



JANET T. MILLS  
GOVERNOR

017  
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**

January 9, 2020

A meeting of the Board of Environmental Protection was held on Thursday, January 9, 2020 at the Augusta Civic Center, 76 Community Drive, Augusta. Presiding Officer Robert Duchesne called the meeting to order at 9:00 a.m. with the following individuals present:

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

**Staff:** Kevin Martin, Compliance and Procedures Specialist, Office of the Commissioner

**Others:** Jerry Reid, Commissioner  
Peggy Bensinger, Assistant Attorney General  
Cynthia Bertocci, Board Executive Analyst  
Ruth Ann Burke, BEP Clerk and Administrative Assistant

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

Legislative Session. Commissioner Reid noted that the legislative session has begun, and he will keep the Board posted on the work of the Environment and Natural Resources Committee.

Climate Council. The work of the Climate Council is well underway. The various work groups are expected to report to the Council in June. The next meeting of the Climate Council on January 29, 2020 will be a public meeting. The public will not have an opportunity to address the Council, but the public is welcome to attend and observe the proceeding. At that meeting Department staff member Stacy Knapp will make a presentation on the Department's Biennial Green House Gas Emission Report which includes, among other things, emission trends by sector and fuel type. The report will also be posted on the Department's webpage next week.

PFAS Task Force. The PFAS Task Force wrapped up its work in December. The Task Force is finalizing its report which will be issued and presented to the Governor shortly. The Task Force will be introducing a bill which would, if approved, enact a number of recommendations.

Board Members. Commissioner Reid commented that the Governor has nominated Steve Pelletier of Topsham to fill the seat being vacated by Mr. Ahlers. The confirmation hearing is scheduled for January 17, 2020. If confirmed, Mr. Pelletier would join the Board in time to participate in the hearing on Nordic Aquafarms' application.

**B. Board Chair's Comments:** None

**C. Executive Analyst's Comments:** None

**D. Board Calendar:** The Board's next meeting is January 23, 2020.

**E. Departmental Orders / Applications Accepted for Processing:** No questions.

**II. Regular Agenda Items:****1. BEP Meeting Minutes. December 12, 2019**

The Board voted (4-0-0-3) on a motion by James Parker, seconded by Alvin Ahlers, to approve the minutes of December 12, 2019 as presented.

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

Board members Alvin Ahlers, Robert Duchesne, James Parker, and Robert Sanford voted to support the motion.

2. Nordic Aquafarms, Inc. / Appeal by Upstream Watch-Northport Village Corporation of the Sixth Procedural Order

Staff: Kevin Martin, Compliance and Procedures Specialist, Office of the Commissioner.

In the Sixth Procedural Order, the Presiding Officer ruled on Nordic Aquafarm's "Objections and Motions to Strike Intervenors' Pre-filed Testimony." Intervenor Upstream Watch/Northport Village Corporation (Upstream/NVC) filed a timely appeal of the Sixth Procedural Order objecting to the ruling in Section 2(A) of the Order which granted the motion to strike Mr. Lannan's testimony on noise at Tab 6 of Upstream/NVC's pre-filed direct testimony.

Prior to the Board meeting, staff distributed a Staff Recommendation/Proposed Board Order on Appeal to Board members and the parties to the proceeding.

Following introduction of the matter at the Board meeting, Upstream/NVC's representative addressed the Board. Upstream/NVC's representative stated that Upstream/NVC had reviewed the proposed order and would not pursue the appeal further. Upstream/NVC stated that it would preserve its objections to the Department's and Board's determination that daytime construction noise is not subject to regulation by the Department. The applicant and the other intervenors were given an opportunity to address the Board but declined. Department staff reviewed the Proposed Board Order with Board members including the Department's analysis of the statute governing daytime construction noise and responded to Board member questions.

The Board then voted (4-0-0-3) on a motion by James Parker, seconded by Alvin Ahlers, to accept the Proposed Board Order and deny the appeal of the Sixth Procedural Order.

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.

3. Additional Comment from Board Members

At the conclusion of the regular business, Board member Parker stated his concern that the federal standards incorporated in State law at 38 M.R.S. § 341-C(8) governing participation by Board members in NPDES [and Clean Air Act] permitting are too restrictive. He commented that members who simply work for an entity such as a Town that has a wastewater treatment plant are barred from participating in the review of a NPDES application even though he believes there

is no real conflict of interest. Mr. Parker asked the Commissioner if there was an opportunity to change the law. Commissioner Reid responded that he agreed that the federal standards were restrictive, but that the State is required to incorporate them into State law.

***(The Board meeting adjourned at approximately 9:45 a.m.)***