

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)

STATE OF MAINE  
BOARD OF ENVIRONMENTAL PROTECTION



JANET T. MILLS  
GOVERNOR

Susan M. Lessard, Chair

William F. Hinkel  
Executive Analyst

Ruth Ann Burke  
Board Clerk

January 13, 2025

**SENT VIA ELECTRONIC MAIL ONLY**

Senator Denise Tepler  
Representative Victoria Doudera  
Joint Standing 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 First Regular Session of the 132<sup>nd</sup> Maine State Legislature**

Dear Senator Tepler, Representative Doudera, 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. The enclosed report, which summarizes the Board's responsibilities and activities in calendar year 2024, is respectfully submitted to the First Regular Session of the 132<sup>nd</sup> 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](mailto:bill.hinkel@maine.gov).

Respectfully submitted,

A handwritten signature in blue ink that reads "Susan M. Lessard".

Susan M. Lessard, Chair  
Board of Environmental Protection

Enclosure: Board Report 2024

cc: Melanie Loyzim, DEP Commissioner



# **Report to the Joint Standing Committee on Environment and Natural Resources**

## **Board of Environmental Protection Summary of Activities in Calendar Year 2024 and Recommendations for Committee Consideration**

---

Contact: William F. Hinkel, Board Executive Analyst  
[bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov)  
(207) 314-1458



**MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
17 State House Station | Augusta, Maine 04333-0017  
[www.maine.gov/dep](http://www.maine.gov/dep)



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

**Summary of Activities in Calendar Year 2024**

**Table of Contents**

---

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>II.</b>	<b>BOARD MEMBERSHIP, DUTIES, AND RESPONSIBILITIES .....</b>	<b>1</b>
<b>III.</b>	<b>SUMMARY OF MATTERS BEFORE THE BOARD IN 2024 .....</b>	<b>6</b>
	A. RULEMAKING .....	6
	B. APPEALS OF COMMISSIONER LICENSING DECISIONS .....	17
	C. APPEALS OF INSURANCE CLAIMS-RELATED DECISIONS OF THE COMMISSIONER AND THE STATE FIRE MARSHAL.....	19
	D. APPEALS OF ADMINISTRATIVE ORDERS ISSUED BY THE COMMISSIONER.....	20
	E. PERMIT AND LICENSE APPLICATIONS .....	20
	F. ADMINISTRATIVE CONSENT AGREEMENTS .....	21
	G. PETITIONS TO MODIFY A LICENSE OR ORDER CORRECTIVE ACTION .....	30
	H. RECOMMENDATIONS TO THE MAINE LEGISLATURE .....	30
<b>IV.</b>	<b>SUMMARY OF PENDING LITIGATION .....</b>	<b>31</b>
<b>V.</b>	<b>CLOSING .....</b>	<b>35</b>
<b>ATTACHMENT</b>		
	A. BOARD MEMBER BIOGRAPHIES	

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

**Summary of Activities in Calendar Year 2024**

**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 First Regular Session of the 132<sup>nd</sup> Maine State Legislature.

Section II of this report provides an overview of the Board’s membership, duties, and responsibilities. Section III summarizes matters considered by the Board in 2024. Section IV summarizes recently settled and pending litigation of orders and decisions issued by the Board.

**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 for Board member Barbara Vickery expires in December 2025; other Board members terms run through 2026 or later; and one seat on the Board was vacated in March 2024 and is expected to be seated during the First Regular Session of the 132<sup>nd</sup> Maine 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. Notice of each Board meeting is made in accordance with the Freedom of Access Act, 1 M.R.S. § 406, and all meetings of the Board, which are typically held on the first and third Thursdays of each month, are open to the public. All meetings of the Board are held in-person, unless otherwise specified on the Board meeting notice and agenda. As a convenience, the Board generally provides a live video stream of its meetings for those who wish to watch the proceeding from a remote location. The link for a live stream of each Board meeting is provided on the Board meeting notice and agenda. Audio recordings of each Board meeting are made and an electronic link to the recording is available upon request made to the Board Clerk at [clerk.bep@maine.gov](mailto:clerk.bep@maine.gov). The Board's [webpage](#) provides 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, or repeal reasonable rules and 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.

In 2023, the Governor signed into law L.D. 74, *An Act to Update the Responsibilities of the Clean-up and Response Fund Review Board* (P.L. 2023, ch. 61), which shifted 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. In 2024, the Board adopted new rules (*see* Chapter 2 in Section III (A)(1) of this report) to govern the processing of such appeals.

4. Decisions on Certain Permit Applications. The Commissioner and the Board are both responsible for reviewing and deciding applications for licenses and permits; however, Maine law specifies certain types of applications that may only be decided by the

Board. In 2024, the Legislature passed L.D. 865, *An Act to Clarify the Roles and Responsibilities of the Board of Environmental Protection* (P.L. 2024, ch. 512 and codified at 38 M.R.S. § 341-D(2)), that amended the Board's responsibilities and duties with respect to the Board's jurisdiction over license applications. The new law amends the criteria for Board jurisdiction over a license or permit application and stipulates the specific categories of license and permit applications over which the Board must assume jurisdiction. The new law establishes that the Board must assume original jurisdiction over the following, and only the following, types of license and permit applications.

- A new mining permit required pursuant to the Maine Metallic Mineral Mining Act, 38 M.R.S. § 490-OO;
- A license for a new solid waste disposal facility required pursuant to the Solid Waste Facility Siting Law, 38 M.R.S. § 1310-N;
- A permit for a new high-impact electric transmission line, as defined in 35-A M.R.S. § 3131(4-A), required pursuant to the Site Location of Development Law, 38 M.R.S. § 483-A;
- A license for a new wastewater discharge required pursuant to the Waste Discharge Licenses Law, 38 M.R.S. § 413, that, as determined by the Department, is expected to use more than 20% of the assimilative capacity of the receiving water;
- A permit for a new offshore wind terminal required pursuant to the Site Location of Development Law, 38 M.R.S. § 483-A; and
- A permit for a new nuclear power plant, as defined in Nuclear Power Generating Facilities Law, 35-A M.S.R. § 4352(9), required pursuant to the Site Location of Development Law, 38 M.R.S. § 483-A.

The Commissioner may not decide any of the application types listed above. The Board may not assume jurisdiction over any other type of license or permit application other than those listed above, unless both the applicant and the Commissioner jointly refer the application to the Board, or Maine statute requires the Board to decide specific application types, such as 38 M.R.S. § 1319-R(3) pertaining to site review of commercial hazardous waste facilities.

The Board may not assume jurisdiction over an application for: an expedited wind energy development project as defined in 35-A M.R.S. § 3451(4); a certification for a smaller-scale wind energy development in organized areas pursuant to 35-A M.R.S. § 3456; a general permit for a general permit for offshore wind energy demonstration project pursuant to 38 M.R.S. § 480-HH; or a general permit for tidal energy demonstration project pursuant to 38 M.R.S. § 636-A.

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 may bring a proposed administrative consent agreement to the Board for consideration, and the Board may approve it or reject it 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.
9. Summary of Board Decisions by Year. Figure 1 below summarizes Board decisions on rulemaking actions, administrative consent agreements, and appeals of Commissioner licensing decisions for the period of 2020 through 2024. Matters considered but not

finally decided by the Board (such as rulemaking actions that were initiated but not adopted prior to expiration of the rulemaking action) are excluded from the analysis.

**Figure 1. Summary of certain Board decisions by year 2020-2024.**



### III. SUMMARY OF MATTERS BEFORE THE BOARD IN 2024

#### A. Rulemaking

The Board acted on 20 rulemaking proposals in calendar year 2024. 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. Chapter 2 is a routine technical rule.

The Board held a public hearing on the proposed rule on January 18, 2024, and adopted the rule on September 5, 2024. The rule went into effect on September 15, 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 primary purpose of the rulemaking proposal was to update the existing rule Chapter 80 in accordance with changes in the law. In addition, the revised rule establishes a sales prohibition on the use of specific applications of intentionally added PFAS to certain types of food packaging, which is a major substantive component of this rulemaking. The rule amendments relate 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 public hearing on the proposed rule on November 16, 2023. The Board adopted the routine technical sections of the amended rule and provisionally adopted the major substantive section (section 5) of the amended rule on January 18, 2024. The routine technical sections of the rule went into effect on February 6, 2024. The provisionally-adopted section 5 of the amended rule was subsequently approved by the Legislature in Resolve 2024, ch. 147, and was signed by the Governor as Emergency Legislation on March 25, 2024. The Board finally adopted section 5 of the amended Chapter 80 rule on April 18, 2024, and section 5 went into effect on May 25, 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. The Department did not recommend that the Board adopt the proposed revisions to Chapter 90 as part of the 2023-2024 rulemaking activity.

On December 19, 2024, the Board considered a new Chapter 90 rulemaking proposal and voted to initiate rulemaking by posting the proposed rule for public comment and a public hearing. Further rulemaking activity on the proposed Chapter 90 is anticipated in 2025.

4. Chapter 111, *Petroleum Liquid Storage Vapor Control*. The Department initiated rulemaking in 2024 to revise Chapter 111, *Petroleum Liquid Storage Vapor Control*, to clarify applicability and to remove the prohibition on tank degassing during certain periods of the year due to the implementation of new control requirements pursuant to Department rule Chapter 170, *Degassing of Petroleum Storage Tanks, Marine Vessels, and Transport Vessels*.

On November 21, 2024, the Board voted to post the proposed amendments to Chapter 111 rule for public comment and a public hearing. Further rulemaking activity on the proposed amendments to Chapter 111 is anticipated in 2025.

5. 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 proposed 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 Board held a public hearing on the proposed Chapter 127-A rule on August 17, 2023. On March 20, 2024, the Board voted to not adopt the proposed rule and directed staff to terminate further rulemaking on the proposed Chapter 127-A.

6. 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, the Natural Resources Council of Maine, and included the certified signatures of more than 150 registered Maine voters. The petition proposed 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 Board held a public hearing on the proposed Chapter 128 rule on August 17, 2023. On October 24, 2023, the Board held a deliberative session for the purpose of providing staff with direction regarding next steps in the rulemaking process. Following a staff summary of the major comments received on this proposal, a majority of Board members supported taking no further action on the petition. Because the Board neither adopted the proposed rule within 120 days of the final comment deadline nor re-posted the proposal for additional comment, the rulemaking action that commenced on May 23, 2023, expired and the proposed rule was not adopted.

7. Chapter 138, *Reasonably Available Control Technology for Facilities that Emit Nitrogen Oxides (NOx RACT)*. The Department initiated rulemaking in 2024 to revise Chapter 138, *Reasonably Available Control Technology for Facilities that Emit Nitrogen Oxides (NOx RACT)*, to clarify applicability; reevaluate NOx RACT for affected facilities located in the ozone transport region due to promulgation of the 2015 8-hour ozone National Ambient Air Quality Standard; replace blanket exemptions for

periods of startup, shutdown, and malfunction with alternative emission limits; and remove outdated and obsolete requirements.

The Board held a public hearing on the proposed amendments to Chapter 138 on October 17, 2024. Further rulemaking activity on the proposed amendments to Chapter 138 is anticipated in 2025.

8. Chapter 140, Part 70 Air Emission License Regulation. The U.S. Environmental Protection Agency requires major stationary sources of air pollutants to obtain operating permits. Maine operates an EPA-approved Operating Permits Program (also known as Part 70 or Title V permitting) pursuant to 40 C.F.R. Part 70. The Department implements this program through Chapter 140. On July 21, 2023, the EPA published a final rule that removed the emergency affirmative defense provisions from 40 C.F.R. Part 70. EPA removed these provisions because they are inconsistent with the EPA's interpretation of the enforcement structure of the Clean Air Act considering prior court decisions from the U.S. Court of Appeals for the D.C. Circuit. The Department initiated rulemaking in 2024 to amend Chapter 140 to align with 40 C.F.R. Part 70.

The Board held a public hearing on the proposed amendments to Chapter 140 on April 18, 2024, and on June 6, 2024, adopted the amended routine technical rule. The rule went into effect on July 8, 2024

9. Chapter 145, NO<sub>x</sub> Control Program. The Department initiated rulemaking in 2024 to amend Chapter 145, *NO<sub>x</sub> Control Program*, to clarify applicability and to remove obsolete requirements. When Chapter 145 was adopted in 2001, it applied to affected sources located in areas of the state that were not covered by a waiver of NO<sub>x</sub> control requirements pursuant to Section 182(f) of the 1990 Clean Air Act (CAA) Amendments. Section 182(f) applies to ozone nonattainment areas and areas within the Ozone Transport Region (OTR). At the time, the entire State of Maine was part of the OTR. The NO<sub>x</sub> waiver provisions of the CAA recognized that requiring additional NO<sub>x</sub> emission reductions was not appropriate in certain cases. Chapter 145 acknowledged



this and limited applicability to areas of the state that were not covered by such a waiver. Maine applied for and received a Section 182(f) NOx waiver on several occasions, including a state-wide waiver in 2014.

In February 2020, the State of Maine petitioned EPA to remove the majority of the state from the OTR. EPA granted the State's petition, and the change became effective on March 14, 2022. This petition approval makes the question of a Section 182(f) NOx waiver irrelevant for much of the State, in that it permanently removes portions of the Maine from the OTR.

The Chapter 145 rulemaking action clarifies that the provisions of Chapter 145 apply to affected sources that are located both within the OTR and in a county that has not received a NOx waiver. The affected sources located outside of the current OTR boundaries have consistently been covered by a NOx waiver and considered by the Department not to be subject to Chapter 145. In addition to the applicability clarification, the amended rule removed several provisions for interim standards for which the compliance date has passed.

The Board held a public hearing on the proposed amendments to Chapter 145 on April 18, 2024, and on June 6, 2024, adopted the amended routine technical rule. The rule went into effect on July 8, 2024.

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 proposed 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 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. Chapter 167 is a routine technical rule.

The Board adopted the amendments to Chapter 167 on January 18, 2024, and the rule went into effect on February 6, 2024.

11. 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).

The Board held a public hearing on the proposed amendments to Chapter 200 on January 18, 2024, and on February 28, 2024, provisionally adopted the amended rule. The provisionally-adopted amended rule was subsequently approved by the Legislature in Resolve 2023, ch. 169, and signed by the Governor as Emergency Legislation on April 16, 2024. The Board finally adopted the amended Chapter 200 rule on May 16, 2024, and the rule went into effective on June 22, 2024.

12. Chapter 305, Natural Resources Protection Act - Permit by Rule Standards. In 2023, *An Act to Improve Coastal Sand Dune Restoration Projects* (P.L. 2023, ch. 97), was enacted and directed the Department to undertake rulemaking to amend Chapter 305, *Natural Resources Protection Act (NRPA) – Permit By Rule Standards*, to allow for the use of biodegradable stabilization materials in dune restoration projects. Following severe winter storms in 2023, an immediate need to allow for expedited approval of enhanced dune restoration and construction projects through permit by rule (PBR) developed. Pursuant to 5 M.R.S. § 8054 (emergency rulemaking provisions of the Maine Administrative Procedure Act), the Department initiated emergency rulemaking in February 2024 to amend Section 16-A of Chapter 305 pertaining to beach nourishment and dune restoration or construction activities in coastal sand dunes to allow for proposed projects to be approved and constructed through the expedited PBR permitting process. The emergency rulemaking was intended to allow property owners the opportunity to rebuild eroded sand dunes prior to the end of the 2023-24 winter work window, and to more rapidly restore this important line of defense against coastal storms.

The Board adopted the emergency rule revision on February 1, 2024. Pursuant to 5 M.R.S. § 8054(3), emergency rules are effective for only 90 days. Therefore, the revised Section 16-A provisions expired on May 1, 2024.

13. Chapter 305, Natural Resources Protection Act - Permit by Rule Standards. In conjunction with the proposed Chapter 310 revisions described below, the Department initiated routine technical rulemaking in 2024 to amend Chapter 305 in response to increased interest in shoreline stabilization activities requiring a Natural Resources Protection Act permit and to ensure conformity with recently passed legislation. The goals of the proposed rulemaking are to encourage nature-based shoreline stabilization methods using vegetation and biodegradable stabilization materials; place appropriate limits on the use of hardened stabilization structures like riprap and seawalls to ensure project impacts are reasonable and to address cumulative impacts; and to simplify and speed up the permitting process for applicants and the Department. The proposed rule

changes would also implement two laws passed by the 131<sup>st</sup> Legislature: P.L. 2023, ch. 97, *An Act to Improve Coastal Sand Dune Restoration Projects*, and P.L. 2023, ch. 531, *An Act to Amend the Natural Resources Protection Act to Enhance the State's Ability to Respond to and Prepare for Significant Flood Events and Storm Surge*.

On November 7, 2024, the Board voted to post the proposed Chapter 305 rule for public comment and a public hearing. The Board held a public hearing on the proposed Chapter 305 on December 19, 2024. Further rulemaking activity on the proposed amendments to Chapter 305 is anticipated in 2025.

14. Chapter 310, *Wetlands and Waterbodies Protection*. In conjunction with the proposed Chapter 305 revisions described above, the Department initiated routine technical rulemaking in 2024 to amend Chapter 310 in response to increased interest in shoreline stabilization activities requiring a Natural Resources Protection Act permit and to ensure conformity with recently passed legislation. The goals of the proposed rulemaking are to encourage nature-based shoreline stabilization methods using vegetation and biodegradable stabilization materials; place appropriate limits on the use of hardened stabilization structures like riprap and seawalls to ensure project impacts are reasonable and to address cumulative impacts; and to simplify and speed up the permitting process for applicants and the Department. The proposed rule changes would also implement two laws passed by the 131<sup>st</sup> Legislature: P.L. 2023, ch. 97, *An Act to Improve Coastal Sand Dune Restoration Projects*, and P.L. 2023, ch. 531, *An Act to Amend the Natural Resources Protection Act to Enhance the State's Ability to Respond to and Prepare for Significant Flood Events and Storm Surge*.

On November 7, 2024, the Board voted to post the proposed Chapter 310 rule for public comment and a public hearing. The Board held a public hearing on the proposed Chapter 310 on December 19, 2024. Further rulemaking activity on the proposed amendments to Chapter 310 is anticipated in 2025.

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, 38 M.R.S. §§ 480-A–480-JJ. This rulemaking updated the reference to cite the most recent Coastal Sand Dune Maps prepared by the Maine Geological Survey dated 2023. The amendments to Chapter 355 are major substantive pursuant to 38 M.R.S. § 480-AA.

The Board held a public hearing on the proposed amendments to Chapter 355 on September 21, 2023, and provisionally adopted the rule on November 16, 2023. The provisionally-adopted amended rule was subsequently approved by the Legislature in Resolve 2024, ch. 130, and signed by the Governor as Emergency Legislation on February 29, 2024. The Board finally adopted the amended Chapter 200 rule on April 18, 2024, and the rule went into effective on June 22, 2024.

16. Chapter 375, *No Adverse Environmental Effect Standards of the Site Location of Development Act*. The Department initiated rulemaking in calendar year 2023 to amend its existing Chapter 375 rule to incorporate requirements of L.D. 1881, *An Act Regarding Compensation Fees and Related Conservation Efforts to Protect Soils and Wildlife and Fisheries Habitat from Solar and Wind Energy Development and High-impact Electric Transmission Lines Under the Site Location of Development Laws*, which was signed by the Governor on July 26, 2023 (P.L. 2023, ch. 448).

The Board held a public hearing on the proposed amendments to Chapter 375 on March 7, 2024, and subsequently scheduled two deliberative sessions to discuss the proposed changes with Department staff. The Board provisionally adopted the proposed amendments to Chapter 375 on December 5, 2024.

17. Chapter 428, *Stewardship Program for Packaging*. The Department initiated rulemaking in calendar year 2023 to adopt a new rule, Chapter 428, in response to P.L. 2021, ch. 455, *An Act To Support and Improve Municipal Recycling Programs and Save*

*Taxpayer Money*, which was approved by the Governor on July 21, 2021. The law requires the Department to initiate rulemaking to adopt rules necessary for the implementation, administration and enforcement of a stewardship program for packaging pursuant to 38 M.R.S. § 2146. Chapter 428 is a routine technical rule pursuant to 38 M.R.S. § 2146(13).

The Board held a public hearing on the proposed Chapter 428 on March 7, 2024, and subsequently scheduled two deliberative sessions to discuss the proposed changes with Department staff. The Board adopted Chapter 428 on December 5, 2024, and the rule went into effect on December 25, 2024.

18. 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 public hearing on the proposed Chapter 526 on December 7, 2023, and adopted Chapter 526 on February 1, 2024. Chapter 526 will become effective upon the approval of the U.S. Environmental Protection Agency of related parts of the State's application to administer the National Pollutant Discharge Elimination System program of the Federal Clean Water Act, pursuant to 40 CFR part 123. This approval is pending.

19. Chapter 534, *Wastewater Treatment Plant Operator Certifications - Revocation or Suspension*. The Department initiated rulemaking in calendar year 2024 to adopt a new rule, Chapter 534, which sets forth procedures that may be used by the Department to consider revoking or suspending a wastewater treatment plant operator certification. The Department may revoke or suspend wastewater treatment plant operator certifications pursuant to Maine's Sewage Treatment Operators law, 32 M.R.S. § 4175-

A, and Department rule Chapter 531, *Wastewater Treatment Plant Operator Certification*. The purpose of the new Chapter 534 rule is to specify notice requirements and opportunity for a hearing pursuant to the Maine Administrative Procedure Act, 5 M.R.S. §§ 8001-11008. Chapter 534 is a routine technical rule.

The Board adopted Chapter 534 on April 18, 2024, and the rule went into effect on April 30, 2024.

20. Chapter 583, *Nutrient Criteria for Class AA, A, B, and C Fresh Surface Waters*. The Department initiated rulemaking in 2024 to adopt a new rule, Chapter 583, *Nutrient Criteria for Class AA, A, B, and C Fresh Surface Waters*, which would establish ambient water quality criteria for nutrients in most Class AA, A, B and C fresh surface waters of the State and set forth procedures to establish site-specific values for total phosphorus and other nutrients. The proposed criteria integrate numeric concentration values for total phosphorus with values for response indicators such as chlorophyll, algal cover and sewer fungus in a decision framework for determining attainment of the criteria.

On November 21, 2024, the Board voted to post the proposed Chapter 583 rule for public comment and a public hearing. Further rulemaking activity on the proposed Chapter 583 is anticipated in 2025.

## **B. Appeals of Commissioner Licensing Decisions**

A person who is aggrieved by a licensing decision of the Commissioner may appeal that decision 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 hold a hearing on any appeal of a Commissioner's licensing decision. 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 2024 are summarized below.

1. Judith Marsh, Damian Marsh, and Helene Harrower. On October 2, 2023, Seth Holbrook filed with the Board a timely appeal of the August 31, 2023, Order of the Commissioner issued to Judith Marsh, Damian Marsh, and Helene Harrower. That 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 Board voted to deny the appeal and affirm the Commissioner's Order on March 20, 2024.
  2. Bill Ham. On November 18, 2024, Richard Hendricks and Nancy Hendricks filed with the Board a timely appeal of the October 21, 2024, Order of the Commissioner issued to Bill Ham. That Order approved with conditions the application for a Natural Resources Protection Act Permit and related Water Quality Certification for the alteration of 13,520 square feet of freshwater wetland habitat to construct a roadway and underground electrical utilities for a nine-lot subdivision on a 58-acre undeveloped parcel of land in Buxton. The appeal proceedings before the Board are ongoing as of the date of this report.
  3. LB Ellsworth, LLC. On May 27, 2024, Carl N. Brooks and John Partridge filed with the Board a timely appeal of the May 2, 2024, Order of the Commissioner issued to LB Ellsworth, LLC. That Order approved with conditions the application for a Combined Storm Water Management Law and Natural Resources Protection Act permit and related Water Quality Certification for a proposed new a multi-family housing development in Ellsworth. The Board voted to deny the appeal and affirm the Commissioner's Order on October 17, 2024.
-



4. Poppy's Redemption Center. On September 4, 2024, Kristin Workman doing business as Four Winds Too filed with the Board a timely appeal of the July 22, 2024, Order of the Commissioner issued to Poppy's Redemption Center in Jay. That Order approved the application of the Licensee for a new redemption center license. The appeal proceedings before the Board are ongoing as of the date of this report.
5. Rumford Falls Hydro LLC. On September 12, 2024, the Maine Council of Trout Unlimited, American Whitewater, Maine Rivers, the Friends of Richardson Lake, Conservation Law Foundation, and American Rivers filed with the Board a timely appeal of the August 16, 2024, Order of the Commissioner issued to Rumford Falls Hydro LLC. That Order approved with conditions the application for Water Quality Certification for the continued operation of the Rumford Falls Hydroelectric Project on the Androscoggin River in Rumford and Mexico. The appeal proceedings before the Board are ongoing as of the date of this report.

#### **C. Appeals of Insurance Claims-related Decisions of the Commissioner and the State Fire Marshal**

On May 8, 2023, the Governor signed into law *An Act to Update the Responsibilities of the Clean-up and Response Fund Review* (P.L. 2023, ch. 61). The new law, among other changes, shifted responsibility to hear appeals of insurance claims-related decisions of the Commissioner and the State Fire Marshal made pursuant to 38 M.R.S. § 568-A from the Clean-up and Response Fund Review Board (created pursuant to 38 M.R.S. § 568-B) to the Board of Environmental Protection. A person aggrieved by an insurance claims-related decision of the Commissioner or the State Fire Marshal may be appeal to the Board for review of that decision. Under provisions of 38 M.R.S. § 341-D(4), the Board may affirm the Commissioner's or State Fire Marshal's decision, amend the Commissioner's or State Fire Marshal's decision, reverse the Commissioner's or State Fire Marshal's decision, or remand the matter to the Commissioner or State Fire Marshal for further proceedings.

Appeals of insurance claims-related decisions of the Commissioner or the State Fire Marshal considered by the Board in 2024 are summarized below.

1. Andrea and Doug Alford. On July 30, 2024, the Board received the timely appeal of Andrea and Doug Alford of the Maine Ground and Surface Waters Clean-Up and Response Fund Determination of Eligibility and Assignment of Deductibles Order issued to the Alfords by the Office of the State Fire Marshal on June 10, 2024. The appeal proceedings before the Board are ongoing as of the date of this report.
2. Pepperell, LLC. On May 6, 2024, the Board received the timely appeal of Pepperell, LLC of the Maine Ground and Surface Waters Clean-Up and Response Fund Determination of Eligibility and Assignment of Deductibles Order issued to Pepperell, LLC by the Office of the State Fire Marshal on March 28, 2024. Pepperell, LLC and the State Fire Marshal elected to pursue an alternative dispute resolution to potentially resolve the issues raised in the appeal. On August 2, 2024, the State Fire Marshal provided the Board with a copy of a new decision issued to Pepperell, LLC. That new decision rescinded the Clean-Up and Response Fund Order issued on March 28, 2024. On August 13, 2024, Pepperell, LLC withdrew their appeal of the Clean-Up and Response Fund Order.

#### **D. 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. No appeals of an administrative order were filed with the Board in calendar year 2024.

#### **E. Permit and License Applications**

In 2024, the Department did not receive any applications for the types of licenses and permits that the Board must decide. Applications for which the Board must assume original jurisdiction are specified in 38 M.R.S. § 341-D(2) and section II.B.4 of this report.

## **F. Administrative Consent Agreements**

Administrative consent agreements are voluntary, and the terms and conditions of such agreements are the product of a negotiation process between the alleged violator, the Department, and the Office of the Maine Attorney General. The Department calculates 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 alleged violation occurred (such as the alleged violator's knowledge of the laws, the cause of the alleged violation, the alleged violator's response and level of cooperation, and the compliance history of the alleged violator), and whether civil monetary penalty is substantial enough to deter others from similar violations (taking into consideration factors such as whether the alleged violator received a financial gain as a result of the violation, whether the alleged violator has committed either the same or similar violations in past five years, and the alleged violator's ability to pay the penalty). The unique circumstances surrounding the alleged 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 an alleged 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 considered 11 administrative consent agreements in 2024, 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. Auto Shine Car Wash, L.L.C. Auto Shine Car Wash, L.L.C. operates a vehicle car wash facility in Windham. In 2019, the Department inspected the facility and determined that Auto Shine had redirected an estimated 900,000 gallons of contaminated car wash wastewater from a holding tank to its stormwater collection system, resulting in the unlicensed discharge of wastewater to ground water in violation of 38 M.R.S. § 413(1), which makes it unlawful to directly or indirectly discharge any pollutant without first obtaining a license from the Department; 38 M.R.S. § 414(5), which makes it unlawful to violate the terms or conditions of a license once issued by the Department; Department rule Chapter 543, *Rules to Control the Subsurface Discharge of Pollutants*, which prohibits unauthorized subsurface wastewater discharges; and Department rule Chapter 691, *Rules for Underground Oil Storage Facilities*, which requires all underground wastewater treatment tank systems that receive or accumulate oil to be registered with the State of Maine.

To resolve these violations, Auto Shine has redirected its car wash wastewater to an approved holding tank for proper disposal in accordance with Maine laws and rules and paid a civil monetary penalty of \$55,869. The Board approved the administrative consent agreement on November 21, 2024.

2. Andrew and Blake Foote. Andrew and Blake Foote own property in Owls Head. On May 17, 2019, Department staff observed that the Footes had altered a freshwater wetland associated with three significant vernal pools for the construction of a residential driveway without first obtaining a permit from the Department. There were no erosion or sedimentation controls in use on the site at the time of the visit. By placing fill and removing vegetation in a freshwater wetland without first obtaining a permit from the Department, the Footes violated the Natural Resources Protection Act, 38 M.R.S. § 480-C. By constructing, or causing to be constructed, an activity that involves filling, displacing or exposing soil or other earthen materials 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 Footes violated the Erosion and Sedimentation Control law, 38 M.R.S. § 420-C.

To resolve these violations, the Footes restored 532 square feet of altered wetland, obtained after-the-fact approval for 3,528 square feet of permanent wetland impacts within the three significant vernal pools, and paid a civil monetary penalty of \$5,000. On April 21, 2023, Department staff determined that restoration of the site was completed to the Department's satisfaction. The Board approved the administrative consent agreement on February 1, 2024.

3. Jeffrey Jordan and Greeley's Garage, Inc. Jeffrey Jordan owns and is president of Greeley's Garage, Inc., a Maine business that operates diesel truck repair and sales facility in Auburn. Jeffrey Jordan and Greeley's Garage, Inc. tampered with the vehicle emission control system of an eight-cylinder diesel truck engine such that the vehicle no longer complies with applicable vehicle emission standards. The Clean Air Act and Maine's motor vehicle emission control system tampering law, 38 M.R.S. § 585-O, prohibit tampering with the emission control system of a motor vehicle. As a result of tampering with the emission control system of the vehicle, the exhaust from the tampered vehicle may contain nitrogen oxides (NO<sub>x</sub>), particulate matter (PM), and other air pollutants at levels that may be hundreds or thousands of times higher than the applicable air quality standards.

To resolve these violations, Jeffrey Jordan and Greeley's Garage, Inc. paid a civil monetary penalty of \$4,000. The Board approved the administrative consent agreement on March 20, 2024.

4. Maine Drilling and Blasting, Inc. Maine Drilling and Blasting, Inc. is a Maine company that operates a rock drilling, blasting and foundation business with its primary location in Gardiner. S.B. Enterprises, Inc. submitted a Notice of Intent to Comply pursuant to Performance standards for quarries, 38 M.R.S. § 490-Y, to mine at a site in Westbrook. S.B. Enterprises, Inc. hired Maine Drilling and Blasting, Inc. to perform blasting services at the Westbrook quarry.

On June 2, 2020, S.B. Enterprises, Inc. reported to the Department that Maine Drilling and Blasting, Inc. conducted a blast event earlier that day that resulted in flyrock leaving the property and landing on two abutting residential properties. Maine Drilling & Blasting, Inc. immediately took measures to report the incident, meet with the affected abutting property owners, and submitted an incident report and modified extraction plan for future blasting that is intended to prevent flyrock from again leaving the property. Pursuant to 38 M.R.S. § 490-Z(14)(A), Maine Drilling and Blasting, Inc. was required to “use sufficient stemming, matting or natural protective cover to prevent flyrock from leaving property owned or under control of the owner or operator or from entering protected natural resources or natural buffer strips.” By failing to use sufficient stemming, matting or natural protective cover to prevent flyrock from leaving property owned or under control of the owner or operator, Maine Drilling and Blasting, Inc. violated 38 M.R.S. § 490-Z(14)(A).

To resolve the violation, Maine Drilling and Blasting, Inc. paid a civil monetary penalty of \$8,000. The Board approved the administrative consent agreement on January 18, 2024.

5. MaineHealth doing business as Franklin Memorial Hospital. MaineHealth d/b/a Franklin Memorial Hospital (Franklin Memorial Hospital) is a non-profit corporation that operates a hospital in Farmington. Franklin Memorial Hospital is a hazardous waste generator and subject to the Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S. §§ 1301–1319-Y and the Department’s Hazardous Waste Management Rules, Chapters 850–858. During a Department inspection, staff determined that Franklin Memorial Hospital failed to: properly label and store hazardous and universal wastes; train all employees and contractors who are responsible for managing the hospital’s hazardous waste; conduct required inspections; post required signage; report missing manifest copies; complete its required contingency plan; and other related actions that resulted in violations of the applicable laws and rules.

To resolve the violations, Franklin Memorial Hospital completed corrective actions to achieve compliance with the applicable laws and rules and paid a civil monetary penalty of \$20,150. The Board approved the administrative consent agreement on September 5, 2024.

6. STC New England LLC d/b/a Sun Tan City. STC New England LLC d/b/a Sun Tan City (Sun Tan City) operated two Generator Owned Central Accumulation Facility (GOCAF) locations, one in Augusta in the basement of an apartment building, and the second at a storage unit at Capital Area Self Storage. Sun Tan City is subject to the Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S. §§ 1301–1319-Y and the Department’s *Hazardous Waste Management Rules*, Chapters 850–858. Universal waste lamps were brought from multiple generator locations to these storage locations where numerous universal waste requirements were not followed. Improper storage, labeling and handling of hazardous wastes at Sun Tan City’s facilities violated the Hazardous Waste, Septage and Solid Waste Management Act and the Department’s Hazardous Waste Management Rules.

By storing lamps for an excessive amount of time and in improper packaging or loose at the GOCAF in Augusta, extensive lamp breakage occurred, releasing mercury to the environment. The GOCAF was located on the Kennebec River in its floodplain, and there was the potential for mercury contamination of the river via floodwaters. Broken lamps were not immediately contained and were cleaned up improperly by discarding them into an adjacent dumpster. Due to improper employee training combined with the lack of a required spill plan and improper storage, there was an increased risk of health impacts or injury to workers and a higher spill risk.

To resolve the violations, Sun Tan City has completed corrective actions to achieve compliance with the applicable laws and rules and paid a civil monetary penalty of \$39,100. The Board approved the administrative consent agreement on September 5, 2024.

7. T&D Wood Energy LLC and Player Design, Inc. T&D Wood Energy LLC is a Maine company, doing business as Wood and Sons, that operates a wood pellet manufacturing facility in Sanford. Player Design, Inc. is a Maine corporation and operates an engineering and equipment design and supply company in Presque Isle. In 2018, the Department issued an Air Emission License to T&D Wood Energy LLC and Player Design, Inc. for a wood pellet manufacturing facility in Sanford. Department inspections document that, between 2018 and 2023, T&D Wood Energy LLC and Player Design, Inc. failed to operate the pellet manufacturing facility in compliance with its Air Emission License, including the following alleged violations: failure to conduct emission testing within required deadlines; failure to submit emission test result reports within the required time period; failure to construct emissions-related equipment in conformance with licensed specifications; multiple failures of compliance emission tests; failure to operate at or below the dryer inlet temperature standard; failure to maintain records sufficient to demonstrate compliance with Air Emission License requirements; installation and operation of unlicensed equipment; and failure to submit reports outlining facility upsets that resulted in emission exceedances.

To resolve the violations, T&D Wood Energy LLC and Player Design, Inc. have completed corrective actions to achieve compliance with the applicable laws and rules and paid a civil monetary penalty of \$151,550. The Board approved the administrative consent agreement on June 20, 2024.

8. The VW Garage, LLC and Cory Sterling. The VW Garage, LLC is a Maine company, doing business in Westbrook. Cory Sterling is the managing member for The VW Garage, LLC. In 2021, the Department's Division of Response Services was informed by the City of South Portland of complaints of an alleged petroleum-like discharge from a storm drain discharge point on Willard Beach. Numerous residents and beach goers had complained about burning sensations from swimming and strong petroleum odors in the area. Oil sheening was reported to the Department by individuals living in Cape Elizabeth. First responders on scene traced the release back to 491 Cottage Road in South Portland, formerly known as Hill's Service Station, about a half



mile south of the beach. On August 24, 2021, South Portland Fire Department arrived at 491 Cottage Road and observed Cory Sterling and another individual attempting to stop (using sorbent materials) a mixture of oil, water and detergents running across the parking area in front of the former auto repair facility and being released into the storm drain. Cory Sterling indicated he was pressure washing the interior of the garage in anticipation of opening an auto repair business at this location when the oily liquids suddenly backed up and over-flowed a collection pit in the garage bay floor. The Fire Department placed further absorbent materials to contain the release. Response Services arrived on scene at Willard Beach and advised the public to stay out of the water due to the presence of petroleum in the water and on the beach. Response Services' cleanup efforts continued into the evening and over the next several days. This resulted in a beach closure from August 24, 2021, to August 28, 2021. About 3,500 gallons of oily water was removed from the affected storm water system and about 3,000 pounds of oiled debris was recovered from the storm water system and the beach. The Department incurred \$54,082.26 total in costs responding to and remediating this spill.

By discharging oil into or upon coastal waters and the beaches and lands adjoining the seacoast of the State, The VW Garage, LLC and Cory Sterling violated 38 M.R.S. § 543, Pollution and corruption of waters and lands of the State prohibited. The VW Garage, LLC, and Cory Sterling's failure to immediately initiate removal of the prohibited oil discharges to the Commissioner's satisfaction violated 38 M.R.S. § 548, Removal of prohibited discharges.

To resolve the violations, The VW Garage, LLC and Cory Sterling reimbursed the Department's expenses of \$54,082.26 by payment to the Maine Ground and Surface Waters Clean-up and Response Fund. The Board approved the administrative consent agreement on September 5, 2024.

9. Tower Solar Partners, LLC. On May 24, 2021, the Department issued to Tower Solar Partners, LLC a combined Site Location of Development Law and the Natural Resources Protection Act permit for the construction of a 5.0-megawatt solar energy

development occupying approximately 30.3 acres of land in Embden. On October 14, 2022, Department staff were notified by the Town of Emden Code Enforcement Officer and a neighbor that sediment-laden water was leaving the site boundaries and entering Alder Brook.

On October 18, 2022, Department staff visited the site and observed sediment-laden water entering neighboring properties as well as Alder Brook and the Kennebec River. Approximately 30 acres of the site had been grubbed and graded without adequate stabilization measures and erosion controls were inadequately or improperly installed. On October 19, 2022, Department staff received a complaint and photographs from the Code Enforcement Officer that large amounts of sediment left the site and were tracked onto Kennebec River Road. Department staff contacted Tower Solar Partners, LLC, who confirmed that logging equipment leaving the site tracked sediment onto the road. On October 26, 2022, Department staff received images from the Code Enforcement Officer of sediment leaving the site and entering Alder Brook.

In response to the violations observed by Department staff, Tower Solar Partners, LLC submitted an updated Site-Specific Erosion and Sedimentation Control Plan and implemented a series of corrective measures, including hiring of 3<sup>rd</sup> party inspector, installing additional sediment basins, expanding perimeter berms and stone check dams, and dedicating a crew to inspect and maintain the erosion and sedimentation controls.

To resolve violations of Tower Solar Partner, LLC's permit and the Erosion and Sedimentation Control Law, Tower Solar Partner, LLC agreed to pay a civil monetary penalty of \$148,836. The Board rejected the administrative consent agreement on February 1, 2024, on the basis that the proposed civil penalty is not proportionate to the severity and willfulness of the alleged violations. The Board directed staff to pursue further enforcement proceedings to seek a resolution to the alleged violations.

10. Trombley Industries, Inc. Trombley Industries, Inc. is a Maine corporation that operates a construction business and operated a gravel pit and gravel washing operation in

Limestone. In response to a September 15, 2022, complaint from the United States Fish and Wildlife Service regarding siltation into Greenlaw Brook in the Aroostook National Wildlife Refuge, an investigation by Department staff led to the discovery of a culvert on the Trombley Industries, Inc. property discharging silt laden water from gravel washing to a wetland and subsequently a tributary to Greenlaw Brook approximately three miles upstream of the refuge. The impacted portion of Greenlaw Brook also runs through land owned by the Aroostook Band of Micmac Trust. Upon discovery and in consultation with Department staff, Trombley Industries, Inc. immediately ceased the discharge to the wetland, excavated the silt ponds in the former gravel pit that had been used previously for the wash water, repaired the infrastructure to pipe the wash water to the silt ponds, and re-routed wash water to the silt ponds. Silt discharged by Trombley Industries, Inc. significantly impacted the wetland immediately adjacent to the discharge, the tributary to Greenlaw Brook, and Greenlaw Brook itself. No fish kill was observed, but impact to aquatic life is assumed to have occurred. Subsequent inspection of the wetland, tributary and Greenlaw Brook by Department staff in the summer of 2023 revealed that the impacts had been naturally mitigated. By discharging sediment to a wetland, a tributary to Greenlaw Brook, and Greenlaw Brook without a license, Trombley Industries, Inc. allegedly violated 38 M.R.S. § 413(1), Waste discharge licenses.

To resolve the violations, Trombley Industries, Inc. paid a monetary penalty of \$12,000 in the form of a supplemental environmental project to the Friends of the Aroostook National Wildlife Refuge for the purposes of providing signage and other infrastructure for the Mi'kmaq Heritage Corridor Trail. The Board approved the administrative consent agreement on October 17, 2024.

11. Worcester Holdings, LLC. Worcester Holdings, LLC constructed a project known as the Flagpole View Cabins Development in Columbia Falls, which consists of at least 52 rental cabins, a restaurant, parking areas, access roads, a well head, and a water storage tank building without first obtaining a permit from the Department pursuant to the Site Location of Development Law. Worcester Holdings, LLC did not employ appropriate

erosion and sedimentation control devices during construction, as required by the Erosion and Sedimentation Control Law.

To resolve violations of the Site Location of Development Law and Erosion and Sedimentation Control Law, Worcester Holdings, LLC agreed to submit an after-the-fact Site Location of Development Law permit application and pay a civil monetary penalty of \$250,000. The Board approved the administrative consent agreement on February 28, 2024.

#### **G. 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 2024.

#### **H. 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. The Board recommends that the Legislature consider adjusting upwards the minimum statutory penalty amount for violations of environmental laws and rules in 38 M.R.S. § 349.
2. The Board is charged with adopting and amending rules necessary for the interpretation, implementation and enforcement of any provision of law that the Department is charged with administering and that are necessary for the conduct of the Department's business. 38 M.R.S. § 341-H. The Board recommends that the Legislature carefully consider the extent to which additional significant public policy decisions must be made during

agency rulemaking when the Legislature designates rules as being routine technical or major substantive pursuant to 5 M.R.S. § 8071 with the goal of settling major public policy decisions at the legislative branch level.

3. The Board recommends that the Legislature carefully consider the Clean Water Act and Clean Air Act recusal requirements of 38 M.R.S. § 341-C(8) when evaluating nominees for Board membership with a goal of limited the number of potential conflicts of interest that prevent Board members from participating in matters that come before the Board.
4. The Board encourages the Legislature to support additional staffing resources at the Department to ensure continued fulfillment of the Department's mission to prevent, abate and control the pollution of the air, water and land.

#### **IV. SUMMARY OF PENDING LITIGATION**

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

1. *Black Bear Hydro Partners, LLC v BEP, et al.*, Law Court Docket No. KEN-23-491

This is an appeal filed by Black Bear Hydro Partners, LLC (Black Bear) of a Board Order issued on June 3, 2021. That Board Order denied Black Bear's appeal and affirmed the Commissioner's denial of Black Bear's application for water quality certification for its Ellsworth Hydroelectric Project in Ellsworth. The Kennebec County Superior Court affirmed the Board Order and denied Black Bear's Rule 80C appeal. Black Bear further appealed that Superior Court decision to the Maine Supreme Judicial Court sitting as the Law Court (Law Court). That Law Court appeal was argued in September 2024 and is now awaiting a decision from the Law Court.

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

This is an appeal filed by Eastern Maine Conservation Initiative (EMCI) and Roque Island Gardner Homestead Corporation (RIGHC) of a Board Order issued on August 4, 2022. That Board Order denied the appeal of Sierra Club of Maine, EMCI, and RIGHC 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 Kennebec County Superior Court affirmed the Board Order and denied EMCI's and RIGHC's Rule 80C appeal. EMCI and RIGHC further appealed that Superior Court decision to the Law Court. That Law Court appeal was argued in April 2024 and is now awaiting a decision from the Law Court.

3. *Mabee, et al. v BEP, et al.*, Business and Consumer Court Docket No. BCD-APP-2024-15

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 was transferred to and is now pending before the Business and Consumer Court in Portland and is consolidated with matter nos. 4 and 5 described below.

4. *Upstream Watch v BEP, et al.*, Business and Consumer Court Docket No. BCD-APP-2024-14

This is another 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 was also transferred to and is now pending before the Business and Consumer Court in Portland, and as noted above, is consolidated with matter nos. 3 and 5.

5. *Mabee, et al. v BEP, et al.*, Business and Consumer Court Docket No. BCD-APP-2024-13

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. This appeal was also transferred to and is now pending before the Business and Consumer Court in Portland and is consolidated with matter nos. 3 and 4 above.

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

This Rule 80C appeal was 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 Board Order denied the appeals of several parties, Natural Resources Council of Maine, NextEra Energy Resources, LLC, and West Forks, of the DEP 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 Rule 80C appeal had been pending in Kennebec County Superior Court earlier in the year but was dismissed in March 2024 and is no longer active.

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

This Rule 80C appeal was 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 Rule 80C appeal had been pending in Lincoln County Superior Court earlier in the year but was remanded to the Board for further remand to the DEP Commissioner for proceedings consistent with P.L. 2024, ch. 588 (emergency, effective Apr. 2, 2024). Those proceedings were not further appealed, and this matter is no longer active.

8. *Conservation Law Foundation, et al. v DEP and BEP*, Cumberland County Superior Court Docket No. PORSC-AP-24-22

This is a Rule 80C appeal and declaratory judgment action filed by the Conservation Law Foundation (CLF), Sierra Club, and Maine Youth Action challenging the Board's alleged failure or refusal to act and adopt proposed rule Chapter 127-A, *Advanced Clean Cars II Program*, addressing certain vehicle emissions standards. On December 26, 2024, the plaintiffs filed a motion for leave to amend their complaint in the Superior Court. The DEP/BEP plan to file a response in opposition, which is due on January 16, 2025.



**V. CLOSING**

As noted above, this report is submitted in fulfillment of the provisions of 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**  
Bangor, 2<sup>nd</sup> Term

Ms. Lessard has 40 years of experience in local government in Maine. She currently serves as Town Manager for the Town of Bucksport, and previously served as the Town Manager for the communities of Hampden, Vinalhaven, Fayette, and Livermore Falls. As such Ms. Lessard has 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 a number of awards for her work including the Governor's Environmental Excellence Award (2002) for development of a collaborative process for municipal review of major landfill expansion projects in Hampden, and the Maine Engineering Excellence Award (1998) and Maine Town and City Manager's Association Leadership Award (1999) for the development of an innovative alternative landfill capping plan for the town of Vinalhaven. Ms. Lessard also received a U.S. Coast Guard Public Service Commendation (1996) for her work on a program to transfer ownership of thirty-five Maine lighthouses from the federal government to municipalities and non-profit organizations across the state. Ms. Lessard resides in Bucksport with her husband Dan. Ms. Lessard was reappointed to the Board by Governor Janet T. Mills in January 2022.

---



**Robert Marvinney**  
Readfield, 1<sup>st</sup> 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 January 2022.

## Attachment A: Board of Environmental Protection Members

---



**Barbara Vickery**  
Richmond, 1<sup>st</sup> 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 its preserves and easements, initiated programs in freshwater and marine conservation, and planned land conservation 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 steering committees of two of MDIFW's State Wildlife Action Plans, 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 eight years ago Mrs. Vickery assumed co-managing editor responsibility for Birds of Maine, a major book that her husband was not able to finish before he died. Since the book's publication in 2020, she has become an active volunteer, serving on the Board of the Forest Society of Maine, as Secretary to the Bates Morse Mt. Conservation Area Corporation, and promoting climate adaptation actions in Richmond, where she lives, and Phippsburg where her family owns seasonal homes. Mrs. Vickery was appointed to the Board by Governor Janet T. Mills in January 2022.



**Robert S. Duchesne**  
Hudson, 2<sup>nd</sup> Term

Robert Duchesne is a former state legislator and radio show broadcast host. Mr. Duchesne's radio career spanned more than three decades, during which he served as host of a popular radio show that was broadcast across eastern and central Maine. 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, and started his own guiding business – Maine Birding Trail. Mr. Duchesne shares his birding expertise in a weekly birding column for the Bangor Daily News. Robert Duchesne resides at Pushaw Lake in Hudson with his wife, Sandi. Mr. Duchesne was reappointed to the Board by Governor Janet T. Mills in February 2024.

## Attachment A: Board of Environmental Protection Members

---



**Robert M. Sanford**  
Gorham, 2<sup>nd</sup> 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 in Vermont. 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 reappointed to the Board by Governor Janet T. Mills in February 2024.



**Steven Pelletier**  
Topsham, 2<sup>nd</sup> 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 ME 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. Mr. Pelletier was reappointed to the Board by Governor Janet T. Mills in February 2024.