

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

December 2, 2010

A meeting of the Board of Environmental Protection was held on Thursday, December 2, 2010, at Civic Center, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Susan M. Lessard, P. Andrews Nixon, Paul Paydos, Lissa Widoff, and Frank Woodard

Matt Scott was absent.

Staff: Jeff Crawford, Bureau of Air Quality
Mike Parker, Bureau of Remediation and Waste Management

Others: Beth Nagusky, Acting Commissioner
Cynthia S. Bertocci, BEP Executive Analyst
Nancy Macirowski, Assistant Attorney General
Terry Dawson, BEP Administrative Assistant

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

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Acting Commissioner Nagusky reported the following:

- * Transition: The Department has submitted its transition information to Governor-Elect LePage's team. The 30-page transition document describes the functions and responsibilities of the Department and the Board, summarizes the mission of the agency, and contains summary information on pending matters.

Budget: The Department's budget will be reviewed by both the current Department of Administrative and Financial Services team and Governor-Elect LePage's team next week. (Sawin Millett and Tarren Bragdon).

Patten: Ms. Nagusky noted that the DEP is working with the Town of Patten and the Maine Rural Water Association to replace approximately 30 home heating oil tanks that are located in a wellhead protection area.

- The new tanks are constructed of thick polyethylene plastic and surrounded by a sheet metal jacket.
- Maine law requires that the replacement tanks be double-walled or have secondary containment if located in a community water supply area.
- Funding was established in 1990 through a grant from the ground water cleanup fund.

Fox Island Wind: The Fox Island Wind facility on Vinalhaven did not require Site Law permitting because of its small size. However, the town requested certification that the project would meet the state's noise regulations as authorized by Maine's Wind Power Act. The Fox Island Wind project was reviewed by the Department and certified as compliant. However, a Department investigation in response to noise complaints found that the noise standards were being exceeded under certain circumstances. The DEP has required the company to modify operational protocols to bring the operation of the turbines into compliance with the noise rules.

Legislative: The Department has a number of reports due to the Legislature (approximately 12). The first of these reports that we anticipate posting to the Department's web site for public comment are: (1) The Product Stewardship Report and (2) The Portland / Bangor Waste Oil Report.

Friends of Lincoln Lake: This group has filed an appeal of the Department's determination of condition compliance concerning financial capacity for First Wind's Rollins Wind Project.

QUESTIONS:

Board member P. Andrews Nixon asked if the noise compliance issues for Fox Island were related to a design problem.

Acting Commissioner Nagusky explained that during the certification process the Department's noise consultant raised concerns about the project's ability to meet the 45 dBA limits under certain conditions. Mr. Brown explained that winds predominantly from the South create wind sheer conditions that may cause the project to exceed noise limits.

Board member Frank Woodard asked what the highest decibel reading was for the Fox Island Wind project.

Ms. Nagusky confirmed that the highest reading was 47 dBA.

Board member M. Wing Goodale asked how far away the nearest residence was from the units which were recorded at noise levels of 47 dBA.

Ms. Nagusky did not have distance measurements to the nearest residence, but noted that measurements exceeding the standard were recorded at a "protected location". The Commissioner noted that there is some disagreement between the DEP's noise expert and Fox Island Wind's noise expert on the protocol for determining compliance. She noted that the Governor's Office of Energy Independence and Security is doing an analysis of the noise regulations and she anticipates further discussion of this issue.

Board member Paul Paydos asked if noise from wind generation facilities is a world-wide problem.

The Governor's Office of Energy Independence and Security is looking into this question. Early indications are that some units in Canada are experiencing similar problems.

Board member Elizabeth Ehrenfeld asked about the status of Calais LNG and specifically whether Board members should continue to hold onto their boxes of materials.

Board Chair Lessard replied that they should retain their materials.

B. COMMENTS FROM THE BEP CHAIR: With respect to the status of Calais LNG, the Board received a letter from the property owners regarding title, right or interest in a portion of the proposed development site. The Board has requested written replies to all issues raised in the recent correspondence from the parties by December 6th. It is yet to be determined whether the Chair will rule on the matter or whether the issue will be brought to the full Board.

C. EXECUTIVE ANALYST COMMENTS: None

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: Reviewed.

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS:

The Board voted (4-0-5-1) to approve consent agenda item 1 BEP minutes November 4, 2010 as presented.

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

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

The Board voted (9-0-0-1) to approve consent agenda items 2, 3 and 4 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, Susan M. Lessard, P. Andrews Nixon, Paul Paydos, Lissa Widoff, and Frank Woodard voted to support the motion. Board member Matt Scott was absent.

2. ROBERT W. BARRIS III, Saco – Administrative Consent Agreement (BLWQ)
3. JAMES & CHERYL GROSS, Penobscot – Administrative Consent Agreement (BLWQ)
4. EWASTE RECYCLING SOLUTIONS, LLC, Auburn – Administrative Consent Agreement (BRWM)

II. Regular Agenda

1. STATE IMPLEMENTATION PLAN (SIP) CLASS I FEDERAL AREA – REGIONAL HAZE SUBMISSION (approve)

Staff: Jeffrey Crawford, Bureau of Air Quality

The Board voted (9-0-0-1) on a motion to approve for submission to the U.S. Environmental Protection Agency (EPA) the proposed State Implementation Plan (SIP) for Regional Haze. The SIP Regional Haze Plan implements strategies to make “reasonable progress” by 2018 toward the 2064 goal of natural visibility in Federal Class I areas. Strategies include utilization of Best Available Retrofit Technology (BART) targeting sulfate reductions from specific sources; a low-sulfur oil strategy for all sectors (commercial, industrial and residential); and a goal of 90% sulfate reductions for key electric generating units impacting any Mid-Atlantic Northeast Visibility Union (MANE-VU) Class I areas.

The vote was taken pursuant to 38 M.R.S.A §585-A, and Section 107(a) and Section 110 of the 1990 Clean Air Act Amendments.

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

2. STATE OF MAINE / STATE PLANNING OFFICE – DEPARTMENT ORDER #S-020700-WU-AJ-N JUNIPER RIDGE LANDFILL (appeal by C. Leithiser, M. Dolan, E. Spencer and Juniper Ridge Landfill Advisory Committee)

Staff: Mike Parker, Bureau of Remediation and Waste Management

The Board voted (9-0-0-1) to deny the appeal submitted by Mary Dolan, Edward Spencer, Charles Leithiser and the appeal submitted by Juniper Ridge Landfill Advisory Committee regarding a permit modification that allowed for an increase in the amount of treated biomedical waste generated by Associated Health Resources, Inc. which could be disposed of at the facility. Appellants Leithiser, Dolan and Spencer sought a denial of the permit and/or a requirement for testing of every load. The Juniper Ridge Landfill Advisory Committee sought a reduction in the amount of biomedical waste allowed at the Juniper Ridge facility. The vote affirmed the Commissioner's decision in Order S-020700-WU-AJ-N and approved the draft proposed Board Order as modified below:

1) Page 6 of the Board Order:

Appellants Objection: The appellants state that Department Order #S-20700-WD-N-A, the Operating Services Agreement between the State Planning Office and **Casella Waste Systems**, and ...

2) Page 8 of the Board Order, Board Response: (bottom of paragraph):
...landfilling, as noted in Section **45**(A) above.

3) Page 9 of the Board Order -- Bottom of second paragraph:
... another facility, provided that all applicable standards are **met meet**.

The vote was taken pursuant to 38 M.R.S.A §1301 to 1319-Y and 2101, and 06-096 CMR Chapters 400, 401, 405, 409, 900 and 2.

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

3. LEGISLATIVE REPORT / SUMMARY OF ACTIVITIES (draft review)

Staff: Cynthia Bertocci, Board Executive Analyst
No action taken.