

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

July 18, 2013

A meeting of the Board of Environmental Protection was held on Thursday, July 18, 2013 at Florian Hall, Department of Public Safety, 45 Commerce Drive, Augusta, Maine. Robert Foley, Chair, called the meeting to order at 9:00 am with the following individuals present:

Board: Alvin Ahlers, Thomas Eastler, Robert Foley, M. Wing Goodale, Richard Gould, Susan Lessard and James Parker.

Staff: Mark Bergeron, Director Division of Land Resources Regulation
Jim Beyer, Bureau of Land and Water Quality
Heather Parent, DEP Policy Director
Mark Stebbins, DEP Mining Coordinator
Jeff Crawford, Policy Development Specialist
Bill Hinkel, Water Quality Regulation
Stacy Ladner, Hazardous Waste Regulation
Tracy Weston Kelly, Uncontrolled Sites

Others: Patricia Aho, Commissioner
Peggy Bensinger, Assistant Attorney General
Cynthia S. Bertocci, BEP Executive Analyst
Ruth Ann Burke, BEP Clerk and Administrative Assistant

I. Departmental**A. Commissioner's Comments:**

- Biennial Budget: The new biennial budget (effective July 1st) reflects the entirety of the Department's request to the Legislature for funding. The Department will receive more General Fund money and steps have been taken to stabilize the funding for land resources regulation.
- Briefing on Metallic Mineral Mining: The Department has dedicated significant staff resources and has also hired a consultant to develop the new metallic mineral mining rules. Team members were introduced.
- Lac Megantic: The Department has reached out to the Province of Quebec to offer assistance, both personnel and equipment if needed, in the wake of the train derailment and oil spill accident in the town of Lac Megantic. The transportation of oil through Maine by railcar began in November 2011, and the entities shipping the oil report these shipments to the Department. In 2012, 5.2 million barrels of oil were transported by rail through Maine. Earlier this spring, Department response staff rode the rail line from the Quebec border to Greenville to, among other things, identify and map sensitive receptors along the route and identify areas to stage response equipment and access the line in the event of a spill. Staff is available to brief the Board on this effort at a future meeting if the Board would like such a briefing.
- Cleanup of Contaminated Sites: The Department's Division of Technical Services has made significant progress in cleaning up sites so that they can be redeveloped. The division maintains a priority list of sites requiring remediation. Last year, the division completed cleanup of 158 sites, the most cleanups ever completed by the Division in one year. In the first 6 months of this year, 68 sites have been cleaned up and the Division is well on its way of meeting its goal for this year of putting another 144 sites back into productive use.

B. Comments from the BEP Chair: Chair Foley welcomed new Board member James Parker. With respect to the meeting agenda, Chair Foley stated that the Board would not take a vote on the Passadumkeag order at today's meeting in order to allow more time for the Board to review the comments received and the proposed changes to the draft order. The comment period closed on July 12th and a revised order was made available on July 16th. The Board will meet on August 1, 2013 to review and likely vote on an order. The parties and interested persons were notified of this change to the Board's schedule for consideration of this matter.

C. Executive Analyst Comments: None

D. Board Calendar: Reviewed. The next meeting is August 1, 2013.

E. Departmental Orders / Applications Accepted for Processing: Reviewed

F. Executive Session: None

II. Consent Agenda Items:

1. BEP Meeting Minutes: June 13, 2013 (approval)
The Board voted (5-0-2-0) on a motion to approve the minutes for June 13, 2013 as presented.

The vote was taken pursuant to 38 M.R.S. § 341-D.

Board members Alvin Ahlers, Thomas Eastler, Robert Foley, Richard Gould, and M. Wing Goodale voted to support the motion. Board members Susan Lessard and James Parker abstained.

III. Regular Agenda Items:

1. Chapter 882 Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products. Section 5 Sales Prohibition of Children's Products Containing Bisphenol A (final adoption)

Staff: Cynthia Bertocci, Board Executive Analyst

The matter before the Board was final adoption of amendments to Chapter 882 which enact a sales prohibition on infant formula packaging and baby food packaging containing intentionally-added bisphenol A in an amount greater than a de minimis level after March 1, 2014.

The Board voted (6-0-1-0) on a motion by Mr. Ahlers, seconded by Mr. Eastler, to finally adopt the amendments to Chapter 882, Section 5(A) as presented. The vote was taken pursuant to 38 M.R.S. § 341-H(1), 38 M.R.S. § 1696, and 06-096 CMR Ch. 882 and Resolve 2013, chapter 44 "Resolve Regarding Legislative Review of Portions of Chapter 882: Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products, a Major Substantive Rule of the Department of Environmental Protection."

Board members Alvin Ahlers, Thomas Eastler, Robert Foley, M. Wing Goodale, Richard Gould and Susan Lessard voted to support the motion. Board member James Parker abstained.

- 2) Chapter 2 Rule Concerning the Processing of Applications and Other Administrative Matters, Section 1(B) Definition of "Aggrieved Person" (final adoption)

Staff: Cynthia Bertocci, Board Executive Analyst

The matter before the Board was final adoption of the amendment to Chapter 2 definition of "aggrieved person" adding the following language: "The Board will interpret and apply the term "aggrieved person," whenever it appears in statute or rule, consistent with Maine court decisions that address judicial standing requirements for appeals of final agency action."

The Board voted (6-0-1-0) on a motion by Ms. Lessard, seconded by Mr. Eastler, to finally adopt the amendment to Chapter 2, Section 1(B) Definition of Aggrieved Person as presented. The vote was taken pursuant to 38 M.R.S. § 341-H(1) and Resolve 2013, chapter 65 "Resolve, Regarding Legislative Review of Portions of Chapter 2: Rules Concerning the Processing of Applications and Other Administrative Matters, a Major Substantive Rule of the Department of Environmental Protection.

Board members Alvin Ahlers, Thomas Eastler, Robert Foley, M. Wing Goodale, Richard Gould and Susan Lessard voted to support the motion. Board member James Parker abstained.

3) Passadumkeag Wind Park LLC / Appeals of Department Denial of License for Wind Energy Development / Revised Order (discussion)

Staff: Cynthia Bertocci, Board Executive Analyst
Mark Bergeron, Director, Division of Land Resources Regulation
James Beyer, Bureau of Land and Water Quality

A draft Board Order granting the appeals and approving the project was circulated for public review and comment on June 20, 2013, with a comment deadline of July 12, 2013. Staff reviewed proposed changes to the draft Board Order made in response to comments received. No vote was taken. The Board will meet on August 1, 2013 to further discuss and act on an order.

4) Metallic Mineral Mining (informational briefing)

Staff: Heather Parent, DEP Policy Director
Mark Stebbins, DEP Mining Coordinator

Ms. Parent provided an overview of the regulatory requirements under the new metallic mineral mining law: "An Act to Improve Environmental Oversight and Streamline Permitting for Metallic Mineral Mining in Maine." No vote was taken.

(The meeting adjourned at approximately 12:00 p.m.)