



JANET T. MILLS
GOVERNOR

001A
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**

June 18, 2020

A meeting of the Board of Environmental Protection was held on Thursday, June 18, 2020 by video-conference via Zoom. Board Chair Mark Draper called the meeting to order at 9:00 a.m. with the following individuals attending:

Board: Mark Draper, Mark Dubois, Robert Duchesne, Susan Lessard, James Parker, Steven Pelletier, and Robert Sanford.

Staff: Scott Belair, Environmental Specialist, Bureau of Land Resources
Tracy Kelly, Compliance Section Manager, Bureau of Air Quality
Peter Carleton, Assistant Environmental Engineer, Bureau of Air Quality
Ron Mongeon, Enforcement Specialist, Office of the Commissioner
Scott Wilson, Environmental Specialist, Bureau of Remediation and Waste Management (BRWM)
Paula Clark, Director, Division of Solid Waste Management, BRWM
Katherine Tarbuck, Senior Environmental Engineer, BRWM
Molly King, Director, Division of Technical Services, BRWM
Victoria Eleftheriou, Deputy Director, BRWM
David Burns, Director, BRWM
Stacy Knapp, Environmental Specialist, Bureau of Air Quality
Jeffrey Crawford, Director, Bureau of Air Quality

Others: Melanie Loyzim, Deputy Commissioner
Katherine Tierney, AAG
Cynthia Bertocci, Board Executive Analyst
Ruth Ann Burke, BEP Clerk and Administrative Assistant

I. Departmental

- A. Commissioner's Comments:** Deputy Commissioner Melanie Loyzim commented that Commissioner Reid is attending the Maine Climate Council's summer meeting which is being held today. Information can be found on the Climate Council's website.
- B. Board Chair's Comments:** None
- C. Executive Analyst's Comments:** None
- D. Board Calendar:** Ms. Bertocci noted that the Board will have a brief meeting on July 2, 2020 to consider administrative consent agreements and adoption of Chapter 890 *Designation of PFOS and its Salts as Priority Chemicals*. The Board will also meet on July 16, 2020 to address the proposed amendments to Chapter 156 and 158 RGGI rules and possibly an appeal of a licensing decision.
- E. Departmental Orders / Applications Accepted for Processing:** No questions.

II. Regular Agenda Items (Note: All votes taken by roll call.)**1. BEP Meeting Minutes. May 14, 2020**

The Board voted (7-0-0-0) on a motion by James Parker, seconded by Robert Duchesne, to approve the minutes of May 14, 2020 as presented.

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

Board members Mark Draper, Mark Dubois, Robert Duchesne, Susan Lessard, James Parker, Steven Pelletier, and Robert Sanford voted to support the motion.

2. BEP Meeting Minutes. May 20, 2020

The Board voted (7-0-0-0) on a motion by Susan Lessard, seconded by James Parker, to approve the minutes of May 20, 2020 as presented.

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

Board members Mark Draper, Mark Dubois, Robert Duchesne, Susan Lessard, James Parker, Steven Pelletier, and Robert Sanford voted to support the motion.

3. Administrative Consent Agreement / Town of St. Agatha

Staff: Scott Belair, Environmental Specialist, Bureau of Land Resources

Mr. Belair summarized the terms of the proposed Administrative Consent Agreement which resolves violations of the Natural Resources Protection Act (NRPA) and the Erosion and Sedimentation Control Law associated with the placement of fill in and adjacent to Long Lake in St. Agatha by the Town's Public Works Department without a permit from the Department. The work was done to

provide access to the lake for the removal of a docking system. The Town has restored the site to the Department's satisfaction, except for a small area for which the Town has obtained an after-the-fact NRPA permit. The agreement includes a monetary penalty of \$1,987.

Following Board questions and deliberations, the Board voted (7-0-0-0) on a motion by James Parker, seconded by Robert Duchesne, to approve the administrative consent agreement as presented.

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

Board members Mark Draper, Mark Dubois, Robert Duchesne, Susan Lessard, James Parker, Steven Pelletier, and Robert Sanford voted to support the motion

4. Administrative Consent Agreement, Dragon Products Company, Thomaston

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

Ms. Kelly summarized the proposed Administrative Consent Agreement and responded to Board member questions.

The proposed agreement resolves multiple violations of the facility's air emissions license that occurred prior to May 5, 2017. The violations resulted in excess emissions of ammonia, carbon monoxide, dioxin/furans, and particulate matter. The agreement includes a monetary penalty of \$66,937. Brian Rayback, Pierce Atwood, commented on behalf of Dragon that the company appreciated the Department's willingness to work with the company to resolve the violations.

Following discussion with staff, the Board voted (7-0-0-0) on motion by Susan Lessard, seconded by Robert Duchesne, to approve the administrative consent agreement as presented.

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

Board members Mark Draper, Mark Dubois, Robert Duchesne, Susan Lessard, James Parker, Steven Pelletier, and Robert Sanford voted to support the motion.

5. Administrative Consent Agreement, Paul Morse, Patten

Staff: Scott Belair, Bureau of Land Quality

Mr. Belair summarized the proposed Administrative Consent Agreement and responded to Board member questions.

The proposed agreement resolves violations of the Natural Resources Protection Act and the Erosion and Sedimentation Control Law associated with the

placement of fill in a freshwater wetland directly adjacent to Webb Brook without a permit and with no erosion and sedimentation control measures. Webb Brook is a tributary to Fish Stream, which is a high-quality brook trout water. The agreement requires a monetary penalty of \$2000.

In response to Board members questions, Mr. Belair stated that removal of the fill had been delayed due to site conditions, but that it has been removed to the Department's satisfaction.

Mr. Parker made a motion, seconded by Mr. Duchesne, that the Board approve the administrative consent agreement as presented. Board member Pelletier suggested the agreement be amended to include a sentence indicating that the fill had been removed and the site restored. Mr. Parker and Mr. Duchesne stated that they would accept that amendment to the motion. Staff clarified that such an addition to the agreement would require that the proposed agreement be revised, signed, and brought back to the Board. The suggested change was withdrawn.

The Board then voted (7-0-0-0) on the original motion by James Parker, seconded by Robert Duchesne, to approve the proposed administrative consent agreement as presented.

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

Board members Mark Draper, Mark Dubois, Robert Duchesne, Susan Lessard, James Parker, Steven Pelletier, and Robert Sanford voted to support the motion.

6. Sheldon Hartstone d/b/a Fairmont Redemption, Bangor. Appeal of Denial of Application for a Beverage Container Redemption Center License.

Staff: Scott Wilson, Environmental Specialist, BRWM

Paula Clark, Director, Division of Solid Waste Management, BRWM

Ms. Bertocci introduced the appeal summarizing Mr. Hartstone's objections to the Commissioner's decision to deny the application and reviewed with Board members the relevant licensing criteria set forth in 38 M.R.S. § 3113 of the Beverage Container Law.

William McKinley, attorney for Mr. Hartstone, argued that Mr. Hartstone had demonstrated a compelling public need for a redemption center in his proposed location at 569 Hammond Street in Bangor and, therefore, qualified for the exception in § 3113(4)(D) to the population-based limit of five redemption centers in a municipality with a population greater than 30,000. The appellant's arguments addressed, among other factors, the nature of the existing redemption centers and their accessibility with respect to Bangor's geography. State Representative Joseph Kelly spoke in support of Mr. Hartstone's appeal.

Following the appellant's presentation, Department staff summarized the basis for the denial of the application and responded to Board member questions. Among other factors, staff cited the proximity of the proposed redemption center to existing redemption centers and its potential to impact existing redemption centers (38 M.R.S. § 3113(2)(C)).

The appellant was afforded an opportunity for brief rebuttal.

Following deliberations, the Board voted (6-1-0-0) on a motion by James Parker, seconded by Steven Pelletier, to direct staff to draft an order that would reverse the Department's decision and grant the appeal. It was noted that a draft order to that effect would be considered by the Board at a future meeting and that no decision on the matter is made until the Board votes to adopt an order setting forth the Board's reasoning.

The vote was taken pursuant to 38 M.R.S. §§ 341-D(4) and 3113, and 06-096 C.M.R. c. 426 *Responsibilities under the Returnable Beverage Container Law*.

Board members Mark Draper, Robert Duchesne, Susan Lessard, James Parker, Steven Pelletier, and Robert Sanford voted to support the motion. Mark Dubois voted opposed.

7. Juniper Ridge Landfill Minor Revision / Appeal by Edward Spencer

Staff: Katherine Tarbuck, Senior Environmental Engineer, BRWM

This agenda item was the appeal of the minor revision issued in December 2019 that increases the amount of oversized bulky waste (OBW) that may be disposed of in the expansion cells at the Juniper Ridge Landfill from 65,000 tons per year to 85,000 tons per year for calendar year 2020. The tonnage limit would revert to 65,000 tons per year in 2021. The licensee (State of Maine, Acting through the Bureau of General Services) had requested that the tonnage be increased to 85,000 tons per year for an unlimited amount of time.

Following Ms. Bertocci's introduction, appellant Edward Spencer addressed the Board. Mr. Spencer summarized his objections to the Department's decision arguing in part that economic growth does not support the requested increase in the amount of OBW, that OBW is not suitable as a bulking agent for sludge, that the revision does not comply with the solid waste management hierarchy, and that an increase in OBW disposed of at the landfill poses a threat to the quality of the State's waters.

Attorney Brian Rayback responded to the appeal on behalf of the State of Maine and Casella Waste Systems, the parent company of NEWSME which operates the landfill for the State of Maine. The licensee responded, in part, that the increase in OBW is justified based on economic activity, the increase in the amount of sludge to be disposed of in part due to PFAS contamination, and the suitability and availability of OBW as a sludge bulking agent.

Staff summarized its recommended decision and responded to Board member questions. Ms. Tarbuck explained that the limit on OBW tonnage is found in Condition 12 of the landfill expansion license issued by the Board in June 2017 and applies only to the disposal of OBW in the expansion cells. Condition 12 provides for an annual review of the limit and modification of the limit if needed. Following staff presentation, the appellant and the licensee were afforded an opportunity for brief rebuttal.

Following Board deliberations regarding among other things, the definition of Maine waste, options for disposal of OBW, the need to handle contaminated sludge, and the waste management hierarchy, James Parker made a motion to grant the appeal. The motion failed for lack of a second.

The Board then voted (6-1-0-0) on a motion by Robert Duchesne, seconded by Robert Sanford, to deny the appeal, affirm the Commissioner's decision, and adopt the proposed order.

The vote was taken pursuant to 38 M.R.S. §§ 341-D(4), §§ 1301 to 1319-Y, §§ 2201- 2236, and 06-096 C.M.R. c. 400, 401, and 405 of the Department's rules.

Board members Mark Draper, Mark Dubois, Robert Duchesne, Susan Lessard, Steven Pelletier, and Robert Sanford voted to support the motion. James Parker voted opposed.

8. State Implementation Plan Revision: Non-Interference Demonstration for the Removal of the Reformulated Gasoline Requirement in Southern Maine.

Staff: Stacy Knapp, Environmental Specialist, Bureau of Air Quality

Ms. Knapp explained the history of the reformulated gasoline (RFG) requirement. In April 2019 the Legislature enacted L.D. 274 "An Act to Allow the Sale of Ethanol-free Gasoline Statewide." This bill provided for the repeal of the RFG sales requirement in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox and Lincoln counties as of November 1, 2020. In order to opt out of the RFG program, Maine must submit a State Implementation Plan (SIP) revision to U.S. EPA demonstrating that elimination of the RFG requirement in southern Maine will not cause or contribute to nonattainment of the national ambient air quality standard for ozone or interfere with the maintenance of the standard. The Department has prepared a demonstration to that effect. Staff requested that the Board post the proposed SIP revision for a 30-day comment period and that, if there is a request for a hearing, the Board authorize a hearing on the proposed SIP revision.

Following staff presentation, the Board voted (7-0-0-0) on a motion by Robert Duchesne, seconded by James Parker, to post the proposed SIP revision to a 30-day public comment period and that a hearing on the proposed SIP revision will be held if one is requested.

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

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