STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

Susan M. Lessard, Chair

Cynthia S. Bertocci
Executive Analyst

Terry Dawson
Office Specialist II

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

July 21, 2011

A meeting of the Board of Environmental Protection was held on Thursday, July 21, 2011, at Civic Center, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Susan M. Lessard, Matt Scott, Lissa Widoff, and Frank Woodard

Board members M. Wing Goodale and P. Andrews Nixon were Absent. There is one vacancy.

Staff: Ron Dyer, Director Bureau of Remediation and Waste Management
Scott Austin, Bureau of Remediation and Waste Management
Robert Green, Bureau of Land and Water Quality
Marybeth Richardson, Bureau of Land and Water Quality
James Cassida, Bureau of Land and Water Quality
Mike Mullen, Bureau of Land and Water Quality

Others: Patricia Aho, Acting Commissioner
Cynthia S. Bertocci, Board Executive Analyst
Peggy Bensinger, Assistant Attorney General (public hearing)
Warren Brown, En Rad (BEP consultant)
Terry Dawson, BEP Administrative Assistant

(Meeting adjourned at approximately 05:30 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Acting Commissioner Aho reported the following:

1] Ozone Alerts: DEP has issued health alerts related to the unhealthy air for today and tomorrow.

2] Chevron: The Department recently finalized an enforcement matter related to pollution from a former marine oil terminal (Chevron) in Hampden. This matter included a $900,000. settlement which represents the one of the highest penalty amounts assessed in the past 25 years. In additional to enforcement penalties the violator will fund a supplemental environmental project of $500,000.00 for the Turtle Head Cove Marina in Hampden. Acting Commissioner Aho extended her appreciation to the Town Manager for efforts in facilitating the community based project.

3] Callahan Mine Superfund Site – Brooksville: The Department continues with efforts to oversee the remediation of the Callahan Mine Site in Brooksville and will spend 3 million in monies obtained through a Superfund Grant. This month 32 truckloads of hazardous waste and 150 truckloads of special waste were cleared from the PCB contaminated area. Lead and arsenic contamination have been removed from four residential yards with plans for removal at a fifth residence later this month. Restoration efforts include: Importing 110 truckloads of clean fill

- Replacing residential overboard discharges with modern septic systems and landscaping.

DEP continues to keep the public informed on remediation activities and scheduled through public meeting. The next meeting is set for August.

4] Wallagrass: The Department continues with its response to the Rt. 11 oil spill in Wallagrass. In an effort to keep community members fully informed about activities related to this spill, the Department has developed a web site. Andrew Flint has been identified as the agency point of contact and we anticipate hosting a second meeting within the next few weeks to share the results of well monitoring efforts.

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 (6-0-1-2) to approve consent agenda item 1 as presented.
The vote was taken pursuant to 38 M.R.S. §341-D(6).
Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Matt Scott, Susan M. Lessard and Lissa Widoff voted to support the motion. Board member Frank

Woodard abstained. Board members M. Wing Goodale and P. Andrews Nixon were absent. There is one vacancy.

1. SUGARLOAF MOUNTAIN CORPORATION CNL INCOME SUGARLOAF, LLC, Carrabassett Valley – Administrative Consent Agreement (BLWQ – Land)

The Board voted (7-0-0-2) to approve consent agenda item 2 as presented.
The vote was taken pursuant to 38 M.R.S. §341-D(6).
Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Matt Scott, Susan M. Lessard, Lissa Widoff, and Frank Woodard voted to support the motion. Board members M. Wing Goodale and P. Andrews Nixon were absent. There is one vacancy.

2. PAUL E. CANTRELL, JR. and DEBORAH A. CANTRELL, Lebanon – Administrative Consent Agreement (BLWQ – Land)

The Board voted (7-0-0-2) to approve consent agenda item 3 as presented.
The vote was taken pursuant to 38 M.R.S. §341-D(6).
Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Matt Scott, Susan M. Lessard, Lissa Widoff, and Frank Woodard voted to support the motion. Board members M. Wing Goodale and P. Andrews Nixon were absent. There is one vacancy.

3. STARCH PARTNERS, LLC d/b/a AROOSTOOK STARCH COMPANY, Fort Fairfield – Administrative Consent Agreement (BAQ)

The Board voted (2-5-0-2) on a motion to approve consent agenda item 4 as presented.
Motion Failed.

The vote was taken pursuant to 38 M.R.S. §341-D(6).
Board members Susan M. Lessard and Frank Woodard voted to support the motion. Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Matt Scott and Lissa Widoff opposed. Board members M. Wing Goodale and P. Andrews Nixon were absent. There is one vacancy.

Note: *Comments from Mr. Peter Beckerman (abutter), Mr. Denny Phillips, (Town of Rome Selectman), and Mr. John Shultz, (Rome Resident) related to the appropriateness of the $500.00 fine issued to the municipality, water quality impacts, and one for one planting were provided. The Board asked the Department to review this case with the Attorney General's Office regarding possible future enforcement action against the landowner and/or the contractor; members expressed concerns related to the high number of healthy trees removed through the "hazard tree" provision of the regulation and the size of the monetary penalty.*

4. TOWN OF ROME, Rome – Administrative Consent Agreement (BLWQ-Land)

II. Regular Agenda

1. CHAPTER 900, BIOMEDICAL WASTE MANAGEMENT RULES – SECTION 7 DEFINITIONS OF BIOMEDICAL WASTE and SECTION 18 STANDARDS FOR TREATMENT FACILITIES / AMENDMENT (adoption)

   Staff: Ron Dyer, Director Bureau of Remediation and Waste Management
   Scott Austin, Bureau of Remediation and Waste Management

   The Board voted (6-1-0-2) on a motion to adopt amendments to Section 18 Standards for Treatment Facilities which allows for the disposal of sharps without requiring shredding and strike the note in Section 18F(3) intended to clarify the proper management of discarded cultures and stocks of infectious agents. The Board asked the Department to pursue stakeholder involvement to clarify the definition of biological waste and the proper management of infectious agents for future rulemaking under the Commissioner's authority.

   The vote was taken pursuant to 38 M.R.S. § 341-D(1-B), and §1319-O(3).
   Board members Richard Gould, Don Guimond, Susan M. Lessard, Matt Scott, Lissa Widoff and Frank Woodard voted to support the motion. Board member Elizabeth Ehrenfeld opposed. Board members M. Wing Goodale and P. Andrews Nixon were absent. There is one vacancy.

2. U.S. ARMY CORPS OF ENGINEERS – NATURAL RESOURCES PROTECTION ACT, COASTAL WETLAND ALTERATION, WATER QUALITY CERTIFICATION // MAINTENANCE DREDGING [DEP PERMIT #L-16281-4E-E-N] (appeal submitted by Town of Phippsburg, Phippsburg Shellfish Conservation Commission, Phippsburg Land Trust, Kennebec Estuary Land Trust, Friends of Merrymeeting Bay, Bob Cummings, Lawrence Pye, Dean Doyle, Dot Kelly, Captain Ethan DeBery, and Laura Sewall (Town of Phippsburg et al.) represented by Stephen Hinchman, Esq., appeal submitted by Dot Kelly, and appeal submitted by Doug Watts and Ed Friedman)

   Staff: Robert Green, Bureau of Land and Water Quality

   Appellants represented by Attorney Stephen Hinchman began their presentation with a request to appeal the Chair's June 10, 2011, administrative ruling regarding supplemental evidence.

   The Board voted (7-0-0-2) on a motion to deny consideration of an appeal of the Chair's June 10, 2011 ruling on supplemental evidence noting that the request could have been brought to the Board's attention in a more timely manner.

   The vote was taken pursuant to 38 M.R.S. 341-D(4) and 06-096 CMR Chapter 2, rules concerning the processing of applications and other administrative matters.
   Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Susan M. Lessard, Matt Scott, Lissa Widoff and Frank Woodard supported the motion. Board members M. Wing Goodale and P. Andrews Nixon were absent. There is one vacancy.

At the meeting attorney Stephen Hinchman officially withdrew the portion of the appeal by Phippsburg et al related to the alternatives analysis.

The Board voted (6-0-1-2) on a motion to deny the appeal submitted by the Town of Phippsburg, the Phippsburg Shellfish Conservation Commission, the Phippsburg Land Trust, the Kennebec Estuary Land Trust, Friends of Merrymeeting Bay and specifically named appellants Bob Cummings, Lawrence Pye, Dean Doyle, Dot Kelly, Captain Ethan DeBery, Laura Sewall; the appeal filed by Dot Kelly; and the appeal filed by Douglas Watts and Ed Freidman. The vote affirmed the Commissioner's permit decision (L-16821-4E-E-N) and approved the draft proposed Board Order.

The vote was taken pursuant to 38 M.R.S. Sections 341-D(4), Section 464(4)(F)(3), § 480-A to 480-HH, Chapter 310, Wetlands and Waterbodies Protection Rules, Chapter 2(24)(B), Rules Concerning the Processing of Applications and Other Administrative Matters, and Section 401 of the Federal Water Pollution Control Act.

Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Susan M. Lessard, Lissa Widoff and Frank Woodard voted to support the motion. Board member Matt Scott voted opposed. Board members M. Wing Goodale and P. Andrews Nixon were absent. There is one vacancy.

3. CHAPTER 375, SECTION 10. CONTROL OF NOISE – CITIZEN INITIATED RULEMAKING (BEP preliminary discussion)

   Staff: James Cassida, Bureau of Land and Water Quality
   Staff: Mike Mullen, Bureau of Land and Water Quality

The Board's consultant (Warren Brown) lead an overview which included the following topics: wind turbine noise which included turbine anatomy, sound production, predictive modeling, sound attenuation, sound distribution factors to include atmospheric profiles, turbine masking and audibility, terminology operational sound assessment, and human perception of sound. The Board scheduled a special meeting for July 28th to continue discussion of comments received at the public hearing.