



Board of Environmental Protection
Recommendations and
Summary of Activities in Calendar Year 2013

Report to the Joint Standing
Committee on Environment and Natural Resources

Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

January 2014

Contact: Cynthia S. Bertocci, Executive Analyst 287-2452

**Report to the Joint Standing Committee on Natural Resources
Summary of Activities – 2013**

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

Summary of Activities in Calendar Year 2013

I. Introduction

The Board of Environmental Protection is a 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).

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.” Although a report is not required at this time, the Board customarily reports to the Legislature on an annual basis. This report highlights some issues for your consideration and provides a summary of the Board’s activities in 2013.

II. Changes to Membership in 2013

Elizabeth Ehrenfeld, a microbiologist and adjunct professor at Southern Maine Community College, and M. Wing Goodale, Deputy Director and Senior Scientist at the BioDiversity Research Institute, completed their service on the Board in 2013, each having served the maximum of two terms. The Board is very appreciative of their dedicated service over the past eight years.

James Parker, a professional engineer and former State Legislator from Veazie, was appointed to the Board by Governor Paul LePage in June 2013. In addition to his experience as a Legislator including service on the Joint Standing Committee on Environment and Natural Resources, Mr. Parker’s technical background in water supply, wastewater, solid and hazardous waste management, and site development will be an asset to the Board. The Board awaits the appointment of a member to fill the seat vacated by Mr. Goodale.

See Attachment A for biographical information on the current Board members.

III. Responsibilities and Duties

The Board's responsibilities as set forth in 38 M.R.S. § 341-D include:

- Major substantive rulemaking: The Board holds public hearings on, and provisionally adopts, major substantive rules of the Department;
- Decisions on certain permit applications: Statute provides that the Board shall decide each application for approval of a permit or license that in its judgment represents a project of statewide significance. Additionally, the Department's statutes specify that certain applications such as those pertaining to hazardous waste facilities must be evaluated and decided by the Board;
- Appeals of certain Commissioner licensing and enforcement actions;
- Petitions to modify a license or require corrective action that are referred to it by the Commissioner; and
- Recommendations to the Legislature: The Board is charged with making recommendations to the Legislature on the implementation of environmental laws.

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 proceeding, 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 where biographical information on Board members, meeting materials, information on pending matters of broad interest, and process guidance are available to interested persons.

IV. Issues for Consideration

Major Substantive Rules: As discussed In Section V below, the Board will be forwarding two major substantive rules to the Committee for your consideration this session: Chapter 200 Metallic Mineral Exploration, Advanced Exploration and Mining, and Chapter 106 Low Sulfur Fuel / Amendments. These rules will be forwarded under separate cover.

Wind Energy Developments: Since enactment of Title 35-A Chapter 34-A Expedited Permitting of Grid-Scale Wind Energy Development (P.L. 2007, c. 661), the Board has reviewed a number of wind energy developments on appeal, with many of the Board's decisions subsequently appealed to the Law Court by persons who live in the vicinity of existing and proposed projects. In reviewing these projects, it is the Board's responsibility to implement the law as written. Our purpose in this report is to make the Committee aware of some of the difficult issues which are frequently raised and/or contested in these appeal proceedings.

Scenic Character and Existing Uses Related to Scenic Character:

- Visual Impact Assessments: Appellants frequently question whether the visual impact assessment limit of 8 miles from a scenic resource of state or national significance (35-A M.R.S. §3452(4)) is sufficient. The location of many projects on ridgelines coupled with the increasing size and height of turbines as technology advances has resulted in concern that newly proposed projects are visible at increasingly greater distances.
- Protected Resources: The statute specifies the resources which may be considered when assessing the visual impact of a proposed project. There is concern that the law's reliance on "Maine's Finest Lakes" (1989) and the "Maine Wildlands Lakes Assessment" (1987) to designate lakes as scenic resources of state or national significance is inadequate given the age of the reports and the intended use of the reports at the time of their preparation. The Board has heard significant public frustration that local natural resources that may contribute significantly to the scenic character of an area, such as a scenic ridgeline, are not afforded consideration under the law. Additionally, appellants have argued that the evaluation criterion in 35-A M.R.S. § 3452(3) pertaining to continued use and enjoyment of a resource tend to under value more pristine, less frequently used areas.
- Nighttime Lighting of Turbines: The Federal Aviation Administration (FAA) requires that turbines be lighted for safety purposes. The red, blinking lights on turbines can be visually intrusive particularly when reflected on the surface of a waterbody at night. This issue may be addressed in part if and when the FAA approves radar activated lighting system technology for wind turbines. The Department has begun to condition permits to require the licensee to apply to the FAA for use of radar activated lighting if and when new technology is approved for turbine lighting by the FAA.

Cumulative Impact: There is concern over a concentration of wind projects in certain areas of the state. Persons express a sense of being surrounded, with the potential for turbines to be viewed in multiple directions. This concern may not be adequately addressed when the scenic impact can only be considered as viewed from a SRSNS. Policy guidance on whether it is best to concentrate wind energy development in certain locations or to distribute it more broadly across the landscape would be helpful. There are obviously related questions regarding the number and location of energy transmission lines and corridors.

Decommissioning: Appellants often challenge the adequacy of financial provisions for decommissioning projects at the end of their useful life. The statute itself does not address decommissioning, and the Department's authority to address this important issue is only found in the unallocated language of Public Law 2007, c. 661 (LD 2283) Part A, §B-13(6). Guidance on financial assurance for decommissioning would be helpful to the Department.

Sound Level Limits: In its 2012 amendments to Chapter 375, the Department established a lower nighttime sound level limit of 42 dBA at protected locations for wind energy developments. Appellants continue to question whether the sound level limits established in rule are protective of public health. They also question the methodology for modeling of sound

propagation and whether the required sound level limits will actually be met. Additionally, Chapter 375 includes a provision allowing a generator of sound to obtain a noise easement from the owner of a protected location. Appellants often question reliance on sound level easements to meet licensing requirements.

Tangible Benefits: To demonstrate that an expedited wind energy development provides significant tangible benefits, the Wind Energy Act requires an applicant to establish a community benefits package (35-A M.R.S. § 3454(3)). Title 35-A §3451(10) requires particular assurance of such benefits to the “host community or communities to the extent practicable and affected neighboring communities.” When the generating facilities are located in a township, statute provides that the county in which the facilities are located is a host community. For the unorganized or deorganized areas of the state, including townships, there has been disagreement over whether the developer or qualifying host communities (e.g. the county) should make the determination as to which entities are offered and/or receive a benefits package and whether all eligible entities should at least be offered a benefits package. Guidance in this area, as well as clarification of “affected neighboring communities,” would be helpful. Additionally, appellants question whether the energy generated by the projects must be used to meet demand in Maine.

Smaller-Scale Wind Energy Development in Organized Areas: Smaller-scale wind energy developments are an emerging issue. Title 35-A § 3456 provides a more limited review of smaller-scale wind energy developments in organized areas that have a generating capacity of more than 100 kilowatts but are not large enough to trigger permitting under the Site Law. These projects are required to obtain a certification from the Department that the generating facilities comply with the Department’s noise control rules, are sited to avoid unreasonable adverse shadow flicker effects, and are constructed with adequate setbacks to protect public safety. With the increase in size and efficiency of turbines, the Department has received inquiries regarding the requirements for such small-scale projects. While small, such projects may be located in environmentally sensitive areas and have the potential to have significant scenic and other natural resource impacts which are not subject to review. The Wind Energy Act also does not require developers of these projects to demonstrate financial assurance or provisions for decommissioning.

V. Summary of Matters before the Board in 2013

The Board held 17 meetings in 2013. Matters considered by the Board are summarized below.

A. Rulemaking

In accordance with 38 M.R.S. § 341-H(1), the Board shall “adopt, amend or repeal only those rules of the department designated as major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A. The board shall also 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.” The Commissioner has the authority to adopt, amend or repeal routine technical rules (38 M.R.S. § 341-H(2)).

Major Substantive Rules:

- Chapter 106 Low Sulfur Fuel / Amendments. This is a joint rulemaking by the Commissioner and the Board since portions of the rule are routine technical while others are major substantive. The routine technical amendments incorporate the updated statutory limits on fuel sulfur content. The major substantive amendments would establish a process for sources to seek an alternative emission reduction strategy. Sulfur emissions are the predominant cause of visibility impairment (regional haze) in the Northeast and Mid-Atlantic states. A public hearing was held on December 5, 2013.
- Chapter 200 Metallic Mineral Exploration, Advanced Exploration and Mining. Public Law 2011, chapter 653 “An Act to Improve Environmental Oversight and Streamline Permitting for Metallic Mineral Mining in Maine” directed the Department of Environmental Protection to provisionally adopt and submit to the Legislature by January 10, 2014 rules for metallic mineral mining in accordance with the framework established in the Maine Metallic Mineral Mining Act. In response to this legislative directive, the Department hired a consultant to assist in the drafting of the rule. Department staff submitted a draft rule to the Board in September 2013. The Board held a public hearing on the proposed rule on October 17, 2013. The Board received extensive comment on the rule during an 8 hour public hearing and two written comment periods. The Board and Department staff reviewed these comments during deliberative sessions on November 7, November 21, December 3, December 19, 2013 and January 10, 2014. The rule was provisionally adopted by the Board on January 10, 2014.

Major Substantive Rules Finally Adopted in 2013: The Board submitted two provisionally adopted rules to the Legislature for review and approval in 2013.

- Chapter 2 Rules Concerning the Processing of Applications and Other Administrative Matters, Section 1(B) Definition of “Aggrieved Person.” Resolve 2011, chapter 144 (LD 1647) directed the Board to adopt rules to conform the standards for standing to appeal a Commissioner decision to the Board to the judicial standards for standing to appeal a decision of the Board to court. The Legislature authorized the rule amendment in Resolve 2013, chapter 65, and it was finally adopted by the Board on July 18, 2013.
- Chapter 882 Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children’s Products. In response to a citizen petition, Chapter 882 was amended to enact a prohibition on the sale of infant formula packaging and baby food packaging that contains intentionally added bisphenol A in an amount greater than a de minimis level. The Legislature authorized the rule in Resolve 2013, chapter 44, and it was finally adopted by the Board on July 18, 2013.

Routine Technical Rules: The Board and Commissioner completed work on two joint routine technical procedural rules.

- Chapter 2 Rules Concerning the Processing of Applications and Other Administrative Matters / Routine Technical Amendments. This was a joint rulemaking by the Board and the Commissioner because it addressed procedural rules for the Department as a whole, including the Board. The rule was amended to incorporate the statutory changes to the Board's responsibilities enacted in LD 1 (PL 2011, c. 304) and to clarify other provisions of rule. A public hearing on the proposed amendments was held on January 3, 2013. The amendments were adopted on May 16, 2013.
- Chapter 3 Rules Governing the Conduct of Licensing Hearings. Chapter 3 repealed and replaced the Department's existing Chapter 20 *Regulations for Hearings on Applications* and existing Chapter 30 *Special Rules for Hearings on Applications of Significant Public Interest*. Chapter 3 consolidated and updated the Department's licensing hearing rules to comply with the requirements of the Maine Administrative Procedure Act and changes to Department statutes. It also addressed a number of issues that had arisen during adjudicatory hearings before the Department in recent years. This was a joint rulemaking by the Board and the Commissioner because it addressed procedural rules for the Department as a whole, including the Board. A public hearing on the proposed rule was held on October 4, 2013. The rule was adopted on February 7, 2013.

B. Major Applications and License Applications Requiring Board Approval

Title 38 § 341-D(2) states that the Board shall decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance.

The Board received one request for Board licensing jurisdiction in 2013. The request was submitted by the Friends of Raymond Cape who requested that the Board hold a hearing on the application by the Town of Frye Island for a Park and Ride Facility. After hearing from the petitioners and the applicant, the Board found that the application did not meet the criteria for Board jurisdiction and denied the request. The application was subsequently processed by Department staff.

Additionally, there was one license that other provisions of statute require be decided by the Board. Control Devices Inc. and GTE Operations Support Inc., Standish, Cumberland County requested a modification of its Hazardous Waste Post-Closure License. The proposed modification removed approximately 70 acres of the 82.3 acre property from the post closure license allowing for the sale of a portion of the property for reuse. It also required additional delineation and remediation of contamination at several remaining areas of concern. The modification was approved by the Board on January 17, 2013.

C. Appeals of Commissioner Licensing Decisions

If an applicant or another person is aggrieved by a licensing decision of the Commissioner, the Commissioner's decision may be appealed to the Board or to Superior Court. 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. The Board's review on appeal is *de novo* in that the Board is not bound by the Commissioner's findings of fact or conclusions of law. Except in limited circumstances set forth in rule, the record for appeals heard by the Board is limited to the administrative record prepared by the Department in its review of the application. The Board's goal is to process appeals expeditiously in accordance with the Department's procedural rules, the requirements of the Maine Administrative Procedure Act, and program specific statutes and rules. 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). Appeals of Commissioner licensing decisions considered by the Board in 2013 are summarized below.

The following appeals were decided:

- Saddleback Ridge Wind, LLC, Carthage, Canton and Dixfield, Franklin and Oxford Counties. The project consists of 12 (2.75 MW) turbines (total generating capacity of 33 MW) and associated infrastructure. In October 2011, the Department issued an order approving the project. That decision was subsequently appealed to the Board by Friends of Maine's Mountains, Friends of Saddleback Mountain, and Rand Stowell. The issues on appeal were: scenic impact, tangible benefits and noise. In February 2012, the Board denied the appeal and affirmed the Department's approval of the application. The Board's decision was subsequently appealed to the Law Court. In a decision dated March 5, 2013, the Law Court vacated the Board's order with respect to noise and remanded it for further review using a nighttime sound level limit of 42 dBA at protected locations. The nighttime sound level limit of 42 dBA was a provisionally adopted rule of the Board at the time it decided the appeal, but it had not yet been approved for final adoption by the Legislature. Following submission of a revised Noise Study and opportunity for public comment, the Board approved the project on November 7, 2013 with a 42 dBA nighttime sound level limit. That approval has been appealed to the Law Court by Alice McKay Barnett and by Friends of Maine's Mountains.
- Passadumkeag Wind Park LLC, Penobscot County. In mid-December 2012 the Board received two appeals of the Commissioner's denial of an application for a 42 MW wind energy development proposed to be located in Greenbush, Grand Falls Township, Summit Mountain Township, and Greenfield Township. The appeals were filed by the applicant Passadumkeag Wind Park LLC and by a landowner, Penobscot Forest LLC. The Commissioner's denial was based on a finding that the project would have an unreasonable adverse effect on the scenic character and existing uses related to scenic character of Saponac Pond, a scenic resource of state or national significance. In a decision dated August 1, 2013, the Board granted the appeals and issued a permit for the development.

The Board's decision has been appealed to the Law Court by Alexander and Rhonda Cuprak and by Passadumkeag Mountain Friends.

- Hancock Wind, LLC, T16 MD/T22 MD/Aurora, Osborn, Hancock County. The project consists of 18 turbines and associated infrastructure with a total generation capacity of 54 MW. On July 22, 2013, the Commissioner issued an order approving the proposed project. The Board subsequently received two separate appeals by two interested persons, Darren Lord and Oscar Weigang, Jr. The issues raised in the appeals included financial capacity, financial assurance for decommissioning, phased development and appropriate scope of review, and tangible benefits. The Board denied the appeals and affirmed the Commissioner's decision in an order dated December 6, 2013.
- Application for Residential Pier in Castine. The application proposed a 100 foot long pier with two seasonal ramps and six seasonal floats that collectively would extend approximately 239 feet into Hatch Cove. The Commissioner denied the application finding that it would cause unreasonable harm to significant wildlife habitat and that the applicant had practicable alternatives. The significant wildlife habitats at issue were tidal waterfowl and wading bird habitat and shorebird feeding habitat that were rated high value by the Maine Department of Inland Fisheries and Wildlife. The applicants, Richard and Margery Read, appealed the Commissioner's decision. The Board denied the appeal and affirmed the Commissioner's decision.
- Application for Natural Resources Protection Act Wetlands Alteration Permit, Biddeford. The Department issued a Natural Resources Protection Act permit to Robert Gilpatrick and Beth Zagoren in May 2013 for wetlands alteration associated with a proposed single family residence. The permit was appealed by Russell LaPorte and the Sea Spray Homeowners Group. The appeal was withdrawn by the appellants in October 2013 prior to the Board's consideration of the appeal.

The following appeals are pending:

- Bowers Wind Project: Champlain Wind, LLC applied for a permit to construct a 16 turbine (48 MW) wind energy development in Kossuth Township in Washington County and Carroll Plantation in Penobscot County. On August 5, 2013, the Commissioner denied the application finding that the proposed project would significantly compromise views from a scenic resource of state or national significance and would have an unreasonable adverse effect on the scenic character and existing uses related to scenic character of the resource. The applicant (Champlain Wind, LLC) and the majority landowner (Douglas Humphrey and Bowers Mountain, LLC) have appealed the Commissioner's decision to the Board.
- Limestone Water and Sewer District Publicly Owned Treatment Works: On September 18, 2013, the Department issued a modification of the facility's waste discharge license amending the discharge limits and the monitoring and reporting requirements for inorganic arsenic and total arsenic. A timely appeal of the permit modification was filed by the Aroostook Band of Micmacs in October 2013. The appeal is pending.

- Natural Resources Protection Act permit for Sand Dune Alteration, Popham Beach. In August 2013 the Department issued a permit to Carol Reece for development of a lawn, walkway and gravel driveway in a frontal dune for the purpose of allowing vehicular access to the applicant's lot on a seasonal basis. The Board has received two timely appeals of the Commissioner's licensing decision, one from Jonathan Day and one from Mary Small, Ann Wong, and John McCarty. The appeals are pending.
- Residential Pier Expansion, Falmouth. In October 2013, the Department issued a Natural Resources Protection Act permit to Paul and Janis Walsh for the expansion of an existing residential pier. The permit has been appealed to the Board by Marjorie Getz and David Tourangeau. The appeal is pending.
- Residential Pier, Southwest Harbor. The Department issued a Natural Resources Protection Act permit to F. Ronald Jenkins in for construction of a residential pier on Greening Island in Southwest Harbor. The permit was appealed by Alexander and Alexandra Hack. Consideration of the appeal has been stayed by the Board at the request of the parties to provide for alternative dispute resolution.

D. 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 2013.

E. Appeal 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. There were no appeals of Commissioner Orders in 2013.

VI. Informational Session

The assistant attorneys general who advise the Board on pending matters held a session with Board members to review several legal issues governing their responsibilities as Board members including: the ex parte communications rule, guidance on accepting public comment, and consultation on potential conflicts of interest.

VII. Closing

Board members consider it a privilege to serve the people of Maine on the Board of Environmental Protection. We are dedicated to carrying out our statutory responsibilities in a fair, transparent and efficient manner that protects the due process rights of all parties and provides for credible public participation in Board proceedings. We hope that this report provides Committee members with a useful overview of our activities in 2013.

Respectfully submitted,



Robert A. Foley, Chair
Board of Environmental Protection

Attachments:

- A. Board Members: Biographical Information
- B. Board of Environmental Protection Meeting Agendas

Appendix A: Board of Environmental Protection Members



Robert Foley, Chair
Wells, 1st Term

Mr. Foley, a 35 year veteran of the insurance industry, is an agent and partner at Cole Harrison Agency in Kennebunk. A native of Kittery, Mr. Foley has been a resident of Wells since 1977, where he has been actively involved in town government. He served on the Wells Board of Selectmen from 1992-2003, and again from 2009 to the present, including seven years as Chairman. Mr. Foley has a strong interest in coastal issues and is the founder of Save Our Shores-Maine and the Maine Coastal Coalition. He holds a Bachelor's degree in Political Science and Public Policy. He was appointed to the Board by Governor Paul LePage in September 2011, and appointed Chair in September 2012.



Alvin K. Ahlers
North Yarmouth,
1st 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 Budget Committee and on the town's Economic and Sustainability Committee. He was appointed to the Board by Governor Paul LePage in September 2011.



Thomas Eastler
Farmington, 1st Term

Mr. Eastler is a Professor of Environmental Geology at the University of Maine Farmington. He obtained his undergraduate degree from Brown University and his masters and doctorate degrees in Geology from Columbia University. His research interests include terrain analysis, remote sensing, and fuel and non-fuel mineral resource depletion. Dr. Eastler has devoted much of his professional career to teaching and has mentored many aspiring geologists. Dr. Eastler has also served as a consultant to a number of entities including Lawrence Livermore Laboratories in California and Raytheon UTD in Virginia. He is a Fellow of the American Association for the Advancement of Science and the Geological Society of America (GSA). Dr. Eastler is a retired Colonel U. S. Air Force Reserves with 30 years of service. He was appointed to the Board by Governor Paul R. LePage in April 2012.



Richard Gould
Greenville, 2nd Term

Mr. Gould is a retired high school teacher, and a former State Legislator. During his tenure in the Legislature, Mr. Gould served on the Joint Standing Committee on Energy and Natural Resources, including a term as co-chair of the Committee. Mr. Gould was also employed as legislative liaison for Great Northern Paper and as Code Enforcement Officer for the Town of Greenville. Mr. Gould remains active in educational issues and currently serves on the Greenville School Committee. He was appointed to the Board by Governor Baldacci in March 2006, and appointed to a second term in March 2010.



Susan M. Lessard
Hampden, 2nd Term

Ms. Lessard is the Town Manager for the Town of Hampden. She has more than 28 years of experience in local government in Maine and has 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. Her educational background is in public administration and engineering. She was appointed to the Board as a member in July 2007 and reappointed to the Board by Governor Paul LePage in September 2011. Ms. Lessard served as Chair of the Board from December 2008 to September 2012.



James W. Parker
Veazie, 1st 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.

Appendix B: Board of Environmental Protection Meeting Agendas

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/index.htm]
Civic Center, 76 Community Drive, Augusta
January 3, 2013 at 9:00 a.m.

9:00 a.m. Public Hearing: Chapter 2 Rule Concerning the Processing of Applications and Other Administrative Matters / Amendments
(Joint Rulemaking by the Board and the Commissioner)

Regular Agenda immediately following conclusion of the public hearing.

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

III. REGULAR AGENDA ITEMS

1. Chapter 882: Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products / Citizen Petition for Rulemaking to Require Safer Alternatives to Bisphenol A in Food and Beverage Packaging for Young Children / Deliberative Session

Staff: George MacDonald, DEP Sustainability Director
Kerri Malinowski, DEP Sustainability Division

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/index.htm]
Civic Center, 76 Community Drive, Augusta
January 17, 2013 at 9:00 a.m.

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

- 1. Minutes: December 6, 2012 (approval)
- 2. Minutes: December 20, 2012 (approval)
- 3. Minutes: January 3, 2013 (approval)

III. REGULAR AGENDA ITEMS

- 1. Control Devices Inc. and GTE Operations Support Inc., Hazardous Waste Facility Post-Closure License Modification #O-000070-HG-F-M // Approval
Staff: Stacy Ladner, Bureau of Remediation and Waste Management
- 2. Chapter 2: Rules Concerning the Processing of Applications and Other Administrative Matters, Section 1(B) Definition of "Aggrieved Person" // Provisional Adoption
Staff: Cynthia Bertocci, Board Executive Analyst

Opportunity for additional public comment prior to adoption pursuant to 38 MRS § 341-H(3)(C): Additional oral public comment on the proposed rule will be accepted at the meeting. Such additional public comment must be directly related to comments received during the formal rule-making comment period or in response to changes to the proposed rule since the close of the formal comment period.

- 3. Chapter 882: Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products / Citizen Petition for Rulemaking to Require Safer Alternatives to Bisphenol A in Food and Beverage Packaging for Young Children // Deliberative Session
Staff: George MacDonald, DEP Sustainability Director
Staff: Kerri Malinowski, DEP Sustainability Division

No packet materials for this agenda item.

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/index.htm]
Elks Lodge
397 Civic Center Drive, Augusta
January 24, 2013 at 9:00 a.m.

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

None

III. REGULAR AGENDA ITEMS

1. **Chapter 882: Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products / Citizen Petition for Rulemaking to Require Safer Alternatives to Bisphenol A in Food and Beverage Packaging for Young Children // Decision – Provisional Adoption**

Staff: George MacDonald, DEP Sustainability Director

Staff: Kerri Malinowski, DEP Sustainability Division

- Cover Memo
- Chapter 882 Text of Proposed Rule Amendment Strikethrough Version
- Chapter 882 Text of Proposed Rule Changes Accepted
- Chapter 882 Basis Statement
- Chapter 882 Supplemental Basis Statement

Opportunity for additional public comment prior to adoption pursuant to 38 MRS § 341-H(3)(C): Additional oral public comment on the proposed rule will be accepted at the meeting. Such additional public comment must be directly related to comments received during the formal rule-making comment period or in response to changes to the proposed rule since the close of the formal comment period.

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/]
Florian Hall, Dept. of Public Safety,
45 Commerce Drive, Augusta
February 7, 2013 at 9:00 a.m.

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

- 1. Minutes: January 17, 2013 (approval)
- 2. Minutes: January 24, 2013 (approval)

III. REGULAR AGENDA ITEMS

- 1. Chapter 3: Rules Governing the Conduct of Licensing Hearings (Proposed for Adoption)
Staff: Cynthia Bertocci, Board Executive Analyst
 - Chapter 3 Cover Memo
 - Chapter 3 Revised Rule - Strikethrough Version
 - Chapter 3 Revised Rule - Edits Accepted Version
 - Chapter 3 Supplemental Basis Statement and Response to Comments

*Opportunity for additional public comment prior to adoption pursuant to 38 MRS § 341-H(3)(C):
Additional oral public comment on the proposed rule will be accepted at the meeting. Such additional public comment must be directly related to comments received during the formal rule-making comment period or in response to changes to the proposed rule since the close of the formal comment period.*

- 2. Orientation Refresher / Discussion
Staff: Peggy Bensinger, Assistant Attorney General

No documents for this agenda item

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/]
Augusta Civic Center
76 Community Drive, Augusta
March 21, 2013 at 9:00 a.m.

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

- 1. Minutes: February 7, 2013 meeting (approval)

III. REGULAR AGENDA ITEMS

- 1. Passadumkeag Windpark LLC / Appeals of Department Denial of Applications #L-25597-24-A-N and #L-25597-TH-B-N by Passadumkeag Windpark LLC and Penobscot Forest LLC
Staff: James Beyer, Bureau of Land and Water Quality

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/]
Elks Lodge
397 Civic Center Drive, Augusta
May 2, 2013 at 9:00 a.m.

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Departmental Orders / Applications Accepted as Complete for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

- 1. Minutes: March 21, 2013 (approval)

III. REGULAR AGENDA ITEMS

- 1. Saddleback Ridge Wind LLC / #L-25137-24-A-N and #L-25137-TG-B-N
Remand by Maine Supreme Judicial Court / Procedural Discussion
Staff: Cynthia Bertocci, Board Executive Analyst

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/]
Civic Center, 76 Community Drive, Augusta
May 16, 2013 at 9:00 a.m.

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Departmental Orders / Applications Accepted as Complete for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

- 1. Minutes: May 2, 2013 (approval)

III. REGULAR AGENDA ITEMS

- 1. Chapter 2 Rule Concerning the Processing of Applications and Other Administrative Matters / Amendment (proposed for adoption)
Staff: Cynthia Bertocci, Board Executive Analyst

Amendments to Chapter 2:

Cover Memo

Supplemental Basis Statement and Response to Comments

Text showing all amendments

Text highlighting changes in Response to Comments

Text with all changes incorporated-Final Rule

*Opportunity for additional public comment prior to adoption pursuant to 38 MRS § 341-H(3)(C):
Additional oral public comment on the proposed rule will be accepted at the meeting. Such additional public comment must be directly related to comments received during the formal rule-making comment period or in response to changes to the proposed rule since the close of the formal comment period.*

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/]
Civic Center, 76 Community Drive, Augusta
June 13, 2013 at 9:00 a.m.

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Department Orders / Applications Accepted as Complete for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

- 1. Minutes: May 16, 2013 (approval)

III. REGULAR AGENDA ITEMS

- 1. Town of Frye Island / Application for Park and Ride Facility L-25719-NA-B-N Request for Board Jurisdiction by The Friends of Raymond Cape (decision on jurisdiction)
Staff: Cynthia Bertocci, Board Executive Analyst
Christine Woodruff, Bureau of Land and Water Quality

- 2. Richard and Margery Read / Appeal of Department Denial of Natural Resources Protection Act Permit for Residential Pier, Castine (decision on appeal)
Staff: Maria Lentine-Eggett, Bureau of Land and Water Quality

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/]
Florian Hall, Dept of Public Safety, 45 Commerce Drive, Augusta
July 18, 2013 at 9:00 a.m.

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Department Orders / Applications Accepted as Complete for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

- 1. Minutes: June 13, 2013 (approval)

III. REGULAR AGENDA ITEMS

- 1. Chapter 882 Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products. Section 5 Sales Prohibition of Children's Products Containing Bisphenol A (final adoption) *
Staff: Kerri Malinowski, DEP Sustainability Division

Staff Memo
Resolve 2013, ch 44
Rule, Legislative Format
Rule, Final Format
Basis Statement and Response to Comments
- 2. Chapter 2 Rule Concerning the Processing of Applications and Other Administrative Matters, Section 1(B) definition of "Aggrieved Person" (final adoption) *
Staff: Cynthia Bertocci, Board Executive Analyst

Staff Memo
Resolve 2013, ch 65
Rule, Legislative Format
Rule, Final Format
Basis Statement and Response to Comments
- 3. Passadumkeag Wind Park LLC / Appeals of Department Denial of License for Wind Energy Development/Revised Order (decision)
Staff: Mark Bergeron, Director, Division of Land Resources Regulation
Jim Beyer, ES IV, Bureau of Land and Water Quality

Staff Memo
Draft Revised Board Order in Response to Comments
- 4. Metallic Mineral Mining (informational briefing for the Board)
Staff: Heather Parent, DEP Policy Director

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/]
Florian Hall, Dept of Public Safety, 45 Commerce Drive, Augusta
August 1, 2013 at 9:00 a.m.

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Department Orders / Applications Accepted as Complete for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

- 1. Minutes: July 18, 2013 (approval)

III. REGULAR AGENDA ITEMS

- 1. Passadumkeag Windpark LLC / Appeals of Department Denial of License for Wind Energy Development / Revised Order (decision)

Staff: Mark Bergeron, Director, Division of Land Resources Regulation
Jim Beyer, ES IV, Bureau of Land and Water Quality
Cynthia Bertocci, Board Executive Analyst

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/]
Elks Lodge, 397 Civic Center Drive, Augusta
September 12, 2013 at 9:00 a.m.

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Department Orders / Applications Accepted for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

- 1. Minutes: August 1, 2013 (approval)

III. REGULAR AGENDA ITEMS

- 1. Chapter 200 Metallic Mineral Exploration, Advanced Exploration and Mining – (post for public hearing)
Staff: Heather Parent, DEP Policy Director
Jeffrey Crawford, Office of the Commissioner

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/]
Civic Center, 76 Community Drive, Augusta
October 17, 2013 at 9:00 a.m.

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Department Orders / Applications Accepted for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

- 1. Minutes: September 12, 2013 (approval)

PUBLIC HEARING

Chapter 200 Metallic Mineral Exploration, Advanced Exploration and Mining

Staff Memo

Draft Proposed Rule

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/]
Department of Public Safety - Florian Hall
45 Commerce Drive, Augusta
November 7, 2013 at 9:00 a.m.

Amended Agenda, October 31, 2013

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Department Orders / Applications Accepted for Processing

II. CONSENT AGENDA ITEMS

- 1. BEP Meeting Minutes: October 17, 2013 (approval)

III. REGULAR AGENDA ITEMS

- 1. Chapter 106 Low Sulfur Fuel / Amendments (post for public hearing)
Staff: Jeffrey Crawford, Office of the Commissioner

Staff Memo and Proposed Rule

- 2. Saddleback Ridge Wind LLC // Decision on Remand
Staff: Erle Townsend, Bureau of Land and Water Quality

~~_____ Beth Zagoren and Robert Gilpatric // Natural Resources Protection Act~~
~~_____ Permit #L-24923-TA-B-N (appeal by Russell LaPorte and Sea Spray Homeowners~~
~~_____ Group)~~
~~_____ Staff: Lisa Vickers, Bureau of Land and Water Quality~~

~~_____ Staff Memo and Draft Board Order~~
~~_____ Project Materials~~

- 3. Chapter 200 Metallic Mineral Exploration, Advanced Exploration and Mining
(initial deliberative session - discussion of comments received)
Staff: Jeffrey Crawford, Office of the Commissioner
Mark Stebbins, Mining Coordinator, Bureau of Land and Water Quality

*(No documentation in the Board packet for this agenda item.
Comments received available on the Board's webpage at
www.maine.gov/dep/bep/ under featured links.)*

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/]

Calumet Club
334 West River Road, Augusta
November 21, 2013 at 10:00 a.m.

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Department Orders / Applications Accepted for Processing

II. CONSENT AGENDA ITEMS

- 1. BEP Meeting Minutes: November 7, 2013 (approval)

III. REGULAR AGENDA ITEMS

- 1. Report to the Legislature – (preliminary discussion)
Staff: Cynthia Bertocci, Board Executive Analyst

(No materials in the Board packet for this agenda item.)

 - 2. Chapter 200 Metallic Mineral Exploration, Advanced Exploration and Mining (deliberative session - discussion of comments received)
Staff: Jeffrey Crawford, Office of the Commissioner
Mark Stebbins, Mining Coordinator, Bureau of Land and Water Quality

(No documentation in the Board packet for this agenda item.
Comments received available on the Board's webpage at
www.maine.gov/dep/bep/ under featured links.)
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BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/]

Civic Center, 76 Community Drive, Augusta
December 3, 2013 at 9:00 am

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar

II. CONSENT AGENDA ITEMS

None

III. REGULAR AGENDA ITEMS

1. Chapter 200 Metallic Mineral Exploration, Advanced Exploration and Mining (deliberative session, vote pursuant to 5 M.R.S. § 8052(5)(B) to post substantial changes to the draft rule for public comment)

Staff: Jeffrey Crawford, Office of the Commissioner
Mark Stebbins, Mining Coordinator, Bureau of Land and Water Quality

*(No documentation in the Board packet for this agenda item.
Comments received available on the Board's webpage at
www.maine.gov/dep/bep/ under featured links.)*

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/]
Florian Hall, Dept. of Public Safety, 45 Commerce Drive, Augusta
December 5, 2013 at 9:00 am

Public Hearing at 9:00 am: Chapter 106 Low Sulfur Fuel / Amendments

The regular meeting will convene immediately following the close of the public hearing.

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Department Orders/ Applications Accepted for Processing

II. CONSENT AGENDA ITEMS

- 1. BEP Meeting Minutes: November 7, 2013 (approval)
- 2. BEP Meeting Minutes: November 21, 2013 (approval)

III. REGULAR AGENDA ITEMS

- 1. ~~Chapter 200 Metallic Mineral Exploration, Advanced Exploration and Mining (tentatively scheduled if needed for further deliberation and vote to request additional public comment on proposed changes to the rule)~~
Staff: ~~Jeffrey Crawford, Office of the Commissioner
Mark Stebbins, Mining Coordinator, Bureau of Land and Water Quality~~

(No documentation in the Board packet for this agenda item.)

Comments received on the draft rule are available on the Board's webpage at www.maine.gov/dep/bep under featured links.)

- 2. Hancock Wind, LLC / Appeals by Darren Lord and Oscar Weigang of Permit approval #L-25875-24-A-N and L-25875-TF-B-N for Wind Power Facility (decision on appeals)
Staff: Maria Eggett, Bureau of Land and Water Quality
James Beyer, Bureau of Land and Water Quality

- 3. Report to the Legislature – (discussion)
Staff: Cynthia Bertocci, Board Executive Analyst

(No materials in the Board packet for this agenda item.)

BOARD OF ENVIRONMENTAL PROTECTION
[www.maine.gov/dep/bep/]
Florian Hall, Dept. of Public Safety, 45 Commerce Drive, Augusta
December 19, 2013 at 9:00 am

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. Board Calendar
- E. Department Orders / Applications Accepted for Processing

II. CONSENT AGENDA ITEMS

- 1. BEP Meeting Minutes: December 3, 2013 (approval)
- 2. BEP Meeting Minutes: December 5, 2013 (approval)

III. REGULAR AGENDA ITEMS

- 1. Update on Licensing of Wind Energy Developments (informational session)
Staff: Mark Bergeron, Director of Land Licensing

(No materials in the Board packet for this agenda item.)

- 2. Report to the Legislature – (discussion)
Staff: Cynthia Bertocci, Board Executive Analyst

(No materials in the Board packet for this agenda item.)

- 3. Chapter 200 Metallic Mineral Exploration, Advanced Exploration and Mining (deliberative session)
Staff: Jeff Crawford, Office of the Commissioner
Mark Stebbins, Bureau of Land and Water Quality

(No materials in the Board packet for this agenda item.)