 2007. Following approval by the Legislature, the rule was finally adopted by the Board on May 1, 2008.
- Chapter 158 CO_2 Budget Trading Program Auction Provisions (new). The rule provides for administration and implementation by the Department of the CO_2 allowance auctions. A public hearing was held on June 5, 2008. The rule was adopted on July 17, 2008.

- Chapter 160 Outdoor Wood Boiler Replacement and Buy Back Program (new). Public Law 2007, Chapter 680 "An Act Establishing an Outdoor Wood Boiler Fund" directed the Department to develop rules establishing criteria for determining when an outdoor wood boiler constitutes a nuisance condition or threat to public health or safety and to establish a program to buy back nuisance wood boilers. A public hearing was held on October 16, 2008. A decision on the proposed rule is anticipated in early 2009.

- Chapter 305 Natural Resources Protection Act Permit by Rule Section 20 (amendment). The amendment applies to activities in existing developed areas located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding and staging areas. It establishes a permit-by-rule procedure for: cutting or removal of vegetation within shorebird roosting and feeding buffer areas; limited expansion of developed areas within shorebird feeding areas; and cutting or removal of vegetation within inland waterfowl and wading bird habitat under certain circumstances. A public hearing was held on November 1, 2007. The amendment was adopted on February 7, 2008.

- Chapter 310 Wetlands and Waterbodies Protection, Section 5(A), General Standards, Avoidance (amendments). The proposed amendments clarified the language regarding practicable alternatives and added categories of activities for which no practicable alternative may exist. The rule was posted for written comment on August 21, 2008. The amendments were adopted on November 20, 2008.

- Chapter 335 Significant Wildlife Habitat (amendments). The amendments update the rule to be consistent with recent statutory changes, provide additional guidance regarding mitigation and compensation, and clarify other provisions. The Board posted the proposed amendments for public comment on October 16, 2008. A decision on the proposed rule amendments is anticipated in early 2009.

- Chapter 342 Significant Groundwater Wells (new). The rule was proposed to implement portions of PL 2007, Chapter 399 "An Act Concerning the Sustainable Use of and Planning for Water Resources." The proposed rule contained provisions for public informational meetings to be held prior to submission of an application and a fee structure to provide funding for independent technical review and assessment of applications. The draft rule was posted for public comment on August 7, 2008. The rule was subsequently withdrawn by staff on November 6, 2008. Staff requested withdrawal citing the need to clarify Legislative intent in several areas.

- Chapters 400 General Provisions (amendments), 409 Processing Facilities (amendments) and 410 Composting Facilities (new). Resolve 2007, Chapter 139 "Resolve, To Streamline the Regulation of Agricultural Composters" directed the Department to amend its rules to regulate agricultural composting operations separately from operations that compost municipal sludge, septage, industrial sludge or other materials with a higher risk of contamination. A public hearing was held on November 6, 2008. The rules were adopted on December 18, 2008.

- Chapter 528 Pretreatment Program (amendments). This chapter regulates industrial discharges to publicly owned wastewater treatment facilities. The amendments update the rule to incorporate federally authorized streamlining provisions. The amendments were posted for public comment on October 4, 2007. The amendments were adopted on January 17, 2008.

- Chapter 555 Standards for the Addition of Transported Wastes to Wastewater Treatment Facilities (repeal and replace). The proposed rule changes require each wastewater treatment facility owner wishing to receive non-hazardous transported wastes from septic tanks, cesspools, and holding tanks to apply for and obtain a license from the Department to ensure that receipt of transported wastes will not adversely impact the operation of the wastewater treatment facility. A public hearing was held on November 6, 2008. A decision on the proposed rule amendment is anticipated in early 2009.

- Chapter 900 Biomedical Waste Management Rules (amendments). The rules had not been amended since their original adoption in 1989. The proposed amendments updated provisions related to approved treatment methods and fees. The proposed amendments were posted for public comment on February 21, 2008. The amendments were adopted on July 3, 2008.

- Chapter 1000 State of Maine Guidelines for Municipal Shoreland Zoning Ordinances / Extension of Deadline for Municipalities. The Guidelines require that areas within 250 feet of moderate and high value waterfowl and wading bird habitat be designated as Resource Protection. The deadline for updating local ordinances was extended by one year from July 1, 2008 to July 1, 2009 to allow more time for the Department of Inland Fisheries and Wildlife to update the resource maps upon which zoning is based. The time extension was approved on February 7, 2008.

- Chapter 1262 Amendment to State-Imposed Shoreland Zoning Map for Steuben. The zoning map was amended to rezone an area adjacent to a coastal wetland from Resource Protection to Limited Residential. The proposed change was in response to revisions to FEMA (Federal Emergency Management Agency) maps which removed the "Special Flood Hazard" designation from the area. The rule change was posted for public comment on February 7, 2008. The change was approved on July 3, 2008.

- Chapter 1292 Municipality of Carthage Amendment to State Imposed Shoreland Zoning Map. The zoning map was amended to rezone the area around Podunk Pond from Resource Protection to Limited Residential since the pond is no longer used as a water supply for the Town of Dixfield and no other criteria for resource protection zoning apply in this instance. The amendment was posted for 30 day comment on May 1, 2008. The amendment was adopted on August 7, 2008.

While not rules, statute requires that the Board approve the following actions.

State Implementation Plan (amendments). The federal Clean Air Act Amendments of 1990 require that the Department provide an opportunity for a public hearing on, and formally adopt, any changes (generally associated with rulemaking) to the State's program for implementation of the Clean Air Act. The Department proposed an amendment demonstrating that emissions from Maine do not contribute significantly to other states' non-attainment or interfere with maintenance of the 8-hour ozone or particulate matter PM 2.5 national ambient air quality standards, and do not contribute significantly to another state's efforts to prevent significant deterioration of air quality. The proposed amendment was posted for public comment on December 6, 2007. The amendment was adopted by the Board on April 3, 2008.

Small Community Grant Program. Statute requires that the Department develop a project priority list, to be approved by the Board, for water pollution abatement projects. The program provides for grant assistance for the construction of individual and cluster septic systems or other wastewater treatment facilities which eliminate small but serious water pollution problems. The program is funded by state bonds and local funds and is for projects too small to qualify for the State Revolving Loan Fund. The Board approved the priority list on July 3, 2008.

B. Major Applications

Title 38 section 341-D(2) provides that: "The board shall decide each application for approval of permits and licenses that in its judgment:

A. Involves a policy, rule or law that the board has not previously interpreted;
B. Involves important policy questions that the board has not resolved;
C. Involves important policy questions or interpretations of a rule or law that require reexamination; or
D. Have generated substantial public interest."

An application of substantial public interest is further defined in rule as a project which has "the potential to affect a broad geographic area or a natural resource of statewide significance, or has generated more than local interest" [06-096 CMR Chapter 2]. In addition, statute requires that the Board decide certain applications directly. However, the Board may not assume jurisdiction over a wind power project.

The only major application before the Board in 2007 was Quoddy Bay LNG, LLC and Quoddy Bay Pipeline, LLC. On August 2, 2007 the Board voted to assume jurisdiction over the applications by Quoddy Bay LNG, LLC and Quoddy Bay Pipeline, LLC (Quoddy Bay) to construct a liquefied natural gas (LNG) import terminal at Pleasant Point and send-out pipeline in Washington County. On October 9, 2007 Quoddy Bay filed a request to slow the processing of its applications, citing Quoddy's need to gather additional information. The request was granted on October 11, 2007. On June 5, 2008, Downeast LNG filed a motion requesting that the Board deny Quoddy Bay's applications without prejudice. The Board denied the motion on July 17, 2008. However, Quoddy Bay subsequently withdrew its applications on November 6, 2008 citing, among other things, uncertainty in the energy and financial markets.

C. Appeals of Department Decisions

The appeals considered by the Board in 2008 are summarized below.

- Verso (formerly International Paper Company), Jay; Rumford Paper Company, Rumford; and FPL Energy Maine Hydro Gulf Island Pond / Deer Rips Hydro Project. Appeals of Maine Pollutant Discharge Elimination System Permits and Maine Waste Discharge Licenses, and the Water Quality Certification for Gulf Island Pond. The Board received multiple appeals of these licenses and certifications. The Board held a public hearing on the appeals on May 2, 3, 4, 8, 9 and 10, 2007. Following the close of the record and the filing of post-hearing briefs, the Board conducted deliberative sessions on August 2 and 16, 2007 and September 6, 2007. Draft orders were issued for public comment on November 27, 2007. At its meeting on January 17, 2008 the Board directed staff to make certain changes to the draft orders. The licenses were issued on February 7, 2008.

- Long Lake, Madawaska. Appeal of Denial of Natural Resource Protection Act Permit for Boat Ramp. The Department denied the application finding that the project would have an adverse impact on water quality and that the applicant had a practicable alternative; namely, a Department of Conservation public ramp in St. Agatha. The Board denied the appeal and affirmed the Department's decision.

- South Thomaston. Appeal of Natural Resources Protection Act Wetlands Alteration Permit. The permit allowed for alteration of a freshwater wetland for construction of a driveway. The Board denied the appeal and affirmed the Department's decision.

- Freedom, Beaver Ridge Wind LLC. Appeal of Stormwater Permit-by-Rule. The appellant argued that runoff from the project would adversely impact his property, which is located down gradient of the project site. The appellant argued that a full stormwater permit should be required. The Board denied the appeal and affirmed the Department's decision.

- Maple Juice Cove, Cushing. Appeal of Denial of Natural Resources Protection Act Permit. The applicant applied for a permit to construct a residential pier. The Department denied the application, finding that it would unreasonably harm significant wildlife habitat. The Board denied the appeal and affirmed the Department's decision.

- Saco. Appeal of Natural Resources Protection Act Permit to Alter a Forested Floodplain Wetland. The Department granted a permit to construct an access-way to the Saco River with certain limitations on the size of the proposed boardwalk. The licensee appealed those restrictions. The Board denied the appeal and affirmed the Department's decision.

- S.D. Warren Company, Presumpscot River Hydro Projects. Appeal of Department Order Modifying Water Quality Certification. The appellants appealed modification of a condition of the water quality certification regarding downstream eel passage studies. The appeal was granted on procedural grounds, and the matter remanded to the Department.

- Strong, Geneva Wood Fuels, LLC. Appeal and Petition to Revoke the transfer of an air emissions license. The appellant contested title, right or interest and asserted that the licensee misrepresented or failed to disclose relevant facts regarding title, right or interest in the property. The Board denied the appeal and dismissed the petition, thereby upholding the Department's licensing decision.

- Winter Harbor. Appeal of Natural Resources Protection Act Permit for Construction of a Permanent Pier. The Department denied the application finding unreasonable interference with the existing scenic, aesthetic, recreational and navigational uses of the resources. After considering the record and hearing from the parties, the Board directed staff to draft an order approving the application. The Board reversed the staff decision and approved the project.

- Unity, Unity College of Maine. Appeal of Site Location of Development and Natural Resources Protection Act Permit. The application was for an addition to the welcome center. The appellant abuts the proposed development site and expressed concerns with stormwater management at the site. The Board denied the appeal and affirmed the Department's decision.

Pending Appeals:

- Rackliff Island, St. George. Appeal of Natural Resources Protection Act Tier 1 Wetland Alteration Permit. The permit allowed filling of a freshwater wetland for the purpose of constructing a driveway. The appellant contends that the Department inappropriately limited the scope of its review and that the project will adversely impact a recreational easement on an abutting property. The matter is scheduled for consideration in early 2009.

- South Bristol. Appeal of Natural Resources Protection Act Wetland Alteration Permit and Water Quality Certification for Commercial Pier. The appellants challenge title, right or interest in all property proposed for development or use and argue that the licensee has failed to meet his burden of demonstrating that there is no practicable alternative to the proposed project that would be less damaging to the environment. The matter is scheduled for consideration in early 2009.

- Cumberland. Appeal and Petition to Revoke Natural Resources Protection Act Permit-by-Rule for Activity Adjacent to a Protected Natural Resource. Consideration of the matter has been stayed by the Board pending a ruling by the courts on issues of title, right or interest.

D. Petitions to Modify, Suspend or Revoke a License

Title 38 section 341-D(3) provides that "...the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, or may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license" under certain specified circumstances.

The public is increasingly turning to the petition process to challenge final existing licenses, some of which have been in place for years. The Board considered the following petitions in 2008.

- Eastern Village Residential Development, Scarborough. The Board received a petition to modify or revoke the Natural Resources Protection Act/Site Law/Stormwater Permit issued by the Department for a 152 unit residential subdivision. The petitioners cited concerns regarding title, right or interest, stormwater management, and potential impacts to the water quality of Scarborough Marsh. After hearing from the parties and considering evidence on the issues raised, the Board dismissed the petition.

- Tanglewood Camp and Learning Center, St. George. The Board received a petition to revoke the Natural Resources Protection Act permit for a platform, ramp and docking system in a coastal wetland. The petitioner alleged, among other things, failure to disclose all relevant facts and threat to the environment including damage to moderate or high value significant tidal waterfowl and wading bird habitat. The Board concluded that the aspects of the project the petitioner objected to were exempt from permitting. The Board dismissed the petition.

- Geneva Wood Fuels, LLC, Strong. Petition to Revoke the transfer of an air emissions license. This matter was simultaneously appealed. See discussion in section V, C above.

Pending Petitions:

- Red Shield Environmental/Red Shield Acquisition, Old Town. Petition to Revoke the solid waste beneficial use license for the use of wood from construction demolition debris as a fuel in its biomass boiler. The petitioner alleges violation of the license, threat to human health and the environment, and change in condition or circumstance. The Board will consider the petition in early 2009.

- Cumberland. Natural Resources Protection Act Permit for Activity Adjacent to a Protected Natural Resource. This permit was simultaneously appealed. See discussion in section V, C above.

E. Enforcement Actions

During 2008, the Board approved 104 Administrative Consent Agreements. These enforcement actions are listed below by program area and relevant statute and/or rule. The number of each type of violation is indicated in parentheses.

Air

- Protection and Improvement of Air Law, air emission standards and license conditions (9).
- Gasoline Dispensing Facilities Vapor Control Rule, Chapter 118 (1).
- New Motor Vehicle Emission Standards, Chapter 127 (7).

Hazardous Waste, Solid Waste, Oil Discharge

- Asbestos Management Regulations (6).
- Hazardous Waste Management Regulations (4).
- Oil Discharge Prevention and Pollution Control Law (8).
- Biomedical Waste Management Rules (1).
- Hazardous Waste and Solid Waste Laws (1). This violation also included violations of the facility's air emissions license.

Land and Water

- Erosion and Sedimentation Control Law: Violations of this law occurred in 21 of the enforcement cases listed in this section.
- Natural Resources Protection Act (35): Violations of the NRPA were frequently accompanied by violations of the following laws: Erosion and Sedimentation Control Law (19 of 35), the Protection and Improvement of Waters Act (8 of 35), and the Storm Water Management Law (4 of 35).
- Performance Standards for Excavations (gravel mining) (10): Two of the ten violations also involved violations of NRPA.
- Performance Standards for Quarries (1).
- Protection and Improvement of Waters Act (3). In addition, eight of the NRPA violations cited above also included violations of the Protection and Improvement of Waters Act.
- Overboard Discharge Laws, Chapter 596 (1).
- Waste Discharge License (6): Two of which also had violations of their air emissions license.
- Site Location of Development Law (3).
- Site Location of Development Law and Natural Resources Protection Act (4): One of these also involved violations of the Protection and Improvement of Waters Act.
- Stormwater Management Law (4): In addition, four of the NRPA violations included violations of the Stormwater Law.

F. Informational Workshops

Department staff provides informational workshops at regularly scheduled Board meetings throughout the year for the benefit of Board members and any members of the public who wish to attend. Workshops in 2008 addressed:

- Regional Greenhouse Gas Initiative Auction Rules
- Governor's Task Force on Wind Power Development
- Freedom of Access Act
- Rulemaking: Presentation by Don Wismer, Office of Secretary of State
- Nutrient Criteria for Freshwater and Marine Waters
- Vernal Pool Habitat Protection
- Guidance for Review of Significant Wildlife Habitat
- Program for Payment of Fees as Compensation for Wetlands Impacts

The Board also conducted the following informational site visits:

- FPL Energy's Lockwood Hydro Power Facility in Waterville/Winslow
- Verso Paper, tour of Jay facility
- Mars Hill and Stetson Ridge Wind Power Projects.

VI Closing

The Board is charged by statute to provide "informed, independent and timely decisions" on the "interpretation, administration and enforcement" of Maine's environmental laws, and to provide for "credible, fair and responsible public participation in department decisions." Board members take this charge seriously and appreciate the opportunity to serve the people of Maine in this capacity. We welcome any comments or suggestions you may have.

Respectfully submitted,

Susan M. Lessard, Chair
Board of Environmental Protection

Attachments:

A. Board Members: List and Biographical Information

Note: The Board's recommendation on changes to the classification of specific waterbodies is being forwarded under separate cover.

Board of Environmental Protection

The Board of Environmental Protection is a ten member citizen Board created by the Legislature to assist in the interpretation, administration and enforcement of Maine's environmental laws and to provide for credible, fair and responsible public participation in Department decisions. The Board accomplishes its purpose through review and approval of Department rules, decisions on selected permit applications, consideration of appeals of Commissioner licensing decisions, consideration of petitions to revoke or modify a license, review of enforcement actions, and recommending changes in law to the Legislature. (38 M.R.S.A. § 341-B).

Members

Susan M. Lessard, Chair
Hampden, 1st Term

Ms. Lessard is the Town Manager of Hampden. She has more than 25 years of experience in local government in Maine and is well versed in a host of economic and community development issues, including extensive experience in solid waste management issues. She is a past president of the Maine Municipal Association, and is currently a member of the Bangor Region Chamber of Commerce and the Maine Town and City Manager's Assn. Her educational background is in public administration and engineering. She was appointed to the Board in July 2007; and appointed Chair in November 2008.

Elizabeth Ehrenfeld
Falmouth, 1st Term

Ms. Ehrenfeld holds a doctorate in Microbiology and Immunology from the University of Michigan. She has authored numerous scientific papers and has several patents on procedures for detection of bacteria in drinking water and food. Ms. Ehrenfeld is currently an adjunct professor at Southern Maine Community College where she teaches courses in microbiology, genetics and biotechnology. She currently serves on the board of the Biotech Association of Maine. Ms. Ehrenfeld is also a Registered Maine Guide. She was appointed to the Board in June 2005.

M. Wing Goodale
Falmouth, 1st Term

Mr. Goodale is a research biologist and seabird program director at the BioDiversity Research Institute, a Maine-based nonprofit ecological research group. He is involved in a number of research projects, including assessment of the impact of mercury and other toxins on bird populations. He also manages BioDiversity's web site and oversees the live eagle and loon web cameras. He has a bachelor's degree in biology from Colorado College and a master's degree in conservation biology from College of the Atlantic. He was appointed to the Board in March 2006.

Richard Gould
Greenville, 1st Term

Mr. Gould is a retired high school teacher, and a former State Legislator. During his tenure in the Legislature, Mr. Gould served on the Joint Standing Committee on Energy and Natural Resources, including a term as co-chair of the Committee. Mr. Gould was also employed as legislative liaison for Great Northern Paper and as Code Enforcement Officer for the Town of Greenville. Mr. Gould remains active in educational issues and currently serves on the Greenville School Committee. He was appointed to the Board in March 2006.

Donald Guimond
Fort Kent, 2nd Term

Mr. Guimond has served as the Town Manager of Fort Kent since 1993. He has also served as Director for the Greater Fort Kent Area Chamber of Commerce and Director of the Aroostook Municipal Association. He received a B.S. degree in Business Administration from Husson College and a Masters degree in Business Administration from Norwich University in Northfield, Vt. Mr. Guimond is also a partner and operator of a 1000 acre family farm, maintaining a cow/calf operation and harvesting grains, hay, straw and forest products. He was appointed to the Board in April 2004.

(photo not available)

P. Andrews Nixon
Brunswick, 1st Term

Mr. Nixon recently retired from his position as Chair and Chief Executive Officer of the Dead River Company, where he was employed for 38 years. In addition to his service on the Board, Mr. Nixon was appointed by Governor Baldacci to serve as a trustee of the Energy and Carbon Savings Trust which was established to receive and expend revenue from the sale of carbon dioxide allowances as part of the State's participation in the Regional Greenhouse Gas Initiative (RGGI). Mr. Nixon was appointed to the Board in March 2008.

Matt Scott
Belgrade, 2nd Term

Mr. Scott is an Aquatic Biologist and a Certified Fisheries Scientist. He is retired from 38 years of service in Maine State Government, including service as Deputy Commissioner of the Department of Inland Fisheries and Wildlife. Mr. Scott is a past president of the North American Lake Management Society, and a past president of the Sportsman's Alliance of Maine. He is a Master Maine Guide and a hobby beekeeper, managing several colonies of bees for pollination and honey production. Mr. Scott was appointed to the Board in June 2003, and served as Board Chair from June 2005 to December 2006.

(photo not available)

Lissa Widoff
Freedom, 1st Term

Ms. Widoff is Executive Director of the nonprofit Robert & Patricia Switzer Foundation, located in Belfast, which focuses on environmental leadership development. Ms. Widoff has also worked for the Maine Community Foundation, State Planning Office, and The Nature Conservancy, Maine Chapter. She received a B.S. degree in Forest Biology from SUNY College of Environmental Science and Forestry in Syracuse, N.Y. and a Masters in Public Administration from Harvard University. She was appointed to the Board in March 2008.

Nancy Ziegler
South Portland, 2nd Term

Ms. Ziegler is a graduate of the University of California at Berkeley and the University of Maine School of Law. She was admitted to the practice of law in Maine and Federal Court in 1981. Ms. Ziegler was an associate with the Portland law firm of Curtis, Thaxter, Stevens, Broder and Micoleau from 1984-1994, with a practice in civil litigation. Ms. Ziegler has served as a debate and mock trial coach for Cape Elizabeth High School for more than 15 years, and has authored the Maine State High School Mock Trial competition case sponsored by the Maine Bar Association. She was appointed to the Board in April 2002.

Note: There is currently one vacancy.