

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

February 18, 2010

A meeting of the Board of Environmental Protection was held on Thursday, February 18, 2010 at the Civic Center, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, Wing Goodale, Richard Gould, Susan M. Lessard, P. Andrews Nixon, and Nancy Ziegler

Absent: Don Guimond, Matt Scott, Lissa Widoff, and Frank Woodard

Staff: Paula Clark, Bureau of Remediation and Waste Management
Matthew Sica, Dept. of Health and Human Services
Hetty Richardson, Bureau of Land and Water Quality
Mike Mullen, Bureau of Land and Water Quality
John James, Bureau of Remediation and Waste Management
Ginger Jordan-Hillier, Office of the Commissioner

Others: David P. Littell, DEP Commissioner
Nancy Macirowski, Assistant Attorney General
Cynthia S. Bertocci, BEP Executive Analyst
Terry Hanson, BEP Administrative Assistant

(Meeting adjourned at approximately 1:30p.m.)

The Board opened the meeting with a public hearing in the matter of:

- (1) CHAPTER 400 – SOLID WASTE MANAGEMENT RULES GENERAL PROVISIONS,
- (2) CHAPTER 401 – LANDFILL DISPOSAL FACILITIES,
- (3) CHAPTER 409 – PROCESSING FACILITIES

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner Littell noted the following:

Greenhouse Gas (GHG) Report: The Department has submitted a third report to the Legislature on the status of Maine's implementation of the Climate Action Plan. The state is on track to meet its 2010 reduction goals. Commissioner Littell specifically noted information contained in Appendix A of the report which compares greenhouse gas levels against economic growth. Data show that even with an increase in Maine Gross Domestic Product through 2008 the state saw a reduction in greenhouse gas emissions. Maine is only state that has this tracking picture.

Although Maine is meeting goals established in its climate action plan, the work continues to meet the 75% reduction of greenhouse gas emissions by 2050.

Governmental Evaluation Act: The Department's Government Evaluation Act report is final and available on the web.

Permitting Timeframes: The Department has been meeting permitting timeframes. DEP has continued to process applications in an efficient manner in spite of budget limitations and reduced staffing. Commissioner Littell noted that the Department has seen a general decline in the volume of applications (mostly abbreviated permit/permit by rule submissions) which may correlate with the economy in 2009 and 2010.

New England Governors and Eastern Canadian Premiers: Commissioner Littell announced that he has stepped down as co-chair of the New England Governors and Eastern Canadian Premiers group (as of January 1, 2010). During his two-year tenure as co-chair there have been improvements in information sharing between the provinces and the states. New web-based links to Canadian provincial resources will be made available by the Canadian Premiers enabling information associated with energy projects, regulatory oversight, and environmental impacts etc. to be readily available to the public and governmental counterparts.

Dr Deborah Rice: Commissioner Littell noted that Dr. Rice was in attendance at the meeting. Dr. Rice is a toxicologist with the Maine Center for Disease Control and was recently honored with the Heinz Award for her research into chemical toxicology (particularly the study of interactions of chemicals within the brain and nervous system).

B. COMMENTS FROM THE BEP CHAIR:

Chair Lessard explained that she and the Board's Executive Analyst presented the Board's Government Evaluation Act report to the Natural Resources Committee. Committee members responded favorably to the information contained in the report and commented on the individual dedication of BEP members.

C. EXECUTIVE ANALYST COMMENTS: NONE

D. BOARD CALENDAR: REVIEWED

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

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS:

The Board voted (6-0-0-4) on a motion to approve consent agenda items 1, 2, 3, and 4 as presented.

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

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

1. NATURALLY POTATOES, A BASIC AMERICAN FOODS DIVISION, LLC, Mars Hill - Administrative Consent Agreement (BAQ)
2. JOHN HANGEN, Fort Fairfield - Administrative Consent Agreement (BLWQ - Land)
3. DOUGLAS R. HENDERSON, Easton - Administrative Consent Agreement (BRWM)
4. KEYSTONE AUTOMOTIVE INDUSTRIES, INC., Portland - Administrative Consent Agreement (BRWM)

The Board voted (6-0-0-4) on a motion to approve consent agenda item 5 as presented.

5. SPRINGFIELD TERMINAL RAILWAY CO. / MAINE CENTRAL RAILROAD COMPANY / PORTLAND TERMINAL COMPANY, South Portland and throughout southern, central and eastern portions of Maine - Administrative Consent Agreement (BRWM)

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

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

II. Regular Agenda

1. CHAPTER 263 STATE OF MAINE COMPREHENSIVE AND LIMITED ENVIRONMENTAL LABORATORY CERTIFICATION RULES (adoption)

Staff: Matt Sica, Department of Health and Human Services

The Board voted (6-0-0-4) on a motion to adopt the repeal and replacement of Chapter 263, Comprehensive and Limited Environmental Laboratory Certification Rules. The rules have been updated to include new definitions for consistency in use of terminology, incorporate policies and national standards, require laboratories to perform one proficiency test per year, include modifications to on-site inspections and general reorganization of the rule.

The vote was taken pursuant to 38 M.R.S. §341-D(1-B).

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

2. CHAPTER 415, REASONABLE COSTS FOR HANDLINE AND RECYCLING OF ELECTRONIC WASTES / amendment (adoption)

Staff: Carole Cifrino, Bureau of Remediation and Waste Management

The Board voted (6-0-0-4) on a motion to adopt amendments to Chapter 415, Reasonable Costs for Handling and Recycling of Electronic Wastes. This rule establishes requirements and procedures for consolidation and recycling of electronic waste generated by households. Proposed amendments include provisions to clarify definitions and responsibilities, streamline submittal requirements for manufacturers, include desktop printers and game consoles as products subject to the manufacturer responsibility, and modify financing from percentage of “return share” to percentage of “market share”. The vote was taken pursuant to 38 M.R.S. §341-D(1-B), §1610 Electronic Waste and 06-096 CMR Chapter 415.

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

3. CHAPTER 521, APPLICATION FOR WASTE DISCHARGE LICENSES // SECTION 9. STORM WATER DISCHARGES / amendment (adoption)

Staff: Don Witherill, Bureau of Land and Water Quality

The Board voted (6-0-0-4) on a motion to adopt amendments to Chapter 521, Application for Waste Discharge Licenses, Section 9 Post Construction Storm Water Discharges in Urban Impaired Stream Watersheds. Amendments establish procedures and requirements for applying for a waste discharge license and set forth requirements for post construction storm water applications for an individual permit under the Maine Pollutant Discharge Elimination System program.

The vote was taken pursuant to 38 M.R.S. §413 et. seq. and §341-D(1-B).

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

4. CHAPTER 880, REGULATION OF CHEMICAL USE IN CHILDREN'S PRODUCTS / new (adoption)

And

CHAPTER 881, FEES; CHEMICAL USE IN CHILDREN'S PRODUCTS / new (adoption)

Staff: John James, Bureau of Remediation and Waste Management

The Board voted (6-0-0-4) on a motion to adopt new Chapter 880 Regulation of Chemical Use in Children's Products to include amendments to Section 2.D.(4) documented on an errata sheet. Chapter 880 establishes a process for the Board to designate and review "priority chemicals". Designation of a chemical as a "priority chemical" would facilitate the gathering of information on 1) the extent to which children may be exposed to the chemical as a result of its use in consumer products, and 2) the availability of safer alternatives.

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

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

The Board voted (6-0-0-4) on a motion to provisionally adopt Chapter 881, Fees; Chemical Use in Children's Products as presented. Chapter 881 allows the Department to cover some of its review costs through fees paid by product manufacturers.

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

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

Next Regular Meeting –Thursday, March 4, 2010 – Augusta Civic Center