STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

Susan M. Lessard
Chair
Cynthia S. Bertocci
Executive Analyst

Terry Dawson
Office Specialist II

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

January 6, 2011

A meeting of the Board of Environmental Protection was held on Thursday, January 6, 2011, at Maple Hill Farm, Hallowell, 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, Lissa Widoff, and Frank Woodard

Paul Paydos and Matt Scott were absent.

Staff: Bryce Sproul, Bureau of Air Quality
Beth Callahan, Bureau of Land and Water Quality
Dawn Hallowell, Bureau of Land and Water Quality
James Cassida, Bureau of Land and Water Quality
Michael Karagiannes, Bureau of Air Quality
Jeff Crawford, Bureau of Air Quality

Others: James P. Brooks, Acting Commissioner
Cynthia S. Bertocci, BEP Executive Analyst
Peggy Bensinger, Assistant Attorney General
Mary Sauer, Assistant Attorney General
Terry Dawson, BEP Administrative Assistant

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

I. DEPARTMENTAL

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

Introduction: Mr. Brooks highlighted his 27 years at the Department, noting that he has served the agency in a variety of areas from the Bureau of Water Quality to the Remediation and Waste Bureau as a project manager for the sludge program and most recently as the Director of the Bureau Air Quality for the past 16 years. He explained that he anticipates that his service as the Acting Commissioner will be brief as the new administration continues with its hiring process.

The Department has said farewell to Ms. Nagusky (former Commissioner), Jody Breton (former Deputy Commissioner), and Mark Hyland (former Director of the Bureau of Remediation and Waste Management). Donna Gormley, the Department's Legislative Liaison, is leaving later this week.

B. COMMENTS FROM THE BEP CHAIR: None

C. EXECUTIVE ANALYST COMMENTS:
Ms. Bertocci noted that the Board will consolidate the January 20th meeting into the regular meeting of February 3, 2011. Additionally, the Board has received a petition for rulemaking signed by 150 registered Maine voters requiring the Board to initiate rulemaking on the petitioners' proposed language regarding noise from wind generation facilities.

D. BOARD CALENDAR: REVIEWED

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

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

1. RED SHIELD ACQUISITION LLC d/b/a/ OLD TOWN FUEL & FIBER, Old Town - Administrative Consent Agreement (BAQ)

II. Regular Agenda

1. DAVID E. RICE, Department Permit L-23698-4E-B-M – Natural Resources Protection Act Minor Revision, Coastal Wetland Alteration / Water Quality Certification (appeal by licensee)

   Staff: Beth Callahan, Bureau of Land and Water Quality

The Board voted (8-0-0-2) on a on a motion to grant the appeal submitted by the licensee David E. Rice. The Board's decision reverses the Department's decision described in Order L-23698-4E-B-M minor revision and removes Special Condition #5 thereby allowing for lobster trap storage directly on the pier. The vote approved the proposed board order as modified below:

Page 1 paragraph 1:
.... Requested review of the proposed project~~s~~

Page 2 paragraph 2:
October 10, 200**9**~~8~~.

Page 2 paragraph 5:
On July, 2010 ..... parties submitted letters with ~~associated~~ **proposed** supplemental evidence dated September 2, 2010, October 20, 2010, and October 22, 2010 in opposition to DMR's new assessment**; however, with the exception of one demonstrative map, that proposed supplemental evidence was not admitted into the record.**

Page 3 paragraph 2:
... storing lobster traps during the winter months ~~in~~ **on** the pier...

Page 4 paragraph5:
These studies state that rockweed can survive long periods in the dark and **they also** have a protection mechanism against damage from high light levels. Further, the studies state~~s~~ that growth of rockweed is zero to negligible during the winter months; therefore, shading effects from storage of traps would not affect the rockweed surrounding the permitted pier. DMR's revised comments are also based upon examination of the orientation of the appellant's permitted pier with relation to varying angles of the sun and the specific type of substrate and **aquatic vegetation** found...

Page 5 paragraph 2:
... water quality and as a **tool for** monitoring environmental conditions

Page 5 paragraph 3:
... DMR's opinion is that given the permitted pier's ~~north south~~ orientation...

Page 5 paragraph 3:
... the appellant's proposal will not cause a ~~permanent~~ **significant** loss of functions...

Page 6 paragraph a: new sentence added at the end:
The appellant does not own or control this upland parcel of land.

Page 6 paragraph b:
... associated float ~~and~~ **are** intended to be used for safe harbor...

Page 6 paragraph c:
While the appellant ~~currently uses~~ **previously used** the exiting pier...

Page 7 paragraph 1:
...resource directly surrounding the permitted pier ~~and~~ which would be caused by the storage ...

The vote was taken pursuant to 38 M.R.S.A Sections 344, 341-D(4), and 480-D, and 06-096 CMR Chapter 2 and Chapter 310.

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

2. CHAPTER 100, DEFINITIONS REGULATION / AMENDMENTS (adoption)
Staff: Michael Karagiannes, Bureau of Air Quality

The Board voted (8-0-0-2) on a motion to postpone adoption of the proposed amendments to Chapter 100, Definitions Regulations. Amendments include clarification of existing definitions, new definitions related to greenhouse gases and CO_2 equivalent emissions for implementation of the Department's major source licensing program.

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

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

3. CHAPTER 118, GASOLINE DISPENSING FACILITIES VAPOR CONTROL / AMENDMENTS (adoption)
Staff: Jeff Crawford, Bureau of Air Quality

The Board voted (8-0-0-2) on a motion to adopt amendments to Chapter 118 Gasoline Dispensing Facilities Vapor Control. Amendments to this regulation repeal Stage II vapor recovery controls in York, Cumberland and Sagadahoc counties, and add references to the Stage I requirements to clarify that sources must meet both the NESHAPS and Phase I requirements and Chapter 118 requirements. The amendments also include language to establish Stage II closure and/or discontinuance protocols.

The vote was taken pursuant to 38 M.R.S.A. §341-D(1-B), § 585-A and § 585-E; 40 CFR Part 63 Subpart CCCCCC; and the 1990 Clean Air Act Amendments Section 110(1) and Section 184(b)(2).

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

4. CHAPTER 129 SURFACE COATING FACILITIES / AMENDMENT (adoption)
Staff Jeff Crawford, Bureau of Air Quality

The Board voted (8-0-0-2) on a motion to adopt amendments to Chapter 129, Surface Coating Facilities which establishes requirements for testing, evaluating and limiting the emissions of volatile organic compounds and hazardous air pollutants from selected surface coating operations. The amendments incorporate Control Technique Guidelines for flat wood paneling and metal furniture.coatings.

The vote was taken pursuant to 38 M.R.S.A. §341-D(1-B) and § 585-A and Section 184 of the Clean Air Act

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