



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**

March 5, 2020

A meeting of the Board of Environmental Protection was held on Thursday, March 5, 2020 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: Mark Draper, Robert Duchesne, Susan Lessard, James Parker, Steven Pelletier, and Robert Sanford. Board members Mark Dubois was absent.

Staff: Paula Clark, Director, Division of Solid Waste Management
Jeffrey Crawford, Director, Bureau of Air Quality
Erle Townsend, Office of the Commissioner
Andy Johnson, Director, Division of Air Quality Assessment

Others: Jerry Reid, Commissioner
Katherine Tierney, AAG (for Chapter 400)
Laura Jensen, AAG (for Chapters 156 and 158)
Cynthia Bertocci, Board Executive Analyst
Ruth Ann Burke, BEP Clerk and Administrative Assistant

I. Departmental

A. Commissioner's Comments:

Supplemental Budget. Commissioner Reid provided an update on the Governor's proposed supplemental budget. The proposal includes 10 General Fund positions; \$4.5 million for Uncontrolled Sites, and \$4.5 million for wastewater infrastructure grants. The Department had strong support from the Environment and Natural Resources Committee (ENR); however, these requests have been tabled in the Appropriations Committee. The Department expects a major increase in work load associated with proposed solar projects and does not have the resources to process the number of applications anticipated.

Extended Producer Responsibility (EPR). The ENR Committee held a work session this week on the EPR bill that addresses packaging (LD 1431). The bill would create incentives for the use of recyclable materials in packaging and impose a fee on producers with the revenues going to municipalities to support recycling and recycling infrastructure. The bill is ambitious. The Department is hopeful that a framework bill could be enacted this session with the details to be handled through rulemaking.

B. Board Chair's Comments: None

C. Executive Analyst's Comments: None

D. Board Calendar: The Board will not meet on March 19th. There will be a special meeting on April 9th for members Duchesne, Parker, Pelletier, and Sanford to address matters pertaining to the Nordic proceeding. At this time, I anticipate that the Board will also meet on April 16th.

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

II. Regular Agenda Items

1. BEP Meeting Minutes. February 6, 2020

The Board voted (5-0-1-1) on a motion by James Parker, seconded by Robert Duchesne, to approve the minutes of February 6, 2020 as presented.

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

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

2. Chapter 400 Maine Solid Waste Management Rules, General Provisions / Petition for Rulemaking (post for public hearing).

Staff: Paula Clark, Director, Division of Solid Waste Management

Ms. Clark introduced the petition for rulemaking which was submitted by Hillary Lister of Maine Matters pursuant to 5 M.R.S. section 8055. The petition was signed by 257 persons thereby requiring the Department to initiate rulemaking on the petition. The stated purpose of the petition is:

“clarify requirements for Public Benefit Determinations relating to approval of waste facilities, by ensuring that the definition of “waste that is generated within the State” accurately describes the sources of waste materials disposed in the State, and by requiring Public Benefit Determinations to include consideration of the impacts on health and welfare, environmental justice and equal protections for communities where waste facilities operate.”

Ms. Clark provided the Board will a copy of Chapter 400 which indicated where the amendments requested by the petitioners would be incorporated into the existing rule. She noted that the rulemaking would be routine technical.

Following discussion, the Board voted (6-0-0-1) on a motion by Robert Duchesne, seconded by James Parker, to post the petitioners’ proposed amendments to Chapter 400 for public hearing. A hearing date was not set.

The vote was taken pursuant to 38 M.R.S. § 341-H, §§ 1304(1), (1-B), (13), (13-A), § 1310-N(9), and § 1301 et seq.

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

3. Chapter 156 CO₂ Budget Trading Program / Proposed Amendments (post for public hearing)
and
Chapter 158 CO₂ Budget Trading Program Auction Process / Proposed Amendments (post for public hearing)

Staff: Jeffrey Crawford, Director, Bureau of Air Quality
Erle Townsend, Office of the Commissioner

Mr. Townsend and Mr. Crawford provided an overview of the proposed amendments and responded to Board member questions. These rules establish the operating parameters for the state’s participation in the Regional Greenhouse Gas Initiative, a regional cap-and-trade program that limits and reduces CO₂ emissions from affected fossil fuel-burning power generation facilities.

The purpose of the rulemaking proposal is to update the Department's rules to align with the latest version of the RGGI model rule. The model rule is reviewed and updated periodically. This update would remove two categories of offset projects and establish the emissions cap and the rate of cap reduction through 2030. This update would also make corrections and edits for clarity and consistency.

Following staff presentation and response to questions, the Board voted (6-0-0-1) on a motion by James Parker, seconded by Steven Pelletier, to post proposed amendments to Chapter 156 and Chapter 158 for public hearing. A hearing date was not set.

The vote was taken pursuant to 38 M.R.S. §§ 341-H, 585-A, 580, 580-A, 580-B, and 580-C.

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

4. South Portland / Portland VOC Air Quality Monitoring Project / Informational Session.

Staff: Jeffrey Crawford, Director, Bureau of Air Quality
Andy Johnson, Director, Division of Air Quality Assessment

Mr. Crawford explained that the Department's air monitoring program in South Portland is a response to concerns initially identified by Global Partners (a petroleum distribution company) at its facility in Chelsea, Massachusetts. Global determined that emissions from its asphalt and residual oil (No. 6) tanks were much higher than anticipated and reported its findings to EPA. EPA subsequently required testing at several facilities in New England, including Global and Sprague Energy facilities in Maine. Testing indicated that air emissions from tanks containing certain products such as asphalt and residual oils are higher than estimated through modeling due, at least in part, to the fact that these products are heated to reduce viscosity thus driving off VOCs. In December 2019, EPA finalized a Consent Decree with Global Partners which requires the facility in South Portland to revise its air emissions license to limit the number of tanks heated, the number of days tanks are heated, and product throughput and thereby limit emissions. The Department has accepted Global's application for processing and will be holding a meeting on the application in South Portland.

In response to concerns regarding air emissions from petroleum tanks, the Department has worked with the City of South Portland to design an air monitoring program to collect data and address public health concerns.

Following Mr. Crawford's summary of the issues, Mr. Johnson reviewed the Department's air monitoring program including: meetings with city officials and

citizens to design the program, the selection of monitoring locations and methods, and the findings from Phase I of the program.

No votes were taken.

The Board voted (6-0-0-1) on a motion by James Parker, seconded by Steven Pelletier, to adjourn the Board meeting.

(The Board meeting adjourned at approximately 10:55 a.m.)