

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

June 21, 2007

A meeting of the Board of Environmental Protection was held on Thursday, June 21, 2007 at the Holiday Inn / Ground Round, Augusta, Maine. Virginia Plummer, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler

Absent: Don Guimond

<u>Staff:</u> Bureau of Land and Water Quality	Dana Murch
Bureau of Land and Water Quality	Danielle Obrey
Bureau of Remediation and Waste Mgmt.	Carla Hopkins
Bureau of Remediation and Waste Mgmt.	Carole Cifrino
Bureau of Air Quality	Bryce Sproul

Others: David P. Littell, Commissioner
Cindy Bertocci, BEP Executive Analyst
Carol Blasi, Assistant Attorney General
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 12:35 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner David Littell reported the following:

Legislative: Commissioner Littell noted that the Legislature is expected to adjourn today and that several of the DEP's proposed bills will result in rulemaking at the Board -- noting the briefing this afternoon on the Regional Greenhouse Gas Initiative.

Significant Wildlife Habitat -- modifications were enacted and are in effect. The Department is working through difficult issues associated with how to implement and permit without formal rules in place.

In-Stream "low flow" rules were approved with minor amendments and will be back to the Board for final adoption.

Outdoor Wood Boilers – The Legislature provided a general standard and the Department will need to provide more specific language in rules. The Department anticipates this rulemaking initiative to be before the Board in the near future.

The Legislature enacted a statute of limitations for certain environmental violations. This applies to air and water violations that are self-reported (discharge and air monitoring); the statute of limitations is 10 years.

Another statute will allow the Department to implement the national and regional visibility standards of the Clean Air Act.

A composting bill passed which maintains agricultural composting with the Department. The DEP and the Department of Agriculture will jointly draft the proposed rule which will include the DEP's tiered permitting thresholds to ensure environmental protection.

Budget – a new budget was passed which provides for additional staff within the Bureau of Land and Water Quality (2 positions for land use licensing and 2 positions for enforcement).

Compact Fluorescent Bulbs: The Public Utilities Commission will implement a recycling program for compact fluorescent bulbs. Efficiency Maine will cover the implementation of a recycling program for citizens. Retailers will display compact fluorescent bulb collection buckets where shoppers can return bulbs for shipment to proper recycling facilities.

Notice of Violation (NOV): The Department has issued a notice of violation and will pursue enforcement action in a matter concerning a citizen who was conducting a construction demolition debris operation in a school parking lot.

BEP Jurisdiction: The Department received a request for Board jurisdiction over an application for the construction of a 40 foot summer seasonal dock in St. George. The Commissioner does not recommend Board jurisdiction.

QUESTIONS:

Board member Nancy Ziegler asked about a status of the Deca legislation and other flame retardants.

Commissioner Littell explained that the Legislation that passed 2 years ago allows the Department to look at all chemicals. The Deca ban includes the dyphenal ethers only, and the next step is to provide a report to Legislature every two years on this matter. Currently, the Department is working to verify data that the ban on Deca includes 80% of the flame retardant uses. This information will be included in the report to Legislature.

Board member Elizabeth Ehrenfeld asked for more information on the outdoor wood boiler legislation.

The Commissioner explained that the statute establishes two technology standards // EPA voluntary standard of .6 pounds per million btu by 2008, and by the year 2010, a more aggressive standard of approximately .4 pounds per million btu. Difficult issues include the setback of units from property lines or residential structures, which many boiler sellers oppose. The Department will need to address existing units under the new nuisance standard. The rules will seek to clarify the nuisance standard – emissions into the first and second floor of a residence would constitute a violation of the nuisance standard.

B. COMMENTS FROM THE BEP CHAIR:

Board Chair Plummer thanked Denis Culley for his 2-years of service to the Board noting his strong voice for the environment, his intelligence and his tenacity.

Denis Culley thanked staff for their efforts and bid farewell to fellow Board members. Mr. Culley expressed his desire for the citizen Board to remain curious, explaining that only through curiosity does one achieve knowledge.

Commissioner Littell presented Mr. Culley with a service plaque to acknowledge his service on the Board and thanked him for asking the hard questions.

C. EXECUTIVE ANALYST COMMENTS:

Downeast LNG – Testimony from Save Passamaquoddy Bay et. al. does not contain the materials that were stricken as provided by the Board's Procedural Order. Additional motions to strike have been filed and any appeals of the Chair's ruling will be considered at a future regular Board meeting.

Androscoggin River Appeals: Closing statements are scheduled for Thursday, July 5, 2007, and Board members will receive post hearing briefs.

D. BOARD CALENDAR: REVIEWED

E. DEPARTMENTAL ORDERS: Reviewed

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

Board voted (9-0-0-1) to approve consent agenda items 2, 3, 5, and 6 as presented.

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Don Guimond was absent.

2. CPM CONSTRUCTORS, Dedham – Administrative Consent Agreement (BLWQ - Water)

3. CLINTON G. BRADBURY, INC., Peru – Administrative Consent Agreement and Enforcement Order (BLWQ – Water)

5. AMERICAN ABATEMENT CO., INC., Canton & Rockland – Administrative Consent Agreement (BRWM)

6. DOMTAR MAINE CORPORATION, Baileyville – Administrative Consent Agreement (BAQ)

Board voted (8-0-1-1) to approve consent agenda item 1 as presented.

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Richard Gould, Ernest Hilton, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale recused. Board member Don Guimond was absent.

1. MIGIS LODGE REALTY, L.L.C. MIGIS LODGE, INC., TIMOTHY G. PORTA, JOAN S. PORTA, South Casco – Administrative Consent Agreement (BLWQ - Water)

Board voted (9-0-0-1) to table consideration of consent agenda item 4 and requested that the Department research the past violation history of this entity.

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Don Guimond was absent.

4. MAINE TREE MANAGEMENT, INC. – New Vineyard – Administrative Consent Agreement and Enforcement Order (BLWQ – Water)

Board voted (9-0-0-1) to approve consent agenda item 7 as presented.

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Don Guimond was absent.

7. ROBERT H. BROWN SAND & GRAVEL, INC., Kennebunkport – Administrative Consent Agreement (BAQ)

III. Regular Agenda

1. KENNEBEC RIVER PETITIONS FOR REVOCATION, MODIFICATION OR SUSPENSION / LOCKWOOD, HYDRO-KENNEBEC, SHAWMUT AND WESTON HYDRO PROJECTS (decision)

Staff: Dana Murch, Bureau of Land and Water Quality

The Board voted (5-0-4-1) on a motion to table consideration of the draft decision document until July 5, 2007 and direct Department staff to make modifications to the document. The vote was taken pursuant to 38 M.R.S.A. section 341-D(3).

Board members Nancy Anderson, Elizabeth Ehrenfeld, Ernest Hilton, Richard Gould, and Nancy Ziegler voted to support the motion. Board members Virginia Plummer, M. Wing Goodale, Matt Scott and Denis Culley abstained. Board member Don Guimond was absent.

Requested Modifications to draft proposed decision:

- 1) Footnotes 3 and 4 clarify migration of fish as juveniles
 - 2) Section 4, paragraph 3: modify to reflect that there is an **insufficient basis** (as opposed to “little or no”) to conclude eel mortality in association with the DMR eel study.
 - 3) Section 7, page 9, first full paragraph of the Order: ...provide downstream eel passage in compliance with ~~there~~ conditions of their water quality...
 - 4) Section 7, page 9 first full paragraph: delete or modify last sentence to clarify use of the term “settled”.
 - 5) Modify section 8 to reflect that re-opener was raised as an issue by the petitioners and that the matter is not addressed in the Board decision document.
 - 6) Footnote 13: move into the body of the decision document.
2. DRAGON PRODUCTS COMPANY SOLID WASTE FACILITY LICENSE APPLICATIONS [S-02077-WO-B-N and S-020778-WO-C-N] and NRPA MINOR REVISION APPLICATION L-4152-TH-T-N (decision)

Staff: Carla Hopkins, Bureau of Remediation and Waste Management

Staff: Danielle Obrey, Bureau of Land and Water Quality

The Board voted (8-0-1-1) on a motion to approve the draft proposed order which approves the application of Dragon Products for closure and reclamation activities with the following modifications:

Page 26 Section 14

The Board finds that **in its application** the applicant has avoided and minimized **additional** wetland impacts...

Condition #6 – new sentence at end of paragraph to the effect that:

In addition, for one year following the effective date of this order Dragon must submit a quarterly summary of air monitoring results to the Department and the Town.

The vote was taken pursuant to 38 M.R.S.A. §341-D(2), §480-A et seq. and §1301 et seq. and §585A, §585B and §590 and the Clean Air Act Amendments of 1991.

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Ernest Hilton, Matt Scott and Nancy Ziegler voted to support the motion. Board member Virginia Plummer abstained. Board member Don Guimond was absent.

3. CHAPTER 415, REASONABLE COSTS FOR HANDLING AND RECYCLING OF ELECTRONIC WASTES / AMENDMENTS (post rulemaking petition submitted by William Tanner to 30-day written public comment period)

Staff: Carole Cifrino, Bureau of Remediation and Waste Management

The Board voted (9-0-0-1) on a motion to post amendments to Chapter 415, Reasonable Costs for Handling and Recycling of Electronic Wastes to a 30-day written public comment period and establish July 27, 2007 as the deadline for receipt of written comments. The proposed amendment would authorize the Department to add consolidators to the approval list at other times of the year outside the current annual approval period of October 1st to December 1st. The vote was taken pursuant to 38 M.R.S.A. Section 341-D (1-B).

Board members Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Ernest Hilton, Richard Gould, M. Wing Goodale, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion. Board member Don Guimond was absent.

INFORMATIONAL BRIEFING

Regional Greenhouse Gas Initiative // James P. Brooks, Director Bureau of Air Quality

*Next Regular Meeting –Thursday, July 5, 2007 – **Holiday Inn / Ground Round***