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**2001 Report to the Joint Standing Committee
on Natural Resources**



**Board of Environmental Protection
Calendar Year 2000**

**Submitted by:
John D. Tewhey, Chairman
Board of Environmental Protection
January, 2001**



STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

JOHN D. TEWHEY
CHAIRMAN

ANGUS S. KING, JR.
GOVERNOR

TERRY A. HANSON
ADMIN. SECRETARY

January 17, 2001

Senator Co-Chair John L. Martin,
House Representative Co-Chair Scott W. Cowger and
Members of the Joint Standing Committee on Natural Resources
#13 State House Station
Augusta, Maine 04333-0013

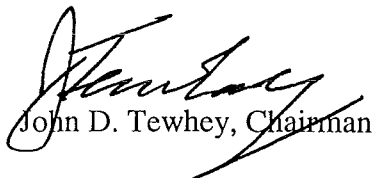
Dear Senator Martin, Representative Cowger, and members of the Committee on Natural Resources:

I have enclosed the Board's report to Legislature. This report was prepared pursuant to 38 M.R.S.A. Section 341-D., paragraph 7.

The statute requires that the Board report by January 15th 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.

We welcome an opportunity to discuss any of the issues raised in our report with Committee members.

Respectfully submitted


John D. Tewhey, Chairman



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I. HISTORY

EARLY BOARDS

The Maine Board of Environmental Protection (Board) has been in existence in one form or another since the 1940s. In its earliest form, the Board focused on wastewater issues, and the membership consisted of representatives from state agencies who had specific technical expertise. Over time, there has been a shift in the composition of the Board from technical members representing state agencies to non-technical members representing the general public. Also, the scope of the Board's mandate has expanded over time to include all aspects of environmental regulation.

BOARD STUDIES

There have been a variety of studies and evaluations of the Board throughout its history. In 1982, the Trafton Commission fully reviewed the Department of Environmental Protection (DEP) and the Board and recommended several changes to the Board, including:

- A reduction in the size of the Board;
- Greater technical expertise for Board members;
- Board jurisdiction limited to appeals of DEP Commissioner decisions; and
- Removal of the DEP Commissioner as a voting member of the Board.

The only Trafton Commission recommendation that was implemented by the Legislature in 1983 was the removal of the Commissioner as a member of the Board. During the 1980s, the Board had jurisdiction over all environmental permits, enforcement actions, and rule-making.

In 1989, the Legislature again formed a committee to evaluate the Board which resulted in L.D. 2214, *An Act to Clarify the Role of the Board of Environmental Protection*. The substantial changes in the Board and the DEP that resulted from L.D. 2214 are as follows:

- The DEP would have jurisdiction over all permits and licenses except for applications of significant public interest, as defined in statute, which would be referred to the Board;
- Several types of permitting decisions which have significant public interest, such as the siting of hazardous waste management facilities, would remain with the Board;
- The Board would hear appeals of DEP decisions (except for petroleum cleanup reimbursement cases, which are handled by the Fund Insurance Review Board); and
- The Board would continue to do all rule-making.

The implementation of L.D. 2214 represented a significant reduction in the jurisdiction of the Board and increased the authority of the DEP Commissioner.

BOARD STUDIES CONT.

In 1997, the Joint Standing Committee on Natural Resources appointed a subcommittee to study the operation of and support for the Board of Environmental Protection. Public hearings were held and the Board addressed issues of the subcommittee in two reports to the Joint Standing Committee. The findings of the subcommittee resulted in L.D. 2547 which established a new staff position for the Board, reporting directly to the Chairman. Cynthia Bertocci, formerly with the DEP and the Maine Environmental Priorities Project, and most recently with the Land Use Regulation Commission (LURC), assumed the role of Board Executive Analyst in January 2001.

II. The Existing Board

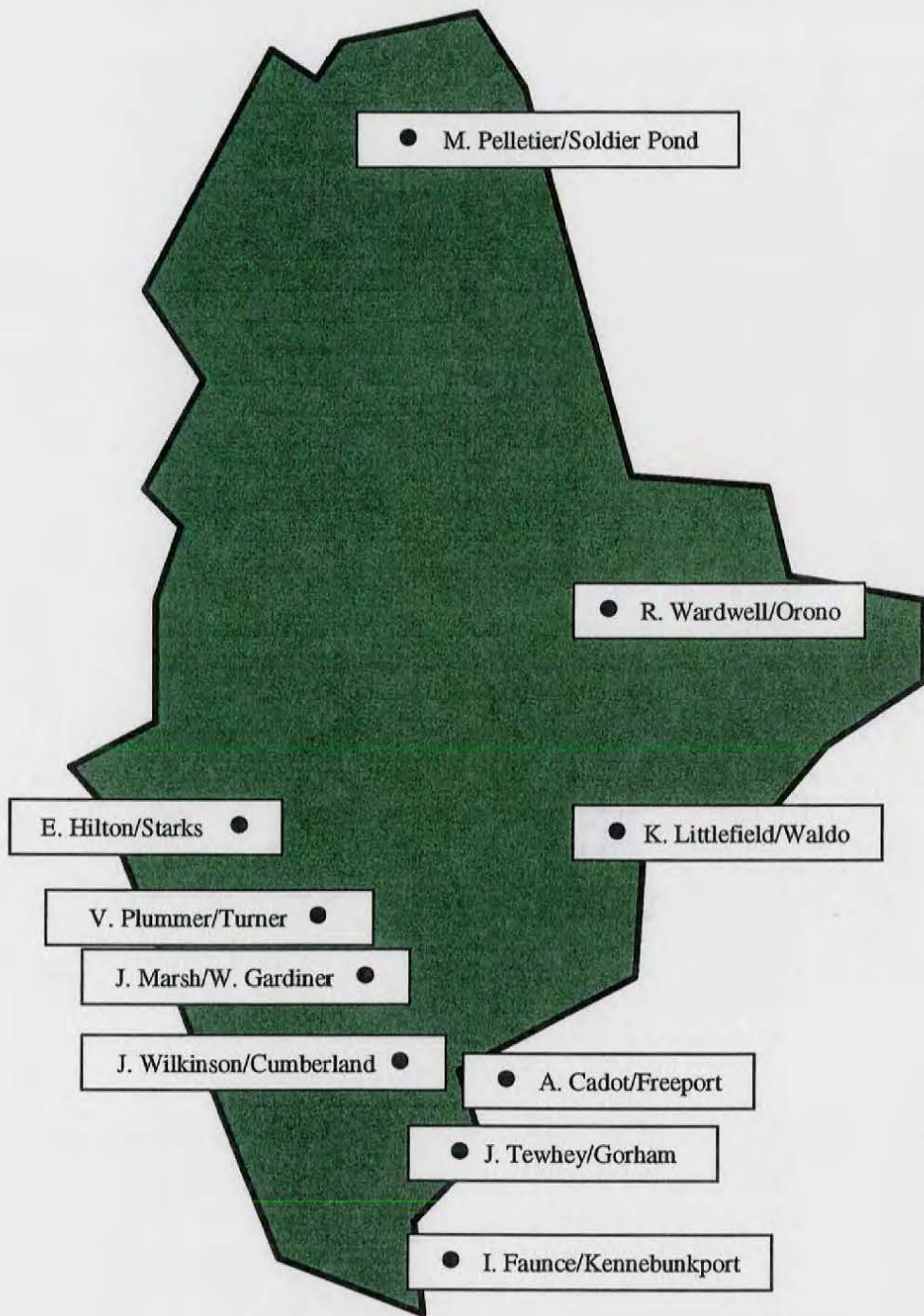
PURPOSE

The stated 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 DEP decisions. The Board fulfills its purpose through rule-making decisions, decisions on selected permit applications, review of appealed permit decisions, review of the Commissioner's licensing and enforcement actions and recommendations to the Legislature regarding changes to the statute.

MEMBERSHIP

The Board consists of ten citizen members appointed by the Governor, and approved by the Joint Standing Committee on Natural Resources. The Governor appoints the Chair. Members are chosen to represent broad interests and experience, and no particular technical expertise is required. Four members must be from the First Congressional District and four must be from the Second District. Members are appointed for staggered four-year terms, and no member may serve more than two consecutive four-year terms. The current Board members are all Governor King appointees. Their occupations and interests, and their home towns are listed below.

Name	Occupation/Experience	Residence
John Tewhey	Scientist/Environmental Consultant	Gorham
Irving Faunce	Health Care Administrator/Former Mayor	Kennebunkport
Ernest Hilton	Attorney/Engineer/Farmer/Historian	Starks
Katharine Littlefield	27-Year Selectman/Farmer	Waldo
John Marsh	Marina Operator/Maine Guide/Former Legislator	West Gardiner
Melford Pelletier	High School Teacher/Former Maine Guide	Soldier Pond
Virginia Plummer	Social Services Consultant/Grant Writer/Film Maker	Turner
Andrew Cadot	Attorney/Civic Leader	Freeport
Richard Wardwell	Engineer/Environmental Consultant/Teacher	Orono
Jean T. Wilkinson	Retired Banker/Civic Leader	Cumberland



OPERATION

The Board is scheduled to meet on the first and third Thursdays of each month, but the schedule can expand or contract, depending on the workload. Hearings or site visits related to applications for significant projects are often scheduled on the day before a regular meeting and usually take place at a facility nearby the subject project. Six members constitute a quorum for a vote of the Board and for rule-making decisions; three members constitute a quorum for hearings held by the Board. This Board is particularly active. It is typical to have a 75% - 80% attendance rate at hearings and 90% - 100% attendance rate for regular semi-monthly meetings. All proceedings before the Board are recorded. An attorney from the Environmental Division of the Office of Attorney General is present to advise the Board at every meeting. The DEP Commissioner Martha Kirkpatrick or her representative, the Board Administrator Terry Hanson, and the Executive Analyst Cynthia Bertocci are present during Board meetings.

In order to be optimally informed on matters before it, the Board has established the following procedures:

- Conduct public hearings in the area of the project so as to allow the widest possible participation by interested parties;
- Schedule public hearings at a time and place that allows interested parties who are working during the daytime to provide input at evening sessions at a central location accessible to the public;
- Visit project sites in the company of the applicant, DEP representatives, and other interested parties in order to observe and evaluate first-hand the site conditions that are important in the decision-making process;
- Extend the duration of a hearing into the evening hours to facilitate full public participation on issues of significant public interest, and;
- Extend the comment period following the close of the public hearing as deemed necessary in order to allow participation by parties that were not present at the hearing.

III. Activities

SUMMARY CY2000

A summary of Board activity during CY2000 follows:

- Jurisdiction of two major projects,
Portsmouth Naval Shipyard - application for commercial hazardous waste transfer facility
Maine Yankee Atomic Power - independent spent fuel storage installation
- Jurisdiction of five applications of significant public interest:
Anne S. Hannum – application for private recreational dock, Bar Harbor
Knox County Board of Commissioners – application for airport apron expansion, Owls Head
China Lake – regulation of water levels and minimum flows
Maine Yankee Atomic Power - sales and use tax exemption certification
Pine Tree Waste – application for solid waste transfer facility, Westbrook

One Evidentiary Hearing

Tire Collections, Inc., Lewiston

- Consideration of twenty-one appeals: (list not inclusive; please see appendix A)
Phase I and II of the Poland Spring Plant, Hollis
Kennebec Sanitary District sludge spreading, Clinton
David Thorp – storage and variance request for land application of septage, Shirley
Bracebridge Corp. – permit amendment to construct recreational field at Point Lookout conference facility, Lincolnville
Androscoggin Energy – tax exemption certification, Jay
Warren Sanitary District – permit renewal of municipal discharge
Dept. of Corrections – site location approval for construction of the state’s new maximum security prison, Warren
- Consideration and decision on one petition to modify:
Steamship Navigation Company – beneficial reuse of paper sludge and Gates Formed Fiber materials at a rifle range, Warren
- Consideration of 23 rule-makings
- Review and approval of 103 consent agreements related to enforcement; and,
- Informational briefings / Workshops
Ex parte Communication
Tire Program
Consent Agreement/Enforcement policy

Over the past several years, there has been an increase in the number of projects appealed to the Board and the number of projects in which individuals/groups have requested that the Board assume jurisdiction. The reasons for the increase in Board activity are thought to be: (1) greater public awareness of the potential environmental impact/consequences of development; (2) greater public awareness of the Board’s role and processes as a result of DEP outreach programs, including information available on the internet; and (3) a growing awareness by the public that the Board consists of ten citizen members who are independent decision makers.

EXECUTIVE ANALYST

In response to the recommendations in the study conducted by the Joint Standing Committee on Natural Resources, the Legislature passed L.D. 2546, which provided for an Executive Analyst for the Board. The Board advertised the position in the summer of 2000, received 58 applications for the position, and interviewed six candidates. The Board's selection process was conducted in accordance with the State of Maine's Civil Service Rules and included the following steps:
(*please see appendix B for details*)

Step 1 - Development of Selection Committee.

(Andrew Cadot, Virginia Plummer, John Tewhey, Richard Wardwell, and Jean T. Wilkinson)

Step 2 - Development of job description, resume review criteria and ranking sheets.

Step 3 - Initial review/evaluation of resumes and ranking in conjunction w/scoring sheet.

Step 4 - Development of interview questions and selection of candidates for interviews.

Step 5 - Interviews of candidates and deliberation by committee.

Step 6 - Recommendation by committee to chairman, follow up on references.

Step 7 - Chairman selection of successful candidate and salary negotiations.

MAINE STATE BAR ASSOCIATION SEMINAR

Chairman Tewhey participated in a seminar hosted by the Maine State Bar Association entitled "Permitting Environmental Projects in Maine, New Developments and Strategies for Success." This was a day-long seminar at which environmental attorneys examined current developments in permitting projects such as new residential developments, large retail and manufacturing facilities and the anticipated construction of lateral connections to the new natural gas pipeline. Chairman Tewhey discussed the role of the Board in permitting and addressed from a practical perspective how the Board evaluates permitting issues and how applicants might maximize their effectiveness before the Board.

IV Issues:

The Board hears a significant number of cases and takes action on numerous proposed rules each year. All present challenges for the Board; however, there are three issues that have been of particular interest to the Board over the past year and which are brought to your attention herein. These issues are summarized below.

SCRAP AND BUY PILOT PROGRAM

On August 17, 2000, the Board of Environmental Protection posted to public hearing a rule established by 10 M.R.S.A. Section 394 *et. seq.* which mandated a state-wide pilot program for the retirement of high-pollution vehicles by providing owners with incentives for scrapping these vehicles and purchasing cleaner vehicles. This proposed rule was intended to reduce both ozone-forming and toxic emissions by removing older high-polluting vehicles from the road and replacing them with newer less-polluting vehicles. The Clean Fuel Vehicle Fund was identified as the funding source for this program. This fund was established within the Finance Authority of Maine to receive money primarily from grants, air pollution penalties and bond issues. Since air pollution penalties are deposited to the fund only if the violator voluntarily allocates penalties to the fund, the High Pollution Vehicle Retirement Pilot Program does not currently have an established, reliable or adequate source of funding for the incentive vouchers.

On September 21, 2000, the Board held a public hearing on the proposed pilot program. At that hearing, representatives of the Maine Auto Recyclers Association stated that they would incur a cost of \$350 to \$550 to dismantle and process a vehicle. This expense would not be recouped from the sale of parts or crushed metal. Consequently, the association's members stated that they would not participate in the program. At the end of the public comment period, the Board met on October 19, 2000 to consider adoption of the proposed rule. The High Pollution Vehicle Retirement Pilot Program was approved by a split vote of the Board.

The three year pilot program was initiated on November 1, 2000. Within the first hour of operation, all funding available on a first-come first-serve basis (\$116,000.00) was spoken for. The Bureau of Air Quality has received requests from 909 citizens wishing to take advantage of this incentive. Fewer than 100 individuals will be able to participate in this program with the available funding. The program as established falls far short of expectations and has been viewed as a failure by the media and the public. The Legislative mandate to adopt a state-wide high-pollution retirement pilot program without adequate funding or the support of a vital participant (auto recyclers) placed the Board in the difficult position of establishing regulations for a program that was destined to fail and thereby frustrate the public and undermine public support for, and confidence in, the Board and the DEP.

The Scrap and Buy Pilot Program is a high-profile program that raised public expectations but, for reasons that could have been anticipated, is unable to fulfill those expectations.

SCRAP AND BUY PILOT PROGRAM CONT.

Recommendation:

It is clear that the State of Maine could benefit by removing high-pollution vehicles from its roads and that significant numbers of the public are interested in taking advantage of the incentive established in this program. However, two areas need the direct attention of the Legislature. The Board recommends that the Legislature secure a stable funding source for the program and provide financial incentives to the auto recyclers.

CUMULATIVE IMPACT

During the past year the Board has become increasingly aware of and concerned about the cumulative impact of numerous small projects and/or multiple phases of large projects at a given locality which individually may seem appropriate, but collectively may have a significant impact on that locality. Public awareness and concern about cumulative impact is particularly evident in certain geographic areas, including coastal communities, scenic natural areas, and small communities and is reflected in the growing number of appeals of DEP Commissioner decisions. A prime example is the recent controversy over the permitting of large, permanent docks in coastal waters in the Bar Harbor area. During its consideration of an appeal on one such dock, the Board struggled with the assessment of cumulative impact. Specifically, how does the Board or the DEP determine the number of docks that will fit harmoniously with the scenic and aesthetic character of any particular area and when is one more dock too many?

Additionally, in recent years the Board has seen a growing number of phased projects where the initial project sets the stage for future proposals. While the initial proposal may have been appropriate and subsequent proposals, if considered in isolation, appear appropriate, the result can be significant change in the character of an area that was either not foreseen or cannot be legally addressed in the context of the specific application under consideration.

While existing statutes and rules direct the DEP to consider cumulative impact, there is little practical guidance on how to assess such impact. In an effort to assist the Board with decision making in this area, the Chairman asked the Office of the Attorney General to prepare an explanation of the current laws and regulations concerning consideration of cumulative impact as they relate to license review. The Board believes that the State of Maine would be well served by the development of more concise standards to address cumulative impact and a means to encourage applicants to anticipate and reveal related projects planned for the site at the time of initial application.

SLUDGE

Maine has one of the highest recycling rates of sewage sludge in the country, which the Board supports and applauds. However, public concern over sludge reutilization remains high as reflected in the number and emotional intensity of the appeals the Board hears each year on sludge issues. Public concerns include: odor, heavy metals, potential contamination of groundwater and streams, increased animal vectors, traffic and the fear of pathogen exposure from inadequate site control, improper treatment of sludge before application, or run off from field stacking.

The DEP is currently working with the University of Maine, Orono on a study to assess groundwater impacts and to determine if the DEP's rules adequately protect Maine's groundwater. This study is in the beginning stages; therefore, the report will not be available for several months. We will forward a copy of the study to the Joint Standing Committee on Natural Resources when it is available. Further revisions to the DEP's sludge spreading rules may be required on the basis of the DEP/University of Maine study.

V. CLOSING

The Board members volunteer their services because they are interested in the environmental affairs of the State of Maine and believe that the process of environmental rule-making and permitting should allow for responsible input from all interested parties, including the general public.

To facilitate participation by all parties, the DEP, working in conjunction with the Office of the Attorney General and the Board, has developed updated guidance materials (*see Appendix D*) to help applicants and other interested parties better understand the basis of and procedures for formal and informal interactions with the Board.

We welcome any suggestions that you or others may have to enhance the functioning of the Board.

Appendix A

Board Agenda (January – December)

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn – Augusta, Maine 09:30 a.m.

January 6, 2000

I. Departmental (09:30 am)

Pg. #

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II Consent Agenda Items (09:30)

- 007 1. BEP MINUTES – November 4, 1999 (approve)
- 011 2. BEP MINUTES – November 18, 1999 (approve)
- 015 3. GREAT NORTHERN PAPER, INC., Millinocket and East Millinocket – Administrative Consent Agreement (BAQ)
- 021 4. COUNTY ABATEMENT, INC., Van Buren, - Administrative Consent Agreement (BRWM)

III. Regular Agenda Items (10:00)

- 027 1. CHAPTER 570, COMBINED SEWER OVERFLOW ABATEMENT, (adoption). Staff: Stephen A. McLaughlin, Bureau of Land and Water Quality.
- 039 2. HAZARDOUS WASTE MANAGEMENT AND SOLID WASTE MANAGEMENT RULES FOR UNIVERSAL WASTE (post to public hearing).
CHAPTER 850, Identification of Hazardous Wastes
CHAPTER 851, Standards for Generators of Hazardous Waste
CHAPTER 853, Licensing of Transporters of Hazardous Waste
CHAPTER 857, Hazardous Waste Manifest Requirements
CHAPTER 400, General Provisions
CHAPTER 402, Transfer Stations and Storage Sites for Solid Waste
Staff: Stacy Ladner, Bureau of Remediation and Waste Management
- 179 3. INTERNATIONAL PAPER TAX CERTIFICATION (remand). Staff: James Dusch, Office of the Commissioner

Board to Reconvene for Public Hearings:

Chapter 145, NOx Control Program / Amendments @ 1:00pm Holiday Inn, Augusta

Chapter 119, Motor Vehicle Fuel Volatility Limit / Amendment @ 3:30pm Holiday Inn, Augusta

BOARD OF ENVIRONMENTAL PROTECTION

Sally's Steakhouse – Augusta, Maine 09:00 a.m.

January 20, 2000

I. Departmental (09:00 am)

Pg. #

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II Consent Agenda Items (09:15)

- 007 1. BEP MINUTES, November 4, 1999
- 011 2. R. J. PEACOCK CANNING CO., Lubec - Administrative Consent Agreement (BRWM)
- 017 3. NEMI PUBLISHING, INC., d/b/a FRANKLIN PRINTING, Farmington --
Administrative Consent Agreement and Enforcement Order (BRWM)
- 027 4. IHT CORPORATION/TIGOLD DIVISION, Kennebunk – Administrative Consent
Agreement and Enforcement Order (BRWM)
- 037 5. RONALD CRAWFORD II, Acton, - Administrative Consent Agreement (BLWQ)
- 041 6. PROSPECT STREET REALTY TRUST, Acton - Administrative Consent Agreement
and Enforcement Order (BLWQ)
- 045 7. SERVICENTER, INC. AND EFR, INC., Waterville - Administrative Consent Agreement
and Enforcement Order (BLWQ)

III. Regular Agenda Items (09:30)

- 049 1. CHAPTER 305, PERMIT-BY-RULE/AMENDMENT, (adoption). Staff: Michael
Mullen, Bureau of Land and Water Quality.
- 069 2. CHAPTER 519, INTERIM EFFLUENT LIMITATIONS AND CONTROLS FOR THE
DISCHARGE OF MERCURY, (adoption). Staff: Dennis Merrill, Bureau of Land and
Water Quality
- 087 3. STEAMSHIP NAVIGATION COMPANY (appeal). Staff: Michael Parker, Bureau of
Remediation and Waste Management

Board to Reconvene at 1:00 ⇒ *Presentation on Project Completion*

Maritimes and Northeast Pipeline Construction Project
Staff: Linda Kokemuller

[Informational Session – no vote]

*** AMENDED ***

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 09:30 a.m.

February 3, 2000

I. Departmental (09:30 am)

Pg. #

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II Consent Agenda Items (09:45)

- 005 1. INTERNATIONAL PAPER COMPANY – Tax Certification Appeal / Order amendment (approval)
- 007 2. BENSON & TASKER ENVIRONMENTAL, Kittery - Administrative Consent Agreement (BRWM)
- 013 3. CIANBRO CORPORATION, Dennysville -- Administrative Consent Agreement (BLWQ)
- 017 4. H.O. BOUCHARD, INC., Hampden – Administrative Consent Agreement (BLWQ)
- 021 5. FRANK HOLMES JR., Waterboro, - Administrative Consent Agreement (BLWQ)
- 025 6. ANTWORTH AND SON, Blaine - Administrative Consent Agreement (BLWQ)
- 029 7. TOWN OF HOPE, Hope - Administrative Consent Agreement and Enforcement Order (BLWQ)
- > 0032a 8. CHAPTER 145, NO_x CONTROL PROGRAM / AMENDMENTS (extension of comment deadline)

III. Regular Agenda Items (10:00)

- 033 1. STATE OF MAINE GUIDELINES FOR MUNICIPAL SHORELAND ZONING ORDINANCES / AMENDMENTS (adoption). Staff: Richard Baker, Bureau of Land and Water Quality.
- 039 2. TIRE COLLECTIONS, INC. (evidentiary hearing to determine appeal). Staff: William Butler, Bureau of Remediation and Waste Management.

Board to Reconvene at 2:00pm for a **Public Hearing:**

Hazardous Waste Management & Solid Waste Management Rules for Universal Waste [Chapters 850, 851, 853, 857, 40 and 402] at 2:00pm Holiday Inn / Ground Round, Augusta

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 09:30 a.m.

February 17, 2000

I. Departmental (09:30 am)

Pg. #

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II Consent Agenda Items (09:45)

- 007 1. BEP MINUTES OF May 26, 1999 (approval)
- 011 2. BEP MINUTES OF December 16, 1999 (approval)
- 015 3. H.O. BOUCHARD, INC., Hampden – Administrative Consent Agreement (BLWQ)
- 019 4. FRANK HOLMES JR., Waterboro – Administrative Consent Agreement (BLWQ)
- 023 5. ALAN AND SANDRA DORR, Levant, - Administrative Consent Agreement and Enforcement Order (BLWQ)
- 029 6. ANDY LEWIS LABRECQUE, Bethel - Administrative Consent Agreement and Enforcement Order (BLWQ)
- 033 7. LYMON EDGAR BRADLEY, Hebron - Administrative Consent Agreement and Enforcement Order (BLWQ)
- 037 8. LYNCH CONSTRUCTION, Bangor – Administrative Consent Agreement (BLWQ)
- 041 9. RICHARD RIEMERSMA, Orono – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 045 10. BARRETT PAVING MATERIALS, INC., Dover Foxcroft – Administrative Consent Agreement (BAQ)
- 049 11. D.H. PINNETTE ASBESTOS REMOVAL, INC., Waterville - Administrative Consent Agreement (BRWM)
- 055 12. ENVIRONMENTAL MANAGEMENT INC., Waterville -- Administrative Consent Agreement (BRWM)
- 061 13. CENTRAL MAINE POWER, Portland, Paris, Biddeford, Alna, York, So. Bristol, W. Gardiner & Peru – Administrative Consent Agreement and Enforcement Order (BRWM)

III. Regular Agenda Items (10:00)

- 069 1. STEAMSHIP NAVIGATION COMPANY (final Board Order approval). Staff: Michael T. Parker, Bureau of Remediation and Waste Management.
- 075 2. CHAPTER 124, TOTAL REDUCED SULFUR CONTROL FROM KRAFT PULP MILLS (adoption). Staff: Marc Cone, Bureau of Air Quality
- 103 3. CHAPTER 119, MOTOR FUEL VOLATILITY LIMIT (adoption). Staff: Ronald Severance, Bureau of Air Quality.
- 113 4. HANNUM, ANNE S. / PERMIT REQUEST (petition for BEP Jurisdiction). Staff: Stacie Beyer, Bureau of Land and Water Quality.

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 09:00 a.m.

March 16, 2000

I. Departmental (09:00 am)

Pg. #

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II Consent Agenda Items

- 007 1. FORT WESTERN TIRE CO., INC., Augusta – Administrative Consent Agreement (BRWM)
- 011 2. ROGER LITTLEFIELD, Montville – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 015 3. GAGNE & SON CONCRETE BLOCKS, INC. Belgrade – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 021 4. MARRINERS, INC., Washington – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 025 5. THADIOUS BARBER, China - Administrative Consent Agreement and Enforcement Order (BLWQ)
- 029 6. CHARLES SPRINGER, Belfast - Administrative Consent Agreement and Enforcement Order (BLWQ)
- 033 7. T.R. DILLON LOGGING, INC., Whitfield - Administrative Consent Agreement (BLWQ)
- 037 8. TIMOTHY and CHERYL HARPER, Sullivan – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 041 9. BERWICK SEWER DISTRICT, Berwick – Administrative Consent Agreement and Enforcement Order (BLWQ)

III. Regular Agenda Items (09:30)

- 047a 1. MAINE YANKEE PERMIT MODIFICATION APPLICATION (post to public hearing).
Staff: David Silver, Bureau of Land and Water Quality
- 047 2. CHAPTER 146, DIESEL-POWERED MOTOR VEHICLE EMISSIONS STANDARDS / NEW (adoption). Staff: Scott Wilson, Bureau of Air Quality.
- 057 3. CHAPTER 123, PAPER COATING REGULATION / AMENDMENTS (post to comment). Staff: Jeffrey Crawford, Bureau of Air Quality
- 065 4. CHAPTER 140, PART 70, AIR EMISSION LICENSE REGULATIONS / AMENDMENTS (adoption). Staff: Jeffrey Crawford, Bureau of Air Quality.
- 151 5. MUNICIPAL and COUNTY SAND/SALT STORAGE PRIORITY LIST (approval).
Staff: Tammy L. Gould, Bureau of Land and Water Quality.

Board of Environmental Protection
March 16, 1999 Agenda (cont.)

- 163 6. CHAPTER 1237, STATE-IMPOSED SHORELAND ZONING MAP TOWN OF GREENE / AMENDMENTS (adoption). Staff: Richard P. Baker, Bureau of Land and Water Quality.
- 171 7. BRACEBRIDGE CORPORATION PERMIT #L-19196-26-L-A (appeal). Staff: Dave Silver, Bureau of Land and Water Quality.

Board to reconvene at approximately 1:00 to consider items #7 and #8 at:

- 267 8. LEWIS B. ROHRBACH PERMIT #L-19946-4E-B-Z (appeal). Staff: Robert Stratton, Bureau of Land and Water Quality.
- 421 9. KENNEBEC SANITARY TREATMENT DISTRICT, PERMIT #S-021829-SI-A-N (appeal). Staff: David Wright, Bureau of Remediation and Waste Management.

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 09:30 a.m.

April 6, 2000

I. DEPARTMENTAL (09:30 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II. CONSENT AGENDA ITEMS

- 005 1. BEP MINUTES, January 20, 2000 (approval)
- 009 2. BEP MINUTES, February 17, 2000 (approval)
- 013 3. THOMAS DiCENZO, INC., Township 24 MD-BPP – Administrative Consent Agreement (BAQ)
- 017 4. TIBBETTS BUILDING and FUEL CENTER, INC., Lincoln – Administrative Consent Agreement (BAQ)
- 021 5. BOWDOIN COLLEGE, Harpswell – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 025 6. FRANK SABSTEANSKI, Harpswell – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 029 7. LOUIS D'AMATO, Denmark – Administrative Consent Agreement (BLWQ)
- 033 8. FREDRICK L. FRENCH, Ellsworth – Administrative Consent Agreement (BLWQ)
- 037 9. DENISE and SCOTT TOWERS, Clinton – Administrative Consent Agreement (BLWQ)
- 041 10. MILES GRAY and STONES CONSTRUCTION CO. INC., Belfast – Administrative Consent Agreement and Enforcement Order (BLWQ)

III. REGULAR AGENDA ITEMS (10:00 A.M.)

- 045 1. CHAPTER 594, STATE CONTRIBUTION TO OVERBOARD DISCHARGE REPLACEMENT PROJECTS / AMENDMENT (post to public hearing). Staff: David Achorn, Bureau of Land and Water Quality.
- 055 2. CHINA LAKE REGULATION OF WATER LEVELS AND MINIMUM FLOWS / MODIFICATION (approval). Staff: Dana P. Murch, Bureau of Land and Water Quality.
- 061 3. CHINA LAKE REGULATION OF WATER LEVELS AND MINIMUM FLOWS (appeal of petition denial) Staff: Dana P. Murch, Bureau of Land and Water Quality.
- 101 4. EXECUTIVE SUMMARY / TIRE PROGRAM (informational briefing) public comments welcome. Staff: Paula Clark, Bureau of Remediation and Waste Management

Board to Reconvene at 1:00 to consider remaining agenda items

Board of Environmental Protection
April 6, 2000 Agenda (cont.)

III. REGULAR AGENDA ITEMS (CONT.)

- 107 5. ADRIAN and VALERIE PRAY (appeal). Staff: David Wright, Bureau of Remediation and Waste Management.
- 155 6. DAVID M. THORP (appeal). Staff: David Wright, Bureau of Remediation and Waste Management.

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 09:00 a.m.

April 20, 2000

I. DEPARTMENTAL (09:00 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II CONSENT AGENDA ITEMS

- 007 1. BEP MINUTES, January 6, 2000 (approval)
- 011 2. BEP MINUTES, March 16, 2000 (approval)
- 017 3. C.H. SPRAGUE & SON CO., Searsport – Administrative Consent Agreement and Enforcement Order (BAQ)
- 023 4. R.H. PERRY EXCAVATING, Groham – Administrative Consent Agreement (BLWQ)

III. REGULAR AGENDA ITEMS (09:15 A.M.)

- 027 1. CHAPTER 119, MOTOR FUEL VOLATILITY LIMIT (final adoption of major substantive rule). Staff: Ronald Severance, Bureau of Air Quality
- 033 2. 2000 SMALL COMMUNITY GRANT PROGRAM PRIORITY LIST (approval). Staff: Richard Green, Bureau of Land and Water Quality.
- 041 3. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM MOU BETWEEN EPA/MeDEP (approval). Staff Dennis Merrill, Bureau of Land and Water Quality.
- 071 4. KENNEBEC SANITARY TREATMENT DISTRICT (appeal / draft order approval). Staff: David Wright, Bureau of Remediation and Waste Management.
- 091 5. ANNE S. HANNUM, PRIVATE RECREATIONAL DOCK (petition to intervene / request date change of hearing) Staff: Stacie Beyer, Bureau of Land and Water Quality.
- 101 6. POLAND SPRING BOTTLING COMPANY (appeal). Staff: Marybeth Richardson, Bureau of Land and Water Quality

Board to Reconvene at 1:30 to consider remaining agenda items

- 401 7. CHAPTER 145, NO_x CONTROL PROGRAM / AMENDMENTS (deliberation). Staff: Jeff Crawford, Bureau of Air Quality.

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 09:30 a.m.

May 4, 2000

I. DEPARTMENTAL (09:30 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II. CONSENT AGENDA ITEMS (09:45 A.M.)

- 005 1. QUALITY DRY CLEANING & SHIRT LAUNDRY, Farmingdale and Brunswick –
Administrative Consent Agreement and Enforcement Order (BRWM)
- 015 2. GARY NORRIS, Augusta – Administrative Consent Agreement and Enforcement Order
(BLWQ)
- 019 3. MAINE DEPARTMENT OF TRANSPORTATION, Millinocket and TA R7 –
Administrative Consent Agreement and Enforcement Order (BLWQ)
- 023 4. MICHAEL W. ROWE, Hartford - Administrative Consent Agreement and Enforcement
Order (BLWQ)
- 027 5. JUDY MOODY, Vassalboro – Administrative Consent Agreement (BLWQ)
- 031 6. RAY ST.LAURENT, Greene – Administrative Consent Agreement and Enforcement
Order (BLWQ)
- 037 7. EDMOND LAPOINTE, Fairfield – Administrative Consent Agreement and Enforcement
Order (BLWQ)
- 041 8. SUSAN J. WILSON and FREEMAN PEASLEE, Boothbay – Administrative Consent
Agreement (BLWQ)
- 045 9. KENNEBEC SANITARY TREATMENT DISTRICT (order approval)

III. REGULAR AGENDA ITEMS (10:00 A.M.)

- 065 1. DAVID M. THORP (appeal continued from April 6th). Staff: David Wright, Bureau of
Remediation and Waste Management
- 2. WORKSHOP (Board Orientation, Roles and Responsibilities -- no vote to be taken)
Discussion Topics:
 - Review of ex parte communications
 - Executive Analyst (job tasks, role, hiring timetable)
 - Agenda items for continued workshop (*as needed*)

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 09:30 a.m.

June 1, 2000

I. DEPARTMENTAL (09:30 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II CONSENT AGENDA ITEMS (09:45 A.M.)

- 005 1. QUALITY DRY CLEANING & SHIRT LAUNDRY, Farmingdale and Brunswick – Administrative Consent Agreement and Enforcement Order (BRWM)
- 015 2. PORTLAND SAND AND GRAVEL, INC., Gray – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 019 3. GAMES DEVELOPMENT, LLC and ALLIED/COOK CONSTRUCTION, INC., Augusta – Administrative Consent Agreement (BLWQ)
- 023 4. DENISE TOWERS, Clinton – Administrative Consent Agreement (BLWQ)
- 027 5. CITY OF AUBURN, Auburn – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 031 6. DAVID M. THORP / APPEAL – Order Approval (BRWM)

III. REGULAR AGENDA ITEMS (10:00 A.M.)

- 039 1. VOC RACT DETERMINATIONS / SOURCE SPECIFIC: Georgia Pacific, The Mearl Corporation (Washington County), Irving Tanning Co. (Somerset County), Great Northern Paper - Millinocket & E. Millinocket (Penobscot County) (approval). Staff: Jeff Crawford, Bureau of Air Quality
- 105 2. CHAPTER 145, NO_x CONTROL PROGRAM / AMENDMENTS (post to public comment). Staff: Jeff Crawford, Bureau of Air Quality.
- 117 3. MACK POINT PORT FACILITY / DREDGE (consideration of BEP jurisdiction). Stacie Beyer, Bureau of Land and Water Quality
- 127 4. POLAND SPRING APPLICATION FOR EXTRACTION WELLS (consideration of BEP jurisdiction). Marybeth Richardson, Bureau of Land and Water Quality

Board to reconvene for continued discussion of hiring process / no vote to be taken

BEP WORKSHOP (Executive Analyst duties/tasks). Staff: All

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 09:30 a.m.

July 6, 2000

I. DEPARTMENTAL (09:30 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II. CONSENT AGENDA ITEMS (09:45 A.M.)

- 005 1. SUSAN J. WILSON and FREEMAN PEASLEE, Boothbay – Administrative Consent Agreement (BLWQ)
- 009 2. BARRETT PAVING MATERIALS INC. New Vineyard – Administrative Consent Agreement and Enforcement Order (BLWQ)

III. REGULAR AGENDA ITEMS (10:00 A.M.)

- 015 1. CHAPTER 145, NO_x CONTROL PROGRAM / AMENDMENTS (extension of public comment). Staff: Jeffrey Crawford, Bureau of Air Quality.
- 023 2. MAINE YANKEE INDEPENDENT SPENT FUEL STORAGE INSTALLATION / TIER I #763 (decision). Staff: David Silver, Bureau of Land and Water Quality.

BEP WORKSHOP (Executive Analyst Position Discussion)

Board of Environmental Protection to reconvene at 12:30 to continue Public Hearing in the matter of:
Anne S. Hannum Application for a Private Recreational Dock, Bar Harbor

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 09:30 a.m.

July 20, 2000

I. DEPARTMENTAL (09:30 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II. CONSENT AGENDA ITEMS (09:45 A.M.)

- 007 1. THE L.E. MEYERS CORPORATION and CENTRAL MAINE POWER COMPANY, Pownal – Administrative Consent Agreement (BLWQ)
- 013 2. CHRISTOPHER COOKSON, Newport – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 017 3. GILBERT & SOLANGE TREMBLAY, Enfield – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 021 4. M.W. SEWALL & CO., Yarmouth – Administrative Consent Agreement and Enforcement Order.
- 031 5. THE LANE CONSTRUCTION CORP., Prospect, Hampden, E. Hampden, Orono, Hancock, Presque Isle, Houlton Hermon and Medway – Administrative Consent Agreement (BAQ)

III. REGULAR AGENDA ITEMS (10:00 A.M.)

- 035 1. ROYAL RIVER DEVELOPMENT COMPANY (appeal). Staff: Alexander Wong, Bureau of Land and Water Quality.

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 09:30 a.m.

August 3, 2000

I. DEPARTMENTAL (09:30 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II CONSENT AGENDA ITEMS (09:45 A.M.)

- 005 1. BEP MINUTES OF May 4, 2000 – approval
- 009 2. BioSAFE ENVIRONMENTAL SERVICES, INC., Westbrook - Administrative Consent Agreement (BRWM)
- 015 3. THE EVEREST COMPANY, INCORPORATED - Holden – Administrative Consent Agreement and Enforcement Order (BLWQ)

Informational Status Report: Steamship Navigation

Staff member: Mike Parker, Bureau of Remediation and Waste Management

III. REGULAR AGENDA ITEMS (10:00 A.M.)

- 019 1. CHAPTER 310, WETLANDS PROTECTION / AMENDMENTS (post to public comment). Staff: Jeff Madore, Bureau of Land and Water Quality.
- 037 2. HAZARDOUS WASTE MANAGEMENT AND SOLID WASTE MANAGEMENT RULES FOR UNIVERSAL WASTE (post to public hearing). Staff: Stacy A. Ladner, Bureau of Remediation and Waste Management
 - Chapter 850, Identification of Hazardous Wastes
 - Chapter 851, Standards for Generators of Hazardous Waste
 - Chapter 853, Licensing of Transporters of Hazardous Waste
 - Chapter 856, Licensing of Hazardous Waste Facilities
 - Chapter 857, Hazardous Waste Manifest Requirements
 - Chapter 400, General Provisions
 - Chapter 402, Transfer Stations and Storage Sites for Solid Waste
- 177 3. POLAND SPRING BOTTLING COMPANY / PHASE II (appeal). Staff: Marybeth Richardson, Bureau of Land and Water Quality.

BOARD OF ENVIRONMENTAL PROTECTION
Holiday Inn / Ground Round – Augusta, Maine **09:30 a.m.**
August 17, 2000

I. DEPARTMENTAL (09:30 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II CONSENT AGENDA ITEMS (09:45 A.M.)

- 005 1. BEP MINUTES OF June 1, 2000 – approval
- 009 2. BEP MINUTES OF July 20, 2000 - approval
- 013 3. CUMBERLAND FARMS, INC., Portland - Administrative Consent Agreement (BAQ)
- 019 4. BENTON FALLS ASSOCIATES, Benton – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 029 5. WHITE BROTHERS, INC., Lyman – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 033 6. B.B. GOLF HOLDINGS, Boothbay – Administrative Consent Agreement (BLWQ)
- 037 7. Pages 037 through 040 withdrawn from consideration prior to printing packet material

Informational Status Report: Steamship Navigation

Staff member: Mike Parker, Bureau of Remediation and Waste Management

III. REGULAR AGENDA ITEMS (10:00 A.M.)

- 041 1. CHAPTER 123, PAPER COATING REGULATION / AMENDMENTS (adoption).
Staff: Jeffrey S. Crawford, Bureau of Air Quality Control.
- 055 2. CHAPTER 147, HIGH POLLUTION VEHICLE RETIREMENT PILOT PROGRAM / NEW (post to public hearing). Staff: Ronald Severance, Bureau of Air Quality
- 061 3. CHAPTER 600, OIL DISCHARGE PREVENTION AND POLLUTION CONTROL RULES FOR MARINE OIL TERMINALS, TRANSPORTATION PIPELINES AND VESSELS (post to public hearing) Staff: David Sait, Bureau of Remediation and Waste Management.
- 117 4. KNOX COUNTY BOARD OF COMMISSIONERS (petition for BEP jurisdiction)
Staff: Judy Gates, Bureau of Land and Water Quality
- 193 5. PORTSMOUTH NAVAL SHIPYARD COMMERCIAL HAZARDOUS WASTE STORAGE FACILITY (post to public hearing). Staff: Joan Jones, Bureau of Remediation and Waste Management.

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 10:30 a.m.

September 7, 2000

I. DEPARTMENTAL (10:30 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II. CONSENT AGENDA ITEMS (10:45 A.M.)

- 005 1. BEP MINUTES OF February 3, 2000 – approval
- 009 2. BEP MINUTES OF August 3, 2000 - approval
- 013 3. GOULD ENTERPRISES, INC. d/b/a POINT SEBAGO RESORT, Casco -
Administrative Consent Agreement (BLWQ)
- 017 4. CHRISTIAN COOKSON, Newport – Administrative Consent Agreement and
Enforcement Order (BLWQ)
- 021 5. WILLIAM LANCASTER, LITCHFIELD – Administrative Consent Agreement and
Enforcement Order (BLWQ)

Informational Status Report: Steamship Navigation

Staff member: Mike Parker, Bureau of Remediation and Waste Management

III. REGULAR AGENDA ITEMS (11:00 A.M.)

- 025 1. KNOX COUNTY BOARD OF COMMISSIONERS / AIRPORT MODIFICATION APPLICATION (establish deadline for petitions to intervene). Staff: Judy Gates, Bureau of Land and Water Quality.
- 035 2. CHAPTER 594, STATE CONTRIBUTION TO OVERBOARD DISCHARGE REPLACEMENT PROJECTS / AMENDMENT (adoption). Staff: David Achorn, Bureau of Land and Water Quality

Public Hearing: 2:00pm, Holiday Inn / Ground Round in Augusta. Hazardous Waste Management and Solid Waste Management Rules for Universal Waste / Amendments:

Chapter 850, Identification of Hazardous Wastes; Chapter 851, Standards for Generators of Hazardous Waste; Chapter 853, Licensing of Transporters of Hazardous Waste; Chapter 856, Licensing of Hazardous Waste Facilities; Chapter 857, Hazardous Waste Manifest Requirements; Chapter 400, General Provisions; Chapter 402, Transfer Stations and Storage Sites for Solid Waste

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 09:00 a.m.

September 21, 2000

I. DEPARTMENTAL (09:00 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II. CONSENT AGENDA ITEMS (09:15 A.M.)

- 005 1. BEP MINUTES OF August 17, 2000 – approval
- 009 2. DONALD PETTIS, Limerick – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 013 3. VURLE C. JONES, Skowhegan - Administrative Consent Agreement and Enforcement Order (BLWQ)
- 017 4. TOWN OF ALNA et.al., and HANLEY CONSTRUCTION, INC., Alna – Administrative Consent Agreement (BLWQ)
- 023 5. HARRIMAN BROTHERS INC., Monroe – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 027 6. SHERMAG INC. d/b/a WOODTECK, North Anson – Administrative Consent Agreement and Enforcement Order (BRWM)
- 037 7. MAINE POLY, INC., Greene – Administrative Consent Agreement and Enforcement Order (BRWM)

III. REGULAR AGENDA ITEMS (9:30 A.M.)

- 047 1. MUNICIPAL and COUNTY SAND/SALT STORAGE AREA PRIORITY LIST (approval). Staff: Tammy Gould, Bureau of Land and Water Quality.
 - 055 2. CHAPTER 870, LABELING OF MERCURY-ADDED PRODUCTS / NEW (post to comment). Staff: John James, Bureau of Remediation and Waste Management
 - 073 3. BRACEBRIDGE CORPORATION (appeal of Coastal Waters Project). Staff: Judy Gates, Bureau of Land and Water Quality
 - 105 4. MAINE YANKEE ATOMIC POWER SALES and USE TAX EXEMPTION CERTIFICATION (approval). Staff: James Dusch, Office of the Commissioner
 - 197 5. ANDROSCOGGIN ENERGY LLC / CONSOLIDATED PROPERTY TAX CERTIFICATION ORDER (appeal of Town of Jay). Staff: James Dusch, Office of the Commissioner
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Public Hearing: 1:30pm, Holiday Inn / Ground Round in Augusta. Chapter 147, High Pollution Vehicle Retirement Pilot Program (New)

BOARD OF ENVIRONMENTAL PROTECTION

Augusta Civic Center – Augusta, Maine 09:30 a.m.

October 5, 2000

I. DEPARTMENTAL (09:30 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II. CONSENT AGENDA ITEMS (10:00 A.M.)

- 005 1. THE RUKSZNIS CORPORATION, Bridgton – Administrative Consent Agreement (BLWQ)
- 009 2. CHRISTIAN COOKSON, Newport – Administrative Consent Agreement and Enforcement Order (BLWQ) [tabled at 9/7 meeting – for reconsideration]

III. REGULAR AGENDA ITEMS (10:30 A.M.)

- 017 1. CHAPTER 127, NEW MOTOR VEHICLE EMISSION STANDARDS / REPEAL and REPLACE (post to public hearing). Staff: Ronald Severance, Bureau of Air Quality.
- 031 2. CHINA LAKE REGULATION OF WATER LEVELS AND MINIMUM FLOWS (schedule hearing). Staff: Dana Murch, Bureau of Land and Water Quality

Informational Session: (no vote to be taken)

- 045 > Department of Environmental Protection Enforcement Policies. Staff: James Dusch, Office of the Commissioner
 - 067 > Bureau of Land and Water Quality Enforcement Policy Review and Case Example. Staff: Michael Mullen, Bureau of Land and Water Quality
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BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 09:30 a.m.

October 19, 2000

I. DEPARTMENTAL (09:30 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II. CONSENT AGENDA ITEMS (09:45 A.M.)

- 005 1. GEORGE SCHOTT, Greene – Administrative Consent Agreement Enforcement Order (BLWQ)
- 011 2. GEORGIA PACIFIC CORPORATION, Baileyville – Administrative Consent Agreement and Enforcement Order (BAQ)

III. REGULAR AGENDA ITEMS (10:00 A.M.)

- 023 1. CHAPTER 147, HIGH POLLUTION VEHICLE RETIREMENT PILOT PROGRAM / NEW(adoption). Staff: Ronald Severance, Bureau of Air Quality.
- 037 2. KNOX COUNTY BOARD OF COMMISSIONERS APPLICATION (petition for intervenor status). Staff: Judy Gates, Bureau of Land and Water Quality
- 053 3. CHAPTER 145, NO_x CONTROL PROGRAM / AMENDMENTS. (re-post to public comment). Staff: Jeff Crawford, Bureau of Air Quality
- 061 4. WARREN SANITARY DISTRICT (appeal). Staff: Michael Barden, Bureau of Land and Water Quality
- 371 5. DEPARTMENT OF CORRECTIONS / CORRECTIONAL FACILITY EXPANSION (appeal). Staff: Judy Gates, Bureau of Land and Water Quality

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 09:30 a.m.

November 2, 2000

I. DEPARTMENTAL (09:30 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II CONSENT AGENDA ITEMS (09:45 A.M.)

- 005 1. HOLMES, INC., Bristol – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 009 2. C.N. BROWN CO., Standish – Administrative Consent Agreement and Enforcement Order (BRWM)

III. REGULAR AGENDA ITEMS (10:00 A.M.)

- 015 1. CHAPTER 592, THE SMALL COMMUNITY WASTEWATER PROGRAM / AMENDMENTS (post to public comment). Staff: Richard Green, Bureau of Land and Water Quality.
 - 029 2. 2000 SMALL COMMUNITY GRANT PROGRAM PRIORITY LIST / AMENDMENT (approval). Staff: Richard Green, Bureau of Land and Water Quality
 - 039 3. ANNE S. HANNUM, APPLICATION FOR PRIVATE RECREATIONAL DOCK (request to reopen the record). Staff: Stacie Beyer, Bureau of Land and Water Quality
 - 4. PORTSMOUTH NAVAL SHIPYARD APPLICATION FOR LICENSE AMENDMENT (Deliberative Session). Staff: Joan Jones, Bureau of Remediation and Waste Management.
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BOARD TO RECONVENE AT 1:00PM FOR A PUBLIC HEARING:

Chapter 600, Oil Discharge Prevention and Pollution Control Rules for Marine Oil Terminals, Transportation Pipelines and Vessels / Amendments

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 11:30 a.m.

November 16, 2000

I. DEPARTMENTAL (11:30 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II. CONSENT AGENDA ITEMS

None

III. REGULAR AGENDA ITEMS (11:30 A.M.)

- 007 1. CHAPTER 592, THE SMALL COMMUNITY WASTEWATER PROGRAM / AMENDMENTS (post to public comment). Staff: Richard Green, Bureau of Land and Water Quality.
- 021 2. TENANTS HARBOR LAND ACQUISITION / ST. GEORGE (approval). Staff: Tom Benn, Bureau of Land and Water Quality
- 025 3. STEAMSHIP NAVIGATION CO. (petition to intervene). Staff: Mike Parker, Bureau of Remediation and Waste Management.

BOARD TO RECONVENE AT 1:00PM FOR A PUBLIC HEARING:

Chapter 127, New Motor Vehicle Emission Standards / Repeal & Replace

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 9:30 a.m.

December 7, 2000

I. DEPARTMENTAL (9:30 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II CONSENT AGENDA ITEMS

- 005 1. THOMAS STERLING AND PROCK MARINE COMPANY, Belfast – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 009 2. DOROTHY EGG FARMS. L.L.C., Manchester – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 013 3. DEREK TAYLOR, Norridgewock – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 017 4. DARRELL SHEIVE AND RICHARD CLOUTIER, Waterville – Administrative Consent Agreement (BLWQ)
- 021 5. DOUTEN D. THOMAS, Roxbury – Administrative Consent Agreement
- 025 6. GREGORY D'AUTEUIL, Rangeley – Administrative Consent Agreement
- 029 7. THE MAINE WILD BLUEBERRY COMPANY, Whitneyville & Machis – Administrative Consent Agreement and Enforcement Order

III. REGULAR AGENDA ITEMS (10:00 A.M.)

- 041 1. CHAPTER 424, LEAD MANAGEMENT RULES / AMENDMENTS (post to public comment). Staff: Jamie Tansey, Bureau of Remediation and Waste Management
- 121 2. PINE TREE WASTE, INC. APPLICATION FOR A TRANSFER FACILITY (BEP jurisdiction). Staff: Randy McMullen, Bureau of Remediation and Waste Management
- 161 3. POLAND SPRING BOTTLING COMPANY / PHASE III (appeal). Staff: Marybeth Richardson, Bureau of Land and Water Quality

Board to reconvene after lunch at approximately 1:30pm for workshop discussion

- 217 4. BEP WORKSHOP (1999, Legislative Report / Executive Analyst discussion). Staff: Terry Hanson, Board of Environmental Protection. – no vote to be taken

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round – Augusta, Maine 9:30 a.m.

December 21, 2000

I. DEPARTMENTAL (9:30 A.M.)

- A. Commissioner's Corner
- B. Chairman's Comments
- 001 C. Board Calendar
- D. Departmental Orders
- E. Executive Session

II CONSENT AGENDA ITEMS

- 005 1. TERRY BRAGG, INC. and DEARBORN BROTHERS CONSTRUCTION, INC.,
Cumberland – Administrative Consent Agreement and Enforcement Order (BLWQ)
- 009 2. DONALD ANDERSON, Acton – Administrative Consent Agreement (BLWQ)
- 013 3. MALCOLM FRENCH, d/b/a M.A. FRENCH PROFESSIONAL FORESTRY, Otis –
Administrative Consent Agreement (BLWQ)
- 017 4. THE TALARIA COMPANY, LLC, d/b/a THE HINCKLEY COMPANY, Southwest
Harbor – Administrative Consent Agreement and Enforcement Order
- 021 5. TOWN OF LITCHFIELD, Litchfield – Administrative Consent Agreement and
Enforcement Order (BLWQ)
- 025 6. C.R.M. CONSTRUCTION SERVICES, INC., Auburn – Administrative Consent
Agreement and Enforcement Order (BLWQ)
- 029 7. KELLY EARTHWORKS, INC., Windsor – Administrative Consent Agreement and
Enforcement Order (BLWQ)
- 033 8. MARK HANLEY, Bremen – Administrative Consent Agreement (BLWQ)
- 037 9. EDWARD C. GALL, Augusta – Administrative Consent Agreement (BLWQ)
- 041 10. PAUL R. JOY d/b/a JOY CONSTRUCTION, Gouldsboro – Administrative Consent
Agreement and Enforcement Order (BRWM)
- 049 11. LUNDER SHOE PRODUCTS COMPANY d/b/a LUNDER MANUFACTURING
COMPANY, Saco – Administrative Consent Agreement and Enforcement Order
(BRWM)
- 057 12. INDUSTRIAL CONCRETE SERVICES, INC., Gorham – Administrative Consent
Agreement and Enforcement Order (BRWM)

III. REGULAR AGENDA ITEMS (10:00 A.M.)

- 071 1. CHAPTER 127, NEW MOTOR VEHICLE EMISSION STANDARDS / REPEAL and
REPLACE (*adoption). Staff: Ronald Severance, Bureau of Air Quality

- 095 2. HAZARDOUS WASTE MANAGEMENT AND SOLID WASTE MANAGEMENT RULES INCORPORATING UNIVERSAL WASTE (*adoption). Staff: Stacy Ladner, Bureau of Remediation and Waste Management
- Chapter 850, Identification of Hazardous Wastes
 - Chapter 851, Standards for Generators of Hazardous Waste
 - Chapter 853, Licensing of Transporters of Hazardous Waste
 - Chapter 856, Licensing of Hazardous Waste Facilities
 - Chapter 857, Hazardous Waste Manifest Requirements
 - Chapter 400, General Provisions
 - Chapter 402, Transfer Stations and Storage Sites for Solid Waste
- 227 3. STEAMSHIP NAVIGATION CO. / DRAFT PROPOSED ORDER (approval). Staff: Mike Parker, Bureau of Remediation and Waste Management

*At its meeting the Board will accept additional public comment on a rule proposed for adoption. Additional public comment will be accepted only if it is directly related to comments received during the formal rulemaking comment period or is in response to proposed changes.

Appendix B

Executive Analyst (Summary of Selection Process)

Summary of Selection Process
2000 Executive Analyst, Board of Environmental Protection

Step 1

Development of Selection Committee. Chairman Tewhey solicited members to participate in the selection process. The selection committee currently is comprised of:

Andrew Cadot
Virginia Plummer
Richard Wardwell
Jean T. Wilkinson
John Tewhey

Step 2

Development of Job Description. Using the Natural Resource Committee Task force report of January 2000, all Board members reviewed and ranked the suggested duties (Appendix B of the report). The selection committee prioritized those ranked duties and developed a job description. This was modified by soliciting input through the human resource staff person to ensure minimum qualifications were manageable for the resume review process. This resulted in the addition of a 6 year experience requirement using environmental laws and rules.

Step 3

Initial Review/Evaluation of Resumes. The Selection Committee receives all 58 resume packets for review and determines which of them they will wish to rank. Following a ranking in conjunction with the scoring sheet candidates are selected for interviews.

Step 4

Development of Interview Questions. The Selection Committee develop interview questions using the criteria from the job description information from the resume review forms and elements from the Management Competency Model.

Step 5

Interviews. Interviews are scheduled in 2hr. blocks. The first 60 minutes of each interview block is dedicated to the interview. The remaining 60 minutes is used for the Committee members to discuss and evaluate their findings from that interview.

Step 6

The selection committee makes a recommendation to the Chair. The top three candidates are referred to the Chairman for follow up on references.

Step 7

Chairman offers position and initiates salary negotiations. Terry to draft all necessary paperwork associated with the hiring process.

Comment:

Recruitment was conducted in accordance with the State of Maine's Civil Service Rules and is an equal employment opportunity entity. For further information regarding guidelines for hiring protocol within the State of Maine, please contact Debbe Clark directly at (207) 287-7835.

Appendix C

Cumulative Impact Response (Attorney General)


State of Maine

Department of
Attorney General

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Memorandum

To: John Tewhey, Chair, Board of Environmental Protection
From: Jan McClintock, Assistant Attorney General 
Date: November 21, 2000
Subject: Cumulative Impacts

This memorandum is in response to the Board's request for an explanation of the current laws and regulations concerning the consideration of cumulative impacts in reviewing license applications. Cumulative impacts are considered in reviewing developments and projects subject to the licensing requirements of the Site Location of Development Law, 38 M.R.S.A. §§ 481, et seq. (1989 & Supp. 1999) and the Natural Resources Protection Act, 38 M.R.S.A. §§ 480-A, et seq. (1989 & Supp. 1999).

The list of licensing criteria in the Site Location of Development Law does not specifically mention cumulative impacts. 38 M.R.S.A. §484. Chapter 372 of the Department's Regulations, "Policies and Procedures Under the Site Location Law," refers to the consideration of cumulative impacts in two places. Section 1 provides that:

In reviewing applications for approval of proposed developments under the Site Location Law, the Board shall consider the size, location and nature of the proposed development in relation to:

- A. The potential primary, secondary and cumulative impacts of the development on the character, quality and uses of land, air and water on the development site and on the area likely to be affected by the proposed development;

...

Note: The Board considers the primary, secondary and cumulative impacts of a proposed development in relation to the areas of concern articulated in the criteria for approval of 38 M.R.S.A. § 484 as interpreted by these regulations. "Cumulative impacts" refer to those impacts that are realized when the incremental

effects of individual developments add up to the point where certain thresholds of tolerance are exceeded.

06-096 CMR 372.1 and Note (effective November 1, 1979).

Section 10 of Chapter 372 provides that:

The Board requires that an application for approval include present plans for all phases of a development to be undertaken on a parcel. In the absence of evidence sufficient to approve all phases of the proposed development, the Board may approve one or more phases of the development based on the evidence then available. Approval of phases, however, shall be based on compliance of the entire proposed development with the standards of the Site Location Law.

Note: A proper analysis of the potential primary, secondary and cumulative impacts of a proposed development can be made only when all phases of a proposed development are considered. Also, the plans for site modification and pollution mitigation need to be based on the entire extent of a proposed development in order to insure their effectiveness in accomplishing the desired objectives.

06-096 CMR 372.10 and Note (effective November 1, 1979).

As with the Site Law, the list of licensing criteria under the Natural Resources Protection Act does not mention cumulative impacts. 38 M.R.S.A. § 480-D. However, the Findings and Purpose section of the Natural Resources Protection Act states that:

The Legislature further finds and declares that the cumulative effect of the frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life.

38 M.R.S.A. § 480-A.

Chapter 310, Section 1, of the Department's Regulations, "Wetlands Protection," restates the above:

The Legislature has also found that the cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life.

06-096 CMR 310.1 (effective Sept. 1, 1996). Chapter 310, Section 5.D(1), further provides that:

Even if a project has no practicable alternative and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on the wetland. "Unreasonable impact" means that one or more of the standards of the Natural Resources Protection Act, 38 M.R.S.A. § 480-D, will not be met. In making this determination, the department considers:

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- (d) Cumulative effects of frequent minor alterations on the wetland.

06-096 CMR 310.5(D)(1) (effective Sept. 1, 1996).

Appendix D

Guidance Materials

Adopted 1/22/97

BOARD OF ENVIRONMENTAL PROTECTION

BOARD GUIDANCE ON RECEIVING PUBLIC COMMENT

I. PURPOSE AND GUIDING PRINCIPLES .

The Board's purpose in this document is to provide guidance concerning how to encourage fair and effective opportunities for public comment on the Board's work, including comment by an applicant, other interested parties or the general public. In seeking to provide ways for inviting and receiving public comment on its work, the Board recognizes the following guiding principles:

- *first, the Board encourages reasonable public participation; before making decisions, the Board wants to be informed of concerns and views of affected parties and the general public;*
- *second, the manner by which public comment is received should enable the Board as a body to legally consider that comment in formulating decisions and policies;*
- *third, the Board should conduct its business assembled at open public meetings and hearings and otherwise in a manner that is fair and accords with the public trust.*

Even as the Board attempts to fulfill each of these guiding principles, it is important to recognize that its job often involves making tough decisions among competing and sometimes adversarial interests in controversial matters. This means that ultimately the decision of the Board will sometimes be contrary to the expressed views of some parties or members of the public. Thus, fairness and openness to public comment in the Board's process cannot mean that all concerns will be given the same weight in the Board's decisionmaking, which itself is a deliberative process of balancing and choosing among sometimes competing views.

It is also important to recognize that the Board is a part-time, volunteer board, its members having been chosen by the Governor to bring to the table diverse viewpoints, backgrounds and community perspectives representative of Maine. Inherent in this diversity is the fact that each Board member will and should have

an individualized sensitivity and awareness with respect to the issues and viewpoints presented in its work. At the same time, the Board wishes to make decisions that are informed by the views and concerns of interested parties and the public at large, a fact which requires an open process in which interested persons are given a fair and reasonable opportunity to present their views.

II. GUIDELINES

Bearing these principles in mind, the Board adopts the following guidelines to assure that diverse public viewpoints are given a fair opportunity to be heard and considered in the course of the Board's work.

A. General Guidelines on the Public's Engaging the Board

Members of a part-time and volunteer Board do not and should not live in a vacuum apart from their communities and the fair exchange of ideas in many public and private forums. Individual Board members are often approached by associates and members of the public who want to express views on the Board's work. *When public expressions deal generally with environmental issues and/or the Board's program in general and do not involve a particular matter pending before the agency, individual discussion between members of the Board and members of the public is healthy.* Public interactions with Board members on general issues of concern are one of the ways that the Board can be aware of and sensitive to public sentiments about its program.

When a particular matter (such as an appeal to the Board of a Commissioner decision, the Board's direct consideration of a license or permit application, or a rulemaking proposal) is or is likely to be pending before the Board, comment from an applicant, interested party or the public about that matter should be channeled in a way that allows the comment to be properly heard and considered by the full Board. In this context, it is important for everyone to understand that Board members cannot consider, no less rely upon in their decisions, public comment unless it is provided to the Board at a Board meeting or hearing, or it is addressed to the Board in writing. When a member of the public, including an applicant or other interested person, approaches an individual Board member with views on a matter pending before the Board, that person should be counseled as to the appropriate way (described below) in which these views can be presented to the Board at large. *Private discussions by Board members with interested parties or members of the public should avoid the merits of a matter pending before the Board.* In counseling a member of the public in this way, the Board member is actually helping that person to express his or her views in a manner that can be effectively heard and considered by the Board in its decision-making process.

The points below deal with particular contexts in which public comment may be offered to the Board on its work, and the best approach to take in allowing that input so that it can be effectively heard and considered.

B. Receiving Comment on a Matter Pending Before the Board at a Regular Meeting (which does not involve an adjudicatory hearing)

When a member of the public (including an applicant, an interested party or the general public) wishes to comment to an individual Board member *on a matter pending or soon likely to be pending at a regular Board meeting, that person should be counseled to either come to the Board meeting or to write to the Board, addressing correspondence to the Board's office in Augusta. That person can be assured that any writing timely sent to the Board at its office will be copied and distributed to all Board members before action is taken on the matter.* It is important for everyone to understand that, on matters pending before the Board, having the ear of one Board member outside of a Board meeting will not provide an effective means for the Board, or even that member of the Board, to properly consider the views and information that are offered.

C. Receiving Comment on a Matter Pending Before the Board in Rulemaking

When a matter involves a rulemaking hearing or other rulemaking proposal pending before the Board, members of the public wishing to express views should be counseled to attend the hearing and give oral testimony, or to provide comments in writing to the Board during the comment period. The public can be assured that written comments received in this way will be distributed to all Board members and considered before a decision is made.

When a member of the public has a significant comment on a proposed rule or plan amendment after the rulemaking record (including the written comment period) has closed, that person or any Board member or the DEP staff may request that the comment period be reopened so that the comment can be properly considered prior to the decision. Reopening the comment period in this fashion is within the discretion of the Board. Reopening the comment period means giving all affected parties and the public notice and an opportunity to participate during the new comment period. Because efficiency requires an effort to achieve closure on matters after a hearing record is closed, the Board ordinarily will reopen the comment period only when the offered comment involves a significant point or issue that was not and could not be adequately addressed during the public hearing process.

D. Receiving Comment on a Matter Pending before the Board Involving an Adjudicatory Hearing

When the Board has decided to hold a formal hearing on a license application or appeal from a decision of the Commissioner, it is particularly important to make sure that public comment, including by an applicant or intervenor, is provided to the Board in a fashion which does not compromise the proceeding. *Public comment on such a matter should be given to the Board only at the public hearing, during any applicable period for written comments, or otherwise in a fashion which the Board's rules specifically provide.* In these situations, public comment must not be given to individual Board members *ex parte* (without notice and opportunity for other parties to participate).

E. Receiving Comment on a Matter Pending Before the Commissioner

In connection with license applications that are currently pending before the staff, communications by an applicant or the general public to individual Board members should be referred to the Department's staff. This is so that the staff is fully informed of the public comment before the Commissioner makes a decision on the matter. It is also important to remember that matters currently being handled by the staff may be appealed to or ultimately considered by the full Board, so that Board members should attempt to channel public communications on these matters in order to avoid jeopardizing the fairness of the process should the matter later be referred to the Board for adjudication or other decision.

F. Receiving Comment on Matters Headed to the Board

A matter that is at the pre-application stage but is headed for later Board hearing and/or decisionmaking should be treated in the same fashion as a matter currently being handled by the staff. See Paragraph E above.

G. Site Visits by Board Members

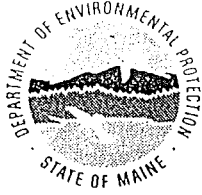
Consistent with the above principles, *if an individual Board member is interested in visiting the site of a proposal that is currently or is likely in the future to be under Board review, the best course is to first discuss the idea with the staff and/or with the full Board at its next meeting,* so as to enable all Board members to participate in the site visit and so as not to prejudice the rights of interested parties in the proceeding. When the Board has decided to hold an adjudicatory hearing on an application, it is particularly important that any visits by Board members to the site should be organized by the staff with notice given to all interested parties.

III. SUMMARY

The Board welcomes and relies on public participation in its process, including comments by interested parties as well as suggestions and criticisms from the public at large. When a matter involves a public hearing, it is important that public comment be presented to the Board as a body in a way that properly appears in the hearing record. When the public comment involves a matter pending before the Board without a public hearing, it should be directed to the Board at a public meeting, or put in writing addressed to the Board at its office, so as to be distributed to all Board members before they make a decision. When the comment involves a matter currently pending before the Department or likely to be later headed to the Board for decision, it should be referred directly to the staff.

By these means, public comment to the Board can be effective in the Board's process and fair to all concerned.

Note: This guidance document states the Board's general guidelines on the process of receiving public comment. These guidelines are not rules of the Board, and are not intended to have the force of law. This guidance does not create or affect any legal rights of parties before the Board, all of which are determined under the Board's rules and applicable statutes and laws.



DEP FACT SHEET

Appealing a Commissioner's Licensing Decision

issued: April 2000

contact: (207) 287-2811

SUMMARY

One of two methods is available to an aggrieved person for appealing a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner -- in an administrative process before the Board of Environmental Protection ("Board") or a judicial process before Maine's Superior Court. This FACT SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, will assist aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeals. A failure to file an appeal within the identified time periods will result in the Commissioner's decision becoming final.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

Maine Revised Statutes Title 38, section 341-D(4) and DEP Rule Chapter 2, section 21(B)

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes and photocopies are not acceptable. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

An appeal must contain the following information:

1. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
2. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
3. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
4. *All the matters to be contested.* As part of the appeal, the Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

5. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
6. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in DEP Rule Chapter 2, section 21(B)(3).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A licensing file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If an applicant proceeds with a project pending the outcome of an appeal, it runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, *see* 38 M.R.S.A. § 346(1); 06-096 CMR 2.21(D); 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this FACT SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.



DEP FACT SHEET

Board Reconsideration and Judicial Review

revised: September 1998

contact: (207) 287-2811

I. SUMMARY OF ADMINISTRATIVE AND JUDICIAL OPTIONS. One of two methods may be appropriate for an individual seeking review of a licensing decision over which the Board of Environmental Protection ("Board") had original jurisdiction: (1) administrative reconsideration by the Board; or (2) judicial review in Maine's Superior Court.

- 1. Administrative.** Within 30-days from the date of an original Board licensing decision, an applicant, or any person, aggrieved by the decision may file an administrative petition requesting that the Board reconsider its prior decision. This FACT SHEET, in conjunction with consulting the statutory and regulatory provisions listed below, will further assist aggrieved persons with filing a petition for reconsideration with the Board.
- 2. Judicial.** Licensing decisions over which the Board had original jurisdiction may be appealed to Maine's Superior Court pursuant to Maine Revised Statutes Title 38, Section 346(1) and under provisions contained in Maine's Administrative Procedures Act, 5 M.R.S.A. § 11000 *et seq.*, and Maine Rule of Civil Procedure 80C. Judicial appeal of an original Board licensing decision is available whether an aggrieved individual receives a reconsidered decision from the Board as the Department of Environmental Protection's ("DEP") final action on the matter, or the individual decides to forgo administrative reconsideration and seeks review directly in Court. In all cases, a party's appeal must be filed with the Superior Court within 30-days of receipt of notice of the Board's decision. A nonparty's appeal must be filed within 40-days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's decision becoming final. Maine's Administrative Procedures Act, DEP statutes governing a particular matter and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

II. ADMINISTRATIVE PETITIONS FOR RECONSIDERATION OF A BOARD DECISION

- 1. STATUTORY AND REGULATORY REFERENCES.** 38 M.R.S.A. § 341-D(5) and DEP Rule Chapter 2, § 21(C)
- 2. WHY FILE A PETITION FOR RECONSIDERATION?** The Board may assume jurisdiction over a licensing application upon the DEP Commissioner or an interested party's request, or of its own accord when important policy questions are at issue or an application has generated substantial public interest. The resulting license decision in such circumstances may be reconsidered by the Board when: a petitioner seeks to correct any part of a decision which is believed to contain an erroneous provision not intended by the Board; new or additional evidence has come to the petitioner's attention regarding any part of the decision; or a petitioner believes official notice was erroneously taken in the decision-making process.

However, not all Board licensing decisions are subject to a Petition for Reconsideration -- only final decisions made solely and originally by the Board (i.e., not initially made by the Commissioner) may be reconsidered through this procedure. The Board's action on appeals of licensing decisions made by the DEP Commissioner are *not* subject to this process and any further review desired must be pursued in court pursuant to Maine Rule of Civil Procedure 80C.

- 3. TIME-PERIOD.** A petition must be filed within 30 calendar days of the date on which the Board's decision is signed.

4. **FILING WITH THE BOARD.** Signed petition documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. A petitioner must also send the DEP Commissioner and the applicant a copy of the documents. All the information listed below in the PETITION FOR RECONSIDERATION CONTENTS section must be submitted at the time the petition is filed. Only the extraordinary circumstances described at the end of the CONTENTS section will warrant Board reconsideration of a licensing decision based on evidence not currently in the administrative record needing consideration.
5. **PETITION CONTENTS.** A petition must contain the following information:
 - A. *The findings, conclusions, or conditions objected to or believed to be in error.* Provide specific references to the license condition(s) believed to be at issue.
 - B. *The basis of the objections or challenge.* Cite specific regulations, statutes, or other factual references which demonstrate omissions of relevant requirements as well as errors believed to have been made in interpretations, conclusions, or relevant requirements.
 - C. *New or additional evidence to be offered.* Evidence submitted for consideration as part of a petition must be new or additional material and based on fact or law, not opinion.
 - D. *The remedy sought.* The remedy a petitioner may seek vary from reversal of the Board's previous decision on the license or permit, to changes in specific permit conditions.

New or additional evidence will be allowed only when an individual shows due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or shows that the evidence itself is newly discovered and could not have been presented earlier in the process. The specific requirements for additional evidence are found in DEP Rule Chapter 2, section 21(B)(3).

6. FURTHER CONSIDERATIONS

- A. *Be familiar with all relevant material in the administrative file.* Virtually all information in the DEP's possession is public and is easily accessible. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide an opportunity for photocopying materials. (There is a charge for copies or copying services.)
 - B. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your petition.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
7. **BOARD ACTION.** Within 30 days of receiving a petition, the Board will consider the matter at a scheduled meeting. If the Board decides to reconsider its earlier decision, action on the matter may be taken at the same meeting it decides to reconsider or at a future meeting. In making its decision, the Board may approve, approve with conditions, or deny the application, or it may order a public hearing be held. If the Board dismisses the petition, the original decision stands. A petitioner will be notified of any dates on which the Board will be considering the matter.
 8. **ADDITIONAL INFORMATION.** If you have questions or need additional information on the petition process, contact the Department's Director of Enforcement and Procedures at (207) 287-2811.

NOTE: The DEP provides this FACT SHEET for general guidance only; it is not intended for use as a legal reference. Applicable statutes and rules govern a petitioner's rights.

Summary (Introduction)

In response to a decades-long concern about regulatory activity, the federal government and many other states have adopted administrative procedure acts. The intent has been to improve public access to agency decision-making and to increase awareness of agency rules.

The Maine Administrative Procedure Act (A.P.A.), 5 MRSA §8001 through 11008, was adopted at the First Session of the 108th Legislature, with some amendments since. It applies uniform requirements to state agencies with rule-making power, and sets minimum standards for agencies to follow in adopting and implementing rules.

Very generally, the A.P.A. establishes a uniform, comprehensive set of procedures covering:

- The administrative actions of state agencies, including rule-making, advisory rulings, adjudicatory proceedings, and licensing; and
- Judicial review of those actions.

First is "Quick Reference Guide" to rule-making. Then Sections 1 and 2 describe the rule-making process and the A.P.A. requirements for agencies authorized to adopt rules. Section 3 outlines the rule filing requirements established by the Secretary of State (hereafter cited as "Secretary") under the A.P.A.

Section 4 describes a related but entirely separate process required of each agency, the Annual Regulatory Agenda, in which an agency files a list of expected rule-making for the coming year.

Finally, appendices show examples of the various forms, and of a filed rule.

*This is an interim edition of the **Guide** pending final formulation, proposal, and adoption of the Secretary of State's rule on electronic (machine readable, word processed) filing of rules.*

QUICK REFERENCE GUIDE

1. Proposed rule

1. File 1 copy of the following with the Secretary of State on the Tuesday of the week prior to newspaper publication date:
 - A. **NOTICE OF RULE-MAKING PROPOSAL FORM, MAPA-3** (see Appendix I for a sample copy). Among other purposes, this form determines the text of your newspaper proposal advertisement; all information, including the financial coding and original signature of your relevant official or business person at the bottom of the form (to approve the expenditure for the ads), should be filled in.
 - B. Copy of the **RULE** being proposed (see Appendix V for a sample rule);
 - C. Copy of the **FACT SHEET** (optional; see Appendix IV for a sample).
2. File 20 copies of the following with the Executive Director of Legislative Council within a day or two after filing with Secretary of State:
 - FACT SHEET** (Appendix IV).

2. Adopted rule

1. The adopted rule should contain all of the following:
 - A. **NOTICE OF RULE-MAKING ADOPTION FORM, MAPA-4** (see Appendix I for a sample copy). Among other purposes, this form determines the text of your newspaper adoption advertisement; all information, including the financial coding and original signature of your relevant official or business person at the bottom of the form (to approve the expenditure for the ads), should be filled in.
 - B. **COVER SHEET (MAPA-1)** signed by the agency and the Assistant Attorney General (see Appendix II for a sample);
 - C. Copy of the **RULE** (for a rule amendment, the full text of the current rule with deleted language crossed out and new language underlined);
 - D. **BASIS STATEMENT**;
 - E. **SUMMARY OF COMMENTS** (now must include names of commenters and affiliations);
 - F. **CHECKLIST**;
 - G. Copy of the **FACT SHEET** (Appendix IV); and
2. Signatures and dates on MAPA-1 must show that the rule has been approved by:
 - A. The person authorizing the adoption of the rule (who must sign within 120 days from the comment deadline); this must be an agency head or major policy-influencing position as listed in Title 5, Chapter 71; and
 - B. The Attorney General or assistant (who must sign within 150 days from the comment deadline).
3. The rule must be filed with the Secretary of State (3 copies).
 - A. The Secretary of State reviews the rule and stamps it as "Accepted for Filing". The Secretary of State will keep two (2) copies and will return one copy to the contact person or whoever is designated to receive the rule.
 - B. The rule will become effective no less than five days after the rule is Accepted for Filing by the Secretary of State. (The agency may designate an effective date anytime after that.)