

STATE OF MAINE  
BOARD OF ENVIRONMENTAL PROTECTION



JANET T. MILLS  
GOVERNOR

January 10, 2019

James W. Parker, Chair

Cynthia S. Bertocci  
Executive Analyst

Ruth Ann Burke  
Board Clerk

Senator Brownie Carson  
Representative Ralph L. Tucker  
Members of the Joint Standing Committee on Environment and Natural Resources  
100 State House Station  
Augusta, Maine 04333-0100

RE: Board of Environmental Protection  
Report to the Legislature

Dear Senator Carson, Representative Tucker, Committee Members:

Pursuant to 38 M.R.S. § 341-D(7), the Board of Environmental Protection is required to report to the Joint Standing Committee on Environment and Natural Resources by January 15 of the first regular session of the Legislature on the effectiveness of the State's environmental laws and any recommendations for the amending those laws or the laws governing the Board.

As discussed in the Section III of the report, the Board is submitting under separate cover: Provisionally adopted Chapter 692 *Siting of Oil Storage Facilities/Amendments*, and Recommendations for the Water Quality Re-classification of Certain Maine Waters for the Committee's consideration this session. Additionally, this report includes a number of recommendations regarding State oversight of Juniper Ridge Landfill, a State-owned facility, and seeks guidance from the Committee on the application of the solid waste management hierarchy as a licensing criterion. The report also provides a general summary the Board's responsibilities and its activities in 2018 for the Committee's information.

If the Committee would like to discuss this report and the Board's recommendations, I am available to meet with you at your convenience. I can be reached by contacting the Board's Executive Analyst, Cynthia Bertocci, at 287-2452 or [cynthia.s.bertocci@maine.gov](mailto:cynthia.s.bertocci@maine.gov).

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'James W. Parker'.

James W. Parker, Chair  
Board of Environmental Protection

cc: Melanie Loyzim, DEP Acting Commissioner



# Report to the Joint Standing Committee on Environment and Natural Resources

## Board of Environmental Protection Summary of Activities in Calendar Year 2018 and Recommendations for Committee Consideration

*January 2019*

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Contact: Cynthia Bertocci, Board Executive Analyst  
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MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION  
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**Report to the Joint Standing Committee on  
Environment and Natural Resources**

**Summary of Activities in 2018 and Recommendations for Committee Consideration**

**Table of Contents**

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	<u>Page</u>
<b>I. Introduction .....</b>	<b>1</b>
<b>II. Board Membership and Responsibilities.....</b>	<b>1</b>
<b>III. Matters for the Committee’s Consideration this Session .....</b>	<b>3</b>
A. Major Substantive Rules / Chapter 692 Siting of Oil Storage Facilities.....	3
B. Water Quality Re-Classification of Certain Maine Waters.....	3
C. Solid Waste Management .....	4
<b>IV. Summary of Additional Matters before the Board in 2018 .....</b>	<b>7</b>
A. Rulemaking .....	8
B. Appeals of Commissioner Licensing Decisions .....	9
C. Appeals of Administrative Orders Issued by the Commissioner .....	11
D. Permit and License Applications .....	11
E. Petitions to Modify a License or Order Corrective Action .....	12
F. Other Duties .....	12
<b>V. Closing .....</b>	<b>13</b>

**Attachments:**

- A. Board of Environmental Protection Members



**Board of Environmental Protection  
Report to the Joint Standing Committee on  
Environment and Natural Resources**

**Summary of Activities in Calendar Year 2018  
and Recommendations for Committee Consideration**

**I. Introduction**

Title 38 § 341-D(7) requires the Board of Environmental Protection to report to the joint standing committee having jurisdiction over natural resource matters by January 15 of the first regular session of each Legislature on the “effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the board.” This report is submitted in fulfillment of that requirement.

Section II of this Report provides an overview of the Board’s membership and responsibilities. Section III addresses the following matters for the Legislature’s consideration:

- Chapter 692 *Siting of Oil Storage Facilities/Amendments*, a major substantive rule of the Department provisionally adopted by the Board,
- Recommendations for Water Quality Re-classification of a Certain Maine Waters,
- Solid Waste Management including issues regarding the management of Juniper Ridge Landfill (JRL), and
- Application of the solid waste management hierarchy as a licensing criterion.

Section IV briefly summarizes other matters before the Board for decision in 2018.

**II. Board Membership and Responsibilities**

The Board of Environmental Protection is a seven-member citizen board whose members are appointed by the Governor and approved by the Legislature. (38 M.R.S. § 341-C). Its purpose is to “provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions.” (38 M.R.S. § 341-B). Biographical information on the current Board members is found in Attachment A.

The Board’s responsibilities as set forth in 38 M.R.S. § 341-D and § 341-H(1) include:

- Rulemaking. The Board holds public hearings on, and provisionally adopts, major substantive rules of the Department for consideration by the Legislature. The Board also has authority to adopt, amend and repeal routine technical rules as necessary for the conduct of the Board's business, including the processing of applications, the conduct of hearings, and other administrative matters.
- Appeals of Commissioner Licensing and Enforcement Actions. An aggrieved person may appeal a final license or permit decision of the Commissioner to the Board. The Board also hears appeals of emergency orders and other unilateral compliance and clean-up orders issued by the Commissioner.
- Decisions on Certain Permit Applications. The Board makes the original licensing decision on applications for projects of statewide significance as defined in statute. Additionally, the Department's statutes specify that certain applications such as those pertaining to commercial hazardous waste facilities must be reviewed and decided by the Board.
- License Modification or Corrective Action. At the request of the Commissioner and after written notice and opportunity for hearing, the Board may modify in whole or in part any license, or issue an order prescribing necessary corrective action, when it finds that certain criteria set forth in statute are met.
- Recommendations to the Legislature. The Board is charged with making recommendations to the Legislature on the implementation of environmental laws.
- Other Duties. The Board shall carry out other duties as required by law. Other duties specified in statute include, among other things, holding hearings on, and making recommendations regarding, the water quality classification of Maine waters.

Proceedings before the Board are governed by the Maine Administrative Procedure Act, the Board's procedural statutes and rules governing the various types of proceedings (e.g., rulemaking, appeal proceedings, adjudicatory hearings, etc.), and by program-specific statutes and rules governing matters such as the control of air emissions, waste management, and land use. All meetings of the Board are noticed and open to the public. The Board maintains a webpage with biographical information on Board members, meeting materials, information on pending matters of broad public interest, and guidance to facilitate public participation in matters pending before the Board. The Board provides audio-streaming of Board meetings and hearings.

### **III. Matters for the Committee's Consideration this Session**

The Board is forwarding two matters, under separate cover, for the Committee's consideration this session: Chapter 692 *Siting of Oil Storage Facilities/Amendments*, a major substantive rule of the Department, and proposed changes to the water quality classification of a number of waterbodies. In addition, the Board recommends that the Committee provide policy guidance on several solid waste management issues as discussed in Section III.C. below.

#### **A. Major Substantive Rules / Chapter 692 Siting of Oil Storage Facilities / Amendments.**

The proposed amendments to Chapter 692 are intended to provide additional flexibility to municipalities and facility owners with respect to siting oil storage facilities (primarily gas stations) in wellhead protection areas and over certain groundwater aquifers if certain standards are met. The Board held a public hearing on the proposed amendments at its meeting on October 4, 2018. The Board provisionally adopted the proposed amendments to the rule at its meeting on December 6, 2018. The provisionally adopted rule has been filed with the Legislative Council.

The current statute and rule on siting in wellhead protection zones, as well as the current rule on siting on significant sand and gravel aquifers, include exceptions to the siting prohibitions for replacement or expansion of oil storage facilities in existence as of certain dates (which are the applicable effective dates of the different siting prohibitions), as long as the replacement or expansion occurs on the "same property." This term is not defined in current statute and rule. The amendments to the rule provisionally adopted by the Board include a definition of "same property" that includes contiguous parcels under the same ownership as of the applicable dates of the siting prohibitions. For the purpose of the exceptions from the siting prohibitions for replacement or expansion of existing oil storage facilities, a majority of Board members recommend that the Committee review and consider the dates on ownership of contiguous property.

#### **B. Water Quality Re-Classification of Certain Maine Waters**

Statute (38 M.R.S. § 464 *Classification of Maine Waters*) requires the Department to conduct water quality studies and the Board to hold hearings and, as appropriate, propose changes to the water classification system to the Legislature for consideration and decision. In the summer and fall of 2017, the Department sought input from Maine's natural resource agencies, federally recognized Indian tribes in Maine, environmental and conservation groups, watershed councils and associations, and municipalities regarding the classification of Maine waters. As a result of this outreach effort, the Department received 15 proposals for changes to the water quality classification of a number of waterbodies. These proposals were assessed by

Department staff using water quality studies conducted in recent years (such as the Biennial Integrated Water Quality Monitoring and Assessment Report required by §§ 305(b) and 303(d) of the Clean Water Act), waste load studies, permitting activities, management activities such as the construction of wastewater treatment plants, and the acquisition of lands for recreation and conservation purposes.

The Board held a public hearing on the proposed changes in water quality classification at its meeting in Bangor on September 20, 2018. The Board's recommendation includes: seven upgrades from Class B to Class A, three upgrades from Class C to Class B, the correction of a classification error on an impounded segment of the East Branch Penobscot River, and an amendment to the statutory language to recognize extension of the free-flowing habitat section of the Penobscot River due to the removal of the Veazie Dam. These recommendations have been forwarded to the Legislature under separate cover.

### **C. Solid Waste Management**

In recent years, the Board has considered the application for expansion of the Juniper Ridge Landfill (JRL) as well as the 2014 and 2017 appeals of the Department's licensing decisions regarding disposal of non-bypass<sup>1</sup>, in-state municipal solid waste (MSW)<sup>2</sup> at JRL. These licensing proceedings have raised questions regarding State solid waste management policy in the context of landfills and the management of Juniper Ridge Landfill that bear consideration by the Legislature including:

- management and oversight of Juniper Ridge Landfill,
- purpose and intended use of disposal capacity at JRL,
- JRL's fee structure, and
- application of the solid waste management hierarchy as a licensing criterion.

By way of background, JRL (formerly the West Old Town Landfill) was initially constructed to provide for land disposal of pulp and papermaking residuals, a special waste<sup>3</sup>, from the James

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<sup>1</sup> By-pass is defined in Chapter 400 of the Department's rules as "any solid waste that is destined for disposal, processing, or beneficial use at a solid waste facility, but which cannot be disposed, processed, or beneficially used at that facility because of malfunction, insufficient capacity, inability of the facility to process or burn, down-time, or any other reason."

<sup>2</sup> Municipal solid waste is defined in Chapter 400 of the Department's rules as "solid waste emanating from household and normal commercial sources. Municipal solid waste includes front end process residue from the processing of municipal solid waste."

<sup>3</sup> Special waste is defined in Chapter 400 of the Department's rules as "any solid waste generated by sources other than household and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures." Special wastes

River Paper Company mill in Old Town. The landfill was acquired by the State in 2004. At that time, the State entered into an Operating Services Agreement (OSA) with Casella Waste Systems, Inc. (Casella) for operation of the landfill. NEWSME Landfill Operations, LLC (NEWSME), a wholly owned subsidiary of Casella, operates the landfill for the State. The facility is licensed to the State of Maine, Acting through the Bureau of General Services. State management oversight is provided by staff at the Department of Economic and Community Development.

#### Management and Oversight of Juniper Ridge Landfill.

- *The Board recommends that the Legislature review the terms of the State/Casella Operating Services Agreement to ensure that Juniper Ridge Landfill is being managed in accordance with State waste management policy and the interests of the State, and to clarify the management and oversight responsibilities of BGS and DECD.*

The Board has been concerned that in the licensing and appeal proceedings before the Board, BGS and DECD consistently defer to Casella creating at least the impression that the facility is being managed as a private landfill for the benefit of Casella rather than as a publicly owned asset for the benefit of the State and its citizens. The Board has been frustrated that it (and the Department during its licensing proceedings) has been at times put in the position of making decisions with incomplete information. By way of example, the Board has been told that if it takes certain actions in a licensing matter, those actions will adversely impact other waste management entities due to the existence of underlying, confidential contracts between Casella and those other entities, contracts that neither the Board nor the Department is party to and have no ability to alter. The signatories to these contracts apparently are required to support Casella's applications before the Department and the Board, further limiting the information available for decision-making. Whether BGS and DECD exercise any influence over the terms of such contracts as they relate to disposal of wastes at JRL is uncertain, although it appears they have little, if any, influence.

The Board recommends that the Legislature clarify its expectations regarding the roles and responsibilities of BGS and DECD in the management and oversight of JRL and its operator (NEWSME) and that the OSA be amended, if necessary and if possible, to ensure that the interests of the State are foremost in the management of this State-owned asset. The Board believes that BGS, as the licensee, and DECD, as manager for the State, should take affirmative steps to ensure that the terms of the OSA and the resulting management of

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include materials such as incinerator ash, asbestos, industrial process wastes, sludge, contaminated soils and dredge materials.

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JRL support the solid waste management policies of the State. This responsibility should not fall largely to the Department and the Board in the licensing process.

#### Purpose and Intended Use of Disposal Capacity at Juniper Ridge Landfill.

- *Should disposal of non-bypass, in-state MSW at JRL be strictly limited in volume and duration, allowed only to address specific circumstances approved by the Department, thereby reserving JRL's capacity for the disposal of special wastes that cannot be managed at other levels in the hierarchy?*

Pursuant to the hierarchy and prior JRL licensing decisions, the Department and Board have continued to limit disposal of non-bypass, in-state MSW at JRL, allowing it only when necessary to address specific situations such as the 2012 closure of the Maine Energy incinerator in Biddeford and, most recently, uncertainties associated with the start-up of the Coastal Resources of Maine (CRM) facility in Hampden (also known as Fiberight) and changes to Penobscot Energy Recovery Company's (PERC's) operations. These prior approvals allowing JRL to accept non-bypass, in-state MSW have included tonnage and time limits and required BGS and NEWSME to develop and prepare to implement measures that eliminate the need for non-bypass, in-state MSW disposal at JRL. BGS and Casella have objected to such limits; however, the Department and Board have found limits to be consistent with Legislative intent and necessary to ensure compliance with the solid waste management hierarchy.

It would be helpful for the Legislature to clarify whether it intends that JRL accept non-bypass, in-state MSW as a routine matter, provided the facility can demonstrate compliance with the hierarchy or, alternatively, whether capacity at JRL should continue to be reserved for the disposal of special wastes except in limited circumstances such as those described above.

#### Juniper Ridge Landfill Fee Structure

- *The Board recommends that the Legislature review the fee structure in the JRL OSA.*

The Operating Services Agreement (OSA) between the State of Maine and Casella governing operation and management of JRL sets “not to exceed” tipping fees for approved wastes which vary by waste type; there are *no minimum fees*. The “not to exceed” tipping fee for landfilling waste at JRL is generally substantially less than the fees charged by other types of waste disposal facilities such as incinerators. The “not to exceed” fees coupled with no minimum fee have the potential to create an economic incentive to landfill wastes at JRL, potentially discouraging investment in other technologies and undermining the

hierarchy. The Board notes that MSW from many of the southern Maine communities that previously went to the Maine Energy incinerator in Biddeford for disposal is still being landfilled at JRL more than six years after the closure of Maine Energy (presumably as the lowest cost option) even though the approval of such disposal by the Department and Board was intended only as a temporary measure.

#### Application of the Solid Waste Management Hierarchy as a Licensing Criterion.

- *It would be helpful for the Legislature to provide guidance on ways that an owner/operator of a landfill may demonstrate, and the Department assess, compliance with the solid waste management hierarchy. The Board recommends that the Legislature review the terms of the OSA governing management of JRL to ensure that its provisions support the Solid Waste Management Hierarchy.*

In order for a solid waste facility to obtain a license, Title 38 M.R.S. § 1310-N(1) requires that facility practices be consistent with the State's solid waste management hierarchy set forth in 38 M.R.S. § 2101 (reduce, reuse, recycle, compost, processing to reduce volume including incineration and, lastly, land disposal). In accordance with Title 38 M.R.S. § 1310-N(1)(D), the Department has adopted rules to incorporate the solid waste management hierarchy as a licensing criterion (Chapter 400, § 4(N)). However, efforts to apply the statute and rule to the licensing of landfills has proved challenging in part because the landfill does not generate the waste. Assessment of compliance with the hierarchy is particularly difficult when the landfill is not part of a larger waste management company and options for the landfill operator to divert waste for management at higher levels in the hierarchy may be limited.

However, compliance is also difficult to assess in the case of JRL which is managed by NEWSME. NEWSME's parent company, Casella, is a large vertically integrated waste management company involved in many aspects of waste management including transportation, processing, and disposal. As discussed above, relationships between and among these various Casella entities as well as Casella's agreements with other entities are governed by private contracts which the Department may not have access to and has no authority to alter.

#### **IV. Summary of Additional Matters before the Board for Decision in 2018**

The Board held 11 regular meetings in 2018. In addition to the matters discussed in Section III, the Board acted on the following matters in 2018.

## A. Rulemaking

Major Substantive Rules. In addition to provisional adoption of amendments to Chapter 692 Siting of Oil Storage Facilities as discussed in Section III above, the Board finally adopted amendments to the following major substantive rules as approved by the Legislature:

- Chapter 418 Beneficial Use of Solid Wastes / Amendments. The purpose of the proposed amendments was to facilitate the beneficial use of a variety of solid wastes in a manner that is protective of public health and the environment and consistent with the solid waste management hierarchy that favors recycling and reuse over disposal. The proposed changes addressed, among other things, the use of dredge material, emulsified asphalt encapsulated contaminated soil, and the use of construction demolition debris as fuel. The Board held a public hearing in 2017 and provisionally adopted the proposed amendments in January 2018. The Legislature authorized final adoption of the proposed rule with the revisions specified in Resolve 2017, Chapter 39. The rule was finally adopted by the Board in May 2018.
- Chapter 502 Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams / Amendments. The rule describes the criteria used to identify lakes most at risk from new development and urban impaired streams, and lists those waterbodies. Projects of a certain size proposed to be located within the watershed of the listed waterbodies must meet, among other requirements, the standards in Chapter 500 Stormwater Management governing the export of phosphorus from the site. The Board held a public hearing, and provisionally adopted the proposed amendments in 2017. The Legislature authorized final adoption in Resolve 2017, Chapter 30, and the amendments were finally adopted by the Board in March 2018.

Routine Technical Rules. The Board and Commissioner jointly adopted amendments to the Department's procedural rule governing licensing matters:

- Chapter 2 Rule Concerning the Processing of Applications and Other Administrative Matters / Amendments. This was a joint rulemaking by the Board and the Commissioner. The amendments incorporated statutory language changes regarding the Department's right of inspection and entry and the process for revocation or suspension of a license. The amendments also addressed timelines associated with the processing of appeals of Commissioner licensing decisions and clarified other provisions of the rule.

## **B. Appeals of Commissioner Licensing Decisions**

If an applicant or other person is aggrieved by a licensing decision of the Commissioner, the Commissioner's decision may be appealed to the Board. Under provisions of 38 M.R.S. §341-D(4), the Board may affirm, amend, or reverse the Commissioner's decision, or remand the matter to the Commissioner for further proceedings. In an appeal proceeding, the Board is not bound by the Commissioner's findings of fact or conclusions of law. The Board's decision on appeal may be appealed to Superior Court (or the Law Court in the case of an expedited wind energy development). In addition to deciding appeals, the Board encourages parties to pursue various forms of alternative dispute resolution in an effort to reach a resolution that is satisfactory to all parties by staying its proceedings upon request of the parties to allow time for productive negotiations. Appeals of Commissioner licensing decisions considered by the Board in 2018 are summarized below.

Appeals Resolved. The following appeals were resolved:

- Chase Custom Homes and Finance, Inc., Windham / Appeal by Highland Lake Association  
The matter before the Board was a request to vacate the permit issued to Chase Custom Homes and Finance, Inc. (Chase) for a residential development at Highland Lake in Windham. During staff review and in light of the issues raised in the appeal, Chase notified the Department that it no longer wished to develop the site as proposed and approved by the Department. Following discussions with Department, Board, and Assistant Attorney General staff, both Chase and the appellant requested that the Board vacate the license and remand the matter to the Department. The Board vacated the license and remanded the matter to the Commissioner at its meeting on June 21, 2018. Chase subsequently withdrew its application.
- Coastal Maine Botanical Gardens, Boothbay and Boothbay Harbor / Consolidated Proceeding on Appeals by Anthony Family of 2016 Major Amendment and 2018 Minor Amendment

In October 2016, the Department approved, with conditions, the application of Coastal Maine Botanical Gardens (CMBG) for a major amendment to its Site Law permit and a Natural Resources Protection Act (NRPA) permit to construct Phase I of its 2015-2035 Master Plan. The Anthony Family, whose property abuts the development site, filed a timely appeal objecting to a number of the Department's findings including, but not limited to, findings on noise and buffer strips, stormwater management, impacts to ground and surface waters, impacts to wildlife habitat and wetlands, and proposed wetland mitigation and compensation measures. The location of a portion of the development within the watershed of Knickerbocker Lake was also a concern.

At the request of the applicant and with the consent of the appellants, the Board stayed processing of the appeal because the applicant stated that it intended to change the location of the engineered subsurface wastewater disposal system to locate it outside the watershed of Knickerbocker Lake, a public water supply and a lake most at risk from new development. The Department issued the requested amendment in March 2018; the Anthony Family filed a second timely appeal.

Following a site visit by the Board and oral argument by the licensee and appellants at a Board meeting, the Board affirmed the Department's licensing decisions but modified CMBG's license to strengthen the stormwater monitoring plan and add a license condition requiring CMBG to protect from future development an area between the Anthony property and a parking lot proximate to the Anthony's home to buffer the Anthony home from the development and protect significant vernal pool habitat in this area.

- Juniper Ridge Landfill Solid Waste License, Old Town / Appeal by Edward Spencer and Appeal by State of Maine Bureau of General Services and NEWSME Landfill Operations

In November 2017, the State of Maine acting through the Bureau of General Services (BGS) and NEWSME Landfill Operations, LLC (NEWSME) filed an application to amend JRL's license to extend beyond March 31, 2018 the date for JRL to accept non-bypass, in-state Municipal Solid Waste (MSW) in the existing Juniper Ridge Landfill (JRL) (Cells 1 through 10). The Department granted a limited time extension until March 31, 2019 with the possibility of a six-month extension due to the uncertainty in the solid waste landscape in Maine and, in particular, uncertainty regarding the start-up of the CRM (Coastal Resources of Maine) facility and PERC's ability to adapt to its new operating model. The approval contained a condition requiring BGS and NEWSME to develop and prepare to implement measures that eliminate the need for non-bypass, in-state MSW disposal at JRL. The Board received two timely appeals. On appeal, the Board modified the Commissioner's Order to extend the deadline for acceptance of non-bypass in-state MSW until 2020 due to continued uncertainty, but retained the condition requiring BGS and NEWSME to develop and prepare to implement measures that eliminate the need for non-bypass, in-state MSW disposal at JRL.

Appeals Pending. There were four appeals pending at year's end, three of which were filed with the Board in December 2018.

- Mary Kudasoski, NRPA Permit-by-Rule #66005, Kennebunkport / Appeal by Robert and Virginia Almeder. This appeal involves the reconstruction of an open rail fence in a coastal sand dune.

- Clary Lake Dam, Transfer of Water Level Order to Clary Lake Association / Appeal by Richard Smith/Aquafortis Associates, LLC. This appeal challenges the transfer of the water level order for the Clary Lake Dam located in Jefferson and Whitefield.
- Whole Oceans, LLC, Wastewater Discharge License #W-009190-6F-A-N, Bucksport / Appeal by Holly Faubel. This appeal seeks modifications to the wastewater discharge license issued to Whole Oceans for its proposed Atlantic salmon aquaculture facility.
- Universal Recycling Technologies. This is an appeal of the Department's denial of URT's application to provide consolidator services under Maine's e-Waste program.

### **C. Appeals of Administrative Orders Issued by the Commissioner**

A number of the Department's program-specific statutes provide for appeals to the Board of a Commissioner's administrative order, such as an order to remediate a site contaminated by oil or hazardous substances. These are unilateral orders through which the Commissioner seeks to correct serious environmental conditions. Due process is afforded through the right of appeal to the Board, and then Superior Court.

- Beal's Linen Designation of Uncontrolled Hazardous Substance Site and Order. On October 18, 2018, the Board held an evidentiary hearing on the appeal of the Commissioner's Designation of Uncontrolled Hazardous Substance Site and Order issued to Sultan Corp. pursuant to 38 M.R.S. § 1365 for contamination at the Beal's Linen Site in Auburn. The site is currently developed with a multi-unit apartment building. A laundry facility reportedly operated on a portion of the site from approximately 1914 to 1948. Soil vapor and indoor air sampling conducted by Department staff and its consultant have shown elevated levels of volatile organic compounds associated with dry cleaning, including levels of trichloroethylene (TCE) and perchloroethylene (PCE) in indoor air above health based standards. The Department has undertaken remedial measures to reduce exposure to contaminants above health-based standards. The Commissioner's order directs the owner of the property to take additional steps to remediate contamination at the site. The owner appealed the order to the Board. At the hearing, witnesses for the Department and witnesses for Sultan Corp. testified and were subject to cross-examination by the other party and questioning by Board members, Board staff, and Board counsel. The Board held a deliberative session at its meeting on December 6, 2018. A decision is pending.

### **D. Permit and License Applications**

Statute (38 M.R.S. § 341-D(2)) provides that the Board shall decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance. A project of statewide significance is defined as a project which meets at least three of the four following criteria:

- Will have an environmental or economic impact in more than one municipality, territory or county;
- Involves an activity not previously permitted or licensed in the State;
- Is likely to come under significant public scrutiny; and
- Is located in more than one municipality, territory or county.

Statute also provides that the Board shall decide all applications for commercial hazardous waste facilities (38 M.R.S. § 1319-R(3)). The Board acted on one such application in 2018.

- Control Devices, Inc. and GTE Operations Support, Inc. Hazardous Waste Facility Post Closure License Renewal.

Control Devices, Inc. and GTE Operations Support, Inc. (CDI and GTEOSI) filed an application to renew and modify the post-closure hazardous waste license for their site in Standish. GTE Products Corporation operated a manufacturing facility at the site from 1967 to 1992. The facility produced electronic control devices for protecting and controlling automotive and appliance devices. As part of those operations, a surface impoundment was used to store plating wastewater, acid waste, and inorganic salt wastes resulting in soil and groundwater contamination with metals and volatile organic compounds. The impoundment was closed in 1987. A groundwater recovery and treatment system (GWRTS) was subsequently installed and began full scale operation in 1994. Following 24 years of operation and a reduction in contaminant levels, CDI and GTEOSI proposed to, among other things, suspend operation of the GWRTS and evaluate the effect of natural attenuation on groundwater quality. The Board approved the requested amendment to the post-closure license at its meeting on September 6, 2018.

#### **E. Petitions to Modify a License or Order Corrective Action**

The petition process is a mechanism to re-open a final license that was issued by the Department if certain conditions are found to exist. There were no such petitions referred to the Board by the Commissioner in 2018.

#### **F. Other Duties**

##### Special Area Management Plan for Vernal Pools (SAMP) – Application by Town of Topsham for Partial Delegation of Permit-Granting Authority under NRPA for Impacts to Vernal Pools

Title 38 M.R.S. § 480-F *Delegation of permit-granting authority to municipality; home rule* provides that: “A municipality may apply to the board for authority to issue all permits under this article [Natural Resources Protection Act] for partial authority to process applications for permits involving activities in specified protected natural resources or for activities included in

chapter 305 of the department's rules, addressing permit by rule" and specifies criteria to be assessed.

The Maine Vernal Pool SAMP was approved by the U.S. Army Corps of Engineers, New England District in August of 2016, and by Maine DEP Commissioner Paul Mercer in September of 2016. The primary purpose of the Maine Vernal Pool SAMP is to increase the compensation/mitigation options available to address proposed impacts to vernal pools by allowing a municipality to permit impacts to vernal pools in municipally designated development areas (DDA's) in exchange for compensation in municipally identified rural areas. Implementation of the VP SAMP is intended to increase protection of the natural resource functions and values of vernal pools at the landscape scale while supporting municipal goals for growth.

The Town of Topsham filed an application with the Board for partial delegation of permit-granting authority under NRPA for impacts to vernal pools. Following opportunity for public comment and presentations by the Town of Topsham and its consultant, the Board approved the application at its meeting on May 17, 2018. This is the first instance of partial delegation of permit-granting authority to a municipality under NRPA.

Application by Town of Orono. In October 2018, the Board received an application from the Town of Orono for partial delegation of permit granting authority under the Maine Vernal Pool SAMP. The application is pending.

## V. Closing

As noted above, this report is submitted in fulfillment of the provisions of 38 M.R.S. § 341-D(7). I would be happy to meet with the Committee and respond to any questions members may have regarding the Board's work and the specific recommendations in this report.

Respectfully submitted,



James W. Parker, Chair  
Board of Environmental Protection

Attachments:

A. Board of Environmental Protection Members: Biographical Information



## Attachment A: Board of Environmental Protection Members

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James W. Parker, Chair  
Veazie, 2<sup>nd</sup> Term

Mr. Parker is a professional engineer and former State Representative for District 18. Mr. Parker served in the 125th Legislature and was a member of the Joint Standing Committee on Environment and Natural Resources and the Special Select Committee for Regulatory Fairness and Reform. Mr. Parker graduated from the University of Maine with a degree in civil engineering. Following employment with James W. Sewall Company, he founded Civil Engineering Services, Inc. (CES, Inc.), an engineering consulting firm providing services in a variety of areas including water supply, wastewater, solid and hazardous waste management, and site development. Mr. Parker retired from the firm in 2009, and now spends summers as a charter captain for whale and sightseeing tours on the downeast coast. Mr. Parker was appointed to the Board by Governor Paul R. LePage in June 2013, and re-appointed for a second term in May 2017. Governor LePage appointed Mr. Parker Board Chair in December 2014.

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Alvin K. Ahlers  
North Yarmouth,  
2<sup>nd</sup> Term

Mr. Ahlers is a retired Registered Professional Engineer. He served as Environmental Manager for Fairchild Semiconductor Corporation in South Portland from 1993 to 2004 where he was responsible for managing environmental compliance for the facility and was an active member of Maine DEP's Environmental Leadership program for Fairchild. Prior to joining Fairchild, Mr. Ahlers was employed by ABB Environmental Services (formerly E.C. Jordan Co.) of Portland. Since retiring he has been active in town government, currently serving on the Town of North Yarmouth's Budget Committee and on the town's Economic and Sustainability Committee. He was appointed to the Board by Governor Paul R. LePage in September 2011. Mr. Ahlers was appointed to a second term in May 2017.

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Mark C. Draper  
Caribou, 2<sup>nd</sup> Term

Mr. Draper is the Solid Waste Director for Aroostook Waste Solutions (formerly Tri-Community Recycling and Sanitary Landfill) in Fort Fairfield, a position he has held since 2003. Mr. Draper previously held the position of Senior Environmental Engineer at the former Champion International Corporation/International Paper mill in Bucksport where he was responsible for oversight of the mill's landfill operation, waste reduction and recycling activities, and hazardous waste management. Mr. Draper also served as plant engineer for the mill's 290-MW co-generation power plant from 2001-2003. Mr. Draper is currently the president of the Maine Resource Recovery Association and Chairman of the Northern Maine Solid Waste Management Committee. He was appointed to the Board by Governor Paul R. LePage in October 2014, and reappointed for a second term in June 2018.

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Mark Dubois  
Falmouth, 1<sup>st</sup> Term

Mr. Dubois, a professional geologist, is the Natural Resources Manager for springs and land in Maine for Poland Spring / Nestle Waters North America. He was previously employed by Woodard & Curran Engineers and Atlantic Geoscience, Inc. Mr. Dubois has worked on a variety of projects in Maine and elsewhere in the Northeast related to drinking water, site characterization, and remediation of contaminated sites. Mr. Dubois received his Bachelor's Degree in Geology from the University of Maine and his Master's Degree in Hydrogeology and Glacial Geology from the University of Cincinnati. He also conducted research on glacial geology in the Antarctic, and is a recipient of the Antarctic Service Medal. Mr. Dubois's community service includes coaching youth baseball and soccer. Mr. Dubois resides in Falmouth with his wife and two children. Mr. Dubois was appointed to the Board by Governor Paul R. LePage in January 2018.



Susan Lessard  
Bucksport, 1<sup>st</sup> Term

Ms. Lessard is the Town Manager for the Town of Bucksport. She previously served as the Town Manager for the communities of Hampden, Vinalhaven, Fayette, and Livermore Falls. Over her career in municipal government, Ms. Lessard has gained extensive experience in solid waste management issues, municipal financial management, and community development. She is a past president of the Maine Municipal Association, and has served on the Municipal Review Committee and the Maine Rural Development Council. Ms. Lessard has received several awards including the Governor's Environmental Excellence Award (2002), Maine Engineering Excellence Award (1998), and Maine Town and City Manager's Association Leadership Award (1999). Ms. Lessard resides in Bucksport with her husband Dan. She was appointed to the Board by Governor Paul R. LePage in January 2018.



Jonathan B. Mapes  
Sanford, 1<sup>st</sup> Term

Mr. Mapes is the President and Owner of H. A. Mapes Inc., a petroleum distribution and management company located in Springvale, Maine. Mr. Mapes has extensive knowledge regarding the regulation and safe handling of petroleum products and is a certified tank installer. He is a member of the Maine Energy Marketers Association and the Society of Independent Gasoline Marketers of America. Mr. Mapes has been active in his community serving on the Sanford Charter Commission, as chairman of the Sanford School Committee, member of the Sanford Chamber of Commerce, member and past president of the area Kiwanis, and member and past president of the Sanford area YMCA. He was appointed to the Board by Governor Paul R. LePage in November 2015.

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There is currently one vacancy on the Board.