BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

November 15, 2012

A meeting of the Board of Environmental Protection was held on Thursday, November 15, 2012 at the Elks Lodge, located at 397 Civic Center Drive, Augusta, Maine. Robert Foley, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Alvin Ahlers, Tom Eastler, Elizabeth Ehrenfeld, Robert Foley, M. Wing Goodale, Richard Gould, and Susan M. Lessard.

Staff: Stacy Ladner, Bureau of Remediation and Waste Management
Heather Jackson, Bureau of Remediation and Waste Management
Becky Blais, Bureau of Remediation and Waste Management
Richard Kaselis, Bureau of Remediation and Waste Management
William Hinkel, Bureau of Land and Water Quality
Brian Kavanah, Bureau of Land and Water Quality
David Courtemanch, Bureau of Land and Water Quality

Others: John Silvestri, DEP Deputy Commissioner
Cynthia S. Bertocci, BEP Executive Analyst
Peter LaFond, Assistant Attorney General (agenda items #1-3)
Jerry Reid, Assistant Attorney General (agenda item #4)

I. Departmental

A. Deputy Commissioner's Comments:

- ECOS (Environmental Council of States). Commissioner Aho has been named Vice Chair of the Planning Committee.
- Passadumkeag Wind Farm proposal. Commissioner Aho has accepted a staff recommendation to deny the project. The denial is based on a finding that the project will have an unreasonable adverse effect on the scenic character of Saponac Pond, a scenic resource of state or national significance.
- Overboard Discharge Removal Grants. The Department has awarded the following grants:
  - $117,831for removal of an OBD in the town of Robbinston. This is the last remaining overboard discharge to an 800 acre shellfish area. The Department of Marine Resources is assessing how much of the shellfish acreage can be re-opened to harvesting.
  - $25,000 for the removal of an OBD on Westport Island.
  - $45,000 to the Town of Bristol for removal of the OBD at the Bristol Consolidated School.
- Casco Bay Lines, Portland. The Department has approved a 3000 square foot expansion and other improvements at the Maine State Pier.

B. Comments from the BEP Chair: Chairman Foley commented that the Board will hold an initial deliberative session on the citizen initiated BPA rulemaking at its December 6th meeting.

C. Executive Analyst Comments: Ms. Bertocci commented that the Department has held interviews for the Office Specialist II position vacated when Terry Dawson, the Board's Administrative Assistant, accepted another position in State government.

D. Board Calendar: Reviewed.

E. Departmental Orders/ applications accepted for processing: Reviewed.

F. Executive Session: None

II. Consent Agenda Items

1. BEP Meeting Minutes – November 1, 2012 (Approval)
   The Board voted (7-0-0-0) to approve consent agenda item 1 as presented. The vote was taken pursuant to 38 M.R.S.A. §341-D.
   Board members Alvin Ahlers, Tom Eastler, Elizabeth Ehrenfeld, Robert Foley, M. Wing Goodale, Richard Gould and Susan M. Lessard voted to support the motion.

III. Regular Agenda

1. Control Devices, Inc. and GTE Operations Support Incorporated, Hazardous Waste Post-Closure License Modification #O-000070-HG-F-M (draft order, post for public comment)
   Staff: Stacy Ladner and Heather Jackson

   The Board voted (7-0-0-0) to approve for a 45 day comment period the draft license as amended by the errata sheet dated November 15, 2012 which was distributed at the meeting. The vote was taken pursuant to 38 M.R.S.A. §§ 1301 through 1319-Y and the Maine Hazardous Waste Management Rules, 06-096 CMR 850-857.
   Board members Alvin Ahlers, Tom Eastler, Elizabeth Ehrenfeld, Robert Foley, M. Wing Goodale, Richard Gould and Susan M. Lessard voted to support the motion.

2. Central Maine Power Company, North Augusta Service Center, Renewal of Commercial Hazardous Waste Storage Facility License # O-000001-HA-D-R (decision)
   Staff: Becky Blais, Bureau of Remediation and Waste Management

   The Board voted (7-0-0-0) to approve the renewal license for CMP's North Augusta commercial hazardous waste storage facility as proposed. The vote was taken pursuant to 38 M.R.S.A. §§ 1301 through 1319-Y and Maine Hazardous Waste Management Rules 06-096 CMR 850-857.
   Board members Alvin Ahlers, Tom Eastler, Elizabeth Ehrenfeld, Robert Foley, M. Wing Goodale, Richard Gould and Susan M. Lessard voted to support the motion.

3. Clean Harbors Environmental Services Inc. Waste Oil Storage and Treatment Facility License Renewal (decision)
   Staff: Richard Kaselis, Bureau of Remediation and Waste Management

   The Board voted (7-0-0-0) to approve the renewal license for Clean Harbors waste oil storage and treatment facility located in South Portland. The vote was taken pursuant to 38 M.R.S.A. §1301 et seq., § 1319 et seq., and the Maine Waste Oil Management Rules 06-096 CMR 860.
   Board members Alvin Ahlers, Tom Eastler, Elizabeth Ehrenfeld, Robert Foley, M. Wing Goodale, Richard Gould and Susan M. Lessard voted to support the motion.

4. S.D. Warren Company, Eel Weir Hydropower Project Water Quality Certification #L-19937-33-J-Z / Appeals of Charles M. Frechette and Douglas H. Watts (decision)
   Staff: William Hinkel, Bureau of Land and Water Quality

The Board voted (7-0-0-0) to deny the appeals of Douglas H. Watts and Charles M. Frechette and affirm the Department's August 30, 2011 Order approving water quality certification for the continued operation of the Eel Weir Hydropower Project with the addition of the following new footnote #19: *Even if the Board were to conclude that standards were not met due to the current lack of access to this river segment for anadromous fish, or the fact that they are not now present, both federal and state law allow the issuance of water quality certification if the project does not cause or contribute to the failure of the water body to meet the standards of classification. 33 U.S.C. § 1341(b); 38 M.R.S.A. § 464(4)(F)(3). Here, it would not be Warren's proposed operation at the Project that would cause or contribute to the failure of anadromous fish to be present in the Eel Weir Bypass. Rather, it would be the lack of anadromous fish passage at the immediate downstream dam. Therefore, the Project would be entitled to certification regardless of whether the Board concluded that standards required either immediate access for anadromous fish, or even their actual presence in the water body. The Board's analysis of fish passage requirements in this certification proceeding is heavily influenced by these unique circumstances: anadromous fish are not currently present at the Project site to avail themselves of fish passage if it were installed now, and their absence is wholly unrelated to the operation of the Project that is before the Board for certification.*

The vote was taken pursuant to 38 M.R.S.A. § 341-D(4), the State's Water Classification Program 38 M.R.S.A. §§ 464 et. seq., 06-096 CMR 2 Rules Concerning the Processing of Applications and Other Administrative Matters, and Section 401 of the Clean Water Act.

Board members Alvin Ahlers, Tom Eastler, Elizabeth Ehrenfeld, Robert Foley, M. Wing Goodale, Richard Gould and Susan M. Lessard voted to support the motion.

(Meeting adjourned at approximately 2:00 p.m.)

Next Regular Meeting –Thursday, December 6, 2012 – Civic Center, Augusta