

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

August 8, 2011

A meeting of the Board of Environmental Protection was held on Monday, August 8, 2011, 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: M. Wing Goodale, Richard Gould, Susan M. Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Frank Woodard

Board members Elizabeth Ehrenfeld and Don Guimond were absent. There is one vacancy.

Staff: James Cassida, Bureau of Land and Water Quality
Mike Mullen, Bureau of Land and Water Quality

Others: Patricia Aho, Acting Commissioner
Cynthia S. Bertocci, Executive Director
Peggy Bensinger, Assistant Attorney General (public hearing)
Warren Brown, En Rad (BEP consultant)
Terry Dawson, BEP Administrative Assistant

(Meeting adjourned at approximately 12:45 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER’S COMMENTS: Acting Commissioner Aho reported the following:

- 1] Director Bureau of Land and Water Quality: On July 18th I received the resignation of Land and Water Bureau Director Teco Brown. I have appointed Mike Mullen as Acting Bureau Director. As many of you may know, Mr. Mullen is a longtime leader in that bureau as its licensing and compliance coordinator.

- 2] Stonyvale Farm: The Department recently issued a solid waste permit to Exeter Agri-Energy (or Stonyvale Farm) for an anaerobic digester to convert cow manure and food waste into energy to power a 1 megawatt electrical generator. This is the first of its kind in Maine and is unique in that the primary fuel source for the digester is cow manure directly generated at the farm. Food processing waste will be from “off-site” sources and mixed with manure that is piped to the new facility from the farm for energy conversion. Any excess power will be available for sale to the electrical grid.

B. COMMENTS FROM THE BEP CHAIR: NONE

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:

None

II. Regular Agenda

1. CHAPTER 375, SECTION 10. CONTROL OF NOISE – CITIZEN INITIATED RULEMAKING – SOUND LEVEL LIMITS AND MEASUREMENTS FOR WIND TURBINE PROJECTS (review staff recommendation – post for additional public comment)

Staff: James Cassida, Bureau of Land and Water Quality

Mike Mullen, Bureau of Land and Water Quality

Warren Brown (En Rad), Consultant

Board staff provided an overview of its recommendation, including options on a few provisions, and highlighting the differences between staff recommendation and the petitioners’ proposed language.

The Board voted (7-0-0-2) to modify language in the staff recommendation as follows:

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

- **Section (1) Applicability:** modified to include Section 10(F) (Variance From Sound Level Limits) as an exemption to this new section of the rule.
- **New Section (6) Variance From Sound Level Limits** – A variance may be granted by the Department if (1) a development is deemed necessary in the interest of national defense or public safety and the applicant has shown that the sound level limits cannot practicably be met without unduly limiting the development’s intended function, and (2) a finding is made by the Department that the proposed development will not have an unreasonable impact on protected locations. The Department shall consider the request for a variance as part of the review of a completed Site Location of Development Law application or a request for certification for a small-scale wind energy development. In granting a variance, the Department may, as a condition of approval, impose terms and conditions to ensure that no unreasonable sound impacts will occur.
- **Section (7) Submissions (d)(9)** – modified to read: Inclusion, at the discretion of the Department, of an addition to the maximum rated output of the sound sources to account for uncertainties in the modeling of sound propagation for wind energy developments. The addition may be up to 3 dBA.
- **Section (7) Submissions (i)** – modified to include: The complaint response protocol shall adequately provide for, at a minimum:
 1. A 24-hour contact for complaints;
 2. A complaint log accessible to the Department;
 3. Analysis of each complaint in accordance with the approved compliance measurement protocol for the project; and
 4. Notification of complaint findings to the Department and the complainant.
- **Section (8) Measurement Procedures (d)4.** – modified to include: generating electricity, however when necessary for calibration or maintenance, the equipment may be removed from the compliance measurement location for up to 10 days. Written notification of such short term removal of the equipment and its reinstallation shall be submitted to the Department prior to removal and upon reinstallation.
- **Section (8) Measurement Procedures (e)1.** – include reference: generating electricity except as set for in subsection I(8)(d)(4).
- Miscellaneous amendments to correct formatting, typographical errors and cross reference citations.

The Board voted (7-0-0-2) on a motion to post for additional written public comment Chapter 375, Section 10 subsection I Sound Level Standards for Wind Energy Developments to include the selection of option B which would set a 42 dBA limit for nighttime sound at any protected location with the change to Section (7)(d)(9) providing for a modeling uncertainty factor of up to 3 dBA and with the amendments set forth above. The Board established Monday, August 29, 2011 as the deadline for submission of written comments.

The vote was taken pursuant to 5 M.R.S.A. §8055(3), 38 M.R.S.A. §341-D(1-B), and §481-490.

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

Next Regular Meeting –Thursday, September 1, 2011 – location to be determined, Augusta