

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**

November 19, 2015

A meeting of the Board of Environmental Protection was held on Thursday, November 19, 2015 at the Elks Lodge, 397 Civic Center Drive, Augusta, Maine. James Parker, Chair, called the meeting to order at 9:00 am with the following individuals present:

Board: Alvin Ahlers, Thomas Dobbins, Mark Draper, Thomas Eastler, and James Parker. There are two vacancies.

Staff: Mark Bergeron, Director, Bureau of Land Quality
Marybeth Richardson, Bureau of Land Quality
Robert Green, Bureau of Land Quality

Others: Heather Parent, Deputy Commissioner
Peggy Bensinger, Assistant Attorney General
Cynthia Bertocci, BEP Executive Analyst
Ruth Ann Burke, BEP Clerk and Administrative Assistant

Draft Pending Board Approval

I. Departmental

- A. **Deputy Commissioner's Comments:** Deputy Commissioner Heather Parent encouraged Board members and the public to take a look at Maine's Climate Change Adaptation Toolkit that is on the Department's webpage. It is a tremendous resource to help Maine businesses and the public understand and plan for Maine's climate related issues. It will be continuously updated and reflects a large amount of work by Department staff.
- B. **Comments from the BEP Chair:** Chair Parker noted that, with respect to the Board's consideration of the appeal this morning, he would not impose strict time limits on presentations, but would give the parties ample time to make their presentations provided they remain on point. He asked members of the public to refrain from commenting or making other signs of approval or disapproval of the statements made by the parties.
- C. **Executive Analyst Comments:** Ms. Bertocci reviewed the procedure for consideration of the appeal of the NNEPRA permit.
- D. **Board Calendar:** Reviewed.
- E. **Departmental Orders / Applications Accepted for Processing:** Reviewed
- F. **Executive Session:** None

II. Consent Agenda Items:

1. BEP Meeting Minutes: October 15, 2015 (approval)

The Board voted (5-0-0-0) on a motion to approve the minutes for October 15, 2015 as presented. The vote was taken pursuant to 38 M.R.S. §341-D.

Board members Alvin Ahlers, Thomas Dobbins, Mark Draper, Thomas Eastler, and James Parker voted to support the motion. There are two vacancies.

III. Regular Agenda Items:

1. NNEPRA Brunswick Layover Facility / Stormwater Permit #L-26119-NJ-C-N Appeal by Brunswick West Neighborhood Coalition, Charles F. Wallace, Jr., J. Maurice L. Bisson, and Robert N. Morrison (decision)

Staff: Mark Bergeron, Director, Bureau of Land Quality
Marybeth Richardson, Bureau of Land Quality
Robert Green, Bureau of Land Quality

The Executive Analyst introduced the appeal. The Board then heard oral argument from Charles Wallace, P.E. on behalf of the appellants, and Mr. Wallace and Mr. Hodsdon, P.E. responded to Board questions. Attorney Nathaniel Rosenblatt presented oral argument in response to the appeal on behalf of NNEPRA. NNEPRA's technical consultants Matt Tonello, P.E. and Stephen Bushey, P.E. responded to technical questions regarding the licensee's project. Attorney Bruce Sleeper presented oral argument in response to the appeal on behalf of intervenor TrainRiders Northeast.

Following presentation of the staff recommendation and opportunity for rebuttal, the Board voted (5-0-0-0) on a motion by Mr. Dobbins seconded by Mr. Draper to deny the appellants' request for a public hearing on the appeal. The vote was taken pursuant to 38 M.R.S. §341-D(4).

Board members Alvin Ahlers, Thomas Dobbins, Mark Draper, Thomas Eastler, and James Parker voted to support the motion. There are two vacancies.

The Board then voted (5-0-0-0) on a motion by Mr. Eastler seconded by Mr. Draper to incorporate the following proposed changes to the draft Board Order presented by staff:

- Page 3 of 24, first paragraph: "The project will result in a total of 4.3 acres of new impervious area..."
- Pages 6 and 7 of 24: "The appellants' next argument concerning meetings is that because the September 12, 2014 application was a resubmittal of the application returned as deficient on August 27, 2014, a pre-submission meeting was required application public informational meeting was not held pursuant to Chapter 2 §§10(B)(6) and (C)(2). They also contend that interested persons were not notified of either a pre-application or pre-submission meeting and that, pursuant to Chapter 2 §10(A), the Department did not provide interested persons with a written summary of all pre-application meetings.

As set forth in Chapter 2 §10(A) However, the Department is authorized under Chapter 2 §10(D) to waive a pre-application meeting or a pre-submission meeting if the Department is satisfied that such a meeting would be of limited value in achieving the purposes of such meetings. T, the purpose of a pre-application meeting is for the Department and an applicant to determine the statutory and regulatory requirements applicable to a specific project, identify issues, processing times, fees, and the types of information and documentation necessary for the Department to properly assess the project. The purpose of a pre-submission meeting, in part, is to allow the Department and an applicant to review the assembled application to ensure that the necessary information has been included prior to filing the application.

The Board has already found that Chapter 2 §10(B)(6) was not applicable and that a pre-application meeting and a public informational meeting were not required prior to filing the September 14, 2014 permit application.

~~In this case, the Department and the licensee met on July 30, 2014 to discuss the activities to be conducted by the licensee and to examine which of these activities may require action by the Department, including issues related to stormwater management. In a letter, dated August 27, 2014, the Department identified the deficiencies in the application that led to the second application being returned as incomplete. The licensee's cover letter with the September 12, 2014 application provided responses to the application deficiencies the Department had noted.~~

On September 8, 2014 the licensee met with the Department to discuss the activities to be conducted at the site and to examine which of these activities may require action by the Department. Issues related to stormwater management and resubmission of the permit application were also discussed.

~~Although the record does not include explicit documentation from Department staff stating that the Department waived summarizing the September 8, 2014 pre-submission meeting, the Board finds the requirements of Chapter 2 §(10)(C)(2) have been met that the waiver is implied and because the September 12, 2014 application was the third filing for the project, holding a pre-application and pre-submission meeting was unnecessary to achieve the purposes of Chapter 2 §10(A)(2).~~

- Page 9 of 24, third full paragraph, last sentence. "...they address concerns raised of by the appellants..."
- Page 19 of 24, fourth full paragraph, last sentence. "that dewatering operations would not be expected to be extensive..."

The vote was taken pursuant to 38 M.R.S. §341-D(4).

Board members Alvin Ahlers, Thomas Dobbins, Mark Draper, Thomas Eastler, and James Parker voted to support the motion. There are two vacancies.

Following deliberations the Board voted (5-0-0-0) on a motion by Mr. Draper seconded by Mr. Dobbins, to affirm the Department Order approving the application of Northern New England Passenger Rail Authority to construct a layover facility in Brunswick, Maine and deny the appeal of Brunswick West Neighborhood Coalition, Charles F. Wallace, Jr., J. Maurice L. Bisson, and Robert N. Morrison.

The vote was taken pursuant to 38 M.R.S. §§ 341-D(4) and 420-D, and 06-096 CMR Chapter 500 Stormwater Management.

Board members Alvin Ahlers, Thomas Dobbins, Mark Draper, Thomas Eastler, and James Parker voted to support the motion. There are two vacancies.

(The meeting adjourned at approximately 1:00 p.m.)

