

STATE OF MAINE  
BOARD OF ENVIRONMENTAL PROTECTION



JANET T. MILLS  
GOVERNOR

Mark C. Draper, Chair

William F. Hinkel  
Executive Analyst

Ruth Ann Burke  
Board Clerk

January 4, 2021

Senator Stacy Brenner  
Representative Ralph L. Tucker  
Committee on Environment and Natural Resources  
c/o Legislative Information Office  
100 State House Station  
Augusta, Maine 04333

**Re: Board of Environmental Protection  
Report to the 130<sup>th</sup> Legislature**

Dear Senator Brenner, Representative Tucker, and Committee Members:

Pursuant to 38 M.R.S. § 341-D(7), the Board of Environmental Protection is required to report to the Joint Standing Committee on Environment and Natural Resources by January 15 of the first regular session of the Legislature on the effectiveness of the State's environmental laws and any recommendations for the amending those laws or the laws governing the Board. The enclosed report provides a summary the Board's responsibilities and its activities in calendar year 2020.

If the Committee would like to discuss this report, I am available to meet with you at your convenience. I can be reached by contacting Board Executive Analyst William Hinkel at 207-314-1458 or [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov).

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Mark C. Draper'.

Mark C. Draper, Chair  
Board of Environmental Protection

Enclosure: Board Report 2020

cc: Melanie Loyzim, DEP Acting Commissioner

# Report to the Joint Standing Committee on Environment and Natural Resources

## Board of Environmental Protection Summary of Activities in Calendar Year 2020 and Recommendations for Committee Consideration

*January 2021*

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Contact: William F. Hinkel, Board Executive Analyst  
[bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov)  
(207) 314-1458



MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 State House Station | Augusta, Maine 04333-0017  
[www.maine.gov/dep](http://www.maine.gov/dep)

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

**Summary of Activities in Calendar Year 2020**

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

**Summary of Activities in Calendar Year 2020**

**I. INTRODUCTION**

Maine law requires the Board of Environmental Protection (Board) to report to the joint standing committee having jurisdiction over natural resource matters 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. 38 M.R.S. § 341-D(7). Although not required each year, the Board customarily reports on its activities annually to the Joint Standing Committee on Environment and Natural Resources (Committee). This report is submitted in fulfillment of its requirement to report to the First Regular Session of the 130th Maine State Legislature.

Section II of this report provides an overview of the Board’s membership, duties, and responsibilities. Section III summarizes matters before the Board in 2020, including the status of any matters pending before the Board at year end.

**II. BOARD MEMBERSHIP, DUTIES, AND RESPONSIBILITIES**

A. Membership. The Board is a seven-member citizen board whose members are appointed by the Governor and approved by the Legislature. 38 M.R.S. § 341-C. The purpose of the Board is to “provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions.” 38 M.R.S. § 341-B.

In February 2020, the Senate confirmed the Committee’s recommended appointment of Governor Mills’ nominee, Steven Pelletier, to the Board. Board member biographies are provided in Attachment A of this report.

In its 2019 report to the Committee, the Board noted that participation by some Board members in certain proceedings before the Board is limited by the federal recusal requirements under the Clean Water Act and the Clean Air Act. These federal standards regarding Board member participation are incorporated into Maine law at 38 M.R.S. § 341-

C(8). As noted in its report to the Second Regular Session of the 129<sup>th</sup> Legislature, it bears repeating here that the Board views these statutory limitations as overly restrictive as they have – and may continue to – inadvertently foreclose participation of certain Board members in matters in which he or she has subject matter expertise. Because the State has been delegated authority to administer the Clean Water Act and Clean Air Act regulations in Maine, however, the Board has been advised that there is little or no discretion as to whether Maine must incorporate these federal standards into statute. Therefore, the Board respectfully requests that the Committee consider these statutory restrictions when appointing new Board members so that the Board as a whole has a diverse and balanced composition.

- B. Responsibilities. The Board’s responsibilities as set forth in 38 M.R.S. § 341-D and § 341-H are summarized below. These responsibilities were amended by P.L. 2019, ch. 315, “An Act to Restore the Authority of the Board of Environmental Protection,” which returned all agency rulemaking (both routine technical and major substantive) to the Board and modified the Board’s enforcement authority to include approval of administrative consent agreements negotiated by the Department to resolve violations of environmental laws administered by the Department.

Proceedings before the Board are governed by the Maine Administrative Procedure Act, the Board’s statutes and procedural rules governing the various types of proceedings (e.g., rulemaking, appeal proceedings, adjudicatory hearings, etc.), and by program-specific statutes and rules governing matters, such as the control of air emissions, waste management, and land use. All meetings of the Board are noticed and open to the public. The Board maintains a webpage with member biographies, meeting materials, information on pending matters of broad public interest, and guidance to facilitate public participation in matters pending before the Board.

The Board provides audio-streaming of Board meetings and hearings. In response to the Covid-19 public health emergency and as authorized by P.L. 2019, ch. 617, the Board, beginning in May 2020 and lasting through the remainder of the year, conducted 14 meetings by video conference.

1. Rulemaking. The Board has authority to adopt, amend, or repeal reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of the laws administered by the Department. The Board also has authority to adopt, amend, and repeal rules as necessary for the conduct of the Department’s business.
2. Appeals of Commissioner Licensing and Enforcement Actions. An aggrieved person may appeal to the Board a final license or permit decision of the Commissioner. The

Board also hears appeals of emergency orders and unilateral compliance and clean-up orders issued by the Commissioner pursuant to 38 M.R.S. § 347-A(3).

3. Decisions on Certain Permit Applications. The Board decides each application for approval of permits and licenses that in its judgment represents a project of statewide significance based on statutory criteria. 38 M.R.S. § 341-D(2). Additionally, the Department's statutes specify that certain applications, such as those pertaining to commercial hazardous waste facilities, must be reviewed and decided by the Board.
4. License Modification or Corrective Action. At the request of the Commissioner and after written notice and opportunity for hearing, the Board may modify, in whole or in part, any license, or issue an order prescribing necessary corrective action whenever the Board finds that any of the criteria at 38 M.R.S. § 342(11-B) are met.
5. Administrative Consent Agreements. The Board must approve, or may send back to the Department for further consideration, administrative consent agreements negotiated by the Commissioner pursuant to 38 M.R.S. § 347-A(1) to resolve violations of environmental laws or rules administered by the Department.
6. Recommendations to the Legislature. The Board is charged with making recommendations to the Legislature regarding the environmental laws of the State and any recommendations for amending those laws or the laws governing the Board.
7. Other Duties. The Board must carry out other duties as required by law. Other duties specified in statute include, among other things, holding hearings on and making recommendations to the classification of waters of the State it deems necessary to the Legislature.

### **III. SUMMARY OF MATTERS BEFORE THE BOARD IN 2020**

The Board held 20 regular meetings in calendar year 2020. A summary of matters on which the Board acted in calendar year 2020, including those still pending, follows below.

- A. Rulemaking. The Board did not act on any major substantive rules in calendar year 2020. The Board acted on six routine technical rules in calendar year 2020, a summary for each is provided below
  1. Chapter 100, *Definitions Regulation.* Chapter 100 provides definitions for those terms used in the air pollution control regulations and emission standards. The Department has proposed to amend the definition of "Ozone Transport Region" to exclude those

parts of the State to be removed from the Ozone Transport Region consistent with the State's petition to the U.S. Environmental Protection Agency (U.S. EPA) pursuant to the federal Clean Air Act § 176A (a)(2). The Board, on November 19, 2020, held a hearing on the proposed amendment to Chapter 100. A decision of the Board is anticipated in early calendar year 2021.

2. Chapter 156, *CO<sub>2</sub> Budget Trading Program*, and Chapter 158, *CO<sub>2</sub> Budget Trading Program Auction Process*. Together, these rules establish the operating parameters for the State's participation in the Regional Greenhouse Gas Initiative, a regional cap-and-trade program that limits and reduces CO<sub>2</sub> emissions from affected fossil fuel-burning power generation facilities. The purpose of the proposed Chapters 156 and 158 rulemaking was to update the Department's rules to align with the latest version of the Regional Greenhouse Gas Initiative model rule, which is reviewed and updated periodically. The updates removed two categories of offset projects and established the emissions cap and the rate of cap reduction through 2030. The updates also made corrections and edits for clarity and consistency. On April 16, 2020, the Board authorized the Department to post the draft rules for a 30-day written comment period. On August 6, 2020, the Board voted to adopt Chapters 156 and 158.
3. Chapter 400, *General Provision*, of the *Maine Solid Waste Management Rules*. Chapter 400 establishes the rules regarding administrative matters and general standards concerning solid waste facilities and solid waste handling. It describes which facilities and activities are subject to the Maine Solid Waste Management Rules and which are exempted. On January 13, 2020, the Department received a citizen petition to initiate rulemaking to amend Chapter 400 to clarify requirements for Public Benefit Determinations relating to approval of waste facilities, by ensuring that the definition of "waste that is generated within the State" accurately describes the sources of waste materials disposed in the State, and by requiring Public Benefit Determinations to include consideration of the impacts on health and welfare, environmental justice and equal protections for communities where waste facilities operate. On March 5, 2020, the Board voted to post the proposed changes to public hearing, and on September 17, 2020, held a public hearing on the proposed changes to Chapter 400. Further deliberation for possible adoption by the Board on the proposed Chapter 400 rule changes is anticipated in early 2021.
4. Chapter 584, *Surface Water Quality Criteria for Toxic Pollutants*. Chapter 584 establishes ambient water quality criteria for toxic pollutants in the surface waters of the State and establishes procedures that may be used to determine alternative statewide criteria or site-specific criteria adopted as part of a licensing proceeding. The purpose of the proposed rule amendments was to implement P.L. 2019, c. 463, "An Act to Protect Sustainance Fishing" and 38 M.R.S. § 466-A. The amended rule institutes water effect

ratios for the Androscoggin and St. Croix Rivers; promulgates new ambient water quality criteria for copper in the Little Androscoggin River; adds carbaryl to the non-priority pollutant list; and updates human health criteria using the methodology and values from the U.S. EPA's Human Health Ambient Water Quality Criteria 2015 updates (with the exception of aluminum, copper, and selenium) and Maine-specific fish consumption rates. A public hearing on the rule amendments was held on November 21, 2019. The Board voted on February 6, 2020, to adopt the amendments to Chapter 584.

5. Chapter 890, *Designation of PFOS and its Salts as Priority Chemicals*. Chapter 890 designates perfluorooctane sulfonic acid (PFOS) and its salts as priority chemicals and requires reporting for certain children's products that contain PFOS or its salts. The revised rule designates PFOS and its salts as priority chemicals and requires reporting for certain consumer product categories that contain these regulated chemicals. The revised rule applies to manufacturers and distributors of specified consumer product categories that contain intentionally added amounts of PFOS and its salts and requires reporting of information such as the amount and function of PFOS in the product and the number of products sold or distributed in Maine or nationally. The revised rule was originally posted for Departmental rulemaking with a public comment period beginning April 3, 2019. A Department public hearing was held on April 23, 2019. After the close of this initial public comment period, new information about the prevalence of PFOS in Maine's biosolids highlighted the continuing possibilities of exposure and caused the Department to undertake revisions to the draft rule. Effective September 19, 2019, responsibility for all rulemaking shifted to the Board. A new rulemaking proceeding was initiated by the Board's posting of the Department's revised draft rule for a 30-day written public comment period beginning on October 2, 2019. Before the close of the comment period, six requests for a public hearing were received. The comment period was reopened on January 1, 2020, and the Board held a public hearing on January 23, 2020. The Department made changes to the draft rule to include specific salts of PFOS and other minor changes, and the revised draft was reposted for an additional comment period on February 3, 2020. The Board voted on July 2, 2020, to adopt revisions to Chapter 890.

## B. Appeals of Commissioner Licensing Decisions

If an applicant or other person is aggrieved by a licensing decision of the Commissioner, the Commissioner's decision may be appealed to the Board. Under provisions of 38 M.R.S. § 341-D(4), the Board may affirm, amend, or reverse the Commissioner's decision, or remand the matter to the Commissioner for further proceedings. The Board may, at its discretion, also hold a hearing on an appeal. In an appeal proceeding, the Board is not bound by the Commissioner's findings of fact or conclusions of law. The Board's decision



on appeal may be appealed to Superior Court (or the Law Court in the case of an expedited wind energy development). In addition to deciding appeals, the Board encourages parties to pursue various forms of alternative dispute resolution in an effort to reach a resolution that is satisfactory to all parties. Appeals of Commissioner licensing decisions considered by the Board in 2020 are summarized below.

1. Apartments at Brunswick Landing, LLC. On October 20, 2020, Joshua Katz filed a timely appeal of Department Order #L-28632-NJ-A-N / L-28632-TC-B-N, which was issued to Apartments at Brunswick Landing, LLC on July 22, 2020. The Department Order approved the applications for a Stormwater Management Law and a Natural Resources Protection Act license to fill approximately 14,440 square feet of forested wetlands and to construct a stormwater management system for a new apartment consisting of nine, three-story, approximately 1,200-square foot buildings, each with 12 apartment units, a 2,400-square foot clubhouse, walkways, and parking areas for 172 vehicles on a 5.69-acre parcel of land within the former Brunswick Naval Air Station in Brunswick, Maine. This appeal is pending before the Board.
2. Central Maine Power Company (CMP). On May 11, 2020, the Department issued an order conditionally approving the application of CMP for a Site Location of Development and Natural Resources Protection Act permit to construct the New England Clean Energy Connect project (NECEC Order). On June 8, 2020, NextEra Energy Resources, LLC (NextEra) and, jointly, West Forks Plantation, Town of Caratunk, Kennebec River Anglers, Maine Guide Service, LLC, Hawks Nest Lodge, Ed Buzzell, Kathy Barkley, Kim Lyman, Noah Hale, Eric Sherman, Mike Pilsbury, Matt Wagner, Mandy Farrar and Carrie Carpenter (West Forks Group) filed two separate petitions for judicial review of the NECEC Order pursuant to M.R. Civ. P. 80C with the Kennebec County and Somerset County Superior Courts, respectively. On June 10, 2020, the Natural Resources Council of Maine (NRCM) filed a timely appeal of the NECEC Order with the Board. On August 11, 2020, the Court issued a combined order remanding to the Board both 80C appeals for consolidation with the NRCM appeal. The appeals of NextEra, West Forks Group, and NRCM are pending before the Board.

The agency record for the NECEC Order is voluminous – containing thousands of documents compiled during a lengthy regulatory review by the Department. The appellants have raised several complex technical and legal arguments that, in addition to numerous anticipated procedural rulings required of the Chair to regulate the course of the proceeding, will require the Board’s thorough analysis before a decision can be reached.

3. Dyer Long Pond Water Level Order. On April 13, 2020, Richard Saltonstall, III filed a timely appeal of, and request for hearing on, Department Order #L-22951-36-A-N,

which established a water level regime and minimum flow requirements for Dyer Long Pond in Jefferson, Maine. Mr. Saltonstall is the owner of Dyer Long Pond Dam. The Board granted a request to stay the processing of the appeal to allow participants to the appeal an opportunity to negotiate an alternative dispute resolution. The Board anticipates resolution of this appeal in 2021.

4. Ellsworth Hydroelectric Project. On May 8, 2020, Black Bear Hydro Partners, LLC filed a timely appeal of Department Order #L-13256-33-L-N, which denied Black Bear Hydro Partners, LLC's application for water quality certification for the proposed Federal Energy Regulatory Commission relicensing and continued operation of the existing Ellsworth Hydroelectric Project located on the Union River in the towns of Ellsworth, Mariaville, Waltham, and Fletchers Landing, Maine. The Board anticipates resolution of this appeal in 2021.
5. Fallbrook Commons Development, LLC. On June 29, and June 30, 2020, the Board received from Ian Houseal and Michael Denbow, respectively, timely appeals of Department Order #L-11219-TE-H-N, which was issued to Fallbrook Commons Development, LLC on June 4, 2020. The Department Order approved the application for a Natural Resources Protection Act permit to construct a 90-bed nursing care center that includes a two-story, 58,197-square foot building with two courtyards and two parking areas in Portland, Maine. The Board anticipates resolution of this appeal in 2021.
6. Hartland Secure Sludge Landfill. Between February 18 – 21, 2020, the Board received from the Hartland Environmental Advisory Team, Mr. Linwood Violette, Mr. Rod Pease and Mrs. Judy Pease, and Mr. Rick Sanborn separate timely appeals of Department Order #S-003463-WD-N-R, which was issued to the Town of Hartland on January 24, 2020. The Department Order approved the relicensing of the Hartland Secure Sludge Landfill located in Hartland, Maine. On October 15, 2020, the Board denied the five appeals and affirmed the Department Order, with modifications. In November 2020, the Hartland Environmental Advisory Team, *et al.* filed in the Superior Court of Somerset County a petition under Maine Rule of Civil Procedure 80C for judicial review of the Department Order.
7. Juniper Ridge Landfill. On January 21, 2020, the Board received from Mr. Edward Spencer a timely appeal of Department Order # S-020700-WD-BW-M, which was issued on December 20, 2019, to the State of Maine acting through the Bureau of General Services (BGS) for the Juniper Ridge Landfill located in Old Town, Maine. The Department Order denied the minor revision application of BGS, in which it sought to modify the oversized bulky waste from 65,000 tons per year to 85,000 tons per year for an unlimited time period, but approved the application to modify the oversized

bulky waste from 65,000 tons per year to 85,000 tons per year for a limited time period in calendar years 2019 and 2020. The Department Order was conditioned such that the oversized bulky waste limit reverts back to 65,000 tons per year in calendar year 2021 and in subsequent years. On June 25, 2020, the Board denied the appeal and affirmed the Department Order.

8. Lower Barker Hydroelectric Project. On December 23, 2019, KEI (Maine) Power Management (III) LLC (KEI) filed a timely appeal of the Department's November 22, 2019, approval of a water quality certification (Department Order #L-126654-33-D-N) issued to KEI regarding the Lower Barker Hydroelectric Project in Auburn, Maine. The Project is licensed by the Federal Energy Regulatory Commission (FERC Project No. P-2808). On August 12, 2020, the Board granted KEI's request to stay the appeal proceeding to allow participants to the appeal an opportunity to negotiate an alternative dispute resolution. On October 23, 2020, KEI submitted a progress reported to the Board indicating negotiations have been positive and that KEI anticipates the parties will succeed in resolving the remaining issues under discussion without the need to continue the appeal. If the alternative dispute resolution is unsuccessful in resolving the matter, the Board anticipates that it will resume processing of the appeal in early calendar year 2021.
9. Mattaceunk Hydroelectric Project. On April 23, 2020, Great Lakes Hydro America, LLC (GLHA) filed a timely appeal of the Department's March 25, 2020, approval of a water quality certification (Department Order #L-10124-33-J-N) issued to GLHA regarding the Mattaceunk Hydroelectric Project located on the Penobscot River in the towns of Mattawamkeag, Medway, Molunkus Township, and Woodville, Maine. The Project is licensed by the Federal Energy Regulatory Commission (FERC Project No. P-2520). On August 18, 2020, GLHA withdrew its appeal of the Department Order.
10. Sheldon Hartstone. On March 3, 2020, Sheldon Hartstone filed a timely appeal of the Department's February 5, 2020, denial of Mr. Hartstone's (doing business as Fairmount Redemption) application for a new beverage container redemption center proposed to be located in Bangor, Maine. On June 18, 2020, the Board voted to direct Department staff to draft an order that would reverse the Department's decision and grant the appeal. On September 17, 2020, the Board voted to grant the appeal and reverse the Department's February 5, 2020, Order denying the application. The Board ordered that the Department shall issue Mr. Hartstone a redemption center license for the proposed facility. The Department is awaiting notification from Mr. Hartstone that he has completed setup of the redemption center so that a license may be issued.

### C. Appeals of Administrative Orders Issued by the Commissioner

A number of the Department's program-specific statutes provide for appeals to the Board of a Commissioner's administrative order, such as an order to remediate a site contaminated by oil or hazardous substances. These are unilateral orders through which the Commissioner seeks to correct serious environmental conditions. Due process is afforded through the right of appeal to the Board, and then Superior Court. The Board received no appeals of administrative orders in calendar year 2020.

### D. Permit and License Applications

Maine law provides that the Board decide each application for approval of permits and licenses that in the Board's judgment represents a project of statewide significance. 38 M.R.S. § 341-D(2). A project of statewide significance is defined as a project which meets at least three of the four following criteria:

- Will have an environmental or economic impact in more than one municipality, territory or county;
- Involves an activity not previously permitted or licensed in the State;
- Is likely to come under significant public scrutiny; and
- Is located in more than one municipality, territory or county.

Additionally, the Board shall decide all applications referred to it jointly by the Commissioner and the applicant. The Board may vote to assume jurisdiction of an application if it finds that at least 3 of the 4 criteria identified above have been met. An exception to this provision is that Board may not assume jurisdiction over an application for an expedited wind energy development as defined in Title 35-A, § 3451, sub-§ 4, for a certification pursuant to Title 35-A, § 3456 or for a general permit pursuant to Title 38 § 480-HH or § 636-A.

1. Nordic Aquafarms, Inc. Application for Land-Based Atlantic Salmon Aquaculture Facility, Belfast and Northport. Nordic Aquafarms, Inc. (Nordic) applied for the following licenses for its proposed facility: Site Location of Development and Natural Resources Protection Act (Land Bureau applications), Chapter 115 Minor Source Air Emissions (Air Bureau application), and Maine Pollutant Discharge Elimination System / Maine Waste Discharge License (Water Bureau application). In response to requests for additional information, on May 17, 2019, Nordic submitted consolidated applications that contained additional evidence. The Department accepted the consolidated applications as complete for processing on June 13, 2019. At the request of Nordic and the Commissioner, the Board, on June 20, 2019, voted to assume original jurisdiction over Nordic's applications for the proposed facility, and subsequently

published notice of opportunity for persons to apply for intervenor status in the proceeding. The Board granted intervenor status to nine entities and held four days of hearing on the applications between February 11–14, 2020, with one evening session devoted to receiving testimony from the general public. The Board held several deliberative sessions following the hearing. The Board, on November 19, 2020, approved with conditions the separate applications for Site Location of Development, Natural Resources Protection Act, Chapter 115 Minor Source Air Emissions, and Maine Pollution Discharge Elimination/Waste Discharge License.

Additional Applications Subject to Board Approval. Maine law provides that the Board shall decide all applications for commercial hazardous waste facilities. 38 M.R.S. § 1319-R(3). The Board acted on one such application in 2020.

2. Portsmouth Naval Shipyard, United States Department of the Navy (PNS). The PNS has operated a hazardous waste facility on Jamaica Island in Kittery, Maine since August 1980. The PNS is a federally owned Navy installation which operates the facility, referred to as Building 357, in support of the overhaul, servicing, and repair of the nuclear propulsion fleet of the Navy. The PNS accepts hazardous wastes from other Department of Defense generators in New England. Because the PNS accepts waste from off-site generators, the Building 357 facility must meet the standards for a commercial hazardous waste storage facility. The PNS applied on September 29, 2016, for approval to renew its license to operate a commercial hazardous waste storage facility. The application was accepted as complete for processing on October 4, 2016. The Board approved the application, with conditions, on September 17, 2020.

#### E. Administrative Consent Agreements

Administrative consent agreements are voluntary, and the terms and conditions of such agreements are the product of a negotiation process between the violator, the Department, and the Office of the Maine Attorney General. The Department calculates civil monetary penalties through the evaluation of the environmental aspects of a case (such as the sensitivity of the environmental resource, size of the affected area, and potential effect to human health), the circumstances in which the violation occurred (such as the violator's knowledge of the laws, the cause of the violation, the violator's response and level of cooperation, and the compliance history of the violator), and whether civil monetary penalty is substantial enough to deter others from similar violations (taking into consideration factors such as whether the violator received a financial gain as a result of the violation, whether the violator has committed either the same or similar violations in past five years, and the violator's ability to pay the penalty). Maine law authorizes the Department to include supplemental environmental projects – an environmentally beneficial project primarily benefiting public health or the environment that a violator is not

otherwise required or likely to perform – as part of an administrative consent agreement. 38 M.R.S. § 349(2-A).

As noted above, P.L. 2019, ch. 315 modified the Board’s enforcement authority to include approval of administrative consent agreements negotiated by the Department to resolve violations of environmental laws administered by the Department. As a result of its new responsibilities pursuant to 38 M.R.S. § 341-D(6)(G), the Board experienced a sharp increase in activity in calendar year 2020 with respect to the review and approval of administrative consent agreements. The Department prepares monthly enforcement reports to satisfy its statutory obligation under 38 M.R.S. § 349(7) that the department inform the public of certain enforcement resolutions. See the Department’s webpage at <https://www.maine.gov/dep/enforcement/mcar/index.html>. A summary of each administrative consent agreement considered by the Board in calendar year 2020 is provided below.

1. Town of Wiscasset. The Town of Wiscasset Fire Department violated the Department’s air quality rules by intentionally burning a structure for demolition purposes and not for a bona fide fire training exercise. The Wiscasset Fire Department did not remove waste materials from the building prior to the burn, did not investigate if asbestos had been removed from the building, did not investigate if lead-based paint was present, did not have a written training plan, and created a nuisance and public safety threat along U.S. Route 1. The Board, on January 23, 2020, voted to approve the administrative consent agreement, which resolved the violations and stipulated payment of a monetary penalty of \$1,000.00.
2. Daniel Delucca, Houlton. Daniel Delucca violated the Natural Resources Protection Act by removing vegetation from and placing fill in approximately 50,000 square feet of forested wetland without first obtaining a permit; and violated the Erosion and Sedimentation Control Law and the Stormwater Management Law by disturbing approximately 3.75 acres of land without the use of erosion and sedimentation controls and without first obtaining a permit. Daniel Delucca subsequently restored the altered area in accordance with a Department approved restoration plan. The Board, on February 6, 2020, approved the administrative consent agreement, which resolved the violations and stipulated payment of a monetary penalty of \$3,401.00.
3. Town of Bingham. The Town of Bingham violated certain terms and conditions of its waste discharge license and 38 § 414(5) between calendar years 2013 and 2019. Violations at the Town of Bingham’s wastewater treatment facility include failure to adhere to and document standard methods for sampling and analyzing wastewater, failure to repair equipment, failure to provide back-up power, and failure to keep an Operations and Maintenance Manual. The Board, on May 19, 2020, approved the

administrative consent agreement, which resolved the violations and stipulated payment of a monetary penalty of \$39,256.00 with all but \$15,000 suspended. The \$15,000 will partially fund a supplemental environmental project (Cold Stream Bridge Replacement for Wild Eastern Brook Trout, Johnson Mountain Township). The Town agreed to hire a consultant to provide a comprehensive evaluation of the facility and to train staff.

4. Town of St. Agatha. The Town of St. Agatha, through its Public Works Department, violated the Natural Resources Protection Act and the Erosion and Sedimentation Control Law by placing fill in and adjacent to Long Lake in St. Agatha without the use of erosion and sedimentation controls and without first obtaining a permit. The Town of St. Agatha impacted an area measuring approximately 4,500 square feet below and above the normal high water line of the lake. The Board, on June 25, 2020, approved the administrative consent agreement, which resolved the violations and stipulated payment of a monetary penalty of \$1,987.00.
5. Dragon Products Company, LLC Thomaston. Dragon Products Company, LLC, at its facility located in Thomaston, violated the facility's air emission license, which resulted in excess emissions to the air, specifically releases of ammonia (NH<sub>3</sub>), carbon monoxide (CO), dioxin/furans, and particulate pollutants (dust and smoke) at levels that exceed standards established in its air emission license or established by federal rule. The Board, on June 25, 2020, approved the administrative consent agreement, which resolved the violations and stipulated payment of a monetary penalty of \$66,937.00.
6. Paul Morse, Patten. Paul Morse violated the Natural Resources Protection Act and the Erosion and Sedimentation Control Law by placing fill in approximately 5,000 square feet of a freshwater wetland directly adjacent to Webb Brook in Patten, without the use of erosion and sedimentation controls and without first obtaining a permit. The Board, on June 25, 2020, approved the administrative consent agreement, which resolved the violations and stipulated payment of a monetary penalty of \$2,000.00.
7. SHOEM Corporation, Mercer. SHOEM Corp. violated the Oil Discharge Prevention and Pollution Control Law by discharging liquid asphalt at a site in Mercer that resulted in the death of at least nine turkey poults. The dead birds, hardened liquid asphalt, and contaminated soil have been removed. The Board, on June 25, 2020, approved the administrative consent agreement, which resolved the violations and stipulated payment of a monetary penalty of \$6,000.00.
8. Southwest Harbor Water and Sewer District and the Town of Southwest Harbor. The Southwest Harbor Water and Sewer District and the Town of Southwest Harbor violated certain terms and conditions of its waste discharge license and 38 § 414(5) between January 1, 2016, and May 10, 2017. The SHWSD operator did not conduct

sampling and testing in compliance with required methods, did not keep records of monitoring, and reported invalid data to the Department as if it were valid. The Board, on August 11, 2020, approved the administrative consent agreement, which resolved the violations and stipulated payment of a monetary penalty of \$57,355.00. The penalty will be used to complete the Marshall Brook Culvert Replacement Project, a supplemental environmental project, to improve fish passage.

9. Stan Brescia, d/b/a Larry's Construction, Ashland. Stan Brescia violated the Natural Resources Protection Act, Permit by Rule standards, and the Erosion and Sedimentation Control Law by disturbing soil immediately adjacent to the Aroostook River in Ashland in a manner that did not comply with work approved by Permit by Rule # PBR 67700 and without the use of erosion and sedimentation controls. Stan Brescia has completed training and is now certified by the Department in erosion and sedimentation control practices. The Board, on August 27, 2020, approved the administrative consent agreement, which resolved the violations and stipulated payment of a monetary penalty of \$2,646.00.
10. Brenda and Derek Marcou, Wells. Brenda and Derek Marcou violated the Natural Resources Protection Act, the Coastal Sand Dune Rules, and certain conditions of Department Order #L-27616-4J-A-N. In December 2017, the Department approved an application for construction of a driveway, residential home, deck and patio on the Marcous' property in Wells. Upon inspection, the Department determined that the project was not constructed in accordance with the terms and conditions of the Department Order. Violations included the placement of new structures on or seaward of a frontal dune. The Board, on September 28, 2020, approved the administrative consent agreement, which resolved the violations and stipulated the submission of an after-the-fact permit application to convert unpermitted granite beam structures into a cobble trapping fence or a restoration plan to remove the granite beams; removal of unpermitted granite edging; submission of as built plans depicting the decks, patio and stairs; and a monetary penalty of \$17,500.00.
11. ProShot Concrete, Inc., Gardiner. ProShot Concrete, Inc. violated the Oil Discharge Prevention and Pollution Control Law. ProShot Concrete, Inc. was under contract to the Maine Department of Transportation to rehabilitate a culvert at a construction site on Route 24 in Gardiner. Following a report of a spill of hydraulic oil and subsequent investigation by the Department and Maine Department of Transportation staff, it was determined that up to 70 gallons of hydraulic oil had been discharged to soil and surface water from equipment at the site. ProShot Concrete, Inc. did not comply with its spill prevention control plan and its contract with Maine Department of Transportation and failed to immediately notify the Department or initiate cleanup of the spill. The site was subsequently cleaned up by ProShot Concrete, Inc. The Board, on October 1, 2020,



approved the administrative consent agreement, which resolved the violations, requires that ProShot conduct employee safety training, and stipulated payment of a monetary penalty of \$7,000.00.

12. Town of Brunswick, Graham Road Landfill. The Town of Brunswick, through its Graham Road Landfill, violated certain terms and conditions of its waste discharge license and 38 M.R.S. § 414(5) during the period of May 2011 through July 2019. Leachate from the landfill is treated in a series of lagoons and then combined with stormwater before being discharged to the Androscoggin River in Brunswick. In calendar year 2000, the U.S. EPA promulgated national effluent guidelines for the discharge of wastewater from non-hazardous landfills, which are applicable to the Graham Road Landfill. Unable to achieve compliance with the new required effluent guidelines, the Town entered into a schedule of compliance with the Department to close the landfill. The Board, on October 1, 2020, approved the administrative consent agreement, which resolved the violations and stipulated a monetary penalty of \$17,000.00 with all but \$10,000.00 suspended.
13. David Jacobson, DDS, PLLC d/b/a Two Lights Dental, LLC, Cape Elizabeth. David Jacobson, agent of David S. Jacobson, DDS, PLLC, doing business as Two Lights Dental, LLC, violated the Stormwater Management Law. In December 2019, David Jacobson d/b/a Two Lights Dental, LLC applied for a permit for a four-lot commercial subdivision in Cape Elizabeth. Prior to obtaining permit approval for the proposed development, David Jacobson initiated clearing of vegetation, stumping, grubbing, and blasting. David Jacobson subsequently obtained a Stormwater Management Law permit for the proposed development. The Board, on October 1, 2020, approved the administrative consent agreement, which resolved the violations and stipulated a monetary penalty of \$2,608.80.
14. Dirigo Center Developers, LLC, Westbrook. Dirigo Centers Development, LLC violated the Site Location of Development Law and certain terms and conditions of a Department Order #L-02734-23-C-N. Dirigo Centers Development, LLC obtained the permit for the development of a 52.6-acre commercial and retail center in Westbrook. Dirigo Centers Development, LLC subsequently proposed to substantially alter the plans for the South Campus from the approved mixed-use retail area to an outdoor music venue known as “Rock Row,” but began site work prior to issuance of a permit for the amended proposal. The Department subsequently approved the application to amend the Department Order. The Board, on October 1, 2020, approved the administrative consent agreement, which resolved the violations and stipulated a monetary penalty of \$10,931.00.

15. Kennebec Sanitary Treatment District (KSTD), Waterville. KSTD experienced a force main break on November 29, 2019, that lasted until December 13, 2019. Initially, KSTD shut down the main pump station and began an intentional bypass of the flow to the Kennebec River from their licensed combined sewer overflow outfall with the expectation that the repair would be completed quickly. Due to unexpected complications, the repair could not be completed in a timely manner. In total, KSTD discharged an estimated 21.6 million gallons of untreated wastewater directly to the Kennebec River, which is a Class B river. In addition, KSTD failed to have in place an acceptable Operations and Maintenance Plan since 2015. The Board, on December 17, 2020, approved the administrative consent agreement, which resolved the violations and stipulated a monetary penalty of \$33,912.00 to be paid to Maine Rivers as a supplemental environmental project, and other remedial corrective actions.
16. Lewiston-Auburn Water Pollution Control Authority (LAWPCA), Auburn. The Department, Office of the Maine Attorney General, and LAWPCA entered into an administrative consent agreement on August 12, 2019, to resolve violations related to ground water contamination resulting from LAWPCA's composting facility in Auburn. As part of the administrative consent agreement, LAWPCA agreed to fund a supplemental environmental project for a sediment control catch basin installation project administered by the Lake Auburn Watershed Protection Commission, the completed cost of which was less than anticipated and left funds remaining in the supplemental environmental project account. The Board, on December 17, 2020, approved an amended administrative consent agreement, which includes a new supplemental environmental project and approval to utilize the remaining \$20,170.93 of supplemental environmental project funds to complete the project.
17. ND Paper, Inc., Rumford. On November 6, 2019, the Departments received an anonymous report of a No. 6 oil release at the ND Paper, Inc. facility. An investigation conducted by Department staff revealed that ND Paper, Inc. failed to immediately initiate removal of the prohibited oil discharges to the Commissioner's satisfaction; did not notify the Department of the spill as required; and did not assist in cleanup activities and investigation until three weeks after the three documented discharges occurred. Due to ND Paper, Inc.'s failure to timely notify the Department of the spill, it is currently unknown to what extent petroleum products were discharged to the soil, ground water or river, or the potential impact of the discharges. ND Paper, Inc. has completed corrective actions including spill response and training to employees, equipment repairs, enabling alarms, and video surveillance monitoring to prevent future discharges. The Board, on December 17, 2020, approved the administrative consent agreement, which resolved the violations and stipulated a monetary penalty of \$90,000.00 to be paid to the Maine Ground and Surface Waters Clean-up and Response Fund.

18. ND Paper, Inc. and Catalyst Paper Operations, Inc., Rumford. This enforcement action was initiated as the result of failed hydrogen chloride emissions stack tests conducted on Cogen Boilers #6 & #7 in February and March 2017. The Department’s investigation revealed a total of 13 violations which resulted in excess emissions to the air, specifically releases of hydrogen chloride, particulate matter, total reduced sulfur compounds, and other gasses, at levels that exceeded standards established in their Air Emission License or established by federal regulations, as well as failure to maintain proper air pollution controls by not operating equipment according to their Air Emission License. The Board, on December 17, 2020, approved the administrative consent agreement, which resolved the violations and stipulated a monetary penalty of \$79,710.00 with \$44,880.80 paid to the Treasurer, State of Maine and \$34,829.20 paid to the Town of Rumford as part of a supplemental environmental project.

F. Petitions to Modify a License or Order Corrective Action

The petition process is a mechanism to re-open a final license that was issued by the Department if certain conditions are found to exist. There were no such petitions referred to the Board by the Commissioner in 2020.

G. Other Duties

1. Callahan Mine Superfund Site, Brooksville – Acquisition of Real Estate Easement. Pursuant to Uncontrolled Hazardous Substance Sites, 38 M.R.S. § 1364(7), “[t]he [D]epartment may acquire . . . any interest in real property that the [B]oard in its discretion determines, by 2/3 majority vote, is necessary to conduct remedial actions in response to threats or hazards posed or potentially posed by an uncontrolled site....” The Department requested of the Board approval to obtain easements on two parcels of land adjacent to the Callahan Mine Superfund Site to provide access for implementation of the site remedy. The easements would provide access to stabilize the tailings dam and install a cover system over the impounded tailings to prevent catastrophic failure of the impoundment dam and reduce the leaching of heavy metals (including arsenic, copper, lead, and zinc) to Goose Cove. The Board, on January 23, 2020, approved the Department’s request to purchase easements on two abutting parcels of land as necessary to implement the Callahan Mine Superfund Site Remedy.
2. Clean Air Act Section 176A Petition. The Board, on February 6, 2020, authorized the Department to submit to the U.S. EPA a petition to remove portions of the State from the Ozone Transport Region pursuant to Clean Air Act section 176A(a)(2) based on a demonstration that NOx and VOC emissions from northern and eastern Maine are not significant contributors to ozone nonattainment in other states and do not interfere with

maintenance of the ozone National Ambient Air Quality Standards in those Maine municipalities that will remain in the Ozone Transport Region.

3. Amendments to the State’s Air Implementation Plan. The Board, on February 6, 2020, authorized the Department to submit to the U.S. EPA proposed amendments to Limited Maintenance Plans for the Portland and Midcoast Ozone Maintenance Areas, proposed revisions to the Section 110(a)(1) and (2) Infrastructure State Implementation Plan, and proposed revisions to the Section 110(a)(2)(D)(i)(I) “Good Neighbor” State Implementation Plan.
  
4. South Portland / Portland VOC Air Quality Monitoring Project – Informational Session. Department staff, on March 5, 2020, held an informational session for the Board regarding the Department’s air monitoring program in South Portland in response to concerns initially identified by Global Partners (a petroleum distribution company) at its facility in Chelsea, Massachusetts. Global Partners determined that emissions from its asphalt and residual oil tanks were much higher than anticipated and reported its findings to the U.S. EPA, which subsequently required testing at several facilities in New England, including Global Partners and Sprague Energy facilities in Maine. Testing indicated that air emissions from tanks containing certain products such as asphalt and residual oils are higher than estimated through modeling due, at least in part, to the fact that these products are heated to reduce viscosity, thus driving off volatile organic compounds (VOCs). In December 2019, the U.S. EPA finalized a consent decree with Global Partners, which requires the facility in South Portland to revise its air emissions license to limit the number of tanks heated, the number of days tanks are heated, and product throughput and thereby limit emissions. The Department reported that it had accepted an application to revise its air emission license from Global Partners and that the Department would hold a meeting in South Portland to discuss the application.

In response to concerns regarding air emissions from petroleum tanks, the Department reported that it has worked with the City of South Portland to design an air monitoring program to collect data and address public health concerns.

5. State Implementation Plan Revision: Non-Interference Demonstration for the Removal of the Reformulated Gasoline Requirement in Southern Maine. In April 2019, the Legislature enacted L.D. 274 “An Act to Allow the Sale of Ethanol-free Gasoline Statewide.” This bill provided for the repeal of the reformulated gasoline (RFG) sales requirement in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln counties as of November 1, 2020. In order to opt out of the RFG program, Maine must submit a State Implementation Plan revision to U.S. EPA demonstrating that elimination of the RFG requirement in southern Maine will not cause or contribute

to nonattainment of the national ambient air quality standard for ozone or interfere with the maintenance of the standard. The Board, on June 18, 2020, authorized the Department to post the proposed State Implementation Plan revision for a 30-day public comment period, and on August 6, 2020, held a hearing on the proposed State Implementation Plan revision. The Board, on August 20, 2020, approved the proposed State Implementation Plan revision.

#### **IV. CLOSING**

As noted above, this report is submitted in fulfillment of the provisions of 38 M.R.S. § 341-D(7). I would be happy to meet with the Committee and respond to any questions members may have regarding the Board's work and the specific recommendations in this report.

Respectfully submitted,



Mark C. Draper, Chair  
Board of Environmental Protection

Attachment: Board members' biographical information

# **ATTACHMENT A**

## Attachment A: Board of Environmental Protection Members

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**Mark C. Draper, Chair**  
Caribou, 2<sup>nd</sup> Term

Mr. Draper is the Solid Waste Director for Aroostook Waste Solutions (formerly Tri-Community Recycling and Sanitary Landfill) in Fort Fairfield, a position he has held since 2003. Mr. Draper previously held the position of Senior Environmental Engineer at the former Champion International Corporation/International Paper mill in Bucksport where he was responsible for oversight of the mill's landfill operation, waste reduction and recycling activities, and hazardous waste management. Mr. Draper also served as plant engineer for the mill's 290-MW co-generation power plant from 2001-2003. Mr. Draper served on the Board of the Maine Resource Recovery Association for 14 years and is currently Chairman of the Northern Maine Solid Waste Management Committee. He was appointed to the Board by Governor Paul R. LePage in October 2014, and appointed for a second term in June 2018. Governor Janet T. Mills appointed Mr. Draper Chair in March 2019.

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**James W. Parker**  
Veazie, 2<sup>nd</sup> Term

Mr. Parker is a professional engineer and former State Representative for District 18. Mr. Parker served in the 125th Legislature and was a member of the Joint Standing Committee on Environment and Natural Resources and the Special Select Committee for Regulatory Fairness and Reform. Mr. Parker graduated from the University of Maine with a B.S. in civil engineering. Following employment with James W. Sewall Company, he founded Civil Engineering Services, Inc. (CES, Inc.), an engineering consulting firm providing services in a variety of areas including water supply, wastewater, solid and hazardous waste management, and site development. Mr. Parker retired from the firm in 2009, and now spends summers as a charter captain for whale and sightseeing tours on the downeast coast. Mr. Parker was appointed to the Board by Governor Paul R. LePage in June 2013; he was appointed for a second term in May 2017. Mr. Parker served as Chair from December 2014 to March 2019.

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**Mark Dubois**  
Falmouth, 1<sup>st</sup> Term

Mr. Dubois, a professional geologist, is the Natural Resources Manager for springs and land in Maine for Poland Spring / Nestle Waters North America. He was previously employed by Woodard & Curran Engineers and Atlantic Geoscience, Inc. Mr. Dubois has worked on a variety of projects in Maine and elsewhere in the Northeast related to drinking water, site characterization, and remediation of contaminated sites. Mr. Dubois received his B.S in Geology from the University of Maine and his M.S in Hydrogeology and Glacial Geology from the University of Cincinnati. He also conducted research on glacial geology in the Antarctic and is a recipient of the Antarctic Service Medal. Mr. Dubois's community service includes coaching youth baseball and soccer. Mr. Dubois resides in Falmouth with his wife and two children. Mr. Dubois was appointed to the Board by Governor Paul R. LePage in January 2018.

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## Attachment A: Board of Environmental Protection Members

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**Susan M. Lessard**  
Bucksport, 1<sup>st</sup> Term

Ms. Lessard is the Town Manager for the Town of Bucksport. She previously served as the Town Manager for the communities of Hampden, Vinalhaven, Fayette, and Livermore Falls. Over her career in municipal government, Ms. Lessard has gained extensive experience in solid waste management issues, municipal financial management, and community development. She is a past president of the Maine Municipal Association and has served on the Municipal Review Committee and the Maine Rural Development Council. Ms. Lessard has received several awards including the Governor's Environmental Excellence Award (2002), Maine Engineering Excellence Award (1998), and Maine Town and City Manager's Association Leadership Award (1999). Ms. Lessard was appointed to U.S. EPA's Local Government Advisory Committee in 2018. Ms. Lessard resides in Bucksport with her husband Dan. She was appointed to the Board by Governor Paul R. LePage in January 2018.

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**Robert S. Duchesne**  
Hudson, 1<sup>st</sup> Term

Robert Duchesne is a former State Legislator and radio show broadcast host. During his radio career, Mr. Duchesne was active in charity and public service organizations in the Bangor area, including Downeast Big Brothers Big Sisters, Maine Audubon, and the Maine Association of Broadcasters. He also served on several economic and business development boards. In 2005, Mr. Duchesne was elected to the Maine House of Representatives, where he served six non-consecutive terms. While in the Legislature, he chaired both the Environment and Natural Resources Committee and the Inland Fisheries and Wildlife Committee. Mr. Duchesne is owner and operator of Maine Birding Trail. Mr. Duchesne also shares his birding expertise in a weekly birding column for the Bangor Daily News and the Woods and Waters column for Bangor Metro magazine. Robert Duchesne resides at Pushaw Lake in Hudson with his wife, Sandi. He was appointed to the Board by Governor Janet T. Mills in March 2019.

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**Robert M. Sanford**  
Gorham, 1<sup>st</sup> Term

Robert Sanford is Chair of the Department of Environmental Science & Policy at the University of Southern Maine, a position he has held since 2010. Mr. Sanford obtained his M.S. and Ph.D. degrees in Environmental Science from the State University of New York College of Environmental Science and Forestry. He is the author of numerous books and journal articles on environmental planning and policy, applied archeology, instruction, and civic engagement. Prior to joining the faculty of the University of Southern Maine in 1996, Mr. Sanford served 10 years as an Environmental Board District Coordinator for the State of Vermont administering a land-use permitting program for one of Vermont's nine environmental districts. In addition to his teaching and academic research responsibilities, Mr. Sanford has served on numerous advisory committees including the Maine Water Resources Committee, the Maine Farmland Project, the Friends of the Presumpscot River, and the Town of Gorham's Municipal Recycling Committee. He lives in Gorham with his wife and son. Robert Sanford was appointed to the Board by Governor Janet T. Mills in July 2019.

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## Attachment A: Board of Environmental Protection Members

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**Steven Pelletier**  
Topsham, 1<sup>st</sup> Term

Mr. Pelletier is a Certified Wildlife Biologist®, Maine Licensed Forester, and Professional Wetland Scientist with over 40 years of professional natural resource experience. Earlier in his career he served as a Wildlife Biologist with the US Forest Service and as an Environmental Specialist for the Maine Department of Environmental Protection's Land Bureau, was later co-founder/ owner of Woodlot Alternatives, Inc., a Maine-based ecological consulting firm, until its acquisition by Stantec Consulting in 2007. At Stantec he served as Senior Principal and US Ecosystems Discipline Lead specializing in rare species habitats and site and landscape-level resource assessments, also serving as Principal Investigator of two federal offshore migration research projects. Mr. Pelletier also conducted and oversaw a broad variety of diverse projects ranging from highway/ rail transportation to offshore energy development. He has authored numerous publications on a variety of natural resource topics including forest biodiversity, bat migration, vernal pools, and resource mitigation and compensation planning. He has served on a variety of Federal and State advisory committees and stakeholder groups and in 1989, co-founded the Maine Association of Wetland Scientists. He currently serves on the Maine Board of Licensure of Foresters and several local community organizations including the Brunswick-Topsham Land Trust Advisory Board, Topsham Conservation Commission, and Topsham Development, Inc. Mr. Pelletier resides in Topsham with his wife Mary. He was appointed to the Board by Governor Janet T. Mills in February 2020.

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