

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

August 5, 2010

A meeting of the Board of Environmental Protection was held on Thursday, August 5, 2010, at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

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

Board member P. Andrews Nixon departed at approximately 1:00 p.m.

Staff: Andy Fisk, Bureau of Land and Water Quality
Rick Kaselis, Bureau of Remediation and Waste Management
Jeff Madore, Bureau of Remediation and Waste Management
Jeff Crawford, Bureau of Air Quality
Thomas Downs, Bureau of Air Quality
Jim Brooks, Director, Bureau of Air Quality
Marc Cone, Bureau of Air Quality
Don Witherill, Bureau of Land and Water Quality
Hetty Richardson, Bureau of Land and Water Quality
James Cassida, Bureau of Land and Water Quality

Others: David P. Littell, DEP Commissioner
Cynthia S. Bertocci, BEP Executive Analyst
Jan McClintock, Assistant Attorney General
Robert Gerber, BEP Technical Consultant
Terry Hanson, BEP Administrative Assistant

(Meeting adjourned at approximately 4:30 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Gulf Oil Spill: The Department's first response crew has returned from assisting in the Gulf and the second crew has departed. Ginger McMullin returned to Maine after a 5 week deployment only to be asked to return the following week to continue operations assistance. Barbara Parker left Maine to relieve her counterpart at the command center heading up Florida's response. Ms. Parker has been asked by the U.S. Coast Guard to participate in its review the response to the BP spill

Cap and Trade: There is an active group in New Jersey campaigning against the CO2 cap and trade program. This effort appears to be funded by the Koke foundation. This campaign calls for the repeal of RGGI in New Jersey. The Maine Republican platform also calls for an investigation of officials who they accuse of promoting false climate science

Wind Turbine Health Impacts: Commissioner Littell provided the Board with a copy of a study conducted for the province of Ontario. He noted that the Ontario study is very comprehensive, up-to-date, and represents one of the studies conducted by a government entity rather than a private firm.

Commissioner Littell explained that based on issues raised during appeals of various wind power projects to the Board and Board feedback, the Department looked at how it is conducting wind power reviews. The Department investigated the possibility of having the Maine Center for Disease Control (CDC) conduct a full review of each proposed project; however, the CDC does not have resources to conduct such reviews. It was concluded that the DEP will continue to utilize Mr. Warren Brown for noise reviews and Dr. Mills will review any new scientific reports to determine if they raise concerns that might change her assessment of wind power project impacts. The role of the CDC will be to flag whether our regulations are adequate for protection of human health, and will consider new issues if raised by new studies such as infra-sound.

Board member M. Wing Goodale expressed a concern that the current rules do not require bird and bat surveys for the entire project area making assessment of impacts to birds (eagles) difficult.

Commissioner noted that in the case of the Rollins application, the Department of Inland Fisheries and Wildlife allowed the bird reviews for Rollins 1 to be applied to the Rollins 2 project. Mr. Littell explained the review protocols for post construction monitoring of impacts and acknowledged that Board member Goodale would prefer data that includes a full migration radar study, on-the-ground species identification, and observation data of the entire area for Rollins 2. Lastly, the Commissioner confirmed that noise and bat/bird impacts are among the major issues that the Department has focused its attention on when reviewing wind power projects and that both the Department of Environmental

Protection and the Department of Inland Fisheries and Wildlife believe the current review protocols – which are more than most states are requiring – are adequate.

Nomination: Commissioner Littell noted that August 19th is the hearing date for consideration of his nomination for a seat on the Public Utilities Commission.

Paul Paydos has been nominated for Ms. Ziegler's seat on the Board. His confirmation hearing is also scheduled for August 19th. Mr. Paydos is the former director of sustainability for Gilford of Maine – progressive textile company. Mr. Paydos is looking forward to working on the Board

QUESTIONS:

Board member Matt Scott commented that Mr. John Kerry and Ms. Jennifer Puser of the Office of Energy Independence and Security provided the Board with valuable information on their research into the issue of noise from wind power projects and noted that the dialogue was helpful.

Schedule: The Board's regular meeting of August 19 will begin at 10:00 am to allow for the Chair and Executive Analyst to attend the confirmation hearing of Mr. Paydos.

Board member M. Wing Goodale asked for an update on Calais LNG.

The Chair explained that Calais LNG notified the Board on July 21, 2010 that they are seeking a new financial partner. The letter stated that the company expected to withdraw all applications if negotiations were not successful by August 11th. The Chair held a phone conference call with all parties on July 23rd to allow all parties to provide input into the requested change in schedule ~~ the conversation was productive. A conference of council is scheduled for September 8th to address matters associated with the licensing proceeding.

Board member M. Wing Goodale asked of a withdrawal the application would require action by the full Board.

The Chair responded that the Presiding Officer has the authority to regulate the course of the proceeding. She noted that in the case of the Downeast project, the full Board considered the request to withdraw the application because of the timing of the request, which was after the conclusion of the public hearing. The Board's Executive Analyst offered to provide an update on the various LNG application process outcomes.

- B. COMMENTS FROM THE BEP CHAIR:** Chair Lessard mentioned that she, the Board's Executive Analyst, the Board's Assistant Attorney General Peggy Bensinger will participate in the Maine Bar Association's continuing education session on September 22, 2010 regarding environmental law and practicing before the Board.
- C. EXECUTIVE ANALYST COMMENTS:** None
- D. BOARD CALENDAR:** Reviewed
- E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:** Reviewed

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS:

The Board voted (8-0-2-0) to approve consent agenda item 1 (BEP MINUTES – April 15, 2010) as presented.

The vote was taken pursuant to 38 M.R.S. §341-D.

M. Wing Goodale, Richard Gould, Don Guimond, P. Andrews Nixon, Sue Lessard, Matt Scott, Lissa Widoff, Frank Woodard voted to support the motion. Board members Elizabeth Ehrenfeld and Nancy Ziegler abstained.

The Board voted (6-0-4-0) to approve consent agenda item 2 (BEP MINUTES – May 6, 2010) as corrected below:

The vote was taken pursuant to 38 M.R.S. §341-D.

Elizabeth Ehrenfeld, Richard Gould, Sue Lessard, Lissa Widoff, Frank Woodard and Nancy Ziegler voted to support the motion. Board members M. Wing Goodale, Don Guimond, P. Andrews Nixon and Matt Scott abstained.

Correction to BEP May 6 minutes on page 5 Agenda Item #2 Calais LNG Project: The votes were taken pursuant to 38 M.R.S. Section 341-D(2), and 06-096 CMR Chapter 30 Special Regulations for Hearings on Applications of Significant Public Interest ~~2 Rules Concerning the Processing of Applications and Other Administrative Matters.~~

Board members Elizabeth Ehrenfeld, ~~M. Wing Goodale~~, Richard Gould, ~~Don Guimond~~, Susan M. Lessard, Lisa Widoff ~~Woodard~~, Frank Woodard and Nancy Ziegler voted to support the motion. Board members ~~Elizabeth Ehrenfeld~~ M. Wing Goodale, Don Guimond, P. Andrews Nixon, and Matt Scott ~~Nancy Ziegler~~ were absent.

The Board voted (8-0-2-0) to approve consent agenda item 3 (BEP MINUTES – May 20, 2010) as corrected below:

The vote was taken pursuant to 38 M.R.S. A. §341-D.

Elizabeth Ehrenfeld, Richard Gould, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard and Nancy Ziegler voted to support the motion. Board members M. Wing Goodale and Don Guimond abstained.

Correction to Board minutes for May 20, 2010 on page 5 Agenda Item #4 Calais LNG Project:

The vote was taken pursuant to 38 M.R.S.A Section 341-D(2) and 06-096 CMR Chapter 30 Special Regulations for Hearings on Applications of Significant Public Interest.

Board members Elizabeth Ehrenfeld, Richard Gould, ~~P. Andrews Nixon~~, Susan M. Lessard, Matt Scott, Lissa Widoff, Frank Woodard and Nancy

Ziegler voted to support the Motion. Board members Don Guimond, M. Wing Goodale were absent on May 20th and P. Andrews Nixon was absent at the time of the vote.

The Board voted (8-0-2-0) to approve consent agenda item 4 (BEP MINUTES – June 3, 2010) as corrected to indicate M. Wing Goodale voted in support of all motions and Board member A. Andrews Nixon was absent.

The vote was taken pursuant to 38 M.R.S. A. §341-D.

Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Sue Lessard, Matt Scott, Lissa Widoff, Frank Woodard and Nancy Ziegler voted to support the motion. Board member Don Guimond and P. Andrews Nixon abstained.

The Board voted (8-0-2-0) to approve consent agenda item 5 (BEP MINUTES – June 17, 2010) as presented.

The vote was taken pursuant to 38 M.R.S. A. §341-D.

M. Wing Goodale, Richard Gould, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, Frank Woodard and Nancy Ziegler voted to support the motion. Board members Elizabeth Ehrenfeld and Don Guimond abstained.

The Board voted (10-0-0-0) to approve consent agenda items 6, 7, 8 and 9 as presented.

The vote was taken pursuant to 38 M.R.S. A. §341-D(6).

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

6. ENVIROVANTAGE, INC., Kittery – Administrative Consent Agreement (BRMW)
7. KARL J. WALZ, JR. and ANDY PICARD EXCAVATING, INC., Arundel – Administrative Consent Agreement (BLWQ – Land)
8. MICHAEL C. KAIN and CONSTANCE P. KAIN, Prospect – Administrative Consent Agreement (BLWQ – Land)
9. WOODS OF MAINE, INC., Bangor – Administrative Consent Agreement (BLWQ – Land)

II. Regular Agenda

1. ENPRO SERVICES OF MAINE INC., RENEWAL – HAZARDOUS WASTE/WASTE OIL STORAGE AND TREATMENT FACILITY LICENSE (draft approval – 45 day written comment period)

Staff: Richard Kaselis, Bureau of Remediation and Waste Management

The Board voted (10-0-0-0) on a motion to approve a draft Maine hazardous waste transfer facility, and waste oil and commercial hazardous waste storage and treatment facility renewal license for ENPRO Services of Maine Inc. and to establish a 45-day written comment period. Following the comment period, a final license will be considered by the Board at a future meeting.

The vote was taken pursuant to 38 M.R.S.A. 1319-R and 1319-X, 06-096 CMR Chapters 850-857 Hazardous Waste Management Rules, Chapter 860 Waste Oil Management Rules, and Chapter 2 Rules Concerning the Processing of Applications and Other Administrative Matters

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

2. CHAPTER 691 RULES FOR UNDERGROUND OIL STORAGE FACILITIES / AMENDMENT -- REPEAL SECTION 3-A, SITING RESTRICTIONS FOR NEW FACILITIES (adoption)

Staff: Jeff Madore, Bureau of Remediation and Waste Management

The Board voted (10-0-0-0) on a motion to adopt the repeal of Section 3-A, Siting Restrictions for New Facilities from Chapter 691, Rules for Underground Oil Storage Facilities. Section 3-A was incorporated in new Chapter 692 as part of Maine's wellhead protection law related to groundwater near drinking water supplies which include mapped sand and gravel aquifers.

The vote was taken pursuant to 38 M.R.S.A §341-D(1-B) and Chapter 13-D §1391 through 1399.

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

3. STATE IMPLEMENTATION PLAN (SIP) CLASS I FEDERAL AREA – REGIONAL HAZE SUBMISSION (post to public comment)

Staff: Jeffrey Crawford, Bureau of Air Quality

The Board voted (10-0-0-0) on a motion to post to 30-day written comment with an opportunity to request a public hearing the proposed State Implementation Plan (SIP) for Regional Haze dated August 5, 2010. The SIP Regional Haze Plan proposes to implement the following strategies to make "reasonable progress" by 2018 toward the 2064 goal of natural visibility: utilization of Best Available Retrofit Technology (BART) sulfate reductions from specific sources, a low-sulfur oil strategy for all sectors (commercial, industrial and residential), and establishing a target of 90% sulfate reductions for key electric generating units impacting any MANE-VU Class I area. September 13, 2010 is the deadline for submission of written public comments.

The vote was taken pursuant to 38 M.R.S.A §585-A, and Section 107(a) and Section 110 of the 1990 Clean Air Act Amendments.

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

The Board reconvened at approximately 1:00 for consideration of the following agenda items:

4. SITE LAW AND STORMWATER REGULATION AMENDMENTS // Chapters 371-Definitions, 372-Policies and Procedures, 373-Financial Capacity, 375-No Adverse Environmental Effect, 376-Soil Types, 377-Roads, 380-Planning, 500-Stormwater Management and 502-Watersheds of Lakes Most At Risk from New Development (briefing)

Staff: Andy Fisk, Jim Cassida, Don Witherill, and Hetty Richardson, Bureau of Land and Water Quality

5. UNITED STATES SURGICAL CORP. – MALLINCKRODT LLC / APPEAL OF DESIGNATION OF UNCONTROLLED HAZARDOUS SUBSTANCE SITE AND ORDER, HOLTRACHEM FACILITY (Review Draft Proposed Board Order – Possible Decision)

Staff: Cynthia S. Bertocci, BEP Executive Analyst

The Board provided comment on the draft decision. A revised draft will be brought back for consideration at a future meeting. Board members Elizabeth Ehrenfeld, Richard Gould, Susan Lessard, Lissa Widoff, Frank Woodard and Nancy Ziegler participated in the deliberation. Board members M. Wing Goodale, Donald Guimond, P. Andrews Nixon, and Matt Scott did not participate in the proceeding and were absent.

Next Regular Meeting – Thursday, July 15, 2010 – Holiday Inn / Ground Round