

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

December 16, 2010

A meeting of the Board of Environmental Protection was held on Thursday, December 16, 2010, at Civic Center, 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, Don Guimond, Susan M. Lessard, Paul Paydos, Lissa Widoff, and Frank Woodard

Elizabeth Ehrenfeld, P. Andrews Nixon and Matt Scott were absent.

Staff: Deb Avalone-King, Bureau of Air Quality
Eric Kennedy, Bureau of Air Quality
Richard Perking, Bureau of Air Quality
Andrea Lani, Bureau of Remediation and Waste Management
Scott Whittier, Bureau of Remediation and Waste Management

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

(Meeting adjourned at approximately 11:30 a.m.)

Public Hearing at 9:00 a.m. In The Matter Of:

**CHAPTER 117 SOURCE SURVEILLANCE – EMISSIONS MONITORING –
REPEAL AND REPLACE**

I. DEPARTMENTAL

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

Rulemaking: Department proposed rules Chapter 884 Designation of Chemical Class Brominated Flame Retardants as a Priority Chemical and proposed revisions to Chapters 400, 401, 402, 409, 418, and 419 to establish Solid Waste Landfill Gas and Odor rules have been removed from consideration by the Board at this time to allow the new administration an opportunity to have input on these proposed rules. Because the landfill gas rule amendments were mandated by the Legislature, it is anticipated that the Board will be briefed in January on the proposed rule.

Natural Resources Conservation Program: This is the program that manages funds generated from the in lieu fee for wetland impacts from development. The program approval committee is comprised of representatives from the Nature Conservancy; Commissioners from the Departments of Conservation, Environmental Protection, Marine Resources, and Inland Fisheries and Wildlife; and the federal partners from US EPA, Army Corps of Engineers, and the US Fish and Wildlife Service. Approximately 2 million dollars have been dispersed in geographical areas where impacts from development occurred for wetlands protection.

Regional Greenhouse Gas Initiative (RGGI): Regional meetings continue to analyze options for moving forward with initiatives associated with the low carbon fuel standard.

Product Stewardship: The Department has completed a draft of its report to the Legislature on product stewardship. Product stewardship is a public policy initiative that moves responsibility for the management of products at the end of life from local government to the private sector. Maine law specifies product stewardship programs for the following products:

- Dry cell mercuric oxide and rechargeable batteries
- Mercury auto switches
- Electronic waste
- Cell phones
- Mercury thermostats
- Mercury-added lamps (fluorescent)

The deadline for submission of comments on the Department's report is January 7, 2011. The Department anticipates submitting the final report to Legislature on January 15th.

Legislative: The Department has developed a report that examines three opportunities to address climate change in the Site Law pursuant to LD 891. Stakeholder meetings to discuss this report will begin next week.

Toxic Use Reduction: The Department will begin a stakeholder process to identify 6 priority toxic chemicals. The rulemaking is being initiated pursuant to consensus based Legislation.

B. COMMENTS FROM THE BEP CHAIR:

Chair Lessard explained that Calais LNG has formally withdrawn all their applications related to its proposed liquefied natural gas facility in Washington County. She further noted that Calais LNG cited troubled financial markets as the reason for the withdrawal. Additionally, the letter expressed the company's thanks to the Board for its efforts to move the application forward expeditiously.

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 (7-0-0-3) to approve consent agenda item 1 as presented.

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

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

1. SPRAGUE ENERGY CORP., Searsport. – Administrative Consent Agreement (BAQ)

II. Regular Agenda

1. CHAPTER 305, PERMIT BY RULE – SECTION 16, ACTIVITIES IN COASTAL SAND DUNES – AMENDMENT (provisional adoption)

Staff: Mike Mullen, Bureau of Land and Water Quality

The Board voted (7-0-0-3) on a motion to provisionally adopt amendments to Chapter 305, Permit By Rule, Section 16 Activities in Coastal Sand Dunes. The proposed amendments allow several new activities in coastal sand dunes such as open and cobble trapping fences, and other activities in existing developed areas. .

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

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

2. CHAPTER 882, DESIGNATION OF BISPHENOL A AS A PRIORITY CHEMICAL AND REGULATION OF BISPHENOL A IN CHILDREN'S PRODUCTS / (provisional adoption)

Staff: Andrea Lani, Bureau of Remediation and Waste Management

The Board voted (7-0-0-3) on a motion to adopt the following sections of Chapter 882 as routine technical: Section 1 Applicability, Section 2 Definitions, Section 3 Designation of bisphenol A as a priority chemical, Section 4 Information submission required and Section 6 Department Address.

The Board voted (7-0-0-3) on a motion to provisionally adopt Section 5 of the rule, Sales prohibition of children's products containing bisphenol A. In accordance with 38 MRSA 1696(1), this section of Chapter 882 is a major substantive rule. Chapter 882 designates Bisphenol A as a priority chemical, requires reporting for specific product categories, and prohibits the sale of certain products containing this chemical..

The vote was taken pursuant to 38 M.R.S.A. § 341-D(1-B) and §§ 1691-1699-B.

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

3. CHAPTER 883, DESIGNATION OF THE CHEMICAL CLASS NONYLPHENOL AND NONYLPHENOL ETHOXYLATES AS A PRIORITY CHEMICAL – NEW (adoption)

Staff: Andrea Lani, Bureau of Remediation and Waste Management

The Board voted (7-0-0-3) on a motion adopt new Chapter 883, Designation of the Chemical Class Nonylphenol and Nonylphenol Ethoxylates as a priority chemical. The rule designates this chemical class as a priority chemical and requires reporting for certain consumer products that contain nonylphenol or nonylphenol ethoxylates.

The vote was taken pursuant to 38 M.R.S.A. § 341-D(1-B), §§1691 through 1699-B.

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

4. CHAPTER 693 OPERATOR TRAINING FOR OIL AND HAZARDOUS SUBSTANCE STORAGE FACILITIES / NEW (post to 30-day written comment)

Staff Scott Whittier, Bureau of Remediation and Waste Management

The Board voted (7-0-0-3) on a motion to post revised language to Section 9 A., B., C., and D to 30-day written public comment. New Chapter 693, Operator Training for Oil and Hazardous Substance Storage Facilities would establish 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. The proposed rule

establishes three operator classes (A, B, and C) and sets out the specific requirements for each class of operator. A public hearing was held on October 7, 2010 resulting in proposed modifications that require an additional comment period. Proposed changes include the following: extending the effective date of the rule to August 8, 2011, allowing for annual or biennial recertification of Class A and B operators; and inclusion of a provision that requires retraining and recertification of operators whenever the Department determines, after opportunity for hearing, that there was non-compliance with Department statutes or rules at a facility. January 28, 2011 is the deadline for submission of written comments.

The vote was taken pursuant to 38 M.R.S.A. §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, Don Guimond, Susan M. Lessard, Paul Paydos, Lissa Widoff, and Frank Woodard voted to support the motion. Board members Elizabeth Ehrenfeld, P. Andrews Nixon and Matt Scott were absent.

5. LEGISLATIVE REPORT / SUMMARY OF ACTIVITIES (draft proposed report)
Staff: Cynthia S. Bertocci, BEP Executive Analyst

Reviewed – no vote taken.

Next Regular Meeting – Thursday, January 6, 2010 – Maple Hill Farms, Hallowell