

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

October 7, 2010

A meeting of the Board of Environmental Protection was held on Thursday, October 7, 2010, at the Civic Center, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 8:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Susan M. Lessard, P. Andrews Nixon, P. Paul Paydos, Matt Scott, and Frank Woodard

Board member Lissa Widoff was absent. Board member P. Andrews Nixon departed at approximately 12:45 p.m.

Staff: Becky Blais, Bureau of Land and Water Quality
Jim Cassida, Bureau of Land and Water Quality
Scott Whittier, Bureau of Remediation and Waste Management
Carla Hopkins, Bureau of Remediation and Waste Management
Marc Cone, Bureau of Air Quality
Richard Kaselis, Bureau of Remediation and Waste Management
Michael Morse, Bureau of Land and Water Quality
Michael Karagiannes, Bureau of Air Quality
Jamie Tansey, Bureau of Remediation and Waste Management
Andrea Lani, Bureau of Remediation and Waste Management
David Wright, Bureau of Remediation and Waste Management
Deborah Rice, PhD, Maine Center for Disease Control

Others: Beth Nagusky, Office of the Commissioner
Cynthia S. Bertocci, BEP Executive Analyst
Mary Sauer, Assistant Attorney General
Terry Hanson, BEP Administrative Assistant

(Meeting adjourned at approximately 05:00 p.m.)

III. REGULAR AGENDA

1. EVERGREEN WIND POWER III, LLC – ROLLINS WIND PROJECT // DEPARTMENT ORDERS L-24402-24-A-N, L-24402-TH-B-N AND L-24402-IW-C-N (Petition to Revoke or Suspend submitted by Lynne Williams)

Staff: Becky Blais, Bureau of Land and Water Quality

The Board voted (7-1-1-1) on a motion to dismiss the petition to revoke or suspend construction of a 60-megawatt wind energy generation facility in the Towns of Lincoln, Lee, Winn, Burlington and Mattawamkeag as submitted by Lynne Williams on behalf of Larry Arthurs, George Birmingham, Bradbury Blake, Kristi Birmingham, Mike DiCenso, Harry Epp, Roderick Forrey, Joanne Hinkelman, Kathi Hinkelman-Emery, Gordan Johnson, Rick Kaul, Dennis Mahar, Karl McGillvray, Marge Mitchell, Mary Beth Nolette, Don Smith and Dr. Gary Steinberg. The vote approves the draft proposed Board Order as presented finding that the petitioner's arguments and offer of evidence were not sufficient to grant a request for a public hearing on the petition.

The vote was taken pursuant to 38 M.R.S.A. §341-D(3), 06-096 CMR Chapter 2 Section 27 Rules Concerning the Processing of Applications and Other Administrative Matters.

Board members: Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, P. Andrews Nixon, Susan Lessard, Paul Paydos, and Frank Woodard voted to support the motion. Board member Matt Scott voted opposed. Board member Don Guimond recused. Board member Lissa Widoff was absent.

The Board convened a public hearing at 9:00 a.m. in the matter of:

CHAPTER 693 OPERATOR TRAINING FOR OIL AND HAZARDOUS SUBSTANCE STORAGE FACILITIES / NEW

The Board reconvened its regular agenda at approximately 9:45

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Patten General Store Demolition: The DEP and the U.S. Environmental Protection Agency (EPA) will oversee the demolition of the Patten General Store to allow the removal of three underground petroleum storage tanks and additional contaminated soil discovered during an excavation two months ago. This project was funded with stimulus money provided by the American Recovery and Revitalization Act (ARRA) and state clean-up funds.

- The Town of Patten took ownership of the former Patten General Store and gas station due to unpaid taxes. The removal of the three additional underground storage tanks (USTs) and the approximately seven hundred tons of petroleum-contaminated soil will complete the goal of making the property viable for redevelopment.

- The Patten project is one of four such projects which took place this summer. The others are the former Victor's Irving Station in Grand Isle, the Smithfield General Store and a former gas station in Trenton.

Brunswick Naval Air Station: The Department continues taking steps to assist with the closure of this military base with the recent signing of a suitability finding for the conveyance of two buildings (the Bachelor Officers' Quarters and a classroom building) and 10 acres of land from the Navy to the Southern Maine Community College. This will allow SMCC to expand its programs.

Dam Removal: Removal of the Montsweag Brook dam in Wiscasset has begun. The project was required by the Natural Resources Damage Settlement Agreement between the Maine Yankee Atomic Power Company and the State of Maine, and will facilitate fish passage and habitat restoration. The project was proposed by the Chewonki Foundation and selected by the state Natural Resource Damage Trustees as appropriate restoration and compensation for the affected natural resources.

- State trustees are the Department (as lead trustee), the Department of Inland Fisheries & Wildlife, the Maine Department of Conservation, and the Maine Department of Marine Resources.
- Board members can obtain more information on the dam removal at www.chewonki.org.

Press Release Pleasant Lake: The Department recently announced that Pleasant Lake in Casco is free of variable leaf milfoil and has been removed from the list of infested water bodies. Pleasant Lake is only the second lake to achieve this status. There are 33 lakes remaining on the list of water bodies infested with invasive plants.

- B. COMMENTS FROM THE BEP CHAIR:** None
- 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 (9-0-0-1) to approve consent agenda items 1, 2, 3, and 4 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 Lessard, P. Andrews Nixon, Paul Paydos, Matt Scott and Frank Woodard voted to support the motion. Board member Lissa Widoff was absent.

1. ISF TRADING COMPANY, Portland – Administrative Consent Agreement (BLWQ – Water)
2. SOIL PREPARATION, INC., Plymouth – Administrative Consent Agreement (BRWM)
3. METAL MAGIC, INC., Trenton – Administrative Consent Agreement (BRWM)

4. U.S. DEPARTMENT OF VETERANS AFFAIRS, MEDICAL AND REGIONAL OFFICE CENTER, Togus – Administrative Consent Agreement (BAQ)

II. Regular Agenda

2. ENPRO SERVICES OF MAINE INC., RENEWAL – HAZARDOUS WASTE TRANSFER FACILITY and WASTE OIL and HAZARDOUS WASTE STORAGE AND TREATMENT FACILITY LICENSE (approval)

Staff: Richard Kaselis, Bureau of Remediation and Waste Management

The Board voted (9-0-0-1) on a motion to approve the Maine hazardous waste transfer facility, and waste oil and commercial hazardous waste storage and treatment facility renewal licenses for ENPRO Services of Maine Inc.

The vote was taken pursuant to 38 M.R.S.A. §§ 1301 through 1319-Y, 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 Lessard, P. Andrews Nixon, Paul Paydos, Matt Scott and Frank Woodard voted to support the motion. Board member Lissa Widoff was absent.

3. CHAPTER 1000, STATE OF MAINE GUIDELINES FOR MUNICIPAL SHORELAND ZONING ORDINANCES - SECTION 13(A) RESOURCE PROTECTION DISTRICT / amendment (adoption)

Staff: Michael Morse, Bureau of Land and Water Quality

The Board voted (9-0-0-1) on a motion to adopt amendments to Chapter 1000, Section 13(A), State of Maine Guidelines for Municipal Shoreland Zoning Ordinances. The amendment changed the date of the Department of Inland Fisheries and Wildlife data set for rating “waterfowl and wading bird habitat” for the establishment of Resource Protection Zones to December 31, 2008. The 1973 maps are retained for coastal wetlands.

The vote was taken pursuant to 38 M.R.S.A. § 341-D(1-B) and §§ 435 - 449.

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

4. CHAPTER 305, PERMIT BY RULE – SECTION 16, ACTIVITIES IN COASTAL SAND DUNES – AMENDMENT (post to 30-day written public comment)

Staff: Mike Mullen, Bureau of Land and Water Quality

The Board voted (9-0-0-1) on a motion to post amendments to Chapter 305, Permit by Rule Section 16 Activities in Coastal Sand Dunes (major substantive) to 30-day written public comment period. Amendments incorporate definition changes consistent with Chapter 355, Coastal Sand Dune Rules and allow new activities in a

sand dune such as winter cobble-trapping fences and other activities in existing developed areas. The vote establishes November 12, 2010 as the deadline for submission of written comments.

The vote was taken pursuant to 38 M.R.S.A. §§ 341-D(1-B), 480-A and 480-FF.

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

5. CHAPTER 100, DEFINITIONS REGULATIONS / AMENDMENT (post to public hearing)

Staff: Michael Karagiannes, Bureau of Air Quality

The Board voted (9-0-0-1) to post to public hearing amendments to Chapter 100, Definitions Regulations. Proposed amendments include clarification of existing definitions, new definitions related to greenhouse gases and CO₂ equivalent emissions for implementation of the Department's major source licensing program. A November 18, 2010 public hearing was scheduled with November 29, 2010 as the deadline for submission of written comments.

The vote was taken pursuant to 38 M.R.S.A. § 341-D(1-B) and §585-A and the Clean Air Act.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Susan Lessard, P. Andrews Nixon, Paul Paydos, Matt Scott and Frank Woodard voted to support the Motion. Board member Lissa Widoff was absent.

6. CHAPTER 425, ASBESTOS MANAGEMENT REGULATIONS / AMENDMENT (post to public hearing)

Staff: Jamie Tansey, Bureau of Remediation and Waste Management

The Board voted (9-0-0-1) to post to public hearing amendments to Chapter 425 Asbestos Management Regulations. Proposed amendments seek to update the rule to reflect statutory changes, clarify certain definitions and requirements, integrate changes to standard industry practices, and promote the use of "risk-based" standards in areas of lesser risk for exposure. A November 18, 2010 public hearing was scheduled and November 29, 2010 was established as the deadline for submission of written comments.

The vote was taken pursuant to 38 M.R.S.A. §341-D(1-B), Chapter 12-A and §§1273, 1274-A, 1278, and 1280.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Susan Lessard, P. Andrews Nixon, Paul Paydos, Matt Scott, and Frank Woodard voted to support the Motion. Board member Lissa Widoff was absent.

7. CHAPTER 882, DESIGNATION OF BISPHENOL A AS A PRIORITY CHEMICAL AND REGULATION OF BISPHENOL A IN CHILDREN'S PRODUCTS / (workshop)
Staff: Andrea Lani, Bureau of Remediation and Waste Management

The Board held a public hearing on the proposed rule on August 19, 2010; the comment period closed on August 30, 2010. This proposed rule would list bisphenol A as a priority chemical, require reporting for specific product categories, and prohibit the sale of certain products containing bisphenol A. The Board conducted a workshop for the purpose of reviewing comments received and discussing with staff issues raised during the public hearing and comment period. No vote was taken.

Board to Reconvened at approximately 1:00 for a Public Hearing In The Matter Of:

CHAPTER 883, DESIGNATION OF THE CHEMICAL CLASS NONYLPHENOL AND NONYLPHENOL ETHOXYLATES AS A PRIORITY CHEMICAL – NEW

Next Regular Meeting –Thursday, October 21, 2010 – DEP Response Building, Augusta