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

June 16, 2011

A meeting of the Board of Environmental Protection was held on Thursday, June 16, 2011, at the Civic Center, in Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 01:00 p.m. with the following individuals present:

**Board**: M. Wing Goodale, Richard Gould, Don Guimond, Susan M. Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Frank Woodard

Elizabeth Ehrenfeld, and Paul Paydos were absent.

**Staff**: Kurt Tidd, Bureau of Air Quality
Bryce Sproul, Bureau of Air Quality
Peter Carleton, Bureau of Air Quality
Ronald Dyer, Director, Bureau of Remediation and Waste Management
Andrea Lani, Bureau of Remediation and Waste Management
Mike Mullen, Bureau of Land and Water Quality
Beth Callahan, Bureau of Land and Water Quality
James Cassida, Bureau of Land and Water Quality

**Others**: Patricia Aho, Acting Commissioner
Thomas Harnett, Assistant Attorney General
Terry Dawson, BEP Administrative Assistant

***(Meeting adjourned at approximately 05:00 p.m.)***

## I. DEPARTMENTAL

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

Brownfields Funding: Department staff has been doing a great job assisting communities with submission of grant applications in an effort to advance brownfield's revitalization projects. A recent US Environmental Protection Agency grant award of $2.95 million will support the following projects:

- Augusta Tissue
- Belfast (assessment work)
- Canton (public access launch and greenfields project with the removal of a leather tannery
- Southern Maine on community wide projects.

Maine is the tenth largest recipient of grant funding awards in the nation. This endorses the exceptional work of DEP staff in these programs to obtain necessary financial assistance to help these communities with revitalization projects.

Wallagrass: The Department's response team was deployed to a gasoline spill into bedrock along Route 11 in Wallagrass. The spill was caused when a tank truck rolled over and approximately 5,000 gallons of gasoline was released. DEP plans to hold a meeting in the community to provide answers to questions and fill informational needs of the public.

First Wind – Oakfield: The Department has received an application from First Wind for construction of Phase II of the Oakfield project. The second phase of this project will increase the megawatts from 50 to 150 and increase the number of wind turbines from 30 to 50 turbines. Additionally, 52 miles of tie line will be added south to connect to the New England Power Pool "NEPOOL" grid in the Chester area.

QUESTIONS:
Board member Lissa Widoff asked if the Oakfield project Phase I connected to the grid north of the turbine site.

*Acting Commissioner Aho explained that Phase I ties north and the Phase II project will tie into the grid south.*

**B. COMMENTS FROM THE BEP CHAIR:** Chair Lessard welcomed the Board and Acting Commissioner back and publically thanked the special committee on Regulatory Reform for their thoughtful and responsible work related to LD1. The Chair also expressed gratitude for the efforts made by the Governor's Office and the Joint Standing Committee on Environment and Natural Resources related to LD 1575 which allows for more diverse representation on the Board.

**C. EXECUTIVE ANALYST COMMENTS:** None

**D. BOARD CALENDAR:** Reviewed and noted that the next meeting will begin at 8:30 with a public hearing on the citizen initiated rulemaking concerning Chapter 375, Section 10 Noise to address noise from wind power developments.

**E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:** Reviewed.
**F. EXECUTIVE SESSION:** None

## II CONSENT AGENDA ITEMS:

The Board voted (5-0-3-2) to approve consent agenda item 1 as presented.
The vote was taken pursuant to 38 M.R.S. §341-D.
*Board members M. Wing Goodale, Richard Gould, Don Guimond, Susan M. Lessard, and P. Andrews Nixon voted to support the motion. Board members Matt Scott, Frank Woodard and Lissa Widoff abstained. Board members Elizabeth Ehrenfeld and Paul Paydos were absent.*

1. BEP MINUTES – March 17, 2011 (approval)

The Board voted (6-0-2-2) to approve consent agenda item 2 as presented.
The vote was taken pursuant to 38 M.R.S. §341-D.
*Board members M. Wing Goodale, Richard Gould, Susan M. Lessard, Matt Scott, Lissa Widoff and Frank Woodard voted to support the motion. Board members Don Guimond and P. Andrews Nixon abstained. Board members Elizabeth Ehrenfeld and Paul Paydos were absent.*

2. BEP MINUTES – April 21, 2011 (approval)

The Board voted (8-0-0-2) to approve consent agenda items 3, 4, 5 and 6 as presented.
The vote was taken pursuant to 38 M.R.S. §341-D(6).
*Board members M. Wing Goodale, Richard Gould, Don Guimond, Susan M. Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Frank Woodard voted to support the motion. Board members Elizabeth Ehrenfeld and Paul Paydos were absent.*

3. FERRAIOLO CONSTRUCTION, INC., Liberty – Administrative Consent Agreement (BLWQ-Land)
4. PORTLAND WATER DISTRICT, Portland – Administrative Consent Agreement (BLWQ - Land)
5. ECO MAINE d/b/a ecomaine, Portland - Administrative Consent Agreement (BAQ)
6. BORALEX LIVERMORE FALLS L.P. AND BORALEX ASHLAND L.P. – Administrative Consent Agreement (BAQ)

## II. Regular Agenda

1. <u>CHAPTER 305, PERMIT-BY-RULE, SECTION 16, ACTIVITIES IN COASTAL SAND DUNES / AMENDMENT (final adoption)</u>
   Staff: Mike Mullen, Bureau of Land and Water Quality

   The Board voted (8-0-0-2) on a motion to 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, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Frank Woodard voted to support the motion. Board members Elizabeth Ehrenfeld and Paul Paydos were absent.*

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

Staff: Andrea Lani, Bureau of Remediation and Waste Management
Staff: Ron Dyer, Director Bureau of Remediation and Waste Management

The Board voted (8-0-0-2) on a motion to adopt amendments to Section 5 of the rule, sales prohibition of children's products containing bisphenol A. Section 5 was major substantive and approved by the Legislature on April 12, 2011. 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, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Frank Woodard voted to support the motion. Board members Elizabeth Ehrenfeld and Paul Paydos were absent.*

3. BB DEVELOPMENT, LLC – DEP SITE LOCATION OF DEVELOPMENT ACT AND NATURAL RESOURCES PROTECTION ACT PERMIT APPROVAL L-25203-28-A-N and L-25203-TE-B-N // OXFORD RESORT CASINO – PHASE I (APPEAL submitted by Androscoggin River Alliance, Residents Terri Marin, Joelle Schutt, Ronald & Rachel Hamilton, James & Candace Alden, Richard Swanson, Richard Auren, Carol Ann & Larry LaRoche LaBossiere, Brendan McMorrow, Carol Perkins, Robert Benson and Julie Cameron, Mary & Austin Taylor, and John & Evelyn Sylvester

Staff: Beth Callahan, Bureau of Land and Water Quality
Staff: James Cassida, Bureau of Land and Water Quality

The Board voted (7-0-0-3) on a motion to direct the staff to draft a revised order that would deny the appeal and affirm the Commissioner's approval for Phase I construction of a four season resort and casino with additional conditions, and deny the request for a public hearing on the project.

The Board vote directed the Department to modify the draft proposed Board order to include language requiring the following:

- prior to any additional work at the site other than work related to testing for water supply, the licensee must update its financial capacity information to include estimated costs associated with all aspects of development of Phase I and demonstrate adequate funding from a financial institution; and
- complete testing for water supply and submit the data to the Department for review and approval by September 14, 2011.

In addition the proposed Board Order was modified so that:

- no work other than site preparation and work related to water testing may be done prior to the submission and approval of water supply data.

The vote was taken pursuant to 38 M.R.S. § 341-D(4), § 344(2-A), § 480-A et seq., § 481 et seq., and 06-096 CMR Chapter 2, Rules Concerning the Processing of Applications and other Administrative Matters, and Chapters 310, 335, 373, and 375.

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

*Next Regular Meeting –Thursday, July 7, 2010 – Civic Center, Augusta*