

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

June 17, 2010

A meeting of the Board of Environmental Protection was held on Thursday, June 17, 2010, 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: M. Wing Goodale, Richard Gould, Susan M. Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard and Nancy Ziegler.

Absent: Elizabeth Ehrenfeld and Don Guimond

Staff: Jeff Crawford, Bureau of Air Quality
Andy Fisk, Bureau of Land and Water Quality
Mike Morse, Bureau of Land and Water Quality
Stephenie MacLagan, Bureau of Land and Water Quality
Jeff Madore, Bureau of Remediation and Waste Management
Scott Whittier, Bureau of Remediation and Waste Management
Paula Clark, Bureau of Remediation and Waste Management
Andrea Lani, Bureau of Remediation and Waste Management

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

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

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Regional Greenhouse Gas Initiative (RGGI): Mr. Littell met with a number of his counterparts in Delaware recently to begin discussions on a new RGGI initiative. RGGI currently regulates emissions from electrical generation units (i.e. power plants). The states want to expand the program to the transportation sector. Thirty-three agencies participated in the meeting. They established a report back of September 2010 for their staff to develop proposals for reducing CO2 emissions from the transportation sector.

RGGI Auction: The 8th RGGI auction was held last week. The clearing price per carbon allowance was \$1.88 (just 2 cents above the reserve price). Although the unit price declined, all of the allowances were sold. Maine received \$2.4 million dollars for energy efficiency and programs that reduce energy costs. Since the inception of the auction in 2008, Maine has received more than \$20.4 million dollars in proceeds.

National Legislation: The Murkowski amendment was defeated in the U.S. Senate last week by a vote 47 in support of to 53 opposed. Commissioner Littell noted that Maine's two senators voted in support of the amendment.

DECA legislation – Commissioner Littell responded to Board member Wing Goodale's inquiry on the status of the bill. Mr. Littell explained that the bill passed and the Department is developing a report for submission to the Legislature concerning the implementation phase.

Request for Public Hearing: The Department received a request for a public hearing from the Norridgewock Town Manager concerning Waste Management Disposal Services of Maine, Inc. (WMDSM Crossroads Landfill) application to dispose of treated biomedical waste. The Commissioner explained that a public informational meeting would be a proper forum for participation in the licensing process for citizens to ask questions and voice concerns.

QUESTIONS:

Board member Lissa Widoff asked if the Commissioner knew the basis for Senators Snowe and Collins vote in support of the Murkowski bill.

Commissioner Littell commented that their support of the bill may be related to the issue of carbon neutrality as it relates to biomass combustion.

B. COMMENTS FROM THE BEP CHAIR: NONE

C. EXECUTIVE ANALYST COMMENTS: None

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: Reviewed

Board member Nancy Ziegler asked for more detail regarding the Dragon application for a solid waste permit.

Paula Clark from the Bureau of Remediation and Waste Management explained that Dragon Products has applied for a beneficial use permit. Dragon is seeking a permit to include process slag from a steel mill in Japan as a raw material substitute in the cement making process. Dragon also intends to make this material available to other cement making facilities as a raw material.

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS:

The Board voted (8-0-0-2) to approve consent agenda item 1 as presented.

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

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

Chair Lessard expressed concern over the second violation of similar environmental infractions, particularly because of the nature of the material being handled at the facility (e.g. mercury). Ms. Lessard also expressed a general view that penalties be sufficient to deter future violations.

1. ENVIRON SERVICES, INC., Gorham – Administrative Consent Agreement (BRWM)

II. Regular Agenda

1. CHAPTER 693 OPERATOR TRAINING FOR OIL AND HAZARDOUS SUBSTANCE STORAGE FACILITIES / NEW (post to public hearing)

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 post to public hearing new Chapter 693, Operator Training for Oil and Hazardous Substance Storage Facilities. This proposed rule establishes training requirements for operators of underground oil and hazardous substance storage facilities. The Department must develop and administer operator training and testing requirements related to the design and operation of equipment and require that the facility designate a Class A, Class B and Class C operator. An October 7, 2010 public hearing was set with October 18, 2010 as the deadline for submission of written comments.

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

2. CHAPTER 154, CONTROL OF VOLATILE ORGANIC COMPOUNDS FROM FLEXIBLE PACKAGE PRINTING / new (adoption)

Staff: Jeff Crawford, Bureau of Air Quality

The Board voted (8-0-0-2) on a motion adopt Chapter 154, Control of Volatile Organic Compounds (VOC) from Flexible Package Printing. This rule limits VOC emissions from flexible package printers and includes the Environmental Protection Agency's Control Technique Guideline for emission limits of VOCs that are greater than 25 tons per year from flexible package printers and establishes work practice and recordkeeping requirements.

The vote was taken pursuant to 38 M.R.S. §341-D(1-B) and 585-A, and the Clean Air Act Amendments of 1990.

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

3. CHAPTER 305, PERMIT BY RULE STANDARDS, SECTION 16 ACTIVITIES IN COASTAL SAND DUNES / (final adoption)

Staff: Andy Fisk, Director, Bureau of Land and Water Quality

The Board voted (8-0-0-2) on a motion to finally adopt amendments to Chapter 305, Permit By Rule, Section 16 Activities in Coastal Sand Dunes (major substantive). Amendments incorporate definition changes consistent with Chapter 355, Coastal Sand Dune, allow new activities in a sand dune (including winter cobble-trapping fences) and allow certain other activities in existing developed areas.

The vote was taken pursuant to 38 M.R.S. Sections 341-D(1-B) and 480- A to 480-HH and P.L. 2009 Chapter 460.

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

4. CHAPTERS 400 (GENERAL PROVISIONS), 401 (LANDFILL SITING, DESIGN AND OPERATION), AND 409 (PROCESSING FACILITIES), REVISIONS TO THE SOLID WASTE MANAGEMENT RULES CONCERNING RECYCLING RATES AT SOLID WASTE PROCESSING FACILITIES / (adoption)

Staff: Paula Clark, Bureau of Remediation and Waste Management

The Board voted (8-0-0-2) on a motion to adopt amendments to Chapters 400, General Provisions; 401, Landfill Siting, Design and Operation; and 409, Processing Facilities. Amendments modify recycling rates at solid waste processing facilities, establish provisions for waste characterization and reporting requirements for the assessment of recycling performance, set specific standards for the use of process residues from construction and demolition debris for operational cover or grading materials at landfills, and establish September 1, 2011 as the deadline for submissions concerning implementation of the characterization program, and recycling and reuse efforts of the facility.

The vote was taken pursuant to 38 M.R.S. §341-D(1-B), and §1310-N(5-A)(B).

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

5. CHAPTER 1000, SECTION 13(A), STATE OF MAINE GUIDELINES FOR MUNICIPAL SHORELAND ZONING ORDINANCES / amendment (post to 30-day written comment)

Staff: Michael Morse, Bureau of Land and Water Quality

The Board voted (8-0-0-2) on a motion to post to 30-day written comment the proposed amendments to Chapter 1000, Section 13(A), State of Maine Guidelines for Municipal Shoreland Zoning Ordinances. The proposed amendments identify data sets for the establishment of Resource Protection Zoning by requiring the use of updated wetlands information as mapped by the Department of Inland Fisheries and Wildlife (December 31, 2008). The 1973 maps are retained for coastal wetlands.. July 30, 2010 was established as the deadline for submission of written comments.

The vote was taken pursuant to 38 M.R.S. § 341-D(1-B) and 435-449.

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

6. CHAPTER 882, DESIGNATION OF BISPHENOL A AS A PRIORITY CHEMICAL AND REGULATION OF BISPHENOL A IN CHILDREN'S PRODUCTS / (post to public hearing)

Staff: Andrea Lani, Bureau of Remediation and Waste Management

The Board voted (8-0-0-2) on a motion to post to public hearing new Chapter 882, Designation of Bisphenol A as a priority chemical for regulation of use in children's products. This proposed rule designates Bisphenol A as a priority chemical, requires reporting for specific product categories and prohibits sales of certain products containing this chemical (reusable food or beverage containers). Additional changes to this proposed rule were documented in an errata sheet for inclusion in the vote. A public hearing was scheduled for August 19, 2010, with a deadline of August 30, 2010 for submission of written public comment.

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

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

7. CALAIS LNG PROJECT COMPANY LLC – Site Location of Development Act, Natural Resources Protection Act (NRPA), Air Emission and Water Quality applications #L-24843-26-A-N, #L-24843-TG-B-N, #L-24843-IW-C-N, #L-24843-L6-D-N, #L-24843-4P-E-N, #A-1029-71-A-N, and #W-9056-5O-A-N (appeal of the Fifth Procedural Order)

Staff: Cindy Bertocci, BEP Executive Analyst

The Board voted (8-0-0-2) on a motion to deny the appeals of the Fifth Procedural Order submitted by Calais LNG Project Company LLC, Save Passamaquoddy Bay US / *Nulankeyutomen Nkihtahkomikumon*, consolidated intervenors Conservation Law Foundation / Sierra Club and consolidated intervenors Industrial Energy Consumer Group, Maine Chamber of Commerce and Maine Workers for a Healthier Environment and uphold the Presiding Officer's rulings concerning the motions to strike pre-filed direct testimony, with the exception of the motion to strike the testimony of Conservation Law Foundation (CLF) witness Susan Reid which will be addressed separately.

The vote was taken pursuant to 38 M.R.S.A. Section 341-D(2) and 06-096 CMR Chapter 30 Special Regulations for Hearings on Applications of Significant Public Interest..

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

7. CALAIS LNG PROJECT COMPANY LLC – Site Location of Development Act, Natural Resources Protection Act (NRPA), Air Emission and Water Quality applications #L-24843-26-A-N, #L-24843-TG-B-N, #L-24843-IW-C-N, #L-24843-L6-D-N, #L-24843-4P-E-N, #A-1029-71-A-N, and #W-9056-5O-A-N (appeal of the Fifth Procedural Order)

The Board voted (3-5-0-2) on a motion to grant the appeal of the Fifth Procedural Order filed by Calais LNG Project Company LLC, and consolidated intervenors Industrial Energy Consumer Group, Maine Chamber of Commerce and Maine Workers for a Healthier Environment and amend the Fifth Procedural Order to strike the testimony of CLF witness Susan Reid. **Motion Failed**

The vote was taken pursuant to 38 M.R.S.A. Section 341-D(2) and 06-096 CMR Chapter 30 Special Regulations for Hearings on Applications of Significant Public Interest.

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

The Board voted (6-2-0-2) on a motion to deny the appeal of the Fifth Procedural Order filed by Calais LNG Project Company LLC, and consolidated intervenors Industrial Energy Consumer Group, Maine Chamber of Commerce and Maine Workers for a Healthier Environment and affirm the rulings of the Fifth Procedural Order to retain the testimony of Susan Reid.

The vote was taken pursuant to 38 M.R.S.A. Section 341-D(2) and 06-096 CMR Chapter 30 Special Regulations for Hearings on Applications of Significant Public Interest.

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

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