

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

September 6, 2007

A meeting of the Board of Environmental Protection was held on Thursday, September 6, 2007 at the Holiday Inn / Ground Round, Augusta, Maine. Virginia Plummer, Chair, called the meeting to order at 8:00 a.m. with the following individuals present:

Board: Nancy Anderson, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Matt Scott, Virginia Plummer, and Nancy Ziegler

Board members M. Wing Goodale and Sue Lessard arrived at 11:00 a.m.
Board member Nancy Anderson departed at 11:00 a.m.

<u>Staff:</u>	Bureau of Land and Water Quality	Dana Murch
	Bureau of Land and Water Quality	Brian Kavanah
	Bureau of Land and Water Quality	David Courtemanch
	Bureau of Land and Water Quality	Richard Baker
	Bureau of Air Quality	Jeffrey C. Crawford
	Bureau of Air Quality	Eric Kennedy
	Bureau of Air Quality	Mike Karagiannes

Others: David P. Littell, Commissioner
Cindy Bertocci, BEP Executive Analyst
Peggy Bensinger, Assistant Attorney General (Androscoggin River third deliberative session and Downeast LNG appeal of 5th Procedural Order only)
Jerry Reid, Assistant Attorney General
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 5:30 p.m.)

I. REGULAR AGENDA ITEMS

ANDROSCOGGIN RIVER APPEAL(s) // Verso, Jay ME 0001937 and W000623-5N-F-R; Rumford Paper Company ME 0002054 and W000955-5N-G-R; Livermore Falls Publicly Owned Treatment Works ME 0100315 and W 002654-5L-G-R; and Gulf Island Pond-Deer Rips Hydro Project #L-17100-33-O-N (third deliberative session) – no documentation provided to the Board

I. DEPARTMENTAL

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

DEP Clean Water Act Licensing Program: The U.S. Environmental Protection Agency (EPA) recently recognized the Department's water licensing program's high performance as the "best" in New England and one of the best in the Nation. Maine assumed licensing delegation in 2001. At that time the backlog of expired permits was 46% and, in a 4-year timeframe (by 2005), the Department has reduced that backlog to less than 5%; which it has maintained.

Environmental Protection Agency Audit: The U.S. Environmental Protection Agency conducted two audits in Maine this year (financial / compliance).

(a) EPA's financial audit resulted in "no findings" regarding the state's management of federal funding, meaning no actions are required. The Department anticipates receipt of a written report later this year.

(b) EPA's compliance audit evaluates the ability of the agency to identify significant violators and bring those facilities into compliance within a reasonable timeframe concerning implementation of the Clean Air Act (CAA), Clean Water Act (CWA), and RCRA inspection programs. This audit resulted in a draft FY06 report that concluded the following: Maine's inspection and compliance efforts associated with the CAA demonstrate a strong and well developed enforcement program; noting a 94.3% coverage of major sources, exceeding the national average of 81.1%. Maine's CWA compliance inspection rate is 79.7%, exceeding the national average of 59.9%. Commissioner Littell noted that EPA recommends three more staff than MeDEP has in water, indicating major efficiencies in resource use. Lastly, Maine's RCRA compliance inspections for hazardous waste are also high at 16% (noting that the national percentage is 3.1%). Maine's targeting approach to hazardous waste facility inspections is key to identifying compliance problems and to enabling compliance within the 240-day timeframe regardless of generator size.

Penobscot River: The Department investigated the recent blue green algae plume and concluded that it was caused by a discharge from Katahdin Paper. This mill experienced a similar release of phosphorus leading to a bloom 3-years ago and, as a result, agreed to use a phosphorus free brightener. The Department will work with the mill on corrective actions and enforcement.

Board member Nancy Ziegler asked about the location of the phosphorus discharge and resulting bloom.

Commissioner Littell explained that the bloom was evident at the Dolby flowage area and continued down river.

Regional Greenhouse Gas: Commissioner Littell explained that states are working to establish the governing body for implementation of the trading program.

Request for Public Hearing: The Department received a request for a public hearing concerning two residential projects in Lubec that involve rip rap and construction of a driveway. The Department has received other comments associated with rip rap projects on this resource and will consider these concerns in conjunction with its preliminary decision.

- B. COMMENTS FROM THE BEP CHAIR:** None
- C. EXECUTIVE ANALYST COMMENTS:** None
- D. BOARD CALENDAR:** Reviewed
- E. DEPARTMENTAL ORDERS:** No questions
- F. EXECUTIVE SESSION:** None

II CONSENT AGENDA ITEMS

Board voted (9-0-0-1) to approve consent agenda items 1, 2, 3, 4, and 5 as presented.

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

1. HARRY HANSCOM d/b/a HANSCOM WELL DRILLING, ORRINGTON – Administrative Consent Agreement and Enforcement Order (BLWQ-WATER)
2. EDWIN R. ROLFE, JR, HARRISON - Administrative Consent Agreement and Enforcement Order (BLWQ-LAND)
3. WEBBER OIL COMPANY, BANGOR - Administrative Consent Agreement (BAQ)
4. 7-ELEVEN, INC, KITTERY - Administrative Consent Agreement (BAQ)
5. STUART, TORNO & STUART, INC., LEBANON – Administrative Consent Agreement (BAQ)

III. Regular Agenda

1. CHAPTER 1262, MUNICIPALITY OF STEUBEN / AMENDMENT STATE-IMPOSED MANDATORY SHORELAND ZONING

Staff: Richard Baker, Bureau of Land and Water Quality

The Board voted (9-0-0-1) on a motion to adopt the amendment to Chapter 1262, Municipality of Steuben for State imposed shoreland zoning. The amendment establishes a split district on lots 4 through 10 of Carrying Place Cove South as follows: upland edge of coastal wetland (first 150 feet) is zoned as Resource Protection District and the remaining 100 feet is zoned as Limited Residential District. The Board voted pursuant to 5 M.R.S.A. Section 341–D(1-B) and 438-A(4).

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

2. CHAPTER 900, BIOMEDICAL WASTE MANAGEMENT RULES / AMENDMENT (post to 30-day written comment)

Staff: Scott Austin, Bureau of Remediation & Waste Management

This agenda item was withdrawn from consideration prior to the meeting and will be considered at a future Board meeting.

THE BOARD RECONVENED AT 1:00 P.M. FOR A PUBLIC HEARING IN THE MATTER OF:

CHAPTER 156, CO2 BUDGET TRADING PROGRAM / NEW

CHAPTER 157, CO2 BUDGET TRADING PROGRAM WAIVER AND SUSPENSION / NEW – Major substantive

3. DOWNEAST LNG, DOWNEAST PIPELINE // ROBBINSTON Site Location of Development L-23432-26-A-N, Natural Resources Protection Act L-23432-TG-B-N, Air Emissions A-000960-71-A-N, Section 401 Water Quality Certification and Coastal Zone Management Act (appeal of 5th Procedural Order)

Staff: Cynthia S. Bertocci, BEP Executive Analyst

The Board voted (8-0-0-2) on a motion to deny the appeal submitted by Downeast LNG and affirm the 5th Procedural Order which strikes certain portions of exhibits identified as DLNG-41, DLNG-42, DLNG-43, and DLNG-44 filed by Downeast on August 17, 2007. The vote was taken pursuant to 38 M.R.S.A. §341-D(2) and 06-096

CMR Chapter 2, Rules Concerning the Processing of Licenses and other Administrative Matters and Chapter 30, Special Regulations on Hearings on Applications of Significant Public Interest.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion. Board members Nancy Anderson and Elizabeth Ehrenfeld (who are not participating in the Downeast proceeding) were absent.

The Board voted (8-0-0-2) on a motion to deny the request submitted by Downeast LNG to reopen the record to include the August 17, 2007 letter from the Department of Marine Resources. The vote was taken pursuant to 38 M.R.S.A. §341-D(2) and 06-096 CMR Chapter 2, Rules Concerning the Processing of Licenses and other Administrative Matters and Chapter 30, Special Regulations on Hearings on Applications of Significant Public Interest.

Board members M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion. Board members Nancy Anderson and Elizabeth Ehrenfeld (who are not participating in the Downeast proceeding) were absent.

Next Regular Meeting –Thursday, September 20, 2007 – **Holiday Inn / Ground Round**