

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

June 3, 2010

A meeting of the Board of Environmental Protection was held on Thursday, June 3, 2010, at the Civic Center, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, Richard Gould, Susan M. Lessard, Lissa Widoff, Frank Woodard and Nancy Ziegler. Board members M. Wing Goodale and Matt Scott arrived at noon for the afternoon session

Absent: Don Guimond and P. Andrews Nixon

Staff: Bryce Sproul, Bureau of Air Quality
Kurt Tidd, Bureau of Air Quality
Mark Margerum, Bureau of Land and Water Quality
James Cassida, Bureau of Land and Water Quality
Marybeth Richardson, Bureau of Land and Water Quality
Liza Woodard, Bureau of Remediation and Waste Management
Jeff Madore, Bureau of Remediation and Waste Management
Scott Whittier, Bureau of Remediation and Waste Management

Others: David P. Littell, DEP Commissioner
Cynthia S. Bertocci, BEP Executive Analyst
Jan McClintock, Assistant Attorney General, deliberative session only
Peggy Bensinger, Assistant Attorney General, afternoon session only
Terry Hanson, BEP Administrative Assistant
Robert Gerber, BEP Technical Consultant

(Meeting adjourned at approximately 6:00 p.m.)

III. REGULAR AGENDA

1. UNITED STATES SURGICAL CORP. - MALLINCKRODT LLC // APPEAL OF DESIGNATION OF UNCONTROLLED HAZARDOUS SUBSTANCE SITE AND ORDER, HOLTRA-CHEM FACILITY (Board Deliberative Session)

Staff: Cindy Bertocci, BEP Executive Analyst

The Board conducted a deliberative session, during which they reviewed the record with staff and provided direction to staff on the development of a draft Board Order.

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Gulf Oil Spill: Shortly after the gulf spill, Maine DEP inventoried its resources (*staff and equipment*) and communicated a willingness to volunteer both toward clean-up efforts. British Petroleum requested use of DEP boom equipment which is scheduled for pick up at our Bangor and Portland Offices. Additionally, the National Oceanic and Atmospheric Administration retained the services of DEP's Ginger McMullen to aid in GIS work including protection of high value resources and placement of boom equipment. Following a briefing from Barbara Parker, Division Director Response Unit, Senator Snowe said her office was going to contact Louisiana officials regarding Maine's offer to help with oil containment and capture.

The Commissioner also remarked that modeling indicates the probability of any impact to Maine from the spill is very low. The Grand Banks are slightly more at risk because of ocean currents.

State Revolving Fund: DEP is currently revising criteria for funding of wastewater treatment plant improvements. The stimulus act provided the Department with the authority to include loan forgiveness (negative interest) to encourage certain types of upgrades. There is a mandate associated with the funds for *20% green funding (for energy efficiency, stormwater and erosion control)*. A portion of the money has been used to fund the Long Creek stormwater improvements. The intended use plan for this Clean Water Act funding will go out for public comment shortly.

Long Creek Watershed: The Cumberland County Soil and Water Conservation District, who is administering the plant for the Department, noted that 88 percent of the entities within the Long Creek watershed have indicated their intention to participate in the general permit for remediation of stormwater discharges. One entity has indicated that they will seek an individual permit.

Budget: The first portion of an 8.3 million dollar fund sweep from dedicated accounts is likely to occur at the end of June. Commissioner Littell mentioned that the Board's funding source is among those dedicated accounts at risk. There is a potential that a sweep could impact some Department programs. Early projections for next fiscal

year indicate a 1.1 billion dollar structural gap which will need to be addressed without stimulus funding.

Climate Change: Senator Lisa Murkowski of Alaska sponsored a resolution to prohibit the Environmental Protection Agency (EPA) from moving forward with greenhouse gas initiatives. Governor Baldacci has submitted a formal letter objecting to this resolution. A vote is scheduled for June 10th. DEP is continuing to review the Kerry - Lieberman and Collins-Cantwell bills on climate change, with hopes that a strong federal bill will pass the U.S. Congress this year.

Sulfur Dioxide: EPA has established a new standard for sulfur dioxide. The National Ambient Air Quality Standard of 75 ppb represents a substantial reduction. Maine ambient air monitoring demonstrated compliance with these new levels; however, modeling of paper mill plumes indicates potential initial concerns. It is likely that the low sulfur bill that passed the Legislature this year to implement visibility requirements will help address this issue.

Utilities Committee: The Utilities Committee requested that the Governor's Office of Energy Independence and Security (OEIS) conduct an evaluation of Maine's noise regulations and the potential health effects related to wind power projects. The DEP has had an initial meeting with the OEIS and learned that the National Renewable Energy Laboratory (NREL) (a federal lab dedicated to research, development, commercialization and deployment of renewable energy and energy efficiency technologies) will assist with this evaluation. NREL will provide assistance from national noise experts, who will look at some of the specific issues that have been raised in Maine. They will be circulating information on the scope of their review shortly for input by other parties.

QUESTIONS

Board member Wing Goodale asked about the timeline and end product for the wind power study.

The OEIS is required to report back to the Utilities Committee in December 2010 or January 2011. They are setting up a process now with NREL to solicit input from interested stakeholders. A draft report is anticipated this fall. This report could drive new legislation or if the report indicates that the standards should be changed, the Department has authority to initiate rulemaking in the event that the science evaluated in this study indicates that current regulations are not adequate to protect public health. Commissioner Littell explained that in addition to having good research support any amendments to the rules, there are some questions regarding interpretation of the existing rules that may need to be clarified.

Board member Wing Goodale asked about the Board's ability to initiate rulemaking.

The Board's Assistant Attorney General reviewed how rulemaking is initiated and confirmed that the Board could request that the Department revisit a rule.

Commissioner Littell noted that the Department would recommend rulemaking if results from the study evaluating the adequacy of current regulations indicates changes are needed.

Board member Lisa Widoff noted her preference to continue to highlight issues through communications with the Joint Standing Committee on Natural Resources as opposed to entering into rulemaking at this time.

Board member Goodale asked for a briefing on the status of OEIS's evaluation of the study at a future Board meeting.

Board member Richard Gould asked about an update on processing timelines for reviewing applications?

The Commissioner offered to provide Board members with a copy of the DEP's Government Evaluation Act Report to the Legislature which details a number of matters, one of which is processing timelines.

- B. COMMENTS FROM THE BEP CHAIR: NONE**
- C. EXECUTIVE ANALYST COMMENTS: None**
- D. BOARD CALENDAR: Reviewed**
- E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: None**
- F. EXECUTIVE SESSION: None**

II CONSENT AGENDA ITEMS:

None

II. Regular Agenda

2. CHAPTER 693 OPERATOR TRAINING FOR OIL AND HAZARDOUS SUBSTANCE STORAGE FACILITIES (briefing)
Staff: Liza Woodard, Bureau of Remediation and Waste Management
3. CHAPTER 693 OPERATOR TRAINING FOR OIL AND HAZARDOUS SUBSTANCE STORAGE FACILITIES / NEW (post to 30-day written comment)
Staff: Jeff Madore, Bureau of Remediation and Waste Management
Scot Whittier, Bureau of Remediation and Waste Management

The Board voted (8-0-0-2) on a motion to table action on the request to post the draft rule to public comment and direct Department staff to clarify the definitions of "hazardous substance" and "oil."

The vote was taken pursuant to 38 M.R.S. §341-D(1-B), §564(2-A)(L) and §1364(2) and P.L. 2009, Chapter 319 An Act to Continue Coverage of Oil Cleanup Costs and Improve Administration of the Ground Water Oil Clean-up Fund.

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

4. EVERGREEN II WIND POWER, LLC // DEP PERMIT APPROVAL #L-24572-24-A-N and L-24572-TF-B-N 51 MEGAWATT WIND ENERGY GENERATION PROJECT IN OAKFIELD (appeal submitted by Brian Raynes, Daniel Koerschner, and Rufus Brown on behalf of Martha A. Powers Trust)

Staff: Mark Margerum, Bureau of Land and Water Quality

The Board voted (7-1-0-2) on a motion to deny the request for a public hearing on the issue of noise filed by Mr. Rufus Brown on behalf of Martha A. Powers Trust.

The vote was taken pursuant to 38 M.R.S. 341-D(4), §§ 344(2-A), §§ 480-A to 480-HH, §§ 481-490, the Maine Wind Energy Act Title 35-A §§ 3451-3455, and Chapter 2 Section 24(B) Rules Concerning the Processing of Applications and Other Administrative Matters.

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

The Board voted (7-1-0-2) on a motion to deny the appeals filed by Brian Raynes, Daniel Koerschner, and Rufus Brown on behalf of Martha A. Powers Trust. The vote affirms the permit to construct a 51 megawatt wind energy development project in Oakfield as issued in Department Orders L-24572-24-A-N and L-24572-TF-B-N. The motion approves the draft proposed Board Order as modified.

Amendment to Board Order at page 15: THEREFORE, the Board AFFIRMS the Department's approval of the permit applications filed by EVERGREEN WIND POWER II, LLC to construct a 51 MW wind energy development, known as the Oakfield Wind Project, in the Town of Oakfield, Maine, pursuant to Department Order #L-24572-24-A-N / L-24572-TF-B-N **and incorporates the findings of that Department order by reference, including but not limited to Section 5. NOISE.**

The vote was taken pursuant to 38 M.R.S. 341-D(4), §§ 344(2-A), §§ 480-A to 480-HH, §§ 481-490, the Maine Wind Energy Act Title 35-A §§ 3451-3455, and Chapter 2 Section 24(B) Rules Concerning the Processing of Applications and Other Administrative Matters.

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

Next Regular Meeting – Thursday, June 17, 2010 – Holiday Inn / Ground Round