

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR

Susan M. Lessard, Chair

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Board Clerk

December 29, 2023

Senator Stacy Brenner
Representative Lori Gramlich
Committee on Environment and Natural Resources
c/o Legislative Information Office
100 State House Station
Augusta, Maine 04333

**Re: Board of Environmental Protection
Report to the Second Regular Session of the 131st Maine State Legislature**

Dear Senator Brenner, Representative Gramlich, and Committee Members:

Pursuant to 38 M.R.S. § 341-D(7), the Board of Environmental Protection is required to report to the Joint Standing Committee on Environment and Natural Resources by January 15 of the first regular session of the Legislature on the effectiveness of the State's environmental laws and any recommendations for the amending those laws or the laws governing the Board. Although not required each year, in practice, the Board reports on its activities annually to the Committee. The enclosed report, which summarizes the Board's responsibilities and activities in calendar year 2023, is respectfully submitted to the Second Regular Session of the 131st Maine State Legislature.

If the Committee would like to discuss this report, I am available to meet with you at your convenience. I can be reached by contacting Board Executive Analyst William Hinkel at 207-314-1458 or bill.hinkel@maine.gov.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Susan M. Lessard'.

Susan M. Lessard, Chair
Board of Environmental Protection

Enclosure: Board Report 2023

cc: Melanie Loyzim, DEP Commissioner

Enclosure(s)

Report to the Joint Standing Committee on Environment and Natural Resources

Board of Environmental Protection Summary of Activities in Calendar Year 2023 and Recommendations for Committee Consideration

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**Board of Environmental Protection
Report to the Joint Standing Committee on
Environment and Natural Resources**

Summary of Activities in Calendar Year 2023

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Board of Environmental Protection
Report to the Joint Standing Committee on
Environment and Natural Resources

Summary of Activities in Calendar Year 2023

I. INTRODUCTION

Maine law requires the Board of Environmental Protection (Board) to report to the joint standing committee having jurisdiction over natural resource 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. 38 M.R.S. § 341-D(7). Although not required each year, in practice, the Board reports on its activities annually to the Joint Standing Committee on Environment and Natural Resources (Committee). This report is submitted to the Second Regular Session of the 131st Maine State Legislature.

Section II of this report provides an overview of the Board’s membership, duties, and responsibilities. Section III summarizes matters before the Board in 2023, including the status of any matters pending before the Board at year-end.

II. BOARD MEMBERSHIP, DUTIES, AND RESPONSIBILITIES

A. Membership. The Board is a seven-member citizen board whose members are appointed by the Governor and approved by the Legislature. 38 M.R.S. § 341-C. The purpose of the Board is to “provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions.” 38 M.R.S. § 341-B.

Board members are appointed for staggered four-year terms, and a member may not serve more than two consecutive four-year terms. The first four-year term expired in 2023 for three Board members – Robert Duchesne, Steven Pelletier, and Robert Sanford – and each seeks reappointment by the Governor and confirmation by the Legislature during the Second Regular Session of the 131st Legislature. Susan Lessard was appointed by the Governor to serve as the Board Chair. Board member biographies are provided as Attachment A to this report.

- B. Responsibilities. The Board’s responsibilities as set forth in 38 M.R.S. § 341-D and § 341-H are summarized below. Proceedings before the Board are governed by the Maine Administrative Procedure Act, the Board’s statutes and procedural rules governing the various types of proceedings (e.g., rulemaking, appeal proceedings, adjudicatory hearings, etc.), and by program-specific statutes and rules, in the subject areas of air emissions, waste management, and land use. All meetings of the Board are publicized in advance and open to the public. The Board maintains a webpage with member biographies, meeting materials, information on pending matters of broad public interest, and guidance to facilitate public participation in matters pending before the Board.
1. Rulemaking. The Board has authority to adopt, amend, and repeal rules, including emergency rules necessary for the interpretation, implementation and enforcement of the laws administered by the Department. The Board also has authority to adopt, amend, and repeal rules as necessary for the conduct of the Department’s business.
 2. Appeals of Commissioner Licensing and Enforcement Actions. An aggrieved person may appeal to the Board a final license or permit decision of the Commissioner. The Board also hears appeals of emergency orders and unilateral compliance and clean-up orders issued by the Commissioner pursuant to 38 M.R.S. § 347-A(3).
 3. Appeals of Ground and Surface Waters Clean-up and Response Fund Claim Decisions. The Ground and Surface Waters Clean-up and Response Fund (Fund) provides for the investigation, mitigation and removal of discharges or threats of discharge of oil from

underground and aboveground oil storage tank systems, including the restoration of contaminated water supplies. Costs eligible for coverage by the Fund are expenses that are necessary to clean up discharges of oil to the satisfaction of the Commissioner, are cost-effective and technologically feasible and reliable, effectively mitigate or minimize damages, and provide adequate protection of public health and welfare and the environment. The Department administers Fund coverage claim applications related to discharges of oil from underground storage tank systems while the State Fire Marshal administers Fund coverage claim applications related to discharges of oil from aboveground storage tank systems. The Department (for underground storage tanks) or State Fire Marshal (for aboveground storage tanks) will issue an order that specifies eligibility and deductibles.

The 131st Legislature passed L.D. 74, *An Act to Update the Responsibilities of the Clean-up and Response Fund Review Board*, and on May 8, 2023, the Governor signed the bill into law (P.L. 2023, ch. 61). The new law shifts responsibility to hear and decide appeals of insurance claim-related decisions of the Commissioner and the State Fire Marshal under 38 M.R.S. § 568-A from the Clean-up and Response Fund Review Board to the Board of Environmental Protection. The Board has initiated rulemaking (see Chapter 2 in Section III (A)(1) of this Report) to adopt new rules necessary to hear and decide such appeals.

4. Decisions on Certain Permit Applications. The Board decides each application for approval of permits and licenses that in its judgment represents a project of statewide significance based on statutory criteria. 38 M.R.S. § 341-D(2). Additionally, the Department's statutes specify that certain applications, such as those pertaining to commercial hazardous waste facilities, must be reviewed and decided by the Board.
5. License Modification or Corrective Action. At the request of the Commissioner and after written notice and opportunity for hearing, the Board may modify, in whole or in part, any license, or issue an order prescribing necessary corrective action whenever the Board finds that any of the criteria at 38 M.R.S. § 342(11-B) are met.

6. Administrative Consent Agreements. Any administrative consent agreement to resolve a violation of laws administered by the Department must be approved by the Board to be valid. After negotiating a proposed resolution pursuant to 38 M.R.S. § 347-A(1), the Commissioner brings an administrative consent agreement to the Board for consideration, and the Board may approve it or send it back with instructions for further consideration or negotiations by the Department.

7. Recommendations to the Legislature. The Board is charged with making recommendations to the Legislature regarding the environmental laws of the State and any recommendations for amending those laws or the laws governing the Board.

8. Other Duties. The Board must carry out other duties as required by law. Other duties specified in statute include, among other things, holding hearings on and making recommendations to the classification of waters of the State it deems necessary to the Legislature.

III. SUMMARY OF MATTERS BEFORE THE BOARD IN 2023

Figure 1 presents a summary of the type and number of matters completed by the Board in 2023.

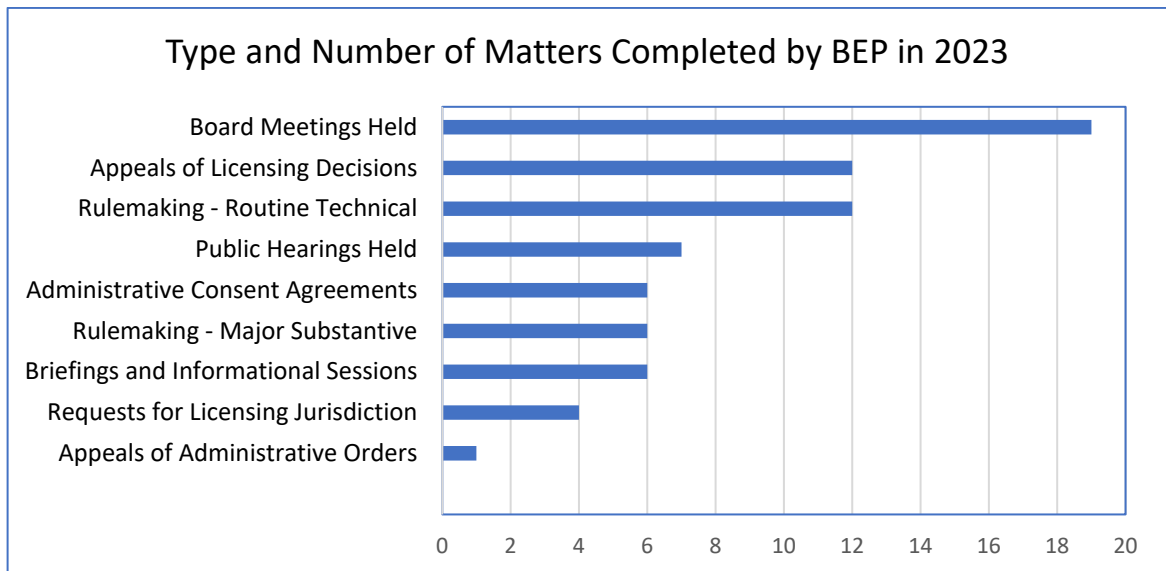


Figure 1. Type and number of matters completed by the Board in 2023.

A. Rulemaking

The Board acted on 18 rulemaking proposals in calendar year 2023. A summary of the rulemaking actions follows.

1. Chapter 2, *Processing of Applications and Other Administrative Matters*. The Department initiated rulemaking in calendar year 2023 to repeal and replace the existing Chapter 2 rule, *Rule Regarding the Processing of Applications and Other Administrative Matters*. Chapter 2 is the primary rule that governs the administrative procedures of the Department, including the Board, for actions including the processing of license applications, appeals of Commissioner license decisions, license revocations, suspensions, and surrenders, and other administrative matters, such as requests for an advisory ruling. The Department proposes to repeal and replace Chapter 2 to improve the clarity, organization, and grammar of the rule; to revise or establish new procedures based on the Department's experience applying the rule across the wide range of programs administered by the Department; and to incorporate recent legislative changes to the Board's responsibilities and duties. Chapter 2 is a routine technical rule.

On December 7, 2023, the Board voted to post the proposed Chapter 2 rule for comment and a public hearing. Further rulemaking activity on the proposed Chapter 2 rule is anticipated in 2024.

2. Chapter 80, *Reduction of Toxics in Packaging*. The Department initiated rulemaking in calendar year 2023 to amend the existing Chapter 80 rule, which establishes sales prohibitions on the use of specific additives in packaging. The purpose of the rulemaking proposal is to update the existing rule Chapter 80 in accordance with changes in the law. The proposed changes also include updating language and formatting, and the addition of an existing statutory sales prohibition on the use of phthalates in food packaging. The proposal also adds a new section 5, establishing a sales prohibition on the use of specific applications of intentionally added PFAS to certain types of food packaging. The addition of the new section 5 is major substantive

rulemaking. The rule amendments related to food packaging are authorized by 32 M.R.S. § 1737, which requires that the Department adopt rules necessary for the implementation, administration, and enforcement of 32 M.R.S. §§ 1731-1738, *Reduction of Toxics in Packaging*.

The Board held a hearing on the proposed rule on November 16, 2023. Further rulemaking activity on the proposed Chapter 80 rule amendments is anticipated in 2024.

3. Chapter 90, *Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances*. The Department initiated rulemaking in calendar year 2023 to provide guidance on the notification requirements and sales prohibitions for products and product components containing intentionally added PFAS pursuant to 38 M.R.S. § 1614. Title 38, § 1614 requires manufacturers of products with intentionally added PFAS to notify the Department of the presence of intentionally added PFAS in those products beginning January 1, 2023. The law also prohibits the sale of carpets or rugs, as well as the sale of fabric treatments, that contain intentionally added PFAS beginning on January 1, 2023. Effective January 1, 2030, any product containing intentionally added PFAS may not be sold in Maine unless the use of PFAS in the product is specifically designated as a currently unavoidable use by the Department. Chapter 90 is a routine technical rule.

The Board held a hearing on the proposed rule on April 20, 2023. Further rulemaking activity on the proposed Chapter 90 rule is anticipated in 2024.

4. Chapter 101, *Visible Emissions Regulation*. The Department initiated rulemaking in calendar year 2023 to amend the existing Chapter 101 rule, which establishes visible emission standards, also known as opacity limits, for facilities, both licensed and unlicensed, throughout the State. A State Implementation Plan (SIP) is a collection of regulations used by a state to fulfill requirements of the Clean Air Act. Chapter 101 is part of Maine's SIP.

Court decisions involving the U.S. Environmental Protection Agency (EPA) have held that blanket exemptions for periods of Startup, Shutdown, and Malfunction (SSM) are not allowed in SIPs. EPA acted in May 2015 to ensure states have rules that are fully consistent with the Clean Air Act. The SIPs of 36 states were found to include inappropriate SSM exemptions, and EPA issued a “SIP Call” requiring those states to revise their rules to remove such exemptions. In accordance with the 2015 SIP Call, Maine was required to modify Chapter 101. In response, the Department completed rulemaking in February 2019, and the updated Chapter 101 was submitted to EPA for inclusion in Maine’s SIP in May 2019. However, the federal administration at the time did not immediately move forward with reviewing the State’s submission.

In October 2022, EPA notified the Department that the new version of Chapter 101 had several deficiencies that would prevent its approval into the SIP. Deficiencies noted included blanket exemptions for emission units subject to certain federal rules, the use of work practice standards that may be practically unenforceable, and the lack of technical demonstration justifying the need and appropriateness of alternative emission standards. This 2023 rulemaking action served to rectify language and requirements to bring Chapter 101 into compliance with the SIP Call and Clean Air Act requirements. Chapter 101 is a routine technical rule.

The Board held a hearing on the proposed rule amendments to Chapter 101 on June 15, 2023, and adopted the rule on October 19, 2023. The rule became effective on January 1, 2024.

5. Chapter 119, *Motor Vehicle Fuel Volatility Requirements*. The Department initiated rulemaking in calendar year 2022 to amend the existing Chapter 119 rule, which establishes a maximum allowable volatility for motor vehicle fuel during the period from May 1 through September 15 of each year, to remove requirements for reformulated gasoline in conformance with Maine statute and federal rules. The 129th Maine Legislature repealed the requirement to sell only reformulated gasoline (RFG) in certain counties in southern Maine as of November 1, 2020. After petitioning U.S. EPA

and submitting a State Implementation Plan (SIP) revision, EPA approved Maine's petition and determined that the removal of the federal RFG program for the Southern Maine Area is consistent with the applicable provisions of the Clean Air Act and EPA's regulations. The amendments to Chapter 119 remove the RFG requirement which is no longer required in the Southern Maine Area due to EPA's approval. Chapter 119 is a major substantive rule pursuant to 38 M.R.S. § 585-A.

The Board held a hearing on the proposed rule amendments on November 3, 2022, and provisionally adopted the rule on February 16, 2023. The provisionally-adopted rule was approved by the Legislature without changes, Resolve 2023, c. 25, and signed by the Governor as Emergency Legislation on June 5, 2023. The Board finally adopted Chapter 119 on July 20, 2023, and the rule became effective on September 14, 2023.

6. Chapter 127-A, *Advanced Clean Cars II Program*. On May 23, 2023, the Department received a citizen petition to initiate rulemaking pursuant to 5 M.R.S. § 8055. The petition was submitted by the Natural Resources Council of Maine and included the certified signatures of more than 150 registered Maine voters. The petition proposes to promulgate a new rule establishing motor vehicle emission standards for new passenger cars, light-duty trucks, and medium-duty vehicles by incorporating the requirements of the California Advanced Clean Cars II regulations, beginning with the 2027 model year and continuing through the 2032 model year.

The proposed rule initially required an increasing percentage of new light-duty vehicle sales to be zero emission vehicles (ZEV) sales each year, starting with 43 percent ZEV sales in model year 2027, and leading to 82 percent in model year 2032. The Advanced Clean Cars II program also includes revised pollutant standards for passenger cars, light-duty trucks, and medium-duty vehicles with internal combustion engines. The proposed Chapter 127-A rule is a routine technical rule.

The Board was scheduled to vote on the proposed rule on December 21, 2023; however, that meeting was postponed due to state-wide impacts from a severe storm, and the

Board was unable to vote on the proposed rule in calendar year 2023. As a result of the carryover of the proposed rule to calendar year 2024, the Department posted an amended version of the proposed rule on December 21, 2023, for additional comment in accordance with 5 M.R.S. § 8052(5)(B). Further rulemaking activity on the proposed Chapter 127-A rule is anticipated in 2024.

7. Chapter 128, *Advanced Clean Trucks Program*. On May 23, 2023, the Department received a citizen petition to initiate rulemaking pursuant to 5 M.R.S. § 8055. The petition was submitted by the Conservation Law Foundation, the Sierra Club and the Natural Resources Council of Maine, and included the certified signatures of more than 150 registered Maine voters. The petition proposes to adopt California's Advanced Clean Trucks regulation to encourage the sale of electric medium- and heavy-duty vehicles greater than 8,500 pounds GVWR. The proposed Chapter 128 rule is a routine technical rule.

The Board was scheduled on December 21, 2023, to consider further rulemaking action on the proposed rule; however, that meeting was postponed due to state-wide impacts from a severe storm, and the Board was therefore unable to vote on the proposed rule in calendar year 2023. Pursuant to 5 M.R.S. § 8052(7)(A), a rule may not take effect unless the agency adopts it within 120 days of the close of the comment period. The comment period for the proposed Chapter 127 closed on August 28, 2023, and the rule was not adopted within 120 days of the close of the comment period. Therefore, the proposed Chapter 127 rulemaking action expired without adoption of the rule. No further rulemaking activity on Chapter 127 is anticipated at this time.

8. Chapter 143, *New Source Performance Standards (NSPS)*. In conjunction with proposed revisions to Chapter 144 discussed below, the Department initiated rulemaking in calendar year 2022 to amend existing rule Chapter 143. Chapter 143 enumerates the sections of Part 60 of the federal Clean Air Act, for which enforcement authority has been delegated to the State of Maine, to incorporate the new and amended new source performance standards that have been added between July 1, 2013, and July

1, 2022, for which the Department has also chosen to take delegation. Chapter 143 is a routine technical rule.

The Board held a hearing on the proposed amendments to Chapter 143 on December 15, 2022, and adopted the rule on February 16, 2023. The rule became effective on March 13, 2023.

9. Chapter 144, *National Emission Standards for Hazardous Air Pollutants (NESHAP)*. In conjunction with revisions to Chapter 143 discussed above, the Department initiated rulemaking in calendar year 2022 to amend existing rule Chapter 144. Chapter 144 enumerates the sections of Part 60 of the federal Clean Air Act, for which enforcement authority has been delegated to the State of Maine, to incorporate the new and amended national emission standards for hazardous air pollutants that have been added between July 1, 2013, and July 1, 2022, for which the Department has chosen to take delegation. Chapter 144 is a routine technical rule.

The Board held a hearing on the proposed amendments to Chapter 144 on December 15, 2022, and adopted the rule on February 16, 2023. The rule became effective on March 13, 2023.

10. Chapter 167, *Tracking and Reporting Gross and Net Annual Greenhouse Gas Emissions*. The Department initiated rulemaking in calendar year 2023 to amend the existing Chapter 167 rule to align with statutory requirements. Title 38, § 576-A (4) requires “By July 1, 2021, the Department shall adopt rules to track and report to the Legislature on gross annual greenhouse gas emissions and net annual greenhouse gas emissions.” Chapter 167 was originally adopted in July 2021 to meet this requirement. Chapter 167 establishes methods for the calculation of annual greenhouse gas emissions as required, outlining the methods, data sources, and assumptions used to compile and report these inventories. Methods and data sources used to calculate greenhouse gas emissions and compile the inventory are regularly updated. The Department proposes updates to Chapter 167 to best align with these recent updates.

These emissions estimates are used to assess Maine’s progress toward meeting the gross greenhouse gas reductions set out in 38 M.R.S. § 576-A (1) and (3). The net emissions estimate will be used to gauge Maine’s progress toward the 2045 carbon neutrality goal as stated in 38 M.R.S. § 576-A (2-A). The Department will use these methods to measure progress toward these reductions and toward the goals of the climate action plan described in 38 M.R.S. § 577. The proposed amendments to Chapter 167 are routine technical.

The proposed amendments to Chapter 167 were posted for public comment on September 26, 2023. Further rulemaking activity on the proposed Chapter 167 rule is anticipated in 2024.

11. Chapter 171, *Control of Petroleum Storage Facilities*. A new major substantive rule, Chapter 171 establishes new control, operating, inspection, testing, monitoring, recordkeeping, and reporting requirements for petroleum storage facilities throughout the State. The Board provisionally adopted Chapter 171 on May 5, 2022. In July 2022, the Board included a cover letter with the submission to the Legislature of the provisionally-adopted Chapter 171 rule, noting that the obligation imposed by the new law on the Department and the regulated community may not provide the intended outcome to members of the public seeking clear information about the potential contribution of a single facility on ambient air quality.

The Department submitted the provisionally-adopted rule to the Legislature for review and approval on July 21, 2022, and the Legislature accepted the Department’s submission on August 5, 2022. Because the 130th Legislature had already adjourned, the provisionally-adopted rule was scheduled for legislative review during the 131st Legislature. The Joint Standing Committee on Environment and Natural Resources considered the Board’s comments during its deliberations; however, the Committee ultimately decided not to recommend any changes to the provisionally-adopted rule. The provisionally-adopted rule was subsequently approved by the Legislature without changes, Resolve 2023, c.10, and signed by the Governor as Emergency Legislation on

May 8, 2023. The Board finally adopted Chapter 171 on June 15, 2023, and the rule became effective on August 4, 2023.

12. Chapter 200, *Metallic Mineral Exploration, Advanced Exploration and Mining*. The Department initiated rulemaking in 2023 to amend Chapter 200 in response to P.L. 2023, ch. 398, *An Act to Support Extraction of Common Minerals by Amending the Maine Metallic Mineral Mining Act*, which was approved by the Governor on July 7, 2023. The new law allows a person to apply to the Department for exclusion from the requirements of Chapter 200 for the physical extraction, crushing, grinding, sorting, or storage of metallic minerals. Chapter 200 is a major substantive rule pursuant to 38 M.R.S. § 490-NN(B).

On December 7, 2023, the Board voted to post the proposed amendments to Chapter 200 for public comment and a public hearing. Further rulemaking activity on the proposed Chapter 200 rule is anticipated in 2024.

13. Chapter 263, *Maine Comprehensive And Limited Environmental Laboratory Accreditation Rule*. The Department, jointly with the Department of Health and Human Services, initiated rulemaking to amend the existing Chapter 263 rule. The rule establishes standards for the accreditation of laboratories producing compliance data for programs administered by the Department and Department of Health and Human Services. The amendments update references to federal requirements, update the laboratory accreditation fee schedule, and allow the use of laboratory methods most recently approved by the U.S. Environmental Protection Agency. Chapter 263 is a routine technical rule.

The Board held a hearing on the proposed amendments to Chapter 263 on November 17, 2022, and adopted Chapter 263 on February 16, 2023. The rule became effective on March 15, 2023.

14. Chapter 305, *Natural Resource Protection Act Permit by Rule*. Prior to 2021, certain minor expansions of structures in coastal sand dunes were exempted from the Natural Resource Protection Act (NRPA) permitting requirements, and no review or approval was required. In 2021, P.L. Ch. 186 (L.D. 1635) removed that exemption and replaced it with a provision allowing these same minor expansions through a NRPA permit by rule process. The purpose of these revisions to Chapter 305 is to bring the Department's rules into alignment with statutory changes concerning minor expansions in coastal sand dunes and to allow some beach nourishment projects to qualify for NRPA permit by rule. The changes to Chapter 305, section 16, *Activities in coastal sand dunes*, are major substantive.

The Board provisionally adopted the amendments to Section 16 of the rule on December 15, 2022. The provisionally-adopted rule was approved by the Legislature without changes, Resolve 2023, c.8, and signed by the Governor on April 21, 2023. The Department Board finally adopted Chapter 305, section 16 on November 2, 2023, and the rule became effective on December 9, 2023.

15. Chapter 355, *Coastal Sand Dune Rules*. The Department initiated rulemaking in calendar year 2023 to amend the existing Chapter 355 rule to update the Coastal Sand Dune Geology Map reference. Coastal sand dune systems are a protected natural resource under Maine's Natural Resources Protection Act (NRPA), 38 M.R.S. §§ 480-A–480-JJ. In describing coastal sand dunes, Chapter 355 currently cites outdated and discontinued maps and photos (dated 2001) which depict most, but not all, of the regulated sand dune systems. The proposed rulemaking would update the reference to cite the most recent Coastal Sand Dune Maps prepared by the Maine Geological Survey dated 2023. This reflects the best scientific understanding of where these protected natural resources exist in Maine. The proposed amendments to Chapter 355 are major substantive pursuant to 38 M.R.S. § 480-AA.

The Board held a hearing on the proposed amendments to Chapter 355 on September 21, 2023, and provisionally adopted the rule on November 16, 2023. Further rulemaking

activity on the proposed amendments to Chapter 355 is anticipated following action on the rule by the Legislature in 2024.

16. Chapter 531, *Wastewater Treatment Plant Operator Certification*. The Department initiated rulemaking in calendar year 2023 to repeal and replace existing Chapter 531. The purpose of the Chapter 531 rulemaking action was to establish criteria for the classification of wastewater treatment plants and requirements for certification as an operator of a wastewater treatment plant under the authority of 32 M.R.S. § 4179. Chapter 531 is a routine technical rule.

The Board adopted the rule on May 18, 2023, and the rule became effective on July 24, 2023.

17. Chapter 526, *Cooling Water Intake Structures*. The Department initiated rulemaking in calendar year 2023 to adopt a new rule, Chapter 526, which would establish requirements that apply to cooling water intake structures at new and existing facilities that are subject to section 316(b) of the Clean Water Act (33 U.S.C. § 1326(b)). These proposed requirements include standards for minimizing adverse environmental impact associated with the use of cooling water intake structures, procedures for establishing appropriate technology requirements at regulated facilities, and monitoring, reporting, and record keeping requirements. Chapter 526 is a routine technical rule.

The Board held a hearing on the proposed Chapter 526 on December 7, 2023. Further rulemaking activity on the proposed Chapter 526 is anticipated in 2024.

18. Chapter 600, *Oil Discharge Prevention and Pollution Control Rules for Marine Oil Terminals, Transportation Pipeline and Vessels*. The Department initiated rulemaking in calendar year 2022 to amend the existing Chapter 600 rule, which establishes standards for the siting, design, operation, and closure of marine oil terminals, transportation pipelines, and vessels, to incorporate legislative changes completed since the last rule amendment made in 1999, and new design, operation, and planning

requirements for climate change. The rule amendments related to climate change are derived from recommendations made by the Scientific and Technical Subcommittee of the Maine Climate Council and the subcommittee's report, *Scientific Assessment of Climate Change and Its Effects in Maine*. In *Result of Analysis Required by 2021 Public Resolve, Chapter 67, Resolve, To Analyze the Impact of Sea Level Rise*, submitted to the Joint Standing Committee on Environment and Natural Resources in January 2022, the Department identified Chapter 600 as one of the rules proposed for amendments to incorporate sea level rise in siting provisions and spill containment requirements. Chapter 600 is a routine technical rule.

The Board held a hearing on the proposed amendments to Chapter 600 on December 15, 2022, and adopted the rule on May 4, 2023. The rule became effective on June 6, 2023.

B. Appeals of Commissioner Licensing Decisions

If an applicant or other person is aggrieved by a licensing decision of the Commissioner, the Commissioner's decision may be appealed to the Board. Under provisions of 38 M.R.S. § 341-D(4), the Board may affirm the Commissioner's decision, amend the Commissioner's decision, reverse the Commissioner's decision, or remand the matter to the Commissioner for further proceedings. The Board may, at its discretion, also hold a hearing on an appeal. In an appeal proceeding, the Board is not bound by the Commissioner's findings of fact or conclusions of law. The Board's decision on appeal may be appealed to Superior Court (or directly to the Law Court in the case of an expedited wind energy development). In an appeal to the Board, the parties may pursue various forms of alternative dispute resolution in an effort to reach a resolution that is satisfactory to all parties.

Appeals of Commissioner licensing decisions considered by the Board in 2023 are summarized below.

1. Almighty Waste, Inc. On January 25, 2023, the Commissioner issued an order denying the application of Almighty Waste, Inc. for renewal of its Non-Hazardous Waste Transporter License. On February 2, 2023, Almighty Waste, Inc. filed with the Board a timely appeal of the Commissioner's Order. The Board voted to grant the appeal and reverse the Commissioner's Order on April 20, 2023.

2. Central Maine Power Company and NECEC Transmission LLC. On May 11, 2020, the Commissioner issued an order approving with conditions the application of Central Maine Power Company (CMP) for a combined Site Location of Development Law and Natural Resources Protection Act permit to construct the New England Clean Energy Connect project. On May 7, 2021, the Commissioner issued a Minor Revision Order to CMP and NECEC Transmission, LLC for numerous minor changes to the project as approved in the May 11, 2020, Order.

On June 7, 2021, the Natural Resources Council of Maine (NRCM) filed with the Board an appeal of the May 7, 2021, Minor Revision Order. The Board voted to deny the appeal and affirm the Commissioner's Order on February 16, 2023.

3. Maine Department of Inland Fisheries and Wildlife – Panther Pond. On October 2, 2023, Camp Timanous filed with the Board an appeal of the September 1, 2023, Order of the Commissioner issued to the Maine Department of Inland Fisheries and Wildlife (MDIFW). That Commissioner Order approved with conditions the application of MDIFW for a Natural Resources Protection Act permit and related water quality certification to reconstruct the Panther Pond Dam in Raymond. On October 25, 2023, Camp Timanous withdrew its appeal, having resolved the issues raised in the appeal through an alternative dispute resolution with MDIFW.

4. Maine Yankee Atomic Power Company. On April 28, 2023, the Town of Wiscasset filed with the Board an appeal of the March 31, 2023, Property Tax Exemption Certification Order of the Commissioner issued to Maine Yankee Atomic Power Company pursuant to Maine's property tax law, 36 M.R.S. §§ 655(1)(N) and

656(1)(E)(2). The Board voted to deny the appeal and affirm the Commissioner's Order on October 19, 2023.

5. Judith Marsh, Damian Marsh, and Helene Harrower. On October 2, 2023, Seth Holbrook filed with the Board an appeal of the August 31, 2023, Order of the Commissioner issued to Judith Marsh, Damian Marsh, and Helene Harrower. That Commissioner Order approved with conditions the application of Judith Marsh, Damian Marsh, and Helene Harrower for a Natural Resources Protection Act permit and related water quality certification to replace and expand an existing bulkhead and stabilize shoreline at Paul's Marina in Brunswick. The appeal proceedings before the Board are ongoing as of the date of this report.

6. Municipal Separate Storm Sewer System General Permit. On December 14, 2022, the Department issued a licensing decision approving Low Impact Development (LID) model ordinances submitted by municipalities pursuant to Part IV.C.5.a.i. of the Municipal Separate Storm Sewer System General Permit (MS4) General Permit Modification issued on November 23, 2022. On January 17, 2023, Friends of Casco Bay filed with the Board an appeal of Department's approval of the model ordinances submitted by the City of Biddeford, Town of Cape Elizabeth, Town of Cumberland, Town of Falmouth, Town of Freeport, Town of Gorham, City of Portland, City of Saco, Town of Scarborough, City of South Portland, City of Westbrook, Town of Windham, and Town of Yarmouth. On November 2, 2023, the Board voted to grant the appeal, vacate the Commissioner's Order and remand to the Commissioner for additional proceedings the 13 LID model ordinances submitted by the municipalities listed above.

7. Nordic Aquafarms, Inc. On November 19, 2020, the Board approved with conditions the applications of Nordic Aquafarms, Inc. for a combined Site Location of Development Law and Natural Resources Protection Act permit, an Air Emission License, and a combined Maine Pollutant Discharge Elimination System permit and Waste Discharge License for a proposed Recirculating Aquaculture System for Atlantic salmon production in Belfast and Northport.

Subsequently, Jeffrey Mabee and Judith Grace, the Maine Lobstering Union, and David Black, Wayne Canning, Friends of the Harriet L. Hartley Conservation Area, and Upstream Watch appealed the Nordic permits to Superior Court. The Superior Court upheld the Board's decisions and parties appealed that decision to the Maine Supreme Judicial Court, sitting as the Law Court.

On May 10, 2023, the Law Court, remanded the case back to the Maine Superior Court, with instructions that it remand the matter to the Board so that the Board may determine the impact, if any, of a related case, *Mabee v. Nordic Aquafarms, Inc.*, on the Nordic permits.

On October 19, 2023, the Board issued an order concluding that the Law Court's decision in *Mabee v. Nordic Aquafarms, Inc.* does not affect the validity of the November 19, 2020, licenses issued to Nordic Aquafarms, Inc. by the Board.

8. Team Properties, LLC. On March 10, 2023, Jeffrey Gray filed with the Board an appeal of a *draft* licensing decision of the Commissioner regarding an amendment and transfer application filed by Team Properties, LLC for a Storm Water Management Law permit previously issued to Maine Capitol Companies on February 16, 2007. The law allows an aggrieved person to appeal a *final* license decision made by the Commissioner. 38 M.R.S. § 341-D(4). A final licensing decision regarding Team Properties, LLC's application had not been made at the time Mr. Gray filed his appeal. Therefore, the appeal was premature and was dismissed by the Board Chair.

9. Team Properties, LLC. On March 24, 2023, the Commissioner issued to Team Properties, LLC an order which approved with conditions the amendment and transfer application of Team Properties, LLC pursuant to the Storm Water Management Law, 38 M.R.S. § 420-D, and Department rules Chapter 500, *Stormwater Management* and Chapter 502, *Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams*. On April 18, 2023, Jeffrey Gray filed with the Board an

appeal of the Commissioner's Order. The Board voted to deny the appeal and affirm the Commissioner's Order on September 7, 2023.

10. Topsham Hydro Partners Limited Partnership. The Friends of Merrymeeting Bay; Grow L+A; Downeast Salmon Federation; Native Fish Coalition, Maine Chapter; Friends of Sebago Lake; and the Maine Council of Trout Unlimited, jointly, filed with the Board an appeal of the June 8, 2022, Order of the Commissioner which approved with conditions the application of Topsham Hydro Partners Limited Partnership for a water quality certification for its Pejepscot Hydroelectric Project. The Board voted to deny the appeal and affirm the Department Order on April 6, 2023. In doing so, the Board granted the relief requested by the appellant by concluding in the water quality certification and subsequent Board Order that the proposed operation of the hydropower project meets all applicable Class B water quality standards, in addition to the Class C standards that were in effect at the time the June 8, 2022, water quality certification was issued.

11. Winslow PV, LLC. Greg Cushman Robie filed with the Board an appeal of the August 10, 2022, Order of the Commissioner which approved with conditions the application of Winslow PV, LLC for a combined Site Location of Development Law and Natural Resources Protection Act permit for construction of a 4.1-megawatt ground-mounted solar facility in Winslow. The Board voted to deny the appeal and affirm the Department Order on March 16, 2023.

12. Winslow PV, LLC. On July 10, 2023, Greg Cushman Robie filed with the Board an appeal of the June 8, 2023, Minor Revision Order of the Commissioner which approved with conditions the application of Winslow PV, LLC for a minor revision of its combined Site Location of Development Law and Natural Resources Protection Act permit for construction of a 4.1-megawatt ground-mounted solar facility in Winslow. On October 10, 2023, the Board Chair dismissed the appeal for failure to comply with the Board's requirements for the content of appeals set forth in Chapter 2, § 24(B).

C. Appeals of Administrative Orders Issued by the Commissioner

Several program-specific statutes provide for appeals to the Board of a Commissioner's administrative order, such as an order to remediate a site contaminated by oil or hazardous substances. These are unilateral orders through which the Commissioner seeks to correct serious environmental conditions. Due process is afforded through the right of appeal to the Board, and then Superior Court. The Board received one appeal of an administrative order in calendar year 2023.

1. Brown's Gulf. On February 14, 2023, the Commissioner issued to Robert Brown (doing business as Brown's Gulf in Wells) an Underground Oil Storage Facility Administrative Order (Commissioner's Order) pursuant to 38 M.R.S. § 565-A (the Oil Storage Law). On February 27, 2023, Mr. Brown filed with the Board a timely appeal of the Commissioner's Order. On April 13, 2023, the Board held a hearing on the appeal in accordance with Department rule Chapter 4, *Rule Governing Hearings on Appeals of Certain Emergency or Administrative Commissioner Orders*. The Board voted to deny the appeal and affirm the Commissioner's Order on April 20, 2023.

D. Permit and License Applications

Maine law provides that the Board decide each application for approval of permits and licenses that in the Board's judgment represents a project of statewide significance. 38 M.R.S. § 341-D(2). The Department's rule, Chapter 2, § 17 provides that any person may request that the Board assume original jurisdiction of an application by submitting the request to the Department in writing no later than 20 days after the application is accepted as complete for processing. When the Board assumes original jurisdiction of an application, that means that the Board decides the application in the first instance instead of the Commissioner. A project of statewide significance is defined as a project which meets at least three of the four following criteria:

- Will have an environmental or economic impact in more than one municipality, territory or county;
- Involves an activity not previously permitted or licensed in the State;
- Is likely to come under significant public scrutiny; and
- Is located in more than one municipality, territory or county.

Additionally, the Board must decide all applications referred to it jointly by the Commissioner and the applicant. The Board may vote to assume jurisdiction of an application if it finds that at least three of the four criteria identified above have been met. An exception to this provision is that Board may not assume jurisdiction over an application for an expedited wind energy development as defined in 35-A M.R.S. § 3451(4), for a certification pursuant to 35-A M.R.S. § 3456, or for a general permit pursuant to 38 M.R.S. § 480-HH or § 636-A.

A total of four requests for Board jurisdiction were made to the Department in calendar year 2023. In consideration of the Commissioner's preliminary determinations for each and the criteria for the Board to assume jurisdiction, the Board did not assume original jurisdiction over any applications in 2023.

Maine law provides that the Board will decide all applications for commercial hazardous waste facilities. 38 M.R.S. § 1319-R(3). No such applications came before the Board in 2023.

E. Administrative Consent Agreements

Administrative consent agreements are voluntary resolutions of violations of environmental laws, and the terms and conditions of such agreements are the product of a negotiation process between the violator, the Department, and the Office of the Maine Attorney General. The Department calculates proposed civil monetary penalties through the evaluation of the environmental aspects of a case (such as the sensitivity of the environmental resource, size of the affected area, and potential effect to human health), the

circumstances in which the violation occurred (such as the violator's knowledge of the laws, the cause of the violation, the violator's response and level of cooperation, and the compliance history of the violator), and whether the civil monetary penalty is substantial enough to deter others from similar violations (taking into consideration factors such as whether the violator received a financial gain as a result of the violation, whether the violator has committed either the same or similar violations in past five years, and the violator's ability to pay the penalty). The unique circumstances surrounding the violation(s) results in the calculation of civil penalties that are site- and violator-specific. Maine law authorizes the Department to include supplemental environmental projects – an environmentally beneficial project primarily benefiting public health or the environment that a violator is not otherwise required or likely to perform – as part of an administrative consent agreement. 38 M.R.S. § 349(2-A). Whether or not a supplemental environmental project is included as a component of an administrative consent agreement, mitigation of environmental impacts created by the alleged violation(s) is typically completed during negotiation of the administrative consent agreement or may be established as a binding condition of the administrative consent agreement.

The Board approved six administrative consent agreements in 2023, a summary of each is provided below. The Department prepares monthly enforcement reports to satisfy its statutory obligation under 38 M.R.S. § 349(7) that the Department inform the public of certain enforcement resolutions. See the Department's webpage at <https://www.maine.gov/dep/enforcement/mcar/index.html>.

1. BD Solar Oxford LLC. BD Solar Oxford LLC received a Site Location of Development Law permit to construct a 38.55-acre, 9.2-megawatt solar facility in Oxford, Maine. Department staff subsequently inspected the construction site and observed that BD Solar Oxford LLC had removed vegetation from approximately 1.75 acres of freshwater wetland without the prior approval of the Department and in violation of the terms and conditions of its permit. By removing vegetation from a freshwater wetland without first obtaining a permit to do so from the Department, BD Solar Oxford LLC violated the Natural Resources Protection Act (NRPA), 38 M.R.S. § 480C. By failing to comply

with the terms and conditions of its permit, BD Solar Oxford LLC violated Standard Condition A of the permit, the NRPA, 38 M.R.S. §§ 480-C and 480-R, and the Site Law, 38 M.R.S. § 483-A(2). Since the time of the violation, the impacted 1.75 acres of freshwater wetland have been revegetated. To resolve these violations, BD Solar Oxford LLC agreed to pay a civil monetary penalty of \$13,000. The Board approved the administrative consent agreement on June 15, 2023.

2. ND OTM, LLC. ND OTM, LLC operates a kraft pulp mill located in Old Town, Maine. ND OTM, LLC is authorized to discharge various types of treated process wastewater associated with the pulp and papermaking process; and non-contact cooling waters, turbine condensing waters and filter backwash waters. ND OTM, LLC is authorized under a Maine Pollutant Discharge Elimination System (MEPDES) permit to discharge treated wastewater through three outfalls to the Penobscot River. In October of 2020, ND OTM, LLC's wastewater treatment plant operator observed that monitored pH levels of its filtered intake process water withdrawn from a "forebay area" portion of the Penobscot River was at a pH level of 12 SU. ND OTM, LLC determined that an ongoing discharge of high pH liquid was being discharged to ground water and through the ground water to the forebay area of the Penobscot River. Further investigation showed that the likely source was the sewer system from ND OTM, LLC's boiler area at the mill and that approximately 30,720 gallons of 50% sodium hydroxide was discharged through a failed floor drain from a valve that was inadvertently left open in the recovery system caustic day tank. Subsequent pH monitoring routinely exceeded 8.5 SU until November 24, 2020, and then intermittently through December 3, 2020. Regular monitoring resumed on March 8, 2021, and remained between 7 and 8.5 SU. On June 29, 2022, ND staff observed a small spill of 50% sodium hydroxide solution to the floor of the Riley Building near the day tank associated with the October 2020 discharge incident. Subsequent investigation revealed that stainless steel caustic distribution piping leading to the day tank had developed two leaks. ND estimated that approximately 1,076 gallons over a 30-day period was discharged to the failed floor drain, to the ground and ground water below the Riley Building. In response to the 2020 and 2022 discharges, ND OTM, LLC installed new shut-off valves, temporary floor

drain bypass piping, alarms on the caustic flow process, secondary containment around the caustic tanks, capped legacy piping, replaced approximately 400 feet of stainless-steel piping and repaired all floor drains in the Riley Building. In addition, ND OTM, LLC updated inspection processes, standard operating procedures and maintenance plans. During additional Department investigations, it was also determined that erroneous data was submitted between June 2019 and June 2020 due to a failure to monitor discharges through Outfall #002.

ND OTM, LLC violated Special Conditions A, B, E and O and Standard Condition B of its MEPDES permit, 38 M.R.S. §§ 414(5), 413(1), 420(2), 451 and 465(3); To resolve these violations, ND OTM, LLC agreed to pay to the City of Old Town \$101,400 for the purpose of completing the “City of Old Town College Avenue Extension Culvert Replacement and Upgrade” supplemental environmental project; complete an investigation and submit a report to the Department detailing the results and conclusion of the investigation, estimating the amount of sodium hydroxide remaining in the materials beneath the Riley Building, explaining how the estimate was calculated and describing the actions ND OTM, LLC concludes could be used to address the remaining sodium hydroxide. The Board approved the administrative consent agreement on August 17, 2023.

3. Terry and Brenda Plourde. Terry and Brenda Plourde (Plourdes) own property in Fort Kent, Maine. On June 22, 2021, Department staff observed that approximately 1.75 acres had been cleared and disturbed on the property. The project included approximately 6,000 square feet of soil disturbance or filling and the removal of riparian vegetation within an area adjacent to a brook. There were no erosion and sedimentation controls in use on the site at the time of the visit. After further investigation, it was determined that the Plourdes had hired Jeff Theriault & Sons, Inc. to complete the project and it was completed without either party obtaining a permit from the Department. By conducting, or causing to be conducted, an activity that involves the removal of vegetation and the displacement of soils adjacent to a stream without first obtaining a permit from the Department, the Plourdes violated the Natural

Resources Protection Act, 38 M.R.S. § 480-C. By conducting, or causing to be conducted, an activity that involves filling, displacing, or exposing soil or other earthen material without first taking measures to prevent unreasonable erosion of soils or sediment beyond the project site or into a protected natural resource or ensuring that such measures remain in place and functional until the site is permanently stabilized, the Plourdes violated the Erosion and Sedimentation Control law, 38 M.R.S. § 420-C. By constructing, or causing to be constructed, a project that includes one or more acres of disturbed area without first obtaining a permit from the Department, the Plourdes violated the Storm Water Management Law, 38 M.R.S. § 420-D. To resolve these violations the Plourdes agreed to pay a civil monetary penalty of \$847. On October 13, 2022, Department staff determined that restoration of the site were completed to the Department's satisfaction. The Board approved the administrative consent agreement on July 20, 2023.

4. Jeff Theriault & Sons, Inc. Jeff Theriault & Sons, Inc. is a Maine corporation that operates a construction business with its principal location in Fort Kent, Maine. Jeff Theriault & Sons, Inc. was hired by Terry and Brenda Plourde to complete construction activities on a property owned by the Plourdes in Fort Kent, Maine. See description of violations above. To resolve the violations, Jeff Theriault & Sons, Inc. agreed to pay a civil monetary penalty of \$2,542. The Board approved the administrative consent agreement on July 20, 2023.

 5. S. F. Burt & Son, Inc. S. F. Burt & Son, Inc is a Maine corporation that operates a construction business with its principal location in Mars Hill, Maine. This administrative consent agreement involves violations that occurred on property owned by Ward and Stephanie McLaughlin in Mars Hill, Maine. On August 22, 2022, Department staff received a complaint that heavy equipment had been observed operating adjacent to a stream at the edge of an agricultural field on the property. Department staff observed that soils had recently been disturbed within 75 feet of the normal high-water line of an unnamed stream and approximately 280 linear feet of the stream channel had been excavated. There were no erosion or sedimentation controls observed at that time. After further investigation, it was determined that West Ridge
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Farms, Inc. hired S. F. Burt & Son, Inc. to complete the project and that neither had obtained a permit from the Department. By conducting, or causing to be conducted, an activity that involves dredging, filling, bulldozing, removing or displacing soil, sand vegetation or other earthen material adjacent to and within a protected natural resource without first obtaining a permit from the Department, S. F. Burt & Son, Inc violated the Natural Resources Protection Act, 38 M.R.S. § 480-C. By conducting, or causing to be conducted, an activity that involves filling, displacing, or exposing soil or other earthen material without first taking measures to prevent unreasonable erosion of soils or sediment beyond the project site or into a protected natural resource or ensuring that such measures remain in place and functional until the site is permanently stabilized, S. F. Burt & Son, Inc violated the Erosion and Sedimentation Control Law, 38 M.R.S. § 420-C. To resolve these violations, S. F. Burt & Son, Inc agreed to pay a civil monetary penalty of \$1,756. The impacted area is being restored through regrowth of natural vegetation. The Board approved the administrative consent agreement on July 20, 2023.

6. West Ridge Farms, Inc. West Ridge Farms, Inc. is a Maine corporation that operates an agriculture business with its principal location in Mars Hill, Maine. This administrative consent agreement involves violations of the Natural Resources Protection Act and Erosion and Sedimentation Control Law from earthwork activities conducted by S. F. Burt & Son, Inc. See above. To resolve these violations, West Ridge Farms, Inc. agreed to pay a civil monetary penalty of \$1,756. The Board approved the administrative consent agreement on July 20, 2023.

F. Petitions to Modify a License or Order Corrective Action

The petition process is a mechanism to reopen a final license that was issued by the Department if certain conditions are found to exist. There were no such petitions referred to the Board by the Commissioner in 2023.

G. Recommendations to the Maine Legislature

Another responsibility of the Board is to report to the Legislature on the effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the Board. 38 M.R.S. § 341-D(7). The Board has identified the following as potentially benefitting from legislative review.

1. Consider clarifying the types of applications that are “projects of statewide significance” pursuant to 38 M.R.S. § 341-D(2).
2. Consider revising 38 M.R.S. § 585-D to require that future rulemaking actions (including *Advanced Clean Cars II Program and Advanced Clean Trucks Program*) regarding new motor vehicle emission standards are categorized as major substantive rulemaking rather than routine technical rulemaking.
3. Consider revising Maine’s property tax law, 36 M.R.S. §§ 655(1)(N) and 656(1)(E)(2) to clarify the types of pollution control equipment that are eligible for a property tax exemption.

H. Pending Litigation

The following is a summary of pending litigation of orders and decisions issued by the Board.

1. *Black Bear Hydro Partners, LLC v BEP*, Superior Court Docket No. KEN-21-26

This is an appeal filed by Black Bear Hydro Partners, LLC of a Board Order issued on June 3, 2021. That Board Order denied the appeal of Black Bear Hydro Partners, LLC and affirmed the Commissioner’s water quality certification for the Ellsworth Hydroelectric Project in Ellsworth issued to Black Bear Hydro Partners, LLC. The Kennebec County Superior Court affirmed the Board Order and denied Black Bear’s

80C appeal. Black Bear appealed the Superior Court order, and the appeal is now pending before the Law Court.

2. *EMCI, et al. v BEP*, Law Court Docket No. KEN-23-348

This is an appeal filed by Eastern Maine Conservation Initiative and Roque Island Gardner Homestead Corporation of a Board Order issued on August 4, 2022. That Board Order denied the appeal of Sierra Club of Maine, Roque Island Gardner Homestead Corporation, and Eastern Maine Conservation Initiative of the Commissioner's Site Location of Development Law and Natural Resources Protection Act permit issued to Kingfish Maine, LLC for a proposed land-based recirculating aquaculture system in Jonesport. The Superior Court upheld the Board's decision, and the further appeal is now pending before the Law Court.

3. *Mabee-Grace, et al. v BEP*, Waldo County Superior Court Docket No. BELSC-AP-23-9

This is an appeal filed by Jeffrey Mabee and Judith Grace, the Maine Lobstering Union, and David Black, Wayne Canning, and Friends of the Harriet L. Hartley Conservation Area of a Board Order issued on October 19, 2023, on remand from the Business and Consumer Court and the Law Court following its issuance of a decision in a related case, *Mabee, et al. v. Nordic Aquafarms Inc.* 2023 ME 15. This appeal of the Board's order on remand is pending before the Superior Court in Waldo County.

4. *Mabee-Grace v BEP*, Kennebec County Superior Court Docket No. AUGSC-AP-22-45

This is an appeal filed by Jeffrey Mabee and Judith Grace, the Maine Lobstering Union, and David Black, Wayne Canning, and Friends of the Harriet L. Hartley Conservation Area of an August 24, 2022, Board Chair dismissal of an administrative appeal filed with the Board regarding a permit minor revision issued to Nordic Aquafarms Inc. on

May 18, 2022, involving its air emission license. The appeal is pending before the Superior Court in Kennebec County.

5. *Upstream Watch v BEP*, Kennebec County Superior Court Docket No. AUGSC-AP-23-41

This is a second appeal filed, by Upstream Watch, of the Board Order issued on October 19, 2023, on remand from the Business and Consumer Court and the Law Court following its issuance of a decision in a related case, *Mabee, et al. v. Nordic Aquafarms Inc.* 2023 ME 15. This second appeal of the Board's order on remand is pending before the Superior Court in Kennebec County.

6. *West Forks v BEP*, Kennebec County Superior Court Docket No. AUGSC-AP-22-30

This is a Rule 80C appeal filed by West Forks Planation, Town of Caratunk, Kennebec River Anglers, Maine Guide Service, LLC, Hawks Nest Lodge, Edwin Buzzell, Kathy Barkley, Kim Lyman, Noah Hale, Eric Sherman, Matt Wagner, Mike Pilsbury, Mandy Farrar, and Carrie Carpenter (collectively "West Forks") of a Board Order issued on July 21, 2022. That Order denied the appeals of several parties, Natural Resources Council of Maine, NextEra Energy Resources, LLC, and West Forks, of the Commissioner's May 11, 2020, and December 4, 2020, licensing decisions regarding Central Maine Power and NECEC Transmission LLC's New England Clean Energy Connect (NECEC) project. The appeal is pending before the Superior Court in Kennebec County.

7. *Town of Wiscasset v BEP*, Lincoln County Superior Court Docket No. WISSC-AP-23-11

This is an appeal filed by the Town of Wiscasset of a Board Order issued on October 19, 2023. That Board Order denied the appeal of the Town of Wiscasset of the Commissioner's Order issued to Maine Yankee Atomic Power Company for a tax

exemption certification pursuant to 36 M.R.S. §§ 655(1)(N) and 656(1)(E)(2). The appeal is pending before the Superior Court in Lincoln County.

IV. CLOSING

As noted above, this report is offered to the Second Regular Session of the 131st Maine State Legislature for informational purposes and is not a requirement pursuant to 38 M.R.S. § 341-D(7). I would be happy to meet with the Committee and respond to any questions members may have regarding the Board's work or the specific recommendations in this report.

Respectfully submitted,



Susan M. Lessard, Chair
Board of Environmental Protection

Attachment A: Board members' biographical information

ATTACHMENT A

Attachment A: Board of Environmental Protection Members



Susan M. Lessard
Bucksport, 2nd Term

Ms. Lessard is the Town Manager for the Town of Bucksport. She previously served as the Town Manager for the communities of Hampden, Vinalhaven, Fayette, and Livermore Falls. Over her career in municipal government, Ms. Lessard has gained extensive experience in solid waste management issues, municipal financial management, and community development. She is a past president of the Maine Municipal Association and has served on the Municipal Review Committee and the Maine Rural Development Council. Ms. Lessard has received several awards including the Governor's Environmental Excellence Award (2002), Maine Engineering Excellence Award (1998), and Maine Town and City Manager's Association Leadership Award (1999). Ms. Lessard was appointed to U.S. EPA's Local Government Advisory Committee in 2018. Ms. Lessard resides in Bucksport with her husband Dan. She was appointed to the Board by Governor Paul R. LePage in 2018, and was reappointment for a second term by Governor Janet T. Mills in 2022. In June 2022, Ms. Lessard was appointed by the Governor to be the Board Chair.



Robert Marvinney
Readfield, 1st Term

Dr. Marvinney is a Licensed Geologist with more than 40 years of experience with geological and environmental issues in Maine. While not a native of the State, he has spent most of his professional career here. He retired in July 2021 from his position as Director of the Bureau of Resource Information and Land Use Planning, and State Geologist, an appointed position that he held for 26 years. Dr. Marvinney's experience with Maine began in the early 1980s while carrying out geological projects in northern Maine for his Master's and Doctorate degrees from Syracuse University. While State Geologist at the Maine Geological Survey, he initiated, carried out, and/or directed many projects that highlight the impact Maine's geology can have on the health and well-being of Maine citizens. Most recently, he co-chaired the Science and Technical Subcommittee of the Maine Climate Council that produced the report, "Scientific Assessment of Climate Change and Its Effects in Maine," that summarizes current impacts and likely future scenarios for climate change in Maine. He has lived in Readfield with his wife Cheryl for more than 34 years and has two grown children. Dr. Marvinney was appointed to the Board by Governor Janet T. Mills in 2022.

Attachment A: Board of Environmental Protection Members



Sarah E.W. Alexander
Easton, 1st Term

Sarah Alexander is a native Mainer with diverse work experience in a number of different industries. Currently, she is a Program Manager with the Leadership Council on Legal Diversity, a national non-profit working to diversify the legal profession through its work with some of the largest law firms and corporate legal departments in the country. Prior to that, her role helping to run her family's anaerobic digestion facility and the affiliated food waste collection company gave her a front row seat to the complicated work being done in Maine to tackle solid waste issues. Having lived in almost all corners of Maine, she is uniquely suited to understand and represent the concerns of all Mainers. She grew up in Augusta, lived in Portland for a dozen years, moved to central Maine where the family business is, and most recently moved to Easton in Aroostook County where she lives with her husband and three daughters. Mrs. Alexander holds a Bachelor of Arts degree from Smith College. Her most recent community service experience includes serving as the President of the Smith College Club of Maine and as a member of Pine Tree Search and Rescue. Ms. Alexander was appointed to the Board by Governor Janet T. Mills in 2022.



Barbara Vickery
Richmond, 1st Term

Barbara Vickery is a Conservation Biologist who spent 33 years with The Nature Conservancy, most recently as Director of Conservation Programs. At the Conservancy she was lead scientist, oversaw the stewardship of some 80 preserves and many conservation easements, initiated programs in freshwater and marine conservation, and planned conservation actions across the state and region. Mrs. Vickery served on numerous state advisory committees, including the Ecological Reserves Science Advisory Committee, the Bureau of Public Lands Integrated Resource Plan, Maine Forest Biodiversity Project Steering Committee, and MDIFW's State Wildlife Action Plan, which gave her opportunities to work with industry, state agencies and many other environmental organizations. Mrs. Vickery received a B.A. from Harvard in early childhood education and was a teacher for 10 years. She later earned a B.S. in Biology from Bates College and served as Botanist for the State Planning Office Critical Areas Program before joining The Nature Conservancy. Since retirement five years ago Mrs. Vickery assumed the managing editor responsibility for *Birds of Maine*, a major book that her husband was not able to finish before he died. With the book now published, she is an active volunteer, serving on the Board of the Forest Society of Maine, as Chair of its Stewardship Committee, as Secretary to the Bates Morse Mt. Conservation Area Corporation, and on the Energy Committee of the Town of Richmond where she lives. Mrs. Vickery was appointed to the Board by Governor Janet T. Mills in 2022.

Attachment A: Board of Environmental Protection Members



Robert S. Duchesne
Hudson, 1st Term

Robert Duchesne is a former State Legislator and radio show broadcast host. During his radio career, Mr. Duchesne was active in charity and public service organizations in the Bangor area, including Downeast Big Brothers Big Sisters, Maine Audubon, and the Maine Association of Broadcasters. He also served on several economic and business development boards. In 2005, Mr. Duchesne was elected to the Maine House of Representatives, where he served six non-consecutive terms. While in the Legislature, he chaired both the Environment and Natural Resources Committee and the Inland Fisheries and Wildlife Committee. Mr. Duchesne is owner and operator of Maine Birding Trail. Mr. Duchesne also shares his birding expertise in a weekly birding column for the Bangor Daily News and the Woods and Waters column for Bangor Metro magazine. Robert Duchesne resides at Pushaw Lake in Hudson with his wife, Sandi. He was appointed to the Board by Governor Janet T. Mills in 2019.



Robert M. Sanford
Gorham, 1st Term

Robert Sanford is Professor Emeritus of Environmental Science and Policy at the University of Southern Maine. Mr. Sanford obtained an M.S. and Ph.D. in Environmental Science from the State University of New York College of Environmental Science and Forestry, and an undergraduate degree in Anthropology from SUNY Potsdam. He is the author of numerous books and journal articles on environmental planning and policy, applied archeology, instruction, and civic engagement. Prior to joining the faculty of the University of Southern Maine in 1996, Mr. Sanford served 10 years as an Environmental Board District Coordinator for the State of Vermont administering a land-use permitting program for one of Vermont's nine environmental districts. In addition to his extensive teaching and academic research responsibilities, Mr. Sanford has served on numerous advisory committees for state and local government as well as non-profit organizations including the Maine Water Resources Committee, the Maine Farmland Project, and the Friends of the Presumpscot River. Mr. Sanford also served on the Town of Gorham's Municipal Recycling Committee for ten years. He lives in Gorham with his wife and son. Mr. Sanford was appointed to the Board by Governor Janet T. Mills in 2019.

Attachment A: Board of Environmental Protection Members



Steven Pelletier
Topsham, 1st Term

Mr. Pelletier is a Certified Wildlife Biologist®, Maine Licensed Forester, and Professional Wetland Scientist with over 40 years of professional natural resource experience. Earlier in his career he served as a Wildlife Biologist with the US Forest Service and as an Environmental Specialist for the Maine Department of Environmental Protection's Land Bureau, was later co-founder/ owner of Woodlot Alternatives, Inc., a Maine-based ecological consulting firm, until its acquisition by Stantec Consulting in 2007. At Stantec he served as Senior Principal and US Ecosystems Discipline Lead specializing in rare species habitats and site and landscape-level resource assessments, also serving as Principal Investigator of two federal offshore migration research projects. Mr. Pelletier also conducted and oversaw a broad variety of diverse projects ranging from highway/ rail transportation to offshore energy development. He has authored numerous publications on a variety of natural resource topics including forest biodiversity, bat migration, vernal pools, and resource mitigation and compensation planning. He has served on a variety of Federal and State advisory committees and stakeholder groups and in 1989, co-founded the Maine Association of Wetland Scientists. He currently serves on the Maine Board of Licensure of Foresters and several local community organizations including the Brunswick-Topsham Land Trust Advisory Board, Topsham Conservation Commission, and Topsham Development, Inc. Mr. Pelletier resides in Topsham with his wife Mary. He was appointed to the Board by Governor Janet T. Mills in 2020.
