



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**

November 7, 2019

A meeting of the Board of Environmental Protection was held on Thursday, November 7, 2019 at the Augusta Civic Center, 76 Community Drive, Augusta. Board Chair Mark Draper called the meeting to order at 9:00 a.m. with the following individuals present:

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

Staff: Mark Margerum, Policy Development Specialist, Office of the Commissioner
Jeffrey Crawford, Director, Bureau of Air Quality
Tom Downs, Chief Meteorologist, Bureau of Air Quality
Jane Gilbert, Licensing Unit Manager, Bureau of Air Quality

Others: Jerry Reid, Commissioner (morning session)
Melanie Loyzim, Deputy Commissioner (afternoon session)
Laura Jensen, Assistant Attorney General (morning session)
Peggy Bensinger, Assistant Attorney General (afternoon session)
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: Commissioner Reid commented briefly on the work of the Governor's Climate Council. He noted that the six working groups have been formed and all will have had their initial meeting within the next few weeks. The Steering Committee, of which the Commissioner is a member, is meeting monthly. The Steering Committee is coordinating the efforts of the working groups to avoid duplication of effort and ensure that the necessary work is completed in the compressed timeframe available to them.
 - PFAS Task Force. The Task Force plans to complete its work by mid-December and is in the process of drafting a report. Commissioner Reid anticipates that the report will include recommendations regarding additional testing where most cost effective, improved public education, source reduction, and developing strategies for destroying PFAS compounds once they have entered the waste stream.
 - Consent Agreements: Commissioner Reid commented that the Board will be receiving for review and approval a consent agreement with the Town of York regarding the construction of a seawall. He noted that while the Select Board voted to approve the terms of the consent agreement, it made a number of comments that were critical of the Department and questioned the fairness of the agreement. The Town has asserted that a Department staff member told the Town it could proceed with construction of the seawall without a permit. The Commissioner strongly disagrees with the Town's contentions in this regard and stated that, if there were evidence to that effect, the situation would have been handled differently. He noted that after he became Commissioner the Town continued to proceed with construction of the seawall without a permit after being repeatedly instructed to cease construction. He commented that the seriousness of the situation is reflected in the terms of the agreement.
- B. Board Chair's Comments:** None
- C. Executive Analyst's Comments:** None
- D. Board Calendar:** Ms. Bertocci commented that after the morning session she would like to discuss with members the Board's schedule for upcoming meetings and hearings.
- E. Departmental Orders / Applications Accepted for Processing:** No questions.

II. Regular Agenda Items:

1. BEP Meeting Minutes. September 25, 2019 (approval)

The Board voted (5-0-1-1) on a motion by Alvin Ahlers, seconded by Robert Duchesne, to approve the minutes for September 25, 2019 as presented.

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

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

2. Chapter 890 Designation of PFOS as a Priority Chemical / Post for Hearing

Staff: Mark Margerum, Policy Development Specialist, Office of the Commissioner

At its meeting on September 25, 2019, the Board voted to post Chapter 890 to a 30-day public comment period. The written comment period closed on November 4, 2019. During the written comment period, the Department received more than five requests for a public hearing on the proposed rule. Pursuant to the Maine Administrative Procedure Act, 5 M.R.S. § 8052(1), if a hearing is requested by any five interested persons, a hearing must be held. Staff requested that the Board vote to hold a hearing on Chapter 890 at a date to be determined in consultation with Board staff.

The Board voted (6-0-0-1) on a motion by James Parker, seconded by Robert Duchesne, to schedule a public hearing on Chapter 890 at a date to be determined by staff.

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 James Parker voted to support the motion. Robert Sanford was absent.

3. Informational Session – Overview of the Bureau of Air Quality and the Federal Clean Air Act

Staff: Jeffrey Crawford, Director, Bureau of Air Quality

Mr. Crawford provided an overview of the programs administered by the Bureau of Air Quality including mobile sources, licensing, compliance, emissions inventory, atmospheric science and analysis, air monitoring, and laboratory and quality assurance. He then briefly reviewed the major components of the federal Clean Air Act with an emphasis on Title I, which addresses National Ambient Air Quality Standards (NAAQS), hazardous air pollutants, State Implementation Plans

(SIPs), New Source Review, and Technology Standards. Finally, Mr. Crawford explained how the Clean Air Act is implemented at the state level, and the requirement for delegated states to develop SIPs, which establish programs and procedures to ensure that the state will attain and maintain compliance with NAAQS.

No vote was taken.

4. Clean Air Act Petition and Proposed Revisions to the State Implementation Plan / Post for Hearing.

Staff: Jeffrey Crawford, Director, Bureau of Air Quality

Mr. Crawford summarized the proposed revisions to Maine's State Implementation Plan.

- Section 176A(a)(2) Petition. The Petition proposes to remove portions of the state from the Ozone Transport Region because they are in attainment and do not negatively impact other jurisdictions' ability to meet air quality standards.
- Limited Maintenance Plans for the Portland and Midcoast Ozone Maintenance Areas. These proposed plans address the period from 2016 through 2026 and demonstrate that these areas will continue to maintain compliance with the 1997 8-hour ozone NAAQS.
- Section 110(a)(1) and (2) Infrastructure SIP. This proposed revision demonstrates that Maine has the program infrastructure in place to ensure that it will meet the CAA requirements for the 2015 ozone NAAQS.
- Section 110(a)(2)(D)(i)(I) "Good Neighbor" SIP. This proposal demonstrates that Maine meets its good neighbor requirements for the 2015 NAAQS in that emissions from sources in Maine do not significantly contribute to non-attainment in, or interfere with maintenance by, any other state with respect to the 2015 ozone standard.

Following Mr. Crawford's summary of the petition and proposed revisions to the SIP, the Board voted (6-0-0-1) on a motion by Susan Lessard, seconded by James Parker, to post the petition and proposed SIP revisions to a public hearing.

The vote was taken pursuant to 38 M.R.S. § 582 *et seq.* and the Clean Air Act. Board members Alvin Ahlers, Mark Draper, Robert Duchesne, Mark Dubois, Susan Lessard, and James Parker voted to support the motion. Robert Sanford was absent.

The Board recessed at approximately 10:45 a.m.

The Board reconvened at 12:30 p.m.

The following members were present: Robert Duchesne as Presiding Officer, Alvin Ahlers, James Parker, and Robert Sanford. Board members Mark Draper, Mark Dubois, and Susan Lessard did not attend the afternoon session because they are not able to participate in certain aspects of the Nordic proceeding pursuant to 38 M.R.S. § 341-C(8).

5. Nordic Aquafarms, Inc. Proposed Land-based Aquaculture Facility / Appeal of the Third Procedural Order

Staff: Cynthia Bertocci, Board Executive Analyst

On November 1, 2019, Presiding Officer Duchesne issued the Third Procedural Order in the Nordic proceeding, which identified the issues that will be the subject of the hearing. Non-hearing issues are to be addressed through written submissions. The Board received two appeals of the Third Procedural Order.

The intervenor group made up of Jeffrey Mabee, Judith Grace, and the Maine Lobstering Union appealed the Presiding Officer's determination that Title, Right or Interest (TRI) would not be a topic for the hearing.

The second appeal was filed by intervenors Upstream Watch and Northport Village Corporation who requested clarification of the ruling regarding the issues of air pollution, noise, and odor; and requested that the air emissions application be a topic at the hearing on Nordic's proposed project.

TRI. Attorney Kim Ervin Tucker argued on behalf of intervenors Jeffrey Mabee, Judith Grace, and the Maine Lobstering Union that the Board should hear testimony from the applicant and intervenors, with witnesses subject to cross-examination, on the matter of TRI to the intertidal area where portions of Nordic's proposed pipelines would be located. Attorney David Kallin responded on behalf of the applicant arguing in part that the record contains written submissions on this question and that a lawsuit concerning this matter of TRI is pending in Superior Court.

Following oral argument by the parties, the Board voted (4-0-0-3) on a motion by James Parker, seconded by Alvin Ahlers, to deny the appeal and affirm the Presiding Officer's ruling.

The vote was taken pursuant to 38 M.R.S. § 341-D(2) and Chapter 3, § 4 of the Department's *Rules Governing the Conduct of Licensing Hearings*.

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

Air Emissions. David Losee and Michael Lannan appeared on behalf of Upstream Watch and the Northport Village Corporation. Mr. Lannan commented that his modeling of potential air emissions from the proposed facility indicated potential exceedances of ambient air quality standards. Attorney Kallin responded on behalf of the applicant arguing in part that modeling is not required for a Chapter 115 air emissions application.

Following comments from the parties, Presiding Officer Duchesne asked Department staff to comment on whether staff thought it would be beneficial for the Board to include air emissions as a hearing topic. Department staff commented that the appeal by Upstream Watch and Northport Village Corporation has raised issues that would benefit from further examination, possibly including modeling, and recommended that Nordic's Air Emissions application be included as a hearing issue.

Following deliberations, the Board voted (4-0-0-3) on a motion by James Parker, seconded by Alvin Ahlers, to grant the appeal and add the air emissions application as a hearing issue.

The vote was taken pursuant to 38 M.R.S. § 341-D(2) and Chapter 3, § 4 of the Department's *Rules Governing the Conduct of Licensing Hearings*.

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

(The Board meeting adjourned at approximately 1:30 p.m.)