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Report to the Joint Standing Committee On Natural Resources



BOARD OF ENVIRONMENTAL PROTECTION

Summary of Activities Calendar Year 2005

Respectfully Submitted by: Matthew Scott, Chair

**REPORT TO THE JOINT STANDING COMMITTEE ON NATURAL RESOURCES
SUMMARY OF ACTIVITIES – 2005**

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- > Board Members: List and Biographical Information
- > 2005 Meeting Agendas

Report to the Joint Standing Committee on Natural Resources
Recommendations and Summary of Activities for Calendar Year 2005

I. Introduction

Title 38 section 341-D(7) requires the Board of Environmental Protection to report to the Joint Standing Committee on Natural Resources 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.” While not required by statute, the Board has initiated an annual report to keep the Committee advised of its work. In addition, by letter dated June 6, 2005, the Committee requested that the Board review its responsibilities, taking into consideration the issues that were raised in LD 1149 last Legislative session, and report back to the Committee by January 15, 2006 on any recommendations it may have. This matter is addressed in Section IV of this report.

II. Membership

In 2005, there were the following changes in Board composition.

Chairmanship

In May 2005 Richard Wardwell stepped down as Chair and advised the Governor that he would be resigning from the Board in the summer of 2005 to accept a position in Washington, DC. Governor Baldacci accepted Mr. Wardwell's resignation, expressing appreciation for his years of service to the Board and the people of Maine, including 2.5 years as Board Chair.

The Governor appointed Matthew Scott Chair of the Board in June 2005. Mr. Scott is an aquatic biologist with extensive experience in Maine State Government including service as Deputy Commissioner of the Department of Inland Fisheries and Wildlife.

Appointments

Governor Baldacci appointed Elizabeth Ehrenfeld of Falmouth to fill the vacancy created when Irving Faunce moved from the first to the second Congressional District. Ms. Ehrenfeld holds a doctorate degree in microbiology and immunology from the University of Michigan. She is currently an adjunct professor at Southern Maine Community College where she teaches courses in microbiology, genetics and biotechnology. Ms. Ehrenfeld is also a Registered Maine Guide.

Denis Culley of Mercer was appointed to fill the vacancy created when Katharine Littlefield's term expired in June 2004. Mr. Culley holds a degree from the University of Maine School of Law and is an attorney for Legal Services for the Elderly in Augusta.

Vacancies

Jean Wilkinson of Cumberland Foreside completed her second term on the Board in December 2005. Board members applauded her many contributions to the Board and her eight years of dedicated service to the people and the environment of Maine.

In addition to the vacancy created by the completion of Ms. Wilkinson's term, the seat formerly held by Mr. Wardwell remains vacant, and the terms of Ms. Nancy Ziegler and Mr. Ernest Hilton expire on January 30th and June 16th, 2006, respectively.

The Board is hopeful that the vacancies will be filled and current members reappointed in early 2006, so that we may have a full complement of members to address the many important issues that come before the Board for consideration.

III. Recommendations and Issues for Consideration

As summarized below in Section V, the Board considers a significant number of matters each year. While each presents important issues for consideration and resolution, the Board would like to bring the following matters to your attention.

Support for the RCRA Program

Through its review of consent agreements and enforcement orders, the Board has become aware of significant violations of some of the most basic provisions of the State's Hazardous Waste Management Rules. Violations often cited include failure to identify hazardous waste, failure to label and properly store hazardous wastes, failure to maintain required records, failure to use licensed transporters, and failure to properly train personnel. These violations frequently involve companies with substantial resources that should be in a good position to know and comply with the law. The Board recently reviewed an agreement with a company that is actually in the business of managing universal wastes, but apparently failed to manage its business properly resulting in the improper storage and handling of large quantities of waste. These enforcement actions highlight the need for a strong RCRA program not only to educate and assist hazardous waste generators and facilities, but also to conduct compliance inspections and pursue enforcement actions. Adequate funding of this program is essential to protect public health and the environment from improperly managed hazardous wastes.

Solid Waste Management

Solid waste management continues to be a controversial and divisive issue in communities throughout the State. Given the environmental, economic and social costs associated with waste management, it is only prudent that we recycle where practicable and thereby reduce our ever-increasing demand for waste disposal capacity. As noted in prior reports to the Committee, the Board strongly supports recycling and recommends that the Legislature take steps to increase recycling rates which continue to fall short of State goals. The Board believes it is critical that valuable landfill space not be consumed by materials that can and should be recycled.

Chapter 355 Sand Dune Rules

The Board has provisionally adopted amendments to the Sand Dune Rules which are being forwarded to you under separate cover for your consideration. Section 5E of the rule addresses the reconstruction of seawalls. The Board recognizes that seawalls are an historical fact and are sometimes appropriate to protect property; however, some members of the Board are concerned that the ability to reinforce and alter seawalls may lead to a further hardening of the shoreline with possible damaging effects on the environment. In provisionally adopting the rule, the Board gave considerable weight to the testimony of Department and Maine Geological Survey staff and others who believe the provisions in this rule will be an improvement over the existing situation. However, the Board is concerned that as we invest ever more heavily in vulnerable coastal areas, our society may be setting the stage for increasing financial losses given the evidence on sea level rise and the possibility of increasingly severe ocean storms.

Permanent Piers and Docks

As noted in previous reports to the Committee, applications for permanent piers/docks in coastal waters continue to be contentious, with decisions (either to approve or deny) frequently appealed to the Board, and the courts.

In an effort to improve consistency and ensure fair consideration of these applications, the Board and Department have taken steps to clarify our rules and learn from decisions of the Law Court. In 2004 the Board adopted Chapter 315 Assessing and Mitigating Impacts to Existing Scenic and Aesthetic Uses. This rule provides guidance to applicants planning their projects and to staff evaluating scenic and aesthetic impacts of proposed projects under the Natural Resources Protection Act (NRPA).

Additionally, this past year the Board amended Chapter 305 to remove permanent piers and docks from consideration under the permit-by-rule process. The Board recognizes that removing permanent piers/docks from the PBR process will increase the workload of an already busy staff; however, the Board believes that a full NRPA review is needed to properly evaluate these proposed projects.

The Board anticipates that the guidance provided by Chapter 315 in conjunction with the requirement for a full NRPA review will help ensure that applications for permanent piers contain sufficient information to make the required findings, including a thorough assessment of alternatives to avoid and minimize impacts to the resource. In addition the requirement for public notice associated with a full NRPA application (as opposed to a PBR) will provide an opportunity for public comment earlier in the decision making process and may reduce the number of decisions appealed to the Board.

IV. Board Responsibilities and Process

In response to LD 1149 Resolve, to Review the Responsibilities of the Board of Environmental Protection, the Committee asked that the Board consider the issues raised in connection with LD1149 and report back to the Committee by January 15, 2006.

In response to this request, the Board has reviewed its responsibilities and offers the following comments:

- Tax Certification: Maine's Sales and Use Tax Law, 36 MRSA section 1760(30) and Property Tax Law 36 MRSA sections 655(1)(N) and 656(1)(E)(2) charge the Commissioner of Environmental Protection with certifying whether equipment qualifies for exemption from state sales and use tax and exemption from property tax as an air pollution control facility. The Board occasionally receives petitions for the Board to assume jurisdiction over these matters, and also sees these matters on appeal. The law requires the Board and Department staff to evaluate the primary and secondary purposes of complex pieces of equipment and to delve into the motivations (primary and secondary) behind the purchase and installation of such equipment. Because large sums of money are involved, these matters, and particularly the property tax exemption, can be contentious. The Board does not believe these matters are a good use of its time, since they are largely financial and not environmental policy issues.
- Authority to Remand a Matter to the Department: 38 MRSA section 341-D(4) states that on appeal the Board may "affirm, amend or reverse" the Commissioner's decision. While the Office of the Attorney General has stated that the ability for the Board to remand a matter to the Department for further findings is an inherent power of an appellate body, it is advisable to amend the statute to make that authority explicit. The Board has encountered several instances, primarily when Departmental permit-by-rule actions have been appealed, where the Board believes the record is deficient and more information is needed to render a decision. In these instances, remanding the matter to the Department may be the most efficient and fair process.

- Quorum: The statute [38 MRSA section 341-E(1)] sets the Board's quorum at six members for a vote, six members for a rule-making hearing, and three members for other hearings. When the Board has two or more vacancies for extended periods of time, a quorum of six can be difficult to achieve since Board members have other, often full time, jobs and may have unavoidable conflicts resulting in the need to cancel or significantly delay a Board meeting, hearing or decision. Therefore, the Board recommends that the quorum for a vote and for rulemaking hearings be a majority of appointed and confirmed Board members. Thus, when there are no vacancies, the quorum would remain at six. However, when there are vacancies on the Board, the quorum would be reduced; for example, when there are eight members, the quorum would be five members.
- With respect to primary responsibilities:

 - Rulemaking: The Board believes that rulemaking is an important function of the Board in addressing matters of broad application and that the rulemaking process works well. While some rulemaking matters are admittedly time consuming and complex, the Board and Department staff utilize existing processes to focus the Board's time on the most significant and/or controversial aspects of a proposed rule. For example, the Board has encouraged the Department's use of the stakeholder process to obtain input from the regulated community and the general public prior to and during the rule drafting process. A stakeholder process can serve to clarify provisions of a proposed rule and narrow the areas of disagreement. This often leads to a later rulemaking hearing which is focused on the main issues in dispute. In addition, for uncontroversial, minor amendments to existing rules, the Board encourages the staff to use a written comment period to save both the time and money associated with a formal public hearing. The Board believes that it plays a valuable role in the rulemaking process by helping to resolve contentious issues and providing an overall check on the level of regulation and the practicality of its implementation. The Board does not recommend any changes to the rulemaking process at this time.
 - Appeals: The Board does not recommend any changes other than to clarify the Board's ability to remand a matter to the Department as described above.
 - Board Jurisdiction over permit and license applications: The Board reviewed the processes by which requests for Board jurisdiction are brought to the Board, and developed a guidance document for its and the public's reference. In 2006 the Board intends to examine the specific criteria to be evaluated when the Board considers requests for jurisdiction, but does not recommend any changes at this time.
 - Enforcement: As set forth in statute, the Board's role in enforcement is as follows: to advise the Commissioner on enforcement priorities and activities and the adequacy of penalties and enforcement actions; to approve

administrative consent agreements; and to hear appeals of emergency orders. The review and approval of consent agreements provides the Board with a good mechanism to assess where compliance problems exist, to provide a public forum for their resolution and to gauge the efficacy of its rules and programs. The Board does not recommend any change at this time.

V. Summary of Matters before the Board in 2005

The Board's statutory responsibilities are established in 38 M.R.S.A. section 341-D. These responsibilities include the following: rulemaking; decisions on selected permit applications; review (appeals) of Commissioner licensing decisions; review of enforcement actions; issuance of emergency orders; consideration of petitions to revoke, modify or suspend a license; and recommendations to the Legislature for changes to law. This section summarizes the major actions of the Board in 2005.

A. *Rulemaking*

During 2005, the Board conducted 17 rulemaking proceedings. These rulemaking initiatives are summarized below. Of these, 14 rules (or rule amendments) have been adopted and three are still pending. Two rules, Chapter 335 Significant Wildlife Habitat and Chapter 355 Coastal Sand Dunes, were provisionally adopted and are being forwarded to the Committee under separate cover for your consideration.

- Chapter 100 Definitions, Chapter 115 Major and Minor Source Air Emission License Regulations and Chapter 140 Part 70 Air Emission License Regulations (amendments): The amendments simplify application requirements and incorporate federal changes to the Title V operating permit program. A public hearing was held on September 22, 2005. The Board adopted the proposed amendments on December 1, 2005.
- Chapter 102 Open Burning (minor amendment): This amendment clarified that the exemption for construction and demolition debris applies only to the wood from construction demolition debris, and not other materials such as plastics which may be contained in the construction demolition debris.
- Chapter 127 New Motor Vehicle Emission Standards Regulation – Zero Emission Vehicle Program (new): The amendments implement a zero emission vehicle program for passenger cars and light-duty trucks delivered for sale in Maine beginning with model year 2009. The rule will achieve reductions in volatile organic compounds (VOC) and air toxics emissions. A public hearing was held on October 7, 2004. The rule was provisionally adopted on December 2, 2004. The Legislature subsequently voted to amend the rule pertaining to ZEV credits. The Board adopted the amended rule on July 7, 2005.

- Chapter 127 New Motor Vehicle Emission Standards / Greenhouse Gas Vehicle Emission Standards (new): The amendments adopt California standards limiting greenhouse gas emissions from motor vehicles. A public hearing was held on October 6, 2005. The Board adopted the proposed rule on December 1, 2005. The Alliance of Automobile Manufacturers has appealed the rule to Superior Court.
- Chapter 143 New Source Performance Standards (NSPS) and Chapter 144 National Emission Standards for Hazardous Air Pollutants (NESHAPS) (amendments): Chapter 143 establishes technology based performance standards for selected categories of new sources of air emissions to be implemented through the existing air emissions licensing program. Chapter 144 establishes health-based performance standards for emissions of hazardous air pollutants, commonly referred to as air toxics; and establishes technology-based performance standards for selected source categories. A public hearing was held on March 3, 2005. The amendments were adopted on May 19, 2005.
- Chapter 151 Architectural and Industrial Maintenance (AIM) Coatings (amendment): The purpose of the amendment was to reduce emissions by limiting the volatile organic compound (VOC) content of coatings (including products such as paints, stains, varnishes, lacquers, primers, and wood preservatives) for sale or use in Maine. The rule was initially adopted by the Board on December 2, 2004. The Legislature subsequently amended the rule to establish an alternative VOC content for varnishes and interior wood clear and semi-transparent stains, and eliminated the 3 year sell through provision. The Board posted the amendments to public comment on July 21, 2005. The Board adopted the amendments on October 6, 2005.
- Chapter 305 Permit by Rule (amendments): The major change was to remove permanent docks from the permit-by-rule process. Licensing of private recreational docks has become increasingly controversial, with PBRs frequently appealed. The rule change requires applications for such docks to go through the regular permitting process as opposed to the abbreviated permit-by-rule process. The change in procedure provides for notice to abutters, more detailed applications, and more time for staff to review the proposed project. A public hearing was held on January 6, 2005. The amendments were adopted on April 21, 2005.
- Chapter 335 Significant Wildlife Habitat (new) and Chapter 375 section 15 Protection of Wildlife and Fisheries (amendment): The purpose of the amendment was to establish standards for the protection of significant vernal pools. A public hearing was held on October 20, 2005. The Board provisionally adopted Chapter 335, and adopted amendments to Chapter 375, on December 1, 2005.

- Chapter 355 Coastal Sand Dune Rules (amendments): The amendments address a number of controversial issues including: reconstruction of seawalls and storm damaged structures in frontal dunes, identification of areas at high risk for storm damage and flooding, wildlife habitat protection, and development of a State beach nourishment program. A public hearing was held on August 11, 2005. The proposed amendments were provisionally adopted on November 17, 2005.
- Chapter 415 Reasonable Costs for Handling and Recycling of Electronic Wastes (new): The rule implements 38 MRSA section 1610 governing the handling of electronic waste. The rule addresses, among other things, the operation of consolidation facilities, reimbursement of costs, and the manufacturers' share of any orphan wastes. A public hearing was held on August 18, 2005. The rule was adopted on October 20, 2005.
- Chapter 418 Beneficial Use; Chapter 402 Transfer Stations and Storage Sites for Solid Waste, Chapter 405 Water Quality Monitoring, Leachate Monitoring and Waste Characterization, Chapter 409 Processing Facilities (amendments): The proposed amendments establish, among other things, standards for use of construction demolition debris as a fuel. A public hearing was held on November 17, 2005. The Board held a work session with staff on December 15, 2005 to review a number of issues raised at the hearing. Board action on the proposed amendments is anticipated in early 2006.
- Chapter 500 Storm Water Management and Chapter 502 Direct Watersheds of Lakes Most at Risk from New Development and Urban Impaired Streams (amendments): The amendments improve the effectiveness of storm water management by, among other things, eliminating differential regulation based on location. A public hearing was held on August 19, 2004. The amendments were provisionally adopted on November 4, 2004. The Board adopted the rule on September 22, 2005.
- Chapter 530 Surface Water Toxics Control Program and Chapter 584 Surface Water Quality Criteria for Toxic Pollutants (repeal and replace): Chapter 530 establishes monitoring requirements for licensed discharges and specifies procedures for setting limits on wastes discharged to the waters of the State. Chapter 584 establishes ambient water quality criteria for toxic substances. A public hearing was held on June 2, 2005. The rules were adopted on September 8, 2005.
- Chapter 531 Regulations for Wastewater Operator Certification (amendment): The rule sets forth certification requirements for persons who operate public and private wastewater treatment facilities. The rule was last amended in 1987 and needs to be updated. The proposed amendments include a new classification for small facilities using spray irrigation for treatment. A public hearing was held on December 15, 2005. Board action on the proposed amendment is scheduled for early 2006.

- Chapter 532 Large Commercial Passenger Vessels (new): The rule implements 38 MRSA section 423-D. The rule regulates the discharge to coastal waters of graywater, or a mixture of blackwater and graywater, from large commercial passenger vessels (ie. those that provide overnight accommodations for 250 or more passengers). The Board accepted public comment on the proposed rule. The rule was adopted on April 21, 2005.
- Chapter 685 Payment and Reimbursement of Oil Transfer Fees (new): The rule specifies the procedure for payment of fees imposed under 38 MRSA sections 551(4) and 569-A(5) and for payment of refunds where appropriate. These statutes require oil terminal licensees and registered oil transporters to pay a fee on each barrel of oil transferred from ship to shore or transported into Maine by road or rail for costs related to prevention, containment and clean-up of oil discharges. The rule was posted to public comment on August 18, 2005. The rule was adopted on November 3, 2005.
- Chapter 1000 Guidelines for Municipal Shoreland Zoning (amendments): The proposed amendments address a number of issues including standards for public trails in the shoreland zone. A public hearing was held on September 8, 2005. The comment period was extended at the request of municipalities. Board action on the proposed amendments is anticipated in early 2006.

State Implementation Plan (Amendments): While the Board's role here is not rulemaking as such, the federal Clean Air Act Amendments of 1990 require that the Department hold a public hearing on and formally adopt any changes to the State's program for implementation of the Clean Air Act. The Board held a public hearing on April 21, 2005, and subsequently adopted on June 2, 2005 the following amendments to the State Implementation Plan:

- 15% Rate of Progress Plan: a detailed accounting of volatile organic compound (VOC) and nitrogen oxide (NOx) emissions from sources in Planning Area I (York, Cumberland and Sagadahoc Counties) demonstrating that Maine has satisfied its obligation to reduce VOC emissions by 15% net of growth in 2005 through a variety of state and federal control measures;
- 5% Increment of Progress Plan: a demonstration that Maine has adopted control measures that will provide at least a 5% reduction in VOC emissions from 2002 levels in 2007;
- Motor Vehicle Emissions Budget: establishes a motor vehicle emissions budget within the Portland 8-hour ozone nonattainment area; and
- 2002 Base Year Inventory: a detailed accounting of VOC and NOx emissions from point, area and mobile sources in Planning Area I.

B. Major Applications and Other Licensing Matters

Title 38 section 341-D, subsection 2 provides that: “The board shall decide each application for approval of permits and licenses that in its judgment:

- A. Involves a policy, rule or law that the board has not previously interpreted;
- B. Involves important policy questions that the board has not resolved;
- C. Involves important policy questions or interpretations of a rule or law that require reexamination; or
- D. Have generated substantial public interest.”

An application of substantial public interest is further defined in rule as a project which has “the potential to affect a broad geographic area or a natural resource of statewide significance, or has generated more than local interest” [06-096 CMR Chapter 2]. In addition, its statute requires that the Board decide certain applications directly.

Major applications before the Board in 2005 included:

- Maine Department of Inland Fisheries and Wildlife Application for a Public Boat Ramp at Merepoint, Brunswick: In response to multiple citizen requests, the Board assumed jurisdiction over this application in September 2003. Processing of the application was put on hold twice at the request of the applicant so that it could amend its application to address issues raised by the Department, federal resource agencies and the interested parties. A public hearing was held in March 2005. The Board approved the project on August 11, 2005. The Board’s decision has been appealed to Superior Court.
- Application by Anthony and Erin Uliano for a Private Recreational Dock in Bar Harbor. In April 2002 the Board granted an appeal and denied the application finding that the proposed project would unreasonably interfere with existing scenic, aesthetic, recreational and navigational uses, the cumulative impact would be significant, and there was a practicable alternative that would be less damaging to the environment. The decision was appealed to Superior Court, which upheld the Board’s decision. The Ulianos then appealed to Maine’s Supreme Court (Law Court). The Law Court vacated the Superior Court’s judgment and remanded the case to the Board for further proceedings consistent with its opinion. The Board subsequently voted to reopen the record to receive evidence on the standards cited by the Law Court. Board members visited the site in October 2005. A public hearing on the new evidence is scheduled for March 2, 2006.
- FPL Energy Wyman LLC and Wyman IV LLC. Application for Amendment to Part 70 Air Emission License. Chapter 145 NOx Control Program requires that the NOx emission rate for fossil fuel fired electric generating units with a maximum heat input capacity of 750 million BTU per hour or greater not exceed 0.15 pound NOx per million BTU on a 90 day rolling average as of January 1, 2005. FPL Energy

was not able to meet the 0.15 standard for Units 3 and 4 at Wyman Station, Yarmouth. FPL has applied for an alternate limit of 0.18 pounds per million BTU. The application is pending.

- Dragon Products, Thomaston. At its meeting on October 6, 2005, the Board voted to assume jurisdiction and hold a public hearing over the solid waste facility applications for the facility's cement kiln dust pile and clinker pile. The applications have been pending since 1991. The Board Chair will meet with the parties in early 2006 to discuss procedure and a schedule for consideration of the applications.

The Board denied the following petitions for Board jurisdiction:

- Steven A. McGee Construction, Gravel Pit #2, Augusta. The petition was filed by the City of Augusta and the Grand View Neighborhood Group. The Board found that the project did not meet the standards for Board jurisdiction set forth in 38 MRSA section 341-D(2).
- Maine Pollutant Discharge Elimination System Permit and Maine Waste Discharge License for International Paper Company, Jay; Rumford Paper Company, Rumford; and Town of Livermore Falls; and Water Quality Certification for FPL Energy Maine Hydro Gulf Island Pond / Deer Rips Hydro Project. The Board received a request for the Board to assume jurisdiction over these licensing proceedings from the Natural Resources Council of Maine and Maine Rivers. The Board voted not to assume jurisdiction finding that the deadline for the filing of such petitions had passed. The Board voted not to assume jurisdiction on its own initiative, in part, because the process had progressed to the point that the licenses were ready to issue and the Board would address the matter if appeals were filed.

Other significant licensing proceedings included:

- Amendment to State Imposed Shoreland Zoning Map for the Town of Farmingdale.
- Maine Electronics Inc. and Rockwell Collins Inc. Post closure hazardous waste facility renewal license. The facility, which is located in Lisbon, manufactured printed circuit boards between 1968 and 1989. Groundwater at the site is contaminated with arsenic and chlorinated volatile organic compounds. The post closure license provides for continued cleanup and monitoring of groundwater at the site.
- Central Maine Power Company Interim Hazardous Waste Storage Facility Closure and Termination Interim License: Augusta, Rockland, Belfast, Eustis, Waterville, and Dover-Foxcroft. To close PCB (polychlorinated biphenyl) storage facilities at several electrical distribution facility locations.

C. Appeal of Department Decisions

The Board considered the appeal of nine Commissioner decisions summarized below. Some of the significant issues raised by these appeals are discussed in Section III above.

- Appeal of Site Location of Development Permit issued to Yoho Head Resort and Country Club Machiasport for a nine hole golf course. Appellants challenged the Department's findings and conclusions with respect to adequate provision for utilities and no adverse effect on the natural environment. The Board denied the appeal and affirmed the Department's decision with minor amendments to the license.
- FPL Energy Maine Hydro, LLC. Appeal of Maine Waterway Development and Conservation Act and Water Quality Certification Approving Partial Removal of the Fort Halifax Dam on the Sebec River in Winslow. The appellants challenged several findings and conclusions of the Department including those pertaining to: economic benefit to the public; environmental and energy considerations including findings on wetlands, impacts to fish and wildlife, public right of access to surface waters, hydroelectric energy benefits; and water quality. The Board denied the appeal and affirmed the Department's decision.
- Peregrine Group LLC. Appeal of Site Law and NRPA permits for a multi-unit residential housing development in Orono. The appellants challenged the Department's findings and conclusions with respect to impacts on wildlife and wetlands, and archeological and historic sites. Appellants also stated concerns about traffic impacts and compliance with local shoreland zoning ordinances (over which DEP has no jurisdiction). The Board denied the appeal and affirmed the Department's decision with minor modifications to the permit.
- Town of Brooksville. Appeal of NRPA Permit-by-Rule for a public boat ramp at Smith Cove. The appellants challenged the title, right or interest of the applicant in the land proposed for development and cited potential impacts to existing scenic, aesthetic, recreational or navigational uses. The applicant did not respond to the appeal. The Board granted the appeal and denied the permit.
- Steve Alley NRPA Permit-by-Rule for activity adjacent to a freshwater wetland. The appellants raised a number of concerns about potential impacts to the wetland. The Board found that the application record was not sufficient to make the required findings; therefore, the Board voted to grant the appeal, deny the permit-by-rule and require a full NRPA application for the proposed project.
- Arthur Choate, NRPA Wetland Tier 1 approval for filling of a freshwater wetland for construction of a house on Islesboro. The appellants challenged findings on

avoidance, no unreasonable impact and cumulative impacts. The Board denied the appeal and affirmed the Department's decision.

- Houlton Water Company / Sludge Utilization License for the A. Fitzpatrick Site. Appeal of license for sludge spreading site. The appellants argued that the decision did not contain sufficient factual evidence to support the conclusions with respect to agronomic benefit, financial capacity and technical ability, and required setbacks from certain physical and natural features such as wells. The Board voted to deny the appeal, and affirm the Department's decision with modifications to the license that require development of a site plan depicting all required setbacks prior to spreading of sludge. The appellants [abutters and nearby residents] have filed an appeal of the Board's decision in Superior Court. The 80C appeal is pending.
- Messalonskee Stream Hydro LLC / Union Gas Hydro Project. Appeal of permit to reconstruct the dam. The dam is part of a larger hydropower project which had received both a water quality certification from DEP and a FERC license. In June 2001 a portion of the dam failed; and the Department issued a permit to reconstruct the dam to essentially the previously permitted dimensions. The appellant argued, in part, that since the dam had been breached and American eels have reportedly established themselves above the dam, repair of the dam must now provide for passage of American eels and other indigenous fish species such as the Atlantic salmon. The Board denied the appeal and affirmed the Department's decision.
- Town of Hodgdon Municipal Septage Management Compliance License. Appeal. The appellant argued, among other things, that the DEP license and underlying town contract granted an exclusive franchise in violation of state and federal law. The Board denied the appeal and affirmed the Department's decision.

Pending Appeals

- International Paper Company, Jay and Rumford Paper Company, Rumford; Livermore Falls Waste Water Treatment Plant; and FPL Energy Maine Hydro Gulf Island Pond / Deer Rips Hydro Project. Appeal of Maine Pollutant Discharge Elimination System Permit and Maine Waste Discharge Licenses, and the Water Quality Certification for Gulf Island Pond and associated agreements. The Board received 14 appeals of these licenses, certifications and agreements. The matter is pending before the Board.

D. Petitions to Revoke, Modify or Suspend

Title 38 MRSA section 341-D(3) provides that "...the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, or may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license" under certain specified circumstances. The Board received the following petitions in 2005.

- Arthur Choate: NRPA Permit-by-Rule for activity adjacent to a wetland associated with construction of a house on Islesboro. The abutters petitioned to revoke the permit arguing that the proposed activity would, among other things, dewater a wetland. The Board found that the criteria set forth in 38 MRSA section 341-D(3) were not met. The petition was dismissed.
- Kennebec and Androscoggin Rivers Hydropower Projects: In October and November 2005, the Board received two separate petitions seeking modifications of water quality certifications issued for four dams on the Kennebec River: Weston, Shawmut, Hydro-Kennebec and Lockwood. The Board also received two petitions for modification of the water quality certifications for eleven dams on the Androscoggin River: Brunswick, Pejepscot, Worumbo, Lewiston Falls, Upper Androscoggin, Gulf Island Pond/Deer Rips, Livermore/Jay/Riley, Barker Lower Mills, Barker Upper Mills, Hacketts Mills, and Marcal Dam. The petitions, which seek modifications to allow for eel and/or anadromous fish passage, have been consolidated by river system and will be considered by the Board in early 2006.

E. Enforcement Actions

During 2005, the Board approved 114 Administrative Consent Agreements and/or Enforcement Orders. These enforcement actions covered a range of issues and included violations of the following statutes and rules:

Air

- Air emission standards and license conditions (6).
- Gasoline Dispensing Facilities vapor control rule, Chapter 118 (2).

Hazardous Waste, Solid Waste, Oil Discharge

- Asbestos Management Regulations (11).
- Hazardous Waste Management Regulations (4).
- Lead Management Regulations (1).
- Oil Discharge Prevention statutes and rules (2).
- Hazardous Waste and Oil Discharge statutes and rules (2), plus asbestos (1).
- Toxics Use and Hazardous Waste Reduction Law (7).

Land and Water

- Erosion and Sedimentation Control Law: Violations of this law occurred in 41 of the other enforcement cases listed in this section, primarily in conjunction with NRPA violations.
- Natural Resources Protection Act (51): Violations of the NRPA were frequently accompanied by violations of the Erosion and Sedimentation Control Law (36), the

Protection and Improvement of Waters Act (16), and the Storm Water Management Law (4).

- Performance Standards for Excavations (gravel mining) (5).
- Protection and Improvement of Waters Act (4): In addition, violations of this law occurred in 21 of the other enforcement cases listed in this section, often in association with violations of the Erosion and Sedimentation Control Law.
- Site Location of Development Law (4).
- Site Location of Development Law and Natural Resources Protection Act (3).
- Storm Water Management Law (3): In addition, four of the NRPA violations cited above also included violations of the Storm water law.
- Wastewater discharge license (8).

VI. Outreach

In 2005 the Board continued to take steps to increase accessibility to information about the Board, its processes and proceedings. These efforts included the following:

Web Page: The Board's meeting agenda and all associated documents distributed to the Board in the Board "packet" are now available on-line prior to each meeting through the Department's web page. This effort should increase public access to information provided to the Board, reduce Board printing and mailing costs, and facilitate archiving of Board records.

Site Visits: The Board continued its practice of conducting site visits to familiarize Board members with proposed development sites and/or provide general background information on issues before the Board.

Informational workshops: Department staff provides informational workshops at regularly scheduled Board meetings throughout the year for the benefit of Board members and any members of the public who wish to attend. Workshops in 2005 addressed: supplemental environmental projects as they relate to enforcement actions, mercury, electronic wastes, vernal pools, and the Regional Greenhouse Gas Initiative (RGGI).

Closing

Board members appreciate the opportunity to serve the people of Maine in this unique capacity. We thank you for this opportunity to update you on our work, and welcome any comments you may have.

Attachments:

- Board Members: List and Biographical Information
- Meeting Agendas