



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Susan M. Lessard, Chair

Cynthia S. Bertocci
Executive Analyst

Terry Dawson
Office Specialist II

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

May 3, 2012

A meeting of the Board of Environmental Protection was held on Thursday, May 3, 2012 at the Civic Center, 76 Community Drive, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

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

Tom Eastler and M. Wing Goodale were absent.

Staff: Mike Mullen, Bureau of Land and Water Quality
Mark Stebbins, Bureau of Land and Water Quality
Cyndi Darling, Bureau of Remediation and Waste Management
Paula Clark, Bureau of Remediation and Waste Management

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

(Meeting adjourned at approximately 12:30 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Environmental Achievement Awards: Governor LePage has reinstated the Environmental Achievement Award program. He held a ceremony on Thursday, April 26th to recognize the environmental efforts of:

- IDEXX -- for its commitment to sustainability by recycling nearly half of its waste, with less than 6 percent ending up in landfills.
- CLYNK -- for efforts in enhancing beverage container recycling, returning nearly 300 million containers since 2006.
- George Roberts Co / "The Step Guys" -- operates the largest solar array in the state, providing 90 percent of its electrical energy needs resulting in an annual 10,000 ton reduction of carbon dioxide emissions and for its bio retention stormwater project.
- Maine Energy Systems -- for helping Maine homes, public facilities and businesses transition to a cleaner fuel, sustainability-harvested wood from Maine's forests -- lowering fuel costs for users and cutting the carbon footprint of an average sized home by about 16 tons per year while helping to retain and create jobs in Maine's forest products industry.
- Washington County Council of Governments -- for its county-wide Brownfields program which, over the past three years, redeveloped 5 of 11 brownfield sites, including a former cannery and a historic boat building school.
- The Environmental Living & Learning for Maine Students Project (ELMS) -- for creating a financial aid fund that subsidized residential environmental education for nearly 2,000 Maine students from 33 schools.

DEP Honors:

- EPA Lifetime Achievement Award: Longtime DEP Bureau of Air Quality staff member Jeff Emery was honored with a Lifetime Achievement Award from EPA. Emery, a Dixmont resident who recently retired from the Department after 38 years of state service, was the Monitoring Section Chief for the Field Services Division. Mr. Emery was acknowledged for his years of work as an environmental scientist and as a leader in collaborating with national and regional organizations, Canadian jurisdictions and other states on air quality issues.
- Maine Environmental Education Association -- MEEA's Lifetime Achievement Award was presented to DEP's Barb Welch, in the Office of the Commissioner's Communications & Education Unit, for decades of environmental education work at the Department and her years of volunteer service on the MEEA Board.
- Maine Today Media -- 40 Under 40: The Department's Director of Policy and Procedures, Heather Parent was selected as one of Maine's up-and-coming class of leaders. Recipients will be formerly honored in a ceremony on May 25th.

QUESTIONS:

Board member Richard Gould asked about the progress of the recycling program in Maine. *Commissioner Aho explained that the State's goal is 50% recycling of waste product. Reports indicate that on average the state is currently at 38% recycling of waste product; she noted that more work is needed to help develop infrastructure within communities and counties which do a bulk of the work in this area.*

- 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:**

1. **BEP MEETING MINUTES – February 16, 2012 (Approval)**
The Board voted (5-0-0-2) 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, Elizabeth Ehrenfeld, Robert Foley, Richard Gould, and Susan M. Lessard voted to support the motion. Board members Tom Eastler and M. Wing Goodale were absent.
2. **BEP MEETING MINUTES – April 11, 2012 (Approval)**
The Board voted (4-0-1-2) 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, Robert Foley, Richard Gould, and Susan M. Lessard voted to support the motion. Board member Elizabeth Ehrenfeld abstained. Board members Tom Eastler and M. Wing Goodale were absent.

II. **Regular Agenda**

1. CHAPTER 305, PERMIT BY RULE STANDARDS, SECTION 20, ACTIVITIES LOCATED IN, ON OR OVER HIGH OR MODERATE VALUE INLAND WATERFOWL AND WADING BIRD HABITAT, OR SHOREBIRD NESTING, FEEDING, AND STAGING AREAS (final adoption)
Staff: Mike Mullen, Bureau of Land and Water Quality

The Board voted (5-0-0-2) on a motion to adopt amendments to Chapter 305, Permit By Rule, Section 20, Activities Located In, On, or Over High or Moderate Value Inland Waterfowl and Wading Bird Habitat, or Shorebird Nesting, Feeding, and Staging Areas. The rule allows permit-by-rule for new activities on previously undeveloped lots in moderate inland waterfowl and wading bird habitats, specifying among other things, the required setback from the upland edge of the wetland and requiring consultation with IFW regarding timing of construction activities.

The vote was taken pursuant to 38 M.R.S.A. § 341-H and §§ 480-A through 480-HH, and P.L. 2011 Chapter 140.

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

2. CHAPTER 375, NO ADVERSE ENVIRONMENTAL EFFECT STANDARD OF THE SITE LOCATION LAW, SECTION 10 CONTROL OF NOISE (final adoption)

Staff: Mike Mullen, Bureau of Land and Water Quality

The Board voted (5-0-0-2) to adopt amendments to Chapter 375, Section 10, Control of Noise. The amendments establish a new Section I. Sound Level Standards for Wind Energy Developments which sets sound level limits for daytime and nighttime operations, methodology for determining short duration repetitive sound, predictive modeling requirements, variance provisions, submission requirements, and sound measurement and data collection/reporting protocols.

The vote was taken pursuant to 38 M.R.S. A. § 341-H and §§ 481 through 490 , and P.L. 2011, Chapter 131.

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

3. CHAPTER 378, VARIANCE CRITERIA FOR THE EXCAVATION OF ROCK, BORROW, TOPSOIL, CLAY & SILT AND THE PERFORMANCE STANDARDS FOR THE STORAGE OF PETROLEUM PRODUCTS (final adoption)

Staff: Mark Stebbins, Bureau of Land and Water Quality

The Board voted (5-0-0-2) on a motion to adopt amendments to Chapter 378, Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay or Silt and Performance Standards for the Storage of Petroleum Products. The amendments allow licensed mining operations to store a small amount of diesel fuel on significant sand and gravel aquifers and also establish fuel type and storage capacity limits, update performance standards for containment, and update setback requirements from drinking water wells (public and private).

The Board voted pursuant to 38 M.R.S.A. § 341-H and § 490-E, and P.L. 2011 Chapter 139.

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

4. STATE OF MAINE / STATE PLANNING OFFICE – JUNIPER RIDGE LANDFILL // PUBLIC BENEFIT DETERMINATION (PBD) DEPARTMENT ORDER #S-020700-WS-AU-N: MOTION TO DISMISS LEITHISER APPEAL (appeal by Charles Leithiser of BEP Chair’s ruling dismissing his appeal of the PBD for lack of standing).

The Board voted (4-1-0-2) on a motion to deny the appeal submitted by Mr. Charles Leithiser and uphold the Chair’s ruling dismissing his appeal of the Public Benefit Determination for lack of standing.

The vote was taken pursuant to 38 M.R.S.A. Sections 341-D(4) and 344, and 06-096 CMR Chapter 2, Section 24(B) Rules Concerning the Processing of Applications and Other Administrative Matters.

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

5. STATE OF MAINE / STATE PLANNING OFFICE – JUNIPER RIDGE LANDFILL // PUBLIC BENEFIT DETERMINATION (PBD) DEPARTMENT ORDER #S-020700-WS-AU-N: MOTION TO DISMISS THE SPENCER APPEAL (appeal by State Planning Office / NEWSME Landfill Operations LLC of BEP Chair’s ruling dismissing the appeal of the PBD for lack of standing).

The Board voted (4-1-0-2) on a motion to deny the appeal submitted by the State of Maine, State Planning Office and NEWSME Landfill Operations LLC and uphold the Chair’s ruling finding that Mr. Edward Spencer has standing as an aggrieved person for the purpose of bringing an appeal of the Commissioner’s Public Benefit Determination documented in Department Order S-020700-WS-AU-N.

The vote was taken pursuant to 38 M.R.S.A. Sections 341-D(4) and 344, and 06-096 CMR Chapter 2, Section 24(B) Rules Concerning the Processing of Applications and Other Administrative Matters.

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