



PAUL R. LEPAGE
GOVERNOR

DARRYL N. BROWN
COMMISSIONER

MEMORANDUM

DATE: April 21, 2011

TO: Board of Environmental Protection
FROM: Colin Clark, Bureau of Land and Water Quality
RE: Bob and Kathy Pratt, Owls Head, Maine, PBR # 49857 -- Petition to Revoke

Background

The Board received a petition to revoke dated March 15, 2011 from Richard Hurlbert and Audrey McGlashan. The petitioners are asking the Board to revoke the Natural Resources Protection Act (NRPA) permit by rule issued to Bob and Kathy Pratt to construct a foot bridge over a ponded stream to access the shore.

By letter dated March 25, 2011 Robert and Kathy Pratt, submitted a response to the petition.

A staff memorandum addressing the issues raised in the petition, the petition, and the licensee's response to the petition, and staff photos of the site are provided for your review.

Statutory and Regulatory Provisions Governing Petitions

State law, at 38 MRSA § 341-D(3), provides that, after written notice and opportunity for hearing, the Board may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license, whenever the Board finds that one of the following criteria are met:

- A. The licensee has violated any condition of the license;
- B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;
- C. The licensed discharge or activity poses a threat to human health or the environment;
- D. The license fails to include any standard or limitation legally required on the date of issuance;
- E. There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license;
- F. The licensee has violated any law administered by the department; or
- G. The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990.

Section 27 of the Department's Chapter 2 Rules Concerning the Processing of Applications and Other Administrative Matters provides that any person may petition the Board to modify, revoke or suspend a license. Unless otherwise provided by law, no later than 30 days following the filing of such a petition, and after notice and opportunity for the petitioner and the licensee to be heard, the Board shall dismiss the petition or schedule a hearing on the petition.

Whether to dismiss the petition or proceed to an adjudicatory hearing is discretionary with the Board.

Issue before the Board

The issue before the Board today is whether to dismiss the petition or schedule a public adjudicatory hearing on the matter. In making its decision, the Board may consider whether the petition describes a sufficient factual basis (with reference to the statutory criteria for revocation) that, if proven at hearing, would support revocation of the license or corrective action.

Department Recommendation

The Department recommends that the Board dismiss the petition to revoke PBR #49587 because there has been no demonstration of a violation of a condition of the license, failure to disclose relevant facts or violation of a law administered by the department that is relevant to the stream crossing approved in PBR #49587. As such, the Department recommends that no public hearing be held.

Packet Materials

- Memo from Department staff: pg 115 ;
- Draft Board Order pg 117 ;
- Regulatory References
 - Chapter 2 Rules pg 124 ;
 - Chapter 305 § 10 pg 131 ;
 - 38 M.R.S.A 341-D(3) pg 141 ;
- Permit in Question: pg 143 ;
- Petition to revoke with attachments: pg 159 ;
 - Exhibit I: Town of Owls Head Administrative Appeal pg 163 ;
 - Exhibit II: March 3, 2011 Letter to Planning board of Appeals pg 164 ;
 - Exhibit III: Bridge Proposal pg 165 ;
 - Exhibit IV: Town of Owl's Head Building/Use permit pg 166 ;
 - Exhibit V: Town of Owl's Head Application for a Building/Use permit pg 167 ;
 - Exhibit VI: Bob and Kathy Pratt's Bridge Plan pg 168 ;
 - Exhibit VII: Permit by Rule #49587 cover page pg 169 ;
 - Exhibit VIII: Field Determination Form ID # 8269 pg 170 ;
 - Exhibit IX: page 11 Town of Owls Head Shoreland Zoning Ordinance pg 171 ;
 - Exhibit X: Correspondence pg 172 ;
- Permittee's response to petition to revoke: pg 185 ;
 - Exhibit I: Picture of backhoe operating pg 188 ;
- Excerpts from the Department's record pg 189 ;
 - Field determination pg 190 ;
 - Project location map pg 191 ;
 - Department Site visit photos pg 192 ;