



JANET T. MILLS
GOVERNOR

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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 23, 2020

A meeting of the Board of Environmental Protection was held on Thursday, January 23, 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, Mark Draper, Susan Lessard, James Parker, and Robert Sanford. Board members Mark Dubois and Robert Duchesne were absent.

Staff: Kerri Malinowski, Office of the Commissioner
Tracy Kelly, Compliance Unit Manager, Bureau of Air Quality
David Wright, Director, Division of Remediation, Bureau of Remediation and Waste Management (BRWM)
Naji Akladiss, Environmental Engineer, BRWM
Jane Gilbert, Air Licensing Unit Manager, Bureau of Air Quality
Gregg Wood, Director, Division of Water Quality Management, Bureau of Water Quality

Others: Jerry Reid, Commissioner
Melanie Loyzim, Deputy Commissioner
Mary Sauer, AAG for Chapter 890
Katherine Tierney, AAG (for Callahan Mine agenda item)
Peggy Bensinger, AAG (for Procedures and Standards informational session)
Laura Jensen, AAG (for Procedures and Standards informational session)
Cynthia Bertocci, Board Executive Analyst
Ruth Ann Burke, BEP Clerk and Administrative Assistant
Dr. Thomas Simones, Toxicologist, Maine Center for Disease Control and Prevention

Public Hearing: Chapter 890 Designation of PFOS as a Priority Chemical

Prior to the regular Board meeting, the Board held a public hearing on proposed Chapter 890.

Board Meeting

The Board meeting began after the close of the public hearing at approximately 10:00 a.m.

Regular Agenda Item:

1. Chapter 890 Designation of PFOS as a Priority Chemical / Request to Post Amended Rule for 30-Day Comment Period.

Staff: Kerri Malinowski, Office of the Commissioner
Dr. Thomas Simones, Toxicologist, Maine Center for Disease Control and Prevention

Following the close of the public hearing, the Board considered staff request to further amend proposed Chapter 890 to specify the PFOS salts that would be covered by the proposed rule and to post the amended draft rule for a 30-day comment period.

Following staff presentation and response to Board member questions, the Board voted (5-0-0-2) on a motion by James Parker, seconded by Alvin Ahlers, to authorize staff to post proposed Chapter 890 with the amendments presented by staff for 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, Susan Lessard, James Parker, and Robert Sanford voted to support the motion. Mark Dubois and Robert Duchesne were absent.

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

Board Members. Steve Pelletier of Topsham, who was nominated by the Governor to fill the seat being vacated by Mr. Ahlers, received a unanimous vote of the Environment and Natural Resources Committee on January 17, 2020. If confirmed by the Senate, Mr. Pelletier will be joining the Board in time to participate in the hearing on Nordic Aquafarms' application.

Legislative Session. Commissioner Reid commented on the following matters. The ENR Committee voted to endorse the Department's request for an increase in MEPDES permit fees. There has not been a fee increase in more than 20 years. The bill would increase fees by 40% to support positions in the Water Bureau.

LD 1915 would direct the Department to evaluate best available methodologies for measuring emissions from heated aboveground petroleum storage tanks. The bill was introduced by Senator Millett of South Portland in response to concerns over petroleum tanks farms in that community. The Department supports the bill.

LD 1923 would make technical changes to the Uncontrolled sites Law to ensure that PFAS is covered under that law. The Department supports this proposed change.

Climate Council. The next meeting of the Climate Council is on January 29, 2020. The meeting is open to the public. The public will not have an opportunity to address the Council, but the public is welcome to attend and observe the proceeding.

PFAS Task Force. The PFAS Task Force has finalized its report and the Commissioner and the Chair of the Task Force will be briefing the Governor later today. The report will be posted on the Department's webpage.

Finally, Commissioner Reid thanked Alvin Ahlers for contributions to the Board over the past eight plus years.

- B. Board Chair's Comments:** Mr. Draper and other members of the Board expressed their appreciation for Mr. Ahler's dedicated service to the Board.
- C. Executive Analyst's Comments:** None
- D. Board Calendar:** The Board's next meeting is February 6, 2020.
- E. Departmental Orders / Applications Accepted for Processing:** No questions.

II. Regular Agenda Items

2. BEP Meeting Minutes. January 9, 2020

The Board voted (4-0-1-2) on a motion by James Parker, seconded by Alvin Ahlers, to approve the minutes of January 9, 2020 as presented.

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

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

3. Administrative Consent Agreement / Town of Wiscasset.

Staff: Tracy Kelly, Compliance Unit Manager, Bureau of Air Quality

The proposed agreement resolved violations of the Department's air quality rules associated with the intentional burning of a structure for demolition purposes and not a bona fide fire training exercise.

Following discussion, the Board voted (5-0-0-2) on a motion by Alvin Ahlers, seconded by James Parker, to approve the Administrative Consent Agreement with the Town of Wiscasset as presented.

The vote was taken pursuant to 38 M.R.S. § 341-D(6).

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

4. Callahan Mine Superfund Site, Brooksville / Request for Approval to Obtain Real Estate Easement under the Uncontrolled Sites Law (decision)

Staff: David Wright, Director, Division of Remediation, Bureau of Remediation and Waste Management (BRWM)
Naji Akladiss, Environmental Engineer, BRWM

The Department requested Board approval to obtain easements on two parcels of land adjacent to the Callahan Mine Superfund Site to provide access for implementation of the site remedy. The easements would provide access to stabilize the tailings dam and install a cover system over the impounded tailings to prevent catastrophic failure of the impoundment dam and reduce the leaching of heavy metals (including arsenic, copper, lead, and zinc) to Goose Cove.

Following staff presentation and response to questions, the Board voted (5-0-0-0) on a motion by Robert Sanford, seconded by James Parker, to authorize the Department to purchase easements on two abutting parcels of land as necessary to implement the Callahan Mine Superfund Site Remedy.

The vote was taken pursuant to 38 M.R.S. § 1364(7).

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

5. Nordic Aquafarms, Inc. / Procedures and Standards Briefing

Staff: Peggy Bensinger, Assistant Attorney General
Laura Jensen, Assistant Attorney General
Jane Gilbert, Air Licensing Unit Manager, Bureau of Air Quality
Gregg Wood, Director, Division of Water Quality Management, Bureau of
Water Quality

The Board's hearing on the applications by Nordic Aquafarms, Inc. for an Atlantic salmon land-based aquaculture facility in Belfast and Northport is scheduled for the week of February 10, 2020. In preparation for the hearing, Ms. Bensinger and Ms. Jensen reviewed with Board members the basic structure and schedule of the hearing, the role of Department staff at the hearing, and the *ex parte* communications rule. Ms. Bensinger reminded Board members that the hearing will focus on the licensing criteria identified in the Presiding Officer's procedural orders. Excerpts from the Site Location of Development Law, the Natural Resources Protection Act, Chapter 115 Air Emissions licensing criteria, and the waste discharge laws were distributed for Board members' use during the hearing.

No votes were taken.

6. Report to the Legislature (discussion)

Staff: Cynthia Bertocci, Executive Analyst

Ms. Bertocci distributed a draft report summarizing the Board's work in 2019. She noted that the Board is not required to file a report with the Environment and Natural Resources Committee in the second session of the Legislature, but that the Board has customarily submitted an annual report. The Board provided input on the draft report and requested that Ms. Bertocci highlight the difficulties posed by the federal recusal requirements incorporated in Maine law at 38 M.R.S. § 341-C(8). The Board also requested that the report note the comments received on proposed Chapter 890 pertaining to PFOS precursors. No vote was taken.

(The Board meeting adjourned at approximately 12:00 p.m.)

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