STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

Susan M. Lessard, Chair

Cynthia S. Bertocci
Executive Analyst

Terry Dawson

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

February 16, 2012

A meeting of the Board of Environmental Protection was held on Thursday, February 16, 2012, at the Department of Public Safety, Florian Hall, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Alvin Ahlers, Gary Curtis, Elizabeth Ehrenfeld, Robert Foley, Richard Gould, and Susan M. Lessard.

M. Wing Goodale was absent.

Staff: Mark Margerum, Bureau of Land and Water Quality
Mark Bergeron, Bureau of Land and Water Quality

Others: Patricia Aho, Commissioner
Cynthia S. Bertocci, BEP Executive Analyst
Peggy Bensinger, Assistant Attorney General
Terry Dawson, BEP Administrative Assistant

(Meeting adjourned at approximately 1:30 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Rulemaking: The Legislature has held public hearings and work sessions on all three of the rules provisionally adopted by the Board (Chapter 305 section 20 Inland Waterfowl and Wading Bird Habitat; Chapter 375 section 10 Control of Noise; and Chapter 378 performance standards for storage of petroleum projects in gravel pits). These rules will be coming back to the Board for final adoption.

Juniper Ridge: The Department evaluated an application for public benefit determination for the state owned Juniper Ridge landfill. The proposal was for a 21.9 million cubic yard expansion for disposal of the same waste types that are currently being disposed of at the site. [Phase I: 4.45 million cubic yds., Phase II: 9.35 million cubic yds.; Phase III: 7.08 million cubic yds.]. A partial approval on the application for public benefit determination was issued on January 31, 2012:

- The approval was for a capacity expansion of 9.35 million cubic yards (proposed Phase II). The Department found that this amount meets the state's long-term disposal capacity needs and is consistent with Maine's waste management plan.
- The approval establishes an annual limit on oversized bulky waste (OBW).
- There is a cap of no more than 25,000 tons of MSW bypass in a calendar year from Maine Energy.
- The approval includes an audit condition requiring review by a third party consultant (selected by the Department) to verify the nature and volume of CDD processing residuals being sent to Juniper Ridge for disposal.
    - The first audit is to be conducted prior to any disposal of (OBW).
    - Audits will be conducted at 2-year intervals and Casella shall reimburse the Department for the cost of all audits.

As a result of the partial approval, it is unclear when the project plan redesign will be complete; therefore, it is not possible to speculate on a timeframe for the submission of the technical application.

Tidal Power Generation Project: The Department has evaluated and approved an application to construct an experimental tidal power generation project in Lubec, Maine. The Department issued a permit to Ocean Renewable Power Corporation on January 31, 2012 for a tidal power demonstration project which includes five generation units, submerged cables and associated facilities. This is the first such permit of its kind in Maine.

- FERC permit was issued on January 13, 2011 (HydroKinetic –Tidal Project)

QUESTIONS:

Board member Elizabeth Ehrenfeld asked if any of the provisionally adopted rules were modified as a result of the Legislative process.

Commissioner Aho noted that the proposed rules were moved forward ought to pass as proposed.

B. COMMENTS FROM THE BEP CHAIR: Chair Lessard announced that Board member Gary Curtis tendered his resignation from the Board today. Mr. Curtis plans to return to work following the shortest retirement in history.

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:

1. BEP MEETING MINUTES – December 15, 2011 (Approval)
The Board voted (6-0-0-1) 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, Gary Curtis, Elizabeth Ehrenfeld, Robert Foley, Richard Gould, and Susan M. Lessard voted to support the motion. Board member M. Wing Goodale was absent.

2. BEP MEETING MINUTES – January 5, 2012 (Approval)
The Board voted (5-0-1-1) to approve consent agenda item 2 as presented.
The vote was taken pursuant to 38 M.R.S.A. §341-D.
Board members Alvin Ahlers, Gary Curtis, Robert Foley, Richard Gould, and Susan M. Lessard voted to support the motion. Board member Elizabeth Ehrenfeld abstained. Board member M. Wing Goodale was absent.

II. Regular Agenda

1. SADDLEBACK RIDGE WIND, LLC / Natural Resources Protection Act and Site Location of Development Act Permits: L-25137-24-A-N and L-25137-TG-B-N (appeal submitted by Friends of Maine's Mountains, Friends of Saddleback Mountain, and specifically named individuals)
Staff: Mark Bergeron, Bureau of Land and Water Quality
Mark Margerum, Bureau of Land and Water Quality

The Board voted (6-0-0-1) on a motion to deny the appeal and request for public hearing submitted by Friends of Maine's Mountains, Friends of Saddleback Mountain, Rand Stowell, and other named individuals regarding the Site Law and Natural Resources Protection Act permit application for approval to construct and operate a 33-megawatt wind energy generation facility in the Towns of Carthage, Canton and Dixfield. The vote affirmed the Commissioner's decision approving the construction and operation of the Saddleback Ridge Wind Project as issued in Department Orders L-25137-24-A-N and L-25137-TG-G-N, and approved the draft proposed Board Order with the following modifications:

Page 4 -- … …Lawrence and did so. ~~Mr. James and Dr. Nissenbaum also testified before the Board on wind turbine noise issues in the recent rulemaking proceedings for the Chapter 375 Sound Level Standards for Wind Energy Developments~~. The appellants had the opportunity…

Page 10 – The Board finds that the modeling used to predict the sound from this project, incorporating a 2 dBA uncertainty factor and a reflective ground surface assumption, is reasonable conservative. ~~and likely to over predict the noise actually generated by the project.~~

The Board voted pursuant to 38 M.R.S.A. § 341-D(4); 38 M.R.S.A. § 481 to 490 Site Location of Development Law; 35-A M.R.S.A. §3451-3455 Maine Wind Energy Act; Chapter 2 Rules Concerning the Processing of Application and Other Administrative Matters; and Chapter 375, No Adverse Environmental Effect Standard of the Site Law, Section 10, Control of Noise.

Board members Alvin Ahlers, Gary Curtis, Robert Foley, M. Wing Goodale, Richard Gould and Susan Lessard voted to support the motion. Board member Elizabeth Ehrenfeld was absent.