

**BOARD OF ENVIRONMENTAL PROTECTION**  
**Meeting Minutes**

October 15, 2009

A meeting of the Board of Environmental Protection was held on Thursday, October 15, 2009 at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

**Board:** Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, P. Andrews Nixon, Sue Lessard, Matt Scott, Lissa Widoff, Frank Woodard and Nancy Ziegler

**Staff:** Jeff Madore, Bureau of Remediation and Waste Management  
George Seel, Bureau of Remediation and Waste Management  
Dawn Hollowell, Bureau of Land and Water Quality  
Marybeth Richardson, Bureau of Land and Water Quality

**Others:** Mark Hyland, Director Bureau of Remediation and Waste Management  
Peggy Bensinger, Assistant Attorney General  
Jan McClintock, Assistant Attorney General (Mallinckrodt matter only)  
Cindy Bertocci, BEP Executive Analyst  
Terry Hanson, BEP Administrative Assistant

***(Meeting adjourned at approximately 12:30 p.m.)***

**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:**

None

**B. COMMENTS FROM THE BEP CHAIR: NONE**

**C. EXECUTIVE ANALYST COMMENTS:**

The Board's Executive Analyst, Cindy Bertocci noted that the previously scheduled HoltraChem orientation session has been delayed to allow the parties more time to review the presentation materials.

Additionally, a pre-hearing conference is scheduled for October 30<sup>th</sup>. It is anticipated that Board members will receive their copies of the pre-filed direct testimony soon after that date.

Board member Elizabeth Ehrenfeld asked about timeframes for the HoltraChem hearing (noting her work constraints).

Ms. Bertocci indicated that the Board's Administrative Assistant would be communicating with Board members soon concerning possible hearing dates.

**D. BOARD CALENDAR:** Reviewed.

**E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:** No questions.

**F. EXECUTIVE SESSION:** None

**II CONSENT AGENDA ITEMS:**

The Board voted (9-0-0-1) on a motion to approve consent agenda item 1 as presented.

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

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

1. BORALEX STRATTON ENERGY LLC, Stratton – Administrative Consent Agreement (BAQ)

**III. Regular Agenda**

1. CHAPTER 692, SITING OF OIL STORAGE FACILITIES / NEW (provisional adoption)

Staff: George Seel, Bureau of Remediation and Waste Management

Staff: Jeff Madore, Bureau of Remediation and Waste Management

The Board voted (9-0-0-1) on a motion to provisionally adopt Chapter 692, Siting of Oil Storage Facilities. This new rule proposes to implement the wellhead protection provision of statute by setting geographic restrictions on the siting of new aboveground and underground oil storage tanks and facilities. The rule establishes prohibitions on siting within wellhead protection zones and sand and gravel aquifers (mapped by Maine Geological Survey), with some exceptions and variance

provisions. The vote was taken pursuant to 38 M.R.S. §341-D(1-B), §1391-1399 and PL 2007, Chapter 569, Section 7.

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

2. CHAPTER 700, WELLHEAD PROTECTION: SITING OF FACILITIES THAT POSE A SIGNIFICANT THREAT TO DRINKING WATER / NEW (adoption)

Staff: George Seel, Bureau of Remediation and Waste Management

Staff: Jeff Madore, Bureau of Remediation and Waste Management

The Board voted (9-0-0-1) on a motion to provisionally adopt new Chapter 700, Wellhead Protection: Siting of Facilities that Pose a Significant Threat to Drinking Water. This regulation protects drinking water resources by restricting the geographic location of certain types of facilities that handle hazardous matter (e.g. automobile body shop/repair facility, automobile graveyards, dry cleaning facilities that use perchloroethylene, metal finishing and plating facilities, and commercial hazardous waste facilities.) The rule establishes prohibitions on siting facilities within wellhead protection zones and sand and gravel aquifers, with some exceptions and variance provisions. The vote was taken pursuant to 38 M.R.S. §341-D(1-B), §1391-1399 and PL 2007, Chapter 569, section 7.

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

3. UNITED STATES SURGICAL CORP. - MALLINCKRODT LLC // HOLTRACHEM site (project orientation Appeal of Eighth Procedural Order)

Staff: Cindy Bertocci, BEP Executive Analyst

The Board voted (8-0-1-1) on a motion to deny the appeal submitted by United States Surgical Corp / Mallinckrodt concerning burden of proof, the scope of the record and applicable statutory references, and affirm the Eighth Procedural Order with an amendment to footnote #13 to include reference to page 2, section 1.A.(1) of the Fifth Procedural Order. The vote was taken pursuant to 38 M.R.S. §§ 1361 to 1371 and the Maine Administrative Procedure Act.

*Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale has recused himself from the proceeding. Board member Matt Scott was absent.*

4. MAINE POWER RELIABILITY PROGRAM // Application for 345 kV transmission corridor (project update)

Staff: Dawn Hallowell, Bureau of Land and Water Quality

Note: no vote was taken.

5. GOVERNMENT EVALUATION ACT REVIEW, Title 3 M.R.S.A., Chapter 35 – Program Evaluation Report to Natural Resources Committee (discussion)  
Staff: Cindy Bertocci, Board Executive Analyst

Note: no vote was taken.

*Next Regular Meeting –Thursday, November 5, 2009 – Holiday Inn/Ground Round*