

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

James W. Parker, Chair

Cynthia S. Bertocci
Executive Analyst

Ruth Ann Burke
Board Clerk

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

February 5, 2015

A meeting of the Board of Environmental Protection was held on Thursday, February 5, 2015 at the Department of Public Safety, Florian Hall, 45 Commerce Drive, Augusta, Maine. James Parker, Chair, called the meeting to order at 9:00 am with the following individuals present:

Board: Alvin Ahlers, Mark Draper, Thomas Dobbins, Thomas Eastler, and James Parker. Susan Lessard was absent. There is one vacancy.

Staff: Jeffrey Crawford, Office of the Commissioner

Others: Patricia Aho, Commissioner
Scott Boak, Assistant Attorney General
Cynthia Bertocci, BEP Executive Analyst
Ruth Ann Burke, BEP Clerk and Administrative Assistant

I. Departmental

- A. Commissioner's Comments:** The Commissioner noted that she will be providing the Board with an update on the Department's initiatives later in the meeting as part of the regular agenda.
- B. Comments from the BEP Chair:** None
- C. Executive Analyst Comments:** Ms. Bertocci distributed the decision of the Maine Supreme Judicial Court, dated January 29, 2015, dismissing the appeal by Alice McKay Barnett of the Board's decision on the Canton Mountain Wind Project. Ms. Bertocci also noted that, at its meeting on March 5, 2015, the Board will hear the appeal by the Friends of Maine's Mountains of the Commissioner's licensing decision approving the Bingham Wind Project.
- 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 18, 2014 (approval)

The Board voted (4-0-1-1) on a motion to approve the minutes for December 18, 2014 as presented. The vote was taken pursuant to 38 M.R.S. § 341-D. *Board members Alvin Ahlers, Mark Draper, Thomas Eastler, and James Parker voted to support the motion. Thomas Dobbins abstained. Susan Lessard was absent. There is one vacancy.*

III. Regular Agenda Items:

- 1. Chapter 2 Rule Concerning the Processing of Applications and Other Administrative Matters / Amendments (post for 30 day written comment period)

Staff: Jeffrey Crawford, Office of the Commissioner

This is a joint rulemaking of the Board and the Commissioner. The proposed changes provide for the electronic filing of documents with the Department and correct an error regarding the processing of permit by rule notifications. The Board voted (5-0-0-1) on a motion to post the proposed amendments to Chapter 2 for a 30 day written comment period. The vote was taken pursuant to 38 M.R.S. §341-H.

Board members Alvin Ahlers, Mark Draper, Thomas Dobbins, Thomas Eastler, and James Parker voted to support the motion. Susan Lessard was absent. There is one vacancy.

Following the vote of the Board, Commissioner Aho stated that the proposed rule amendment is a joint routine technical rule and that she has determined that it should be posted for a 30 day written comment period.

2. Commissioner's Update on Department Legislative and Rulemaking Initiatives

Commissioner Aho distributed a copy of her January 21, 2015 Briefing to the Joint Standing Committee on Environment and Natural Resources of the 127th Legislature and summarized the scope of the Department's responsibilities and its funding sources. Commissioner Aho discussed the fact that the Department is responding to an ever increasing number of illegal drug laboratories because of the number of unknown chemicals that may be at these sites. She noted that in 2012, DEP responded to 9 such facilities. In 2014, the Department responded to 27. The Department has received some reimbursement of its expenses from the DEA (U.S. Drug Enforcement Administration). The Governor's budget proposes some General Fund money for addressing this need.

Commissioner Aho then provided an overview of her priorities for the Legislative session:

- Merger of the Department's two Petroleum Funds, the Coastal and Inland Surface Oil Clean-up Fund and the Ground Water Oil Clean-up Fund into a single Petroleum Fund. Commissioner Aho stated that there has been a significant reduction in the amount of crude oil coming into Maine with a resultant decrease in revenue to the Surface Fund. She noted that merging the surface and ground water funds will allow her to allocate staff and other resources needed to respond to petroleum spills whether they occur to surface water, ground water or both more efficiently and ensure the level of coverage that is needed for environmental protection and remediation of spills. Commissioner Aho also noted that transportation of oil by rail has increased in recent years with the potential for spills to occur in some remote areas of the state. The Department has examined the potential threat to resources and has developed a plan for responding to such situations.
- Consolidate Oversight of Recycling Programs. The administration is proposing to move the returnable bottle program from the Department of Agriculture, Conservation and Forestry to the DEP. The move will consolidate recycling programs at DEP with the goal of improving program coordination and increasing efficiency of services.

- Changes to the Permitting Standards for Energy Facilities. The Department is proposing changes to the permitting process for certain energy facilities including the following:
 - A more streamlined process for very small scale renewal energy projects, especially micro-hydro projects. These projects are currently regulated in much the same way as large dams.
 - Increased review of smaller-scale wind power projects that do not require review under the Site Location of Development Law. Such projects, which generally consist of three or fewer turbines, are not required to address criteria such as scenic impact, impacts to wildlife, and provisions for decommissioning. However, given the size of the turbines, there is the potential for these projects to have significant environmental impacts. There is also the potential for persons to develop several such projects in phases and thereby avoid the greater oversight required for grid-scale wind energy developments.
 - Changes to the lake water level petition process to require an attempt at mediation or arbitration of disputes. Statute currently requires the Department to hold an adjudicatory hearing on such petitions.

- Grid-Scale Wind Energy Developments. Commissioner Aho noted that the Department would like to see some changes to the grid-scale wind energy law based upon its experience to date administering the law. These changes are similar to those identified by the Board in its report to the Legislature. The Department has spoken with Committee leadership and anticipates being able to speak to these issues this session.

(The meeting adjourned at approximately 10:00 a.m.)