



JANET T. MILLS
GOVERNOR

001
STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

Mark C. Draper, Chair

Cynthia S. Bertocci
Executive Analyst

Ruth Ann Burke
Board Clerk

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

September 25, 2019

A meeting of the Board of Environmental Protection was held on Wednesday, September 25, 2019 at the Augusta Civic Center, 76 Community Drive, Augusta. Board Chair Mark Draper called the meeting to order at 9:00 am with the following individuals present:

Board: Alvin Ahlers, Mark Draper, Robert Duchesne, Mark Dubois, Susan Lessard, and Robert Sanford. James Parker was absent.

Staff: Paula Clark, Director, Division of Solid Waste Management, BRWM
Cyndi Darling, Environmental Specialist IV, BRWM
Andy Slusarski, Oil & Hazardous Materials Specialist, BRWM
Brian Kavanah, Director, Bureau of Water Quality
Cindy Dionne, Environmental Specialist IV, Bureau of Water Quality
Kerri Malinowski, Planning & Research Associate II, Office of the Commissioner
Ron Mongeon, Enforcement Specialist, Office of the Commissioner
Mark Margerum, Rulemaking Coordinator, Office of the Commissioner

Others: Peter LaFond, Assistant Attorney General
Peggy Bensinger, Assistant Attorney General
Cynthia Bertocci, Board Executive Analyst
Ruth Ann Burke, BEP Clerk and Administrative Assistant

I. Departmental

- A. Commissioner's Comments:** Commissioner Reid commented on the following matters:
- Governor's Climate Council: The first meeting of the Climate Council will be held tomorrow, September 26th, at Maple Hill Farm. Gina McCarthy, U.S. EPA Administrator under President Obama will be the keynote speaker. The Council is a 39-member body that will be voting on recommendations that come to it from six working groups. The working groups are devoted to issues such as transportation, energy, coastal and marine issues and include experts in these subject areas. The working groups will be meeting monthly; the Council, quarterly. By the end of next year, the Council will present an updated version of the State's Climate Action Plan followed by recommendations to the Legislature and State agencies. The Department will provide technical support to some of the working groups.
 - Petroleum Storage and Air Quality. Air Bureau staff have been working with the City of South Portland over the past few months to address air quality concerns and, in particular, emissions from petroleum storage tanks. That process is going very well. The City of Portland has also expressed an interest in receiving similar information. The Department is in the process of locating an air monitoring station in Portland's west end which is generally downwind of the tank farms.
 - PFAS Task Force. The Task Force is meeting this afternoon. Among the topics on today's agenda are efforts to improve public education, a presentation from the State Toxicologist, and information on testing of fish tissue that has occurred in recent years.
 - Changes to the Board's Authority. The Commissioner stated that he is very supportive of the changes to the Board's authority enacted in PL 2019, chapter 315. He believes that the Department works best when the Board is actively engaged in the work of the Department.
- B. Board Chair's Comments:** None
- C. Executive Analyst Comments:** None
- D. Board Calendar:** Ms. Bertocci noted that the Board will not meet on October 3, 2019. Presiding Officer Robert Duchesne will hold a pre-hearing conference with the parties in the Nordic Aquafarms proceeding on October 17, 2019. The Board will visit the site of Nordic's proposed facility on Wednesday, October 23, 2019.
- E. Departmental Orders / Applications Accepted for Processing:** No questions.

II. Regular Agenda Items:1. BEP Meeting Minutes. August 15, 2019 (approval)

The Board voted (3-0-3-1) on a motion by Alvin Ahlers, seconded by Robert Duchesne, to approve the minutes for August 15, 2019 as presented.

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

Board members Alvin Ahlers, Robert Duchesne, and Robert Sanford voted to support the motion. Mark Draper, Mark Dubois, and Susan Lessard abstained. James Parker was absent.

2. NRC Environmental of Maine, Inc., South Portland / License Renewal. Hazardous Waste, Storage and Transfer Licenses #O-000017-HR-N-R and #O-000017-97-I-R and Waste Oil Storage and Treatment License #O-000017-H1-L-R (decision)

Staff: Paula Clark, Director, Division of Solid Waste Management, BRWM
Cyndi Darling, Environmental Specialist IV, BRWM

Ms. Clark commented that the draft order was posted for public comment in accordance with statute and Department rules, and that no public comments were received during the 45-day comment period. Ms. Clark then summarized the changes that were made to the draft order in response to Board member questions at the August 1, 2019 meeting. These included, among other things, clarification of the facility name, information on the most recent site inspections of the facility, and a summary of the most recent groundwater monitoring results. The revised order also included a finding and condition requested by U.S. EPA pertaining to the facility's Waste Analysis Plan and its Closure Plan, as well as several minor typographical and formatting corrections.

Following Ms. Clark's summary, Ms. Clark, Ms. Darling, Mr. Slusarski, and Anne McNeil (U.S. Domestic Compliance Manager for NRC Environmental) responded to Board member questions including questions pertaining to traffic in the vicinity of the facility and the elevation of the facility with respect to sea level. Board member Ahlers expressed his view that given increased traffic in Greater Portland over the past 30 years a new traffic study should have been conducted.

The Board voted (6-0-0-1) on a motion by Mark Dubois, seconded by Robert Duchesne, to approve the proposed Board Order renewing the waste oil and hazardous waste facility licenses for NRC Environmental of Maine in South Portland d/b/a EMI as presented in the strike through version with the following additional changes:

- Page 21 of the packet, section 4B of the order, line 3. "...hazardous waste storage area as described in Finding of Fact #3.E."

- Page 22 of the packet, section 5 of the order, last sentence. “The Board further finds that the new or renewed leases must cover at least the entire remaining term of this renewal license.”
- Page 22 of the packet, section 6 of the order, add the following sentence at the end of the second paragraph. “No comments were received on the draft order.”

The vote was taken pursuant to 38 M.R.S. §§ 1301 through 1319-Y and Chapters 850-857, and 860 of the Department’s rules.

Board members Alvin Ahlers, Mark Draper, Robert Duchesne, Mark Dubois, Susan Lessard, and Robert Sanford voted to support the motion. James Parker was absent.

3. Chapter 890 Designation of PFOS as a Priority Chemical (post for public comment)

Staff: Kerri Malinowski, Office of the Commissioner

Ms. Malinowski provided background information on the State law governing Toxic Chemicals in Children’s Products (38 M.R.S. § 1691 et seq.). She commented on the authority of the Department and the Maine Center for Disease Control and Prevention to identify chemicals of concern, chemicals of high concern, and priority chemicals. The designation of PFOS (perfluorooctane sulfonic acid) as a priority chemical through routine technical rulemaking will require manufacturers and distributors to submit to the Department information on products containing intentionally added amounts of PFOS. This information will assist the State in determining whether additional regulation is warranted.

The Board voted (6-0-0-1) on a motion by Robert Duchesne, seconded by Alvin Ahlers, to post Chapter 890 to a 30-day public comment period.

The vote was taken pursuant to 38 M.R.S. § 341-H and §§ 1691 through 1699-B.

Board members Alvin Ahlers, Mark Draper, Robert Duchesne, Mark Dubois, Susan Lessard, and Robert Sanford voted to support the motion. James Parker was absent.

4. Chapter 584: Surface Water Quality Criteria for Toxic Pollutants / Amendments (post for public hearing)

Staff: Brian Kavanah, Director, Bureau of Water Quality
Cindy Dionne, Bureau of Water Quality

Ms. Dionne explained that Chapter 584 establishes ambient water quality criteria for toxic pollutants in surface waters to protect aquatic life and human health. Among other things, the proposed amendments include new water effect ratios for the Androscoggin and St Croix rivers, a new standard for copper in the Little Androscoggin River, revised methodology for determining human health ambient

water quality criteria, and new human health criteria for the designated use of sustenance fishing. Staff distributed revised language for section 5(C) correcting a typographical error and inserting the following phrase in the second paragraph: “...and a cancer risk level of one in 1,000,000 (except for the cancer risk level for inorganic arsenic, which is governed by 38 M.R.S. § 420(2)(J)).”

Following staff presentation and response to questions, the Board voted (6-0-0-1) on a motion by Alvin Ahlers, seconded by Robert Duchesne, to post amendments to Chapter 584 as presented with the corrected language for a public hearing.

The vote was taken pursuant to 38 M.R.S. §§ 341-H, 420 and 464(5) and Public Law 2019, c.463.

Board members Alvin Ahlers, Mark Draper, Robert Duchesne, Mark Dubois, Susan Lessard, and Robert Sanford voted to support the motion. James Parker was absent.

5. Informational Session on Changes to the Board’s Responsibilities / Public Law 2019, Chapter 315

Staff: Ron Mongeon, Enforcement Specialist, Office of the Commissioner
Mark Margerum, Rulemaking Coordinator, Office of the Commissioner

Public Law 2019, chapter 315, “An Act to Restore the Authority of the Board of Environmental Protection,” expanded the Board’s enforcement responsibilities and returned routine technical rulemaking to the Board. The law became effective on September 19, 2019.

Mr. Mongeon summarized the Department’s compliance and enforcement process with a focus on administrative consent agreements. The administrative consent agreement is one mechanism for resolving violations of environmental laws and licenses without going to court. Under the terms of an agreement, the violator generally agrees to pay a monetary penalty and undertake corrective actions. Administrative Consent Agreements become effective when signed by the violator, now the Board rather than the Commissioner, and the Office of the Attorney General. Proposed administrative consent agreements will appear on the Board’s agenda for review and approval.

Mr. Margerum reviewed the rulemaking process with the Board including, among other things, the difference between routine technical and major substantive rulemaking, the role of Department staff in drafting the rule, the use of stakeholder groups, and the role of the Office of Attorney General which, among other things, ensures that a proposed rule is consistent with the Department’s statutory authority in a given program area.

No vote was taken.

The Board then voted on a motion by Robert Duchesne, seconded by Robert Sanford, to adjourn the meeting.

(The Board meeting adjourned at approximately 11:45 a.m.)