



**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

November 19, 2020

A meeting of the Board of Environmental Protection was held on Thursday, November 19, 2020 by video-conference via Zoom. The 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: Jeff Crawford, Director, Bureau of Air Quality (BAQ);
Eric Kennedy, Director, Division of Licensing and Compliance, BAQ;
Kevin Ostrowski, Senior Meteorologist, BAQ;
Patric Sherman, Assistant Environmental Engineer, BAQ;
Jane Gilbert, Air Licensing Unit Manager, BAQ;
Brian Kavanah, Director, Bureau of Water Quality (BWQ);
Gregg Wood, Director, Division of Water Quality Management, BWQ;
Robert Mohlar, Senior Environmental Engineer, BWQ;
Angela Brewer, Biologist III, BWQ;
Nick Livesay, Director, Bureau of Land Resources (BLR);
Beth Callahan, Project Manager, BLR;
Dillon Shults, Project Manager, BLR;
Dawn Hollowell, Licensing and Compliance Manager, BLR;
Dr. John Hopeck, Senior Geologist, BLR;
Kevin Martin, Compliance and Procedures Specialist, BLR; and
Michael Parker, Environmental Specialist, Bureau of Remediation and Waste Management (BRWM).

Others: Melanie Loyzim, Acting Commissioner
David Madore, Acting Deputy Commissioner
Peggy Bensinger, Assistant Attorney General
Laura Jensen, Assistant Attorney General
William Hinkel, Board Executive Analyst
Cynthia Bertocci, former Executive Analyst
Ruth Ann Burke, BEP Clerk and Administrative Assistant

I. Departmental

Assistant Attorney General Bensinger introduced and Chair Draper welcomed new Assistant Attorneys General Caleb Elwell and Robert Martin.

A. Acting Deputy Commissioner's Comments:

Acting Commissioner Loyzim welcomed the two new AAGs and had no other comments.

B. Chair's Comments:

Chair Draper expressed his gratitude to other Board members and agency staff for working well through all the changes that have occurred in 2020.

C. Executive Analyst's Comments:

Mr. Hinkel briefed the Board on the partial transfer application pending for CMP's NECEC permit, a permit decision that is now before the Board under appeal, and the request filed by the Natural Resources Council of Maine that the Board assume original jurisdiction over the transfer application. Mr. Hinkel noted that on November 13th, he forwarded to all Board members the Natural Resources Council of Maine's request that the Board assume original jurisdiction of NECEC Transmission LLC's application for the transfer of portions of the permit. Mr. Hinkel also forwarded to Board members Acting Commissioner Loyzim's response of November 13th, in which she determined that none of the four criteria for Board assumption of jurisdiction are met with respect to the transfer application. Mr. Hinkel identified that the purpose of his comments was to determine whether the Board members wish to schedule time at a future Board meeting to discuss this matter further, noting that absent any such indication, the Department would continue to process the transfer application for a decision by the Acting Commissioner.

Mr. Duchesne and Ms. Bensinger commented on the Department's Chapter 2 criteria for assumption of Board jurisdiction.

Ms. Lessard requested, and Ms. Bensinger provided, clarification on the pending transfer application and request for Board jurisdiction in the context of the pending appeals of the NECEC Order now under appeal.

Mr. Pelletier questioned how the pending transfer application and pending appeals play into CMP's ability to begin construction. Ms. Bensinger provided a brief summary of filings since issuance of the NECEC Order, a general description of pending decisions of the Court and the Department Commissioner, and the project commencement condition associated with the permit issued by the U.S. Army Corps of Engineers.

Chair Draper observed that no Board members indicated they wanted to schedule time at a future Board meeting to discuss the Acting Commissioner's determination or the Board assuming original jurisdiction of the transfer application.

D. Board Calendar:

Mr. Hinkel stated that a meeting on December 3 may not be necessary and an update would follow.

E. Departmental Orders / Applications Accepted for Processing:

No questions.

II. Regular Agenda Items (Note: All votes taken by roll call. Board votes are recorded in the following order: number voting in favor of a motion – number voting against a motion – number abstaining – number absent.)**1. BEP Meeting Minutes of November 12, 2020**

The Board voted (6-0-1-0) on a motion by Mr. Duchesne, seconded by Mr. Sanford, to approve the minutes of November 12, 2020, as presented.

The vote was taken pursuant to 38 M.R.S. § 341-D. Board members Mr. Draper, Mr. Dubois, Mr. Duchesne, Mr. Parker, Mr. Pelletier, and Mr. Sanford voted to support the motion. Ms. Lessard abstained.

2. Board Report to the Legislature

Staff: William Hinkel, Board Executive Analyst

Pursuant to 38 M.R.S. § 341-D(7), the Board is required to report to the joint standing committee having jurisdiction over natural resources matters by January 15 of the first regular session of each Legislature on the effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the board. A draft report was provided to Board members for their review prior to the meeting.

The Board discussed whether to add language regarding the Environment and Natural Resources Committee's involvement with Department rule Chapter 400 and whether to add detail in the section of the report summarizing administrative consent agreements.

The Board directed Mr. Hinkel to work with Chair Draper to incorporate revisions to the draft report to reflect the discussion and email a revised draft to members for their review and comment.

No vote was taken.

3. Public Hearing, Chapter 100, Definitions Regulation

Staff: Jeffrey S. Crawford, Director, Bureau of Air Quality,

The hearing on Department rule Chapter 100, *Definitions Regulation*, commenced at approximately 10:00 a.m. Mr. Crawford provided a brief introduction on the proposed revision to the definition of "Ozone Transport Region." No persons testified at the hearing. The hearing closed at approximately 10:10 a.m.

Following the public hearing on Chapter 100, the Board reconvened the regular meeting. Board member Duchesne presided over the remainder of the meeting as he was the Presiding Officer for the Nordic Aquafarms matter. Board member Mark Dubois left the meeting; he did not participate in the Board's review of Nordic's applications because he was not able to attend the public hearing.

4. **Nordic Aquafarms, Inc. Applications for Chapter 115 Air Emissions, MEPDES/Waste Discharge License, and Site Location of Development/Natural Resources Protection Act permits (decisions)**

Presiding Officer Duchesne stated that before the Board started its consideration of the proposed Orders each of the parties would be allowed five minutes for a closing argument. He reminded the parties that the record is closed and no references to new evidence, or evidence outside of the record, would be allowed. With respect to Board member participation, Mr. Duchesne commented that Board members recused from participation in one or more of Nordic's applications pursuant to 38 M.R.S. § 341-C(8) would leave the meeting during that portion of the meeting.

The Board heard closing arguments from the following parties:

- Mr. David Losee on behalf of intervenor Upstream Watch;
- Mr. Barry Costa-Pierce on behalf of intervenor University of New England;
- Ms. Kim Tucker on behalf of intervenors Jeffrey R. Mabee, Judith B. Grace, Wayne Canning, David Black, and Maine Lobstering Union;
- Mr. Michael Lannan on behalf of intervenor Northport Village Corporation; and
- Mr. Erik Heim on behalf of the applicant Nordic Aquafarms, Inc.

The following intervenors chose not to present closing arguments:

- Ms. Eleanor Daniels and Ms. Donna Broderick,
- Gulf of Maine Research Institute, and
- The Fish Are Okay.

Mr. Duchesne then recognized Assistant Attorney General Peggy Bensinger who summarized the Board's options with respect to each of the applications:

approve, approve with conditions, direct the staff to modify the draft order in some way, or direct the staff to draft a new order that would deny the application.

Air Emissions Application: Board Chair Mark Draper, who is recused from participation in this application pursuant to 38 M.R.S. § 341-C(8), left the meeting.

The following Department staff were available to respond to Board member questions:

- Jeff Crawford, Director, Bureau of Air Quality;
- Eric Kennedy, Director, Division of Licensing and Compliance;
- Kevin Ostrowski, Senior Meteorologist;
- Patric Sherman, Assistant Environmental Engineer; and
- Jane Gilbert, Air Licensing Unit Manager.

Cynthia Bertocci introduced the Chapter 115 Minor Sources Air Emissions proposed Board order for the Board's consideration. She commented that the Board had reviewed a draft Board order, public comments submitted on the draft order during the 30-day comment period, and staff's response to comments at its deliberative session on October 29, 2020. The Board did not request any changes to the draft order at that time. Assistant Attorney General Laura Jensen then commented that a vote of the Board should address both the proposed Board order (license) and supporting Addendum A response to comments.

Following deliberations, the Board voted (5-0-0-2) on a motion by James Parker, seconded by Steven Pelletier, to approve Nordic's application for a Chapter 115 Minor Source Air Emissions license and adopt the proposed Board order and Addendum A as presented.

The vote was taken in accordance with 38 M.R.S. §§ 341-D(2), 344, and §§ 581 to 610-D, and associated rules. Board members Robert Duchesne, Susan Lessard, James Parker, Steven Pelletier, and Robert Sanford voted to support the motion. Board members Mark Draper and Mark Dubois were absent.

MEPDES/Waste Discharge License Application: Board members Mark Draper and Susan Lessard are recused from participation in this application pursuant to 38 M.R.S. § 341-C(8) and did not attend this portion of the meeting.

The following Department staff were available to respond to Board member questions:

- Brian Kavanah, Director, Bureau of Water Quality;
- Gregg Wood, Director, Division of Water Quality Management;

- Robert Mohlar, Senior Environmental Engineer; and
- Angela Brewer, Biologist III, Bureau of Water Quality.

Ms. Bertocci introduced the agenda item. She commented that a draft Board order and draft Fact Sheet had been available for a 30-day public comment period, followed by an additional 12-day comment period. At its November 12, 2020 meeting, the Board reviewed comments received on the initial draft, including comments received during the 12-day extension of the comment period, a revised draft Board order, and a revised Fact Sheet including a response to comments. At that meeting, the Board requested several minor corrections and clarifications. Ms. Bertocci commented that these changes had been incorporated in the proposed Board order and Fact Sheet currently before the Board for consideration. Ms. Bertocci also noted that an additional errata sheet had been distributed to Board members and the parties prior to the meeting. Assistant Attorney General Laura Jensen commented on the structure of the proposed Board order (license) and the supporting Fact Sheet, noting that any vote on the proposed order should incorporate the Fact Sheet.

Following deliberations, the Board voted (4-0-0-3) on a motion by Steven Pelletier, seconded by James Parker, to approve Nordic's application for a MEPDES/Waste Discharge License and adopt the proposed Board order, Fact Sheet, and errata sheet as presented.

The vote was taken in accordance with 38 M.R.S. § 341-D(2), §§ 411 to 424-B, and §§ 464 to 470; the Clean Water Act, Title 33 U.S.C. § 1251 et seq.; and associated rules.

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

Site Location of Development/Natural Resources Protection Act and Clean Water Act Section 401 Water Quality Certification Application: All members except Mark Dubois participated in this portion of the meeting.

The following staff members were available to respond to Board member questions:

- Nick Livesay, Director, Bureau of Land Resources;
- Beth Callahan, Project Manager;
- Dillon Shults, Project Manager;
- Dawn Hallowell, Licensing and Compliance Manager;
- Dr. John Hopeck, Senior Geologist;
- Kevin Martin, Compliance and Procedures Specialist; and
- Michael Parker, Environmental Specialist, BRWM.

Ms. Bertocci introduced the proposed Board order. A draft Board order had been available for a 30-day public comment period. The Board reviewed the draft Board order, comments received on the draft, and a revised draft Board order at its October 29, 2020 meeting. At that meeting, the Board suggested possible additional revisions to the revised draft Board order. These revisions were included in the proposed Board order before the Board for consideration. Mr. Livesay reviewed the suggested possible revisions, including additional conditions regarding development of an emergency response and facility closure plan, and a Water Resource Monitoring Plan that would expressly address private wells in the vicinity of the proposed project.

Following deliberations, the Board voted (6-0-0-1) on a motion by James Parker, seconded by Mark Draper, to approve Nordic's application for a Site Location of Development/Natural Resources Protection Act permit and Water Quality Certification and adopt the proposed Board order as presented.

The vote was taken pursuant to 38 M.R.S. § 341-D(2), §§ 480-A to 480-JJ, §§ 481 to 489-E, Section 401 (33 U.S.C. § 1341) of the Clean Water Act, and associated rules.

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

(The Board meeting adjourned at approximately 11:30 a.m.)

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