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Board of Environmental Protection  
Recommendations and  
Summary of Activities in Calendar Year 2011

Report to the Joint Standing  
Committee on Environment and Natural Resources

**Maine Department of Environmental Protection**  
17 State House Station  
Augusta, Maine 04333-0017

**January 2012**

Contact: Cynthia S. Bertocci, Executive Analyst 287-2452



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

Susan M. Lessard, Chair

Cynthia S. Bertocci  
Executive Analyst

Terry Dawson  
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January 13, 2012

Senator Thomas B. Saviello  
Representative James M. Hamper  
Members of the Joint Standing Committee on Environment and Natural Resources  
100 State House Station  
Augusta, Maine 04333-0100

RE: Board of Environmental Protection, Summary of Activities in 2011

Dear Senator Saviello, Representative Hamper, Committee Members:

I have enclosed the Board's report of its activities in 2011 to the Joint Standing Committee on Environment and Natural Resources. The report provides a summary of the Board's responsibilities and activities in 2011. The Board is referring three major substantive rules to the Committee for its consideration in the current legislative session: Chapter 375, section 10, subsection I regarding noise from wind energy developments; Chapter 305, section 20 permit by rule for activities in moderate inland waterfowl and wading bird habitat; and Chapter 378 amendments regarding the storage of diesel fuel in gravel pits and quarries. These rulemakings are addressed in Section IV of the report.

I would welcome the opportunity to discuss the report with you and the committee at your convenience. I can be reached by contacting the Board's Executive Analyst, Cynthia Bertocci, at 287-2452 or [cynthia.s.bertocci@maine.gov](mailto:cynthia.s.bertocci@maine.gov).

Respectfully submitted,

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

Susan M. Lessard, Chair  
Board of Environmental Protection

cc: Patricia W. Aho, DEP Commissioner

**REPORT TO THE JOINT STANDING COMMITTEE ON NATURAL RESOURCES  
SUMMARY OF ACTIVITIES – 2011**

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**Attachment:**

- > Board Members: Biographical Information
- > 2011 Board meeting agendas



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

**Summary of Activities in Calendar Year 2011**

**I. Introduction**

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

In 2011 the Legislature enacted Public Law 2011, c. 304 “An Act to Ensure Regulatory Fairness and Reform” (LD 1) which made a number of changes to the Board’s composition and duties. In brief:

- Membership was reduced from 10 to 7 persons and a requirement was added that at least 3 of the members have technical or scientific backgrounds in environmental issues.
- The Board’s rulemaking authority was limited to major substantive rules and certain procedural rules, with routine technical rules delegated to the Commissioner.
- The Board continues to have licensing jurisdiction over projects of statewide significance; however, the definition of such projects was clarified to better reflect legislative intent.
- The Board continues to consider petitions to modify a license, but actions to revoke or suspend a license will be undertaken by the Commissioner.
- Approval of administrative consent agreements to resolve violations of licenses and environmental laws was delegated to the Commissioner.
- The Board’s appeal function with respect to licensing matters and enforcement orders was retained.

In accordance with the transition provisions of LD 1, matters pending before the Board on the effective date of LD 1 were concluded by the Board. This report summarizes the activities of the Board in 2011.

**II. Membership**

In accordance with LD 1, the number of Board members was reduced from ten to seven effective September 16, 2011. At that time, Governor Paul LePage reappointed Susan Lessard of Hampden as Chair, and appointed new members Alvin Ahlers of North Yarmouth, Gary

Curtis of Greenwood, and Robert Foley of Wells. Members Elizabeth Ehrenfeld of Falmouth, M. Wing Goodale of Falmouth, and Richard Gould of Greenville who had each been appointed to a second term by Governor John Baldacci continued their service. The following Board members completed their service on the Board: Don Guimond of Fort Kent (2 terms), Matt Scott of Belgrade (2 terms), Lissa Widoff of Freedom (1 term), and Frank Woodard of Falmouth (1 term).

See Attachment A for biographical information on the current Board members.

### **III. Responsibilities and Duties**

The Board's responsibilities as set forth in statute (38 M.R.S.A. § 341-D) include:

- Major Substantive Rulemaking: the Board holds public hearings on, and provisionally adopts, major substantive rules of the Department;
- Decisions on selected permit applications: the Department's statutes specify that certain applications must be evaluated and decided by the Board;
- Appeals of certain Commissioner licensing and enforcement actions;
- Petitions: the Board considers petitions to modify a license or require corrective action that are referred to it by the Commissioner; and
- Recommendations to the Legislature: the Board is charged with making recommendations to the Legislature on the implementation of environmental laws.

Proceedings before the Board are governed by the Maine Administrative Procedure Act, the Board's procedural statutes and rules governing various types of proceedings (e.g. rulemaking, appeal proceeding, etc.) and by program-specific statutes and rules governing matters such as the control of air emissions, waste management and land use. All meetings of the Board are noticed and open to the public.

Title 38 § 341-D(7) requires the Board of Environmental Protection to report to the joint standing committee having jurisdiction over natural resource matters by January 15 of the first regular session of each Legislature on the "effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the board."

Although not required this session, the Board generally provides an annual summary of its activities to the Committee which may be helpful to document the changes implemented in accordance with LD 1.

### **IV. Recommendations / Major Substantive Rules**

The Board is referring three major substantive rules to the Committee for its consideration in the Second Regular Session of the 125<sup>th</sup> Legislature: Chapter 375, section 10, subsection I regarding noise from wind energy developments; Chapter 305, section 20 permit by rule for activities in moderate inland waterfowl and wading bird habitat; and Chapter 378 amendments regarding the storage of diesel fuel in gravel pits and quarries.

A. Noise from Wind Energy Developments [Chapter 375, section 10(I)]

Public Law 2007, c. 661 “An Act to Implement Recommendations of the Governor’s Task Force on Wind Power Development” expedited the permitting of wind energy projects in certain locations. Since enactment of the law, all of the major projects approved within the organized areas of the State have been appealed to the Board.

While a number of issues have been raised in these appeals, the major issue common to all has been concern over the potential effects of sound from the turbines on public health and welfare. In each instance, the appellants have argued that the Department’s existing rules governing noise (last amended in 1989) do not adequately address the type of noise associated with wind energy development. In each of these proceedings, the Board was presented with a significant amount of information on various wavelengths and levels of sound, sound propagation, potential impacts of sound on human health, and arguments that the Department’s rules need to be revised to reflect the unique aspects of sound generated by wind turbines.

In December 2010, the Board received a petition for rulemaking pursuant to 5 M.R.S.A. § 8055 proposing changes to the Department’s Chapter 375 rules governing noise. The Board retained the services of a noise consultant (EnRad) to assist in its review of the draft rule submitted by the petitioners and the analysis of technical information submitted by the petitioners, regulated community and interested public during the hearing and post- hearing comment period. During a lengthy hearing (10+ hours), the Board heard expert witnesses for the petitioners and for industry as well as testimony from the interested public. After several deliberative sessions, the Board provisionally adopted a rule which establishes sound level limits, addresses the issues of tonal sound and short duration repetitive sound, sets forth the technical information which must be submitted by applicants, specifies measurement procedures, and establishes requirements for the reporting of compliance data. The rule builds upon Department experience gained from the review of proposed projects to date, and incorporates many of the procedures informally used by Department staff in its review of wind energy developments.

The Board recognizes that the technology of wind energy will continue to evolve and, as with any rule, amendments will likely be needed as we gain greater experience. The Board believes that the proposed rule is supported by the science and Department experience to date. It provides greater clarity for applicants and addresses the major issues raised by persons living in the vicinity of wind energy developments. The Board urges your favorable consideration of this rule.

- B. Permit by Rule, Inland Waterfowl and Wading Bird Habitat [Chapter 305, section 20]. Public Law 2011, c. 359 “An Act to Foster Economic Development by Improving Administration of the Laws Governing Site Location of Development and Storm Water Management” directed the Department to amend its rules under the Natural Resources Protection Act to allow an activity occurring in, on or over high and moderate value waterfowl and wading bird habitat to be eligible for permit by rule (PBR). The provisionally adopted rule submitted for your consideration limits the additional PBR-eligible activities to those located in moderate value inland waterfowl and wading bird habitat. It would allow PBR for activities within the habitat



up to 150 feet from the upland edge of the wetland complex. Development of up to 20% of the applicant's land within the habitat would be allowed to proceed under PBR. The rule would require Department of Inland Fisheries and Wildlife (DIFW) approval if clearing of vegetation or construction is proposed to occur during the bird nesting and fledging period of April 15 to July 31. The rule notifies applicants that the Department may request a lighting plan if it is concerned that, due to the nature of the proposed activity, unacceptable amounts of light may intrude into the habitat within 150 feet of the upland edge of the wetland.

Additional Issue for Committee Consideration / Activities Involving the Storage of Petroleum or Hazardous Materials. The Board recommends that the Committee consider the issue of whether facilities that store or use significant quantities of petroleum and/or hazardous materials should be eligible for this PBR. This issue was raised during the Board's proceeding, but not resolved due to rulemaking time constraints. Commenters who favored limiting this PBR to single family residences and small-scale, low risk commercial activities were concerned, in part, about potential risks to the habitat posed by the storage of petroleum or hazardous materials within or adjacent to the inland waterfowl and wading bird habitat. They argued that facilities such as gas stations pose a greater risk to habitat due to the potential for a spill of these materials. They further argued that such commercial entities, unlike persons seeking to build a single family home, often have the ability to avoid locating development within significant wildlife habitat and therefore should be subject to full NRPA review, including DIFW review and the consideration of avoiding and minimizing potential impacts to the resource.

In considering this suggested limitation on activities which may qualify for this PBR, the Board considered that the universe of potentially hazardous materials is large, their use is widespread, and the storage of petroleum products and other hazardous materials is highly regulated for many types of facilities under other Department statutes and rules. The Board did not have sufficient time to fully explore the ramifications of excluding activities from this PBR which store and/or utilize these materials. The Board recommends that the Committee consider this issue when it reviews the provisionally adopted rule.

- C. Variance Criteria for Excavation of Rock, Borrow, Topsoil, Clay or Silt and the Performance Standards for the Storage of Petroleum Products [Chapter 378]. The provisionally adopted rule adds new sections 5(A)(9) and 5(J) to allow for up to two above ground diesel fuel tanks in a single location on a parcel of property with an aggregate capacity not to exceed 1100 gallons. A variance is currently required for the placement of diesel fuel tanks. The amendments are a response to Public Law 2011, c. 26 "Resolve, To Establish a Single Construction Permit for Certain Aboveground Oil Storage Tanks in Gravel Pits and Quarries." The Maine Aggregate Association supported the proposed rule change. There was no opposition. The Board urges your favorable consideration of the rule amendment.



## V. Summary of Matters before the Board in 2011

The Board's statutory responsibilities are established in 38 M.R.S.A. § 341-D. These responsibilities as amended by LD 1 include the following: major substantive rulemaking; decisions on selected permit applications; decisions on appeals of the Commissioner's licensing and enforcement actions; consideration of petitions to modify a license referred to it by the Commissioner; and recommendations to the Legislature for changes to law. This section summarizes the major actions of the Board in 2011.

### A. Rulemaking

LD 1 "An Act to Ensure Regulatory Fairness and Reform" (PL 2011, c. 304) modified the Board's rulemaking authority. In accordance with 38 MRSA § 341-H, subsection 1, the Board shall "adopt, amend or appeal only those rules of the department designated as major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A... and routine technical rules as necessary for the conduct of the department's business, including the processing of applications, the conduct of hearings and other administrative matters." The Commissioner has the authority to adopt, amend or repeal routine technical rules (38 MRSA § 341-H, subsection 2). In instances where rulemaking was initiated on routine technical rules prior to the effective date of LD 1, the rulemaking proceeding was completed by the Board.

During 2011, the Board considered 12 rules or rule amendments referred to it by the Commissioner, 6 involving major substantive rules and 6 involving routine technical rules. One rulemaking was in response to a citizen petition pursuant to 5 M.R.S.A., section 8055. Rulemaking proceedings in 2011 are summarized below.

- Chapter 100 Definitions (Air Bureau) / Amendments. In May 2010, the U.S. EPA issued a final rule addressing greenhouse gas emissions from stationary sources under the Clean Air Act permitting programs. The amendments to Chapter 100 allow Maine to implement its major source licensing program for greenhouse gases. The amendments included definitions related to greenhouse gases and CO2 equivalent emissions. A public hearing was held on November 18, 2010. The amendments were adopted by the Board on February 3, 2011.
- Chapter 117 Source Surveillance – Emissions Monitoring / Repeal and Replace. The rule specifies air emission sources that are required to operate continuous air emission monitoring systems and details the performance specifications, quality assurance requirements, and quality control procedures for such systems. The rule was last updated in 1994. A public hearing on the proposed changes was held on December 16, 2010. The revised rule was adopted by the Board on April 21, 2011.

- Chapter 118 Gasoline Dispensing Facilities Vapor Control / Amendments. The amendments repeal the Stage II gasoline vapor recovery requirement effective January 1, 2012 and require the removal and/or discontinuance of Stage II vapor controls by January 1, 2013. A public hearing was held on November 18, 2010. The amendments were adopted on January 6, 2011.
- Chapter 129 Surface Coating Facilities / Amendments. The Clean Air Act requires control technology on certain sources of VOC (volatile organic compound) emissions that contribute to the formation of ground-level ozone. The amendments expand coverage to include exterior siding and tile board and modify requirements for metal finishing and flatwood panel coating operations. The proposed amendments were posted for comment on September 2, 2010. The amendments were adopted on January 6, 2011.
- Chapter 305 Natural Resources Protection Act Permit-by-Rule Section 16 Activities in Coastal Sand Dunes / Amendments. (Major Substantive). The amendments incorporate definition changes and allow additional activities in existing developed areas. The changes also allow new activities in a sand dune such as winter cobble-trapping fences. The amendments were posted for public comment on October 7, 2010. The amendments were provisionally adopted on December 16, 2010, and finally adopted on June 16, 2011.
- Chapter 305 Natural Resources Protection Act Permit-by-Rule Section 20 Activities Located In, On, or Over High or Moderate Value Inland Waterfowl and Wading Bird Habitat, or Shorebird Nesting, Feeding and Staging Areas. (Major Substantive). Public Law 2011, c. 359, directed the Department to amend its rules concerning permit by rule (PBR) to allow activities occurring in high or moderate value waterfowl and wading bird habitat to be eligible for PBR. The proposed amendments would allow new development in moderate value inland waterfowl and wading bird habitat provided the development is located at least 150 feet back from the upland edge of the wetland and occupies no more than 20% of the lot within the habitat. A public hearing was held on December 1, 2011. Given issues raised at the hearing, the Board continued the hearing to December 15, 2011 to receive expert testimony from staff of the Department of Inland Fisheries and Wildlife. The Board provisionally adopted the rule amendments at its January 5, 2012 meeting.
- Chapter 375 No Adverse Environmental Effect Standard of the Site Location Law, Control of Noise, Sound Level Limits for Measurements for Wind Turbine Projects. (Major Substantive). This rulemaking was initiated in response to a citizen petition pursuant to 5 M.R.S.A. § 8055. A public hearing was held on July 7, 2011. Deliberative sessions were held on July 21, 2011, July 28, 2011, and August 8, 2011, at which time the rule was posted for additional comment with a deadline of August 29, 2011. The rule was provisionally adopted by the Board on September 15, 2011 and has been forwarded to the Legislature for its consideration.

- Chapter 378 Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay or Silt and the Performance Standards for the Storage of Petroleum Products. (Major Substantive). Public Law 2011, c. 26 directed the Department to allow licensed mining operations to store a small amount of diesel fuel in gravel pits and quarries. A public hearing was held on the proposed rule amendments on November 3, 2011. The Board provisionally adopted the rule amendment at its January 5, 2012 meeting.
- Chapter 425 Asbestos Management Regulations / Amendments. The proposed amendments update the rule to reflect statutory changes, clarify certain definitions and requirements, and integrate changes to standard industry practices. A public hearing was held on November 18, 2010. The amendments were adopted on March 17, 2011.
- Chapter 692 Siting of Oil Storage Facilities / Amendments. (Major Substantive). The proposed changes would have amended the Department's current regulations restricting the siting of new oil facilities in significant sand and gravel aquifers. The proposed amendment was in response to Public Law 2011, c. 26. It would have allowed for the storage of up to 1,100 gallons of diesel fuel for fueling heavy equipment used in the mining of sand and gravel from pits located in significant sand and gravel aquifers mapped by the Maine Geological Survey. The rule amendment would also have exempted proposed new oil storage facilities on a site erroneously mapped as a significant sand and gravel aquifer and urban locations where ground water has already been contaminated and is no longer useable as drinking water. A public hearing was held on November 3, 2011. In response to issues raised at the hearing by the regulated community, the rulemaking was terminated on November 3, 2011 to allow Department staff to pursue resolution of issues in dispute with the regulated community.
- Chapter 693 Operator Training for Oil and Hazardous Substance Storage Facilities / New. The rule proposed to establish training requirements for operators of oil storage facilities and hazardous waste storage facilities to satisfy minimum training requirements specified by Section 1524 of the U.S. Energy Policy Act. A public hearing was held on October 7, 2010. The rule was posted for additional public comment on December 16, 2010, and the comment period further extended on February 3, 2011. The rulemaking was subsequently terminated by the Commissioner.
- Chapter 882 Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products / New. (Major Substantive). The rule lists bisphenol A as a priority chemical, requires reporting for certain categories of products containing bisphenol A, and prohibits the sale of certain other products containing bisphenol A. A public hearing was held on August 19, 2010. The rule, with the exception of Section 5 (Sales prohibition of children's products containing bisphenol A), was adopted on December 16, 2010. Section 5 was provisionally adopted on December 16, 2010 and finally adopted by the Board on June 16, 2011.

- Chapter 900 Biomedical Waste Management Rules / Amendments. Department staff proposed to amend the rule to eliminate the provision that sharps such as needles and syringes be shredded after disinfection and prior to disposal in a landfill. The rule was posted for public comment on April 21, 2011, and the amendment was adopted on July 21, 2011.

## **B. Major Applications**

In LD 1, the Legislature made changes to the provision of statute that specifies which permits will be decided by the Board. In accordance with 38 M.R.S.A. § 341-D(2), the Board shall decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance. A project of statewide significance is a project that meets at least 3 of the following 4 criteria:

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

Additionally, the Board shall decide each application referred to it jointly by the Commissioner and the applicant.

There were no applications for projects of statewide significance pending before the Board in 2011.

## **C. Appeals of Department Licensing Decisions**

If an applicant or another person is aggrieved by a licensing decision of the Commissioner, the Commissioner's decision may be appealed to the Board or to Superior Court. Under provisions of 38 M.R.S.A. §341-D(4), the Board may affirm, amend, or reverse the Commissioner's decision, or remand the matter to the Commissioner for further proceedings. The Board's review on appeal is *de novo* in that the Board is not bound by the Commissioner's findings of fact or conclusions of law. Except in limited circumstances set forth in rule, the record for appeals heard by the Board is limited to the administrative record prepared by the Department in its review of the application. The Board's goal is to process appeals expeditiously in accordance with the Department's procedural rules, the requirements of the Maine Administrative Procedure Act, and program specific statutes and rules. The Board's decision on appeal may be appealed to Superior Court (or the Law Court in the case of an expedited wind energy development).



Appeals of Commissioner licensing decisions considered by the Board in 2011 are summarized below.

- Old Town, Juniper Ridge Landfill. Appeal of a Solid Waste Order changing the Municipal Solid Waste (MSW) Bypass Limit. The appeal filed by the Municipal Review Committee and Penobscot Energy Recovery Company objected to provisions regarding the use of municipal solid waste bypass for the “soft layer” in the landfill. The Board denied the appeal and affirmed the Commissioner’s decision.
- Spruce Mountain Wind Project. Appeal of Department approval of an 18 to 20 MW expedited wind energy development proposed for Woodstock, Oxford County. The appeal was filed by Friends of Spruce Mountain. The major issues raised in the appeal were: noise, provisions for decommissioning the facility at the end of its useful life, and scenic impacts. The Board denied the appeal and affirmed the Commissioner’s decision.
- Berwick Iron & Metal Recycling, Inc. Appeal of air emission license for automobile shredding operation. The appeal was filed by Berwick residents, including abutters to the project site. Appellants expressed concerns about noise, hours of operation, impacts to air quality and what they believed were procedural inadequacies in the processing of the application. The Board denied the appeal and affirmed the Commissioner’s decision.
- BB Development LLC. Appeal of Site Location and Natural Resources Protection Act permit approval for the Oxford Resort Casino, Phase 1. The appellants objected to a number of findings including those regarding financial capacity, noise, visual quality, adequate water supply, potential impacts to groundwater, and impacts to wetlands. The Board modified the permit, adding provisions requiring a demonstration of financial capacity and a demonstration of adequate water supply prior to construction of the facility.
- U.S. Army Corps of Engineers / Maintenance Dredging of the Kennebec River / Appeal of Natural Resources Protection Act permit and Water Quality Certification. Appellants objected to the timing of the maintenance dredge in August and expressed concerns over potential adverse impacts to fishing, clamming and recreation in the Kennebec River. The Board denied the appeal and affirmed the Commissioner’s decision.
- Residential Subdivision, Yarmouth. Appeal of Site Location and Natural Resources Protection Act permits, and Water Quality Certification for a residential subdivision. The appellant expressed concerns regarding potential impacts to wetlands, inadequate soils, stormwater management and water quality. The Board found that the person filing the appeal did not demonstrate a particularized injury and therefore did not have standing to bring the appeal. The appeal was dismissed.

### Pending Appeals:

- S.D. Warren Company. Appeal of Water Quality Certification for the Eel Weir Hydropower Project, Sebago Lake, Cumberland County. The appellant objects to the lake level management plan citing adverse impacts to recreation, navigation and aquatic habitat. The certification was also appealed to Superior Court by another entity. The appeal is on hold pending a request before Superior Court regarding consolidation of the appeals.
- Saddleback Ridge Wind, LLC. Carthage, Canton and Dixfield, Franklin and Oxford Counties. Appeal of Site Location and Natural Resources Protection Act permits and Water Quality Certification. Appellants object to the project on the basis of excessive noise from wind turbines and unreasonable visual impact. The matter is scheduled for consideration by the Board in February 2012.

#### **D. Petitions to Modify, Suspend or Revoke a License**

The petition process is a mechanism to re-open a final license that was issued by the Department if certain conditions are found to exist. This provision of statute was amended by LD 1 to limit the Board's role to consideration of petitions to modify a license or order corrective action. As amended Title 38 § 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, whenever the Board finds that one or more of the following conditions exist:

- The licensee has violated any condition of the license;
- The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;
- The licensed discharge or activity poses a threat to human health or the environment;
- The license fails to include any standard or limitation legally required on the date of issuance;
- There has been a change in any condition or circumstance that requires corrective action or a temporary or permanent modification of the terms of the license;
- The licensee has violated any law administered by the Department; or
- The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990.

In 2011, the Board considered the following petitions:

- Construction of Footbridge, Owls Head, Knox County. Appeal of Natural Resources Protection Act Permit-by-Rule. The petitioners argued that the licensee failed to fully disclose all relevant facts and failed to provide public notice of the proposed project. After hearing arguments from the petitioners and the licensee, the Board dismissed the petition.

- Berwick Iron & Metal Recycling, Inc., Berwick, York County. Petition to modify, revoke or suspend the air emission license for the automobile shredding operation. The petition was filed following an unsuccessful appeal by Berwick residents, including abutters to the project site. Petitioners alleged that the licensee had violated laws administered by the Department, misrepresented or failed to disclose fully all relevant facts during the processing of the application, and that a change in circumstances warranted modification, suspension or revocation of the license. After hearing arguments from the petitioners and the licensee, the Board dismissed the petition.

#### **E. Appeal of Administrative Orders Issued by the Commissioner**

A number of the Department's program specific statutes provide for appeals to the Board of a Commissioner Administrative Order, such as an order to remediate a site contaminated by oil or hazardous substances. These are unilateral orders through which the Commissioner seeks to correct serious environmental conditions. Due process is afforded through the right of appeal to the Board, and eventually Superior Court. There were no appeals of Commissioner Orders in 2011.

#### **F. Enforcement Actions**

The decision on whether to take enforcement action in a given situation is the prerogative of the Commissioner, and violations of law can be resolved at a variety of levels. In instances where the Commissioner determines that an administrative consent agreement is appropriate, the Board historically has been required to approve such agreements. This responsibility was eliminated in LD 1; accordingly, the Board no longer reviews administrative consent agreements.

During 2011, the Board approved 18 Administrative Consent Agreements prior to the changes enacted by LD 1. The Board remanded one agreement back to the Department for re-evaluation. The administrative consent agreements approved by the Board in 2011 by program area and applicable statute and/or rule are listed below.

##### Air

- Protection and Improvement of Air Law, air emission standards and license conditions (5).

##### Hazardous Waste, Solid Waste, Oil Discharge

- Hazardous Waste Management Regulations (2).
- Oil Discharge Prevention and Pollution Control Law (1).

##### Land and Water

- Natural Resources Protection Act (3): One of these also involved violations of the Erosion and Sedimentation Control Law.
- Performance Standards for Excavations (3).
- Waste Discharge License (2).
- Site Location of Development Law and Natural Resources Protection Act (2).

## G. Informational Workshops

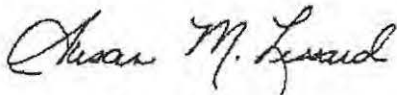
Department staff provides informational workshops at regularly scheduled Board meetings throughout the year for the benefit of Board members and any members of the public who wish to attend. Workshops in 2011 addressed:

- Rulemaking
- Natural Resources Protection Act
- State Water Classification System.

## V. Closing

Over the past year, we have seen changes to the role of the Board and are working with the Commissioner to implement those changes. Members consider it a privilege to serve the people of Maine on the Board of Environmental Protection. We are dedicated to carrying out our statutory responsibilities in a fair, transparent and efficient manner that protects the due process rights of all parties and provides for credible public participation in Board proceedings. We hope that this report provides Committee members with a helpful overview of our activities in 2011. I welcome the opportunity to review the report with you at your convenience.

Respectfully submitted,



Susan M. Lessard, Chair  
Board of Environmental Protection

### Attachments:

- A. Board Members: List and Biographical Information
- B. 2011 Meeting Agendas



## Appendix A: Board of Environmental Protection Members



Susan M. Lessard, Chair  
Hampden, 2<sup>nd</sup> Term

Ms. Lessard transitioned in January of 2012 from her eleven-year position as Town Manager of Hampden to the position of Finance Director with the Town of Southwest Harbor. She has more than 28 years of experience in local government in Maine and has extensive experience in solid waste management issues, municipal financial management, and community development. She is a past president of the Maine Municipal Association, and has served on the Municipal Review Committee and the Maine Rural Development Council. Her educational background is in public administration and engineering. She was appointed to the Board as a member in July 2007; appointed as Chair in December of 2008; and reappointed to the Board as Chair by Governor Paul LePage in September 2011.



Elizabeth Ehrenfeld  
Falmouth, 2<sup>nd</sup> Term

Ms. Ehrenfeld holds a doctorate in Microbiology and Immunology from the University of Michigan. She has authored numerous scientific papers and has several patents on procedures for detection of bacteria in drinking water and food. Ms. Ehrenfeld is currently an adjunct professor at Southern Maine Community College where she teaches courses in microbiology, genetics and biotechnology. She currently serves on the board of the Bioscience Association of Maine and the Appalachian Mountain Club. Ms. Ehrenfeld is also a Registered Maine Guide. She was appointed to the Board by Governor Baldacci in June 2005, and appointed to a second term in June 2009.



M. Wing Goodale  
Falmouth, 2<sup>nd</sup> Term

Mr. Goodale is Deputy Director and Senior Scientist at the BioDiversity Research Institute, a Maine-based nonprofit ecological research group. He is involved in a number of research projects, including assessment of the impact of mercury and other toxins on bird populations. He also manages BioDiversity's web site and oversees the live eagle and loon web cameras. He has a bachelor's degree in biology from Colorado College and a master's degree in conservation biology from College of the Atlantic. He was appointed to the Board by Governor Baldacci in March 2006, and appointed to a second term in March 2010.



Richard Gould  
Greenville, 2<sup>nd</sup> Term

Mr. Gould is a retired high school teacher, and a former State Legislator. During his tenure in the Legislature, Mr. Gould served on the Joint Standing Committee on Energy and Natural Resources, including a term as co-chair of the Committee. Mr. Gould was also employed as legislative liaison for Great Northern Paper and as Code Enforcement Officer for the Town of Greenville. Mr. Gould remains active in educational issues and currently serves on the Greenville School Committee. He was appointed to the Board by Governor Baldacci in March 2006, and appointed to a second term in March 2010.

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Alvin K. Ahlers  
North Yarmouth,  
1<sup>st</sup> Term

Mr. Ahlers is a retired Registered Professional Engineer. He served as Environmental Manager for Fairchild Semiconductor Corporation in South Portland from 1993 to 2004 where he was responsible for managing environmental compliance for the facility and was an active member of Maine DEP's Environmental Leadership program for Fairchild. Prior to joining Fairchild, Mr. Ahlers was employed by ABB Environmental Services (formerly E.C. Jordan Co) of Portland. Since retiring he has been active in town government, currently serving on the Town of North Yarmouth Budget Committee and on the town's Economic and Sustainability Committee. He was appointed to the Board by Governor Paul LePage in September 2011.



Gary Curtis  
Greenwood, 1<sup>st</sup> Term

Mr. Curtis is a retired paper industry expert. Mr. Curtis was the Mill Manager at the New Page Corporation mill in Luke, Maryland from 2006 to 2010 where he oversaw productivity, quality, safety, environmental compliance, staff operations, communications, governmental affairs and labor relations. From 1993 to 2006, he was Vice President of Maine Operations at MeadWestvaco. Mr. Curtis has also held a number of management positions at other paper industry plants throughout the United States. Mr. Curtis's community service includes past membership on the Board of the Rumford Community Hospital and the Board of Androscoggin Home Care and Hospice. He was appointed to the Board by Governor Paul LePage in September 2011.



Robert Foley  
Wells, 1<sup>st</sup> Term

Mr. Foley, a 35 year veteran of the insurance industry, is currently employed as an agent and partner at Cole Harrison Agency in Kennebunk. A native of Kittery, Mr. Foley has been a resident of Wells since 1977, where he has been actively involved in town government. He served on the Wells Board of Selectmen from 1992-2003, and again from 2009 to the present, including seven years as Chairman. Mr. Foley has a strong interest in coastal issues and is the founder of Save Our Shores-Maine and the Maine Coastal Coalition. He holds a Bachelor's degree in Political Science and Public Policy. He was appointed to the Board by Governor Paul LePage in September 2011.

## **Appendix B: Board of Environmental Protection Meeting Agendas**

BOARD OF ENVIRONMENTAL PROTECTION  
[www.maine.gov/dep/bep/index.htm]  
Maple Hill Farms at 09:00a.m.  
11 Inn Road, Hallowell  
January 6, 2011

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I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

- 003 2. RED SHIELD ACQUISITION LLC d/b/a OLD TOWN FUEL & FIBER, Old Town –  
Administrative Consent Agreement (BAQ)

ADMINISTRATIVE CONSENT AGREEMENT:

Proposed wastewater discharge enforcement resolution open for public comment  
Pursuant to 38 M.R.S. § 347-A (6)

K&K EXCAVATION, INC., // Auburn

DEP contact person Colin Clark 441-7419

*Comment Deadline: **January 21, 2011.***

*Tentative schedule for BEP action: **February 3, 2011***

III. REGULAR AGENDA

- 015 1. DAVID E. RICE, Department Permit L-23698-4E-B-M – Natural Resources Protection Act  
Minor Revision Coastal Wetland Alteration/Water Quality Certification (appeal by licensee)  
Staff: Beth Callahan, Bureau of Land and Water Quality
- 245 2. CHAPTER 100 DEFINITIONS REGULATION / AMENDMENTS (adoption)  
Staff: Michael Karagiannes, Bureau of Air Quality
- 295 3. CHAPTER 118, GASOLINE DISPENSING FACILITIES VAPOR CONTROL / AMENDMENTS  
– NEW (adoption)  
Staff: Jeff Crawford, Bureau of Air Quality
- 335 4. CHAPTER 129 SURFACE COATING FACILITIES / AMENDMENT (adoption)  
Staff Jeff Crawford, Bureau of Air Quality

*Next Regular Meeting – Thursday, January 20, 2011 – Holiday Inn - Augusta*



BOARD OF ENVIRONMENTAL PROTECTION  
[www.maine.gov/dep/bep/index.htm]  
Civic Center, Augusta at 08:00a.m.  
February 3, 2011

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**I. REGULAR AGENDA**

- 039 1. CHAPTER 375, SECTION 10. CONTROL OF NOISE / AMENDMENT (citizen petition for rulemaking – post to public hearing)  
Staff: Mike Mullen, Bureau of Land and Water Quality
- 01b 2. SPRUCE MOUNTAIN WIND LLC – DEPARTMENT PERMIT L-24838-24-A-N AND L-24838-2G-B-N (appeal by Friends of Spruce Mountain and other aggrieved persons)  
Staff: Dawn Hallowell, Bureau of Land and Water Quality

**II. DEPARTMENTAL**

- A. Commissioner's Comments  
B. Chairman's Comments  
C. Executive Analyst Comments  
001 D. Board Calendar  
E. Departmental Orders / Applications Accepted for Processing  
F. Executive Session

**III. CONSENT AGENDA ITEMS**

- 003 1. BEP MINUTES – November 18, 2010 (approval)  
009 2. BEP MINUTES – December 2, 2010 (approval)  
015 3. ODYSSEY CONTRACTING CORP., Sedgwick – Administrative Consent Agreement (BRWM)  
021 4. NORTHEAST COATING TECHNOLOGIES, INC., Kennebunk – Administrative Consent Agreement (BRWM)  
033 5. K&K EXCAVATION, INC., Auburn – Administrative Consent Agreement (BLWQ – Land)

**IV. REGULAR AGENDA (CONTINUED)**

- 1773 3. CHAPTER 693 OPERATOR TRAINING FOR OIL AND HAZARDOUS SUBSTANCE STORAGE FACILITIES / NEW (extend written comment 90-days)  
Staff Scott Whittier, Bureau of Remediation and Waste Management
- NOTE: Agenda item #4 tabled at January 6<sup>th</sup> Board Meeting.**
- 245 4. CHAPTER 100 DEFINITIONS REGULATION / AMENDMENTS (adoption)  
Staff: Michael Karagiannes, Bureau of Air Quality

*Next Regular Meeting –Thursday, February 17, 2011 – Civic Center, Augusta*

**I. DEPARTMENTAL**

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

**II. CONSENT AGENDA ITEMS**

- 003 1. MAINE WOODS PELLET COMPANY, LLC, Athens – Administrative Consent Agreement (BAQ)

**III. REGULAR AGENDA**

- 011 3. STATE PLANNING OFFICE – JUNIPER RIDGE LANDFILL SOLID WASTE MINOR REVISION DEPARTMENT ORDER #S0020700-WD-W-M (appeal submitted by The Municipal Review Committee, Inc. and Penobscot Energy Recovery Company, LP)  
Staff Cynthia Darling, Bureau of Remediation and Waste Management  
Staff Paula Clark, Bureau of Remediation and Waste Management

*Next Regular Meeting –Thursday, March 17, 2011 – Civic Center, Augusta*

BOARD OF ENVIRONMENTAL PROTECTION  
[www.maine.gov/dep/bep/index.htm]  
Civic Center, Augusta at 09:00a.m.  
March 17, 2011

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**I. DEPARTMENTAL**

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

**II. CONSENT AGENDA ITEMS**

- 003a 1. BEP MINUTES – December 16, 2010 (approval)
- 003 2. BEP MINUTES – January 6, 2011 (approval)
- 009 3. BEP MINUTES – February 3, 2011 (approval)
- 013 4. KEVIN BARBEE, Sullivan – Administrative Consent Agreement (BLWQ – Land)
- 017 5. GERARD GOODWIN, Franklin – Administrative Consent Agreement (BLWQ – Land)

**III. REGULAR AGENDA**

- 021 1. CHAPTER 425, ASBESTOS MANAGEMENT REGULATIONS / AMENDMENT (adoption)  
Staff: Jamie Tansey, Bureau of Remediation and Waste Management
- 179 2. BERWICK IRON & METAL RECYCLING, INC. – AIR EMISSIONS PERMIT DEPARTMENT ORDER A-001041-71-A-N (appeal and request for a public hearing submitted by Jeanette & Doug Sievwright, Robert & Donna Duffy, Tom & Carol Planche and Joyce & Raymond Provencher)  
Staff: N. Lynn Cornfield, Bureau of Air Quality

*Next Regular Meeting – Thursday, April 7, 2011 – Civic Center, Augusta*

BOARD OF ENVIRONMENTAL PROTECTION  
[www.maine.gov/dep/bep/index.htm]  
Civic Center, Augusta at 09:00a.m.  
April 21, 2011

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**I. DEPARTMENTAL**

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

**II. CONSENT AGENDA ITEMS**

- 003 1. BEP MINUTES – March 3, 2011 (approval)
- 007 2. BORALEX LIVERMORE FALLS LP, Livermore Falls and Ashland – Administrative Consent Agreement (BAQ)
- 025 3. KATHLEEN LITTLEFIELD and THE MODULAR ADVANTAGE, Harpswell – Administrative Consent Agreement (BLWQ - Land)
- 031 4. GEORGE CONRADES, PATSY CONRADES and MUSCLE RIDGE PURCHASE TRUST, South Thomaston - Administrative Consent Agreement (BLWQ – Land)
- 037 5. PARSONS KITCHENS, INC. – Administrative Consent Agreement (BRWM)

**III. REGULAR AGENDA**

- 047 1. CHAPTER 117, SOURCE SURVEILLANCE – EMISSIONS MONITORING / AMENDMENT (adoption)  
Staff: Jeff Crawford, Bureau of Air Quality
- 101 2. CHAPTER 900, BIOMEDICAL WASTE MANAGEMENT RULES – SECTION 7 DEFINITIONS OF BIOMEDICAL WASTE and SECTION 18 STANDARDS FOR TREATMENT FACILITIES / AMENDMENT (post to 30-day written comment)  
Staff: Ron Dyer, Director Bureau of Remediation and Waste Management
- 115 3. BOB and KATHY PRATT – PERMIT-BY-RULE #49587 FOOTBRIDGE (petition to revoke, modify or suspend submitted by Richard Hurlbert and Audrey McGlashan)  
Staff: Colin Clark, Bureau of Land and Water Quality
- 195 4. BERWICK IRON & METAL RECYCLING, INC. – AIR EMISSIONS PERMIT DEPARTMENT ORDER A-001041-71-A-N (petition to revoke, modify or suspend submitted Jeanette & Doug Sievwright, Robert & Donna Duffy, Tom & Carol Planche and Joyce & Raymond Provencher)  
Staff: N. Lynn Cornfield, Bureau of Air Quality

*Next Regular Meeting – Thursday, May 5, 2011 – Civic Center, Augusta*



BOARD OF ENVIRONMENTAL PROTECTION  
[www.maine.gov/dep/bep/index.htm]  
Civic Center, Augusta at 01:00 p.m.  
June 16, 2011

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I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

- 005 1. BEP MINUTES – March 17, 2011 (approval)
- 007 2. BEP MINUTES – April 21, 2011 (approval)
- 011 3. FERRAILOLO CONSTRUCTION, INC., Liberty – Administrative Consent Agreement (BLWQ - Land)
- 015 4. PORTLAND WATER DISTRICT, Portland – Administrative Consent Agreement (BLWQ - Water)
- 033 5. ECO MAINE d/b/a ecomaine, Portland - Administrative Consent Agreement (BAQ)
- 045 6. BORALEX LIVERMORE FALLS LP, Livermore Falls and Ashland – Administrative Consent Agreement (BAQ)

NOTICE OF ADMINISTRATIVE CONSENT AGREEMENT:

Proposed wastewater discharge enforcement resolution open for public comment  
Pursuant to 38 M.R.S.A. §347-A(6)

Town of Hartland // Hartland (John Glowa 287-7783)

Comment Deadline: **June 27, 2011** - Tentative schedule for BEP action: **July 7, 2011**

III. REGULAR AGENDA

- 063 1. CHAPTER 305, PERMIT-BY-RULE, SECTION 16, ACTIVITIES IN COASTAL SAND DUNES / AMENDMENT (final adoption)  
Staff: Mike Mullen, Bureau of Land and Water Quality
- 077 2. CHAPTER 882, DESIGNATION OF BISPHENOL "A" AS A PRIORITY CHEMICAL AND REGULATION OF BISPHENOL "A" IN CHILDREN'S PRODUCTS / NEW (final adoption)  
Staff: Ron Dyer, Director Bureau of Remediation and Waste Management

\*\*\* Pursuant to Title 35 M.R.S.A. Section 341-D(1-B) -- 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. Comments must be presented orally except by leave of the Chairman.

- 087 3. BB DEVELOPMENT, LLC – DEP SITE LOCATION OF DEVELOPMENT ACT AND NATURAL RESOURCES PROTECTION ACT PERMIT APPROVAL I-25203-28-A-N and L-25203-TE-B-N // OXFORD RESORT CASINO – PHASE I (appeal submitted by Androscoggin River Alliance, Residents Terri Marin, Joelle Schutt, Ronald & Rachel Hamilton, James & Candace Alden, Richard Swanson, Richard Auren, Carol Ann & Larry LaRoche LaBossiere, Brendan McMorrow, Carol Perkins, Robert Benson, Mary & Austin Taylor, and John & Evelyn Sylvester)  
Staff: Beth Callahan, Bureau of Land and Water Quality  
Staff: James Cassida, Bureau of Land and Water Quality

*Next Regular Meeting –Thursday, July 7, 2011 – Civic Center, Augusta*

BOARD OF ENVIRONMENTAL PROTECTION  
[www.maine.gov/dep/bep/index.htm]  
Civic Center, Augusta at 08:15 a.m.  
July 7, 2011

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**I. DEPARTMENTAL**

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

**II. CONSENT AGENDA ITEMS**

- 003 1. TOWN OF HARTLAND, Hartland – Administrative Consent Agreement (BLWQ – Water)

**III. REGULAR AGENDA**

- 011 3. BB DEVELOPMENT, LLC – DEP SITE LOCATION OF DEVELOPMENT ACT AND NATURAL RESOURCES PROTECTION ACT PERMIT APPROVAL I-25203-28-A-N and L-25203-TE-B-N // OXFORD RESORT CASINO – PHASE I // APPEAL submitted by Androscoggin River Alliance, Residents Terri Marin, Joelle Schutt, Ronald & Rachel Hamilton, James & Candace Alden, Richard Swanson, Richard Auren, Carol Ann & Larry LaRoche LaBossiere, Brendan McMorro, Carol Perkins, Robert Benson, Mary & Austin Taylor, and John & Evelyn Sylvester (final approval modified draft proposed Board Order  
Staff: Beth Callahan, Bureau of Land and Water Quality

**Public Hearing at 8:30 a.m. In The Matter Of:**

CHAPTER 375, SECTION 10 – CONTROL OF NOISE

- Citizen Petition for Rulemaking: Proposed amendments to Section 10 – New Section I. Sound Level Limits and Measurements for Wind Turbine Projects

*Next Regular Meeting – Thursday, July 21, 2011 – Civic Center, Augusta*

BOARD OF ENVIRONMENTAL PROTECTION  
[www.maine.gov/dep/bep/index.htm]  
Civic Center, Augusta at 09:00 a.m.  
July 21, 2011

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**I. DEPARTMENTAL**

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

**II. CONSENT AGENDA ITEMS**

- 003 1. SUGARLOAF MOUNTAIN CORPORATION CNL INCOME SUGARLOAF, LLC, Carrabassett Valley – Administrative Consent Agreement (BLWQ – Land)
- 009 2. PAUL E. CANTRELL, JR. and DEBORAH A. CANTRELL, Lebanon – Administrative Consent Agreement (BLWQ – Land)
- 015 3. STARCH PARTNERS, LLC d/b/a AROOSTOOK STARCH COMPANY, Fort Fairfield – Administrative Consent Agreement (BAQ)
- 040 4. TOWN OF ROME, Rome – Administrative Consent Agreement (BLWQ-Land)

**III. REGULAR AGENDA**

- 021 1. CHAPTER 900, BIOMEDICAL WASTE MANAGEMENT RULES – SECTION 7 DEFINITIONS OF BIOMEDICAL WASTE and SECTION 18 STANDARDS FOR TREATMENT FACILITIES / AMENDMENT (adoption)  
Staff: Ron Dyer, Director Bureau of Remediation and Waste Management
- 041 2. U.S. ARMY CORPS OF ENGINEERS – NATURAL RESOURCES PROTECTION ACT COASTAL WETLAND ALTERATION WATER QUALITY CERTIFICATION // MAINTENANCE DREDGING [DEP PERMIT #L-16281-4E-E-N] (appeal submitted by Town of Phippsburg, Phippsburg Shellfish Conservation Commission, Phippsburg Land Trust, Kennebec Estuary Land Trust, Friends of Merrymeeting Bay, Bob Cummings, Lawrence Pye, Dean Doyle, Dot Kelly, Captain Ethan DeBery, and Laura Sewall (Town of Phippsburg et al.) represented by Stephen Hinchman, Esq., Dot Kelly, Doug Watts and Ed Friedman)  
Staff: Robert Green, Bureau of Land and Water Quality

**Board to reconvene after lunch (at approximately 1:00 pm)**

- 3. CHAPTER 375, SECTION 10. CONTROL OF NOISE – CITIZEN INITIATED RULEMAKING (BEP preliminary discussion)  
Staff: James Cassida, Bureau of Land and Water Quality  
Staff: Mike Mullen, Bureau of Land and Water Quality

*Next Regular Meeting – Thursday, August 4, 2011 – location to be determined, Augusta*





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## Agenda

**Board of Environmental Protection**  
 Dept. of Human Services at **Noon**  
 41 Anthony Avenue, Augusta  
**Special Meeting July 28, 2011**

### I. Departmental

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- D. [Board Calendar](#)
- E. Departmental Orders / Applications Accepted for Processing
  - [Department Permits filed w/Board - Air / Land](#)  
[Department Permits filed w/Board](#)
  - [Applications Accepted for Processing - Air / Land](#)
  - [Applications Accepted for Processing](#)

### F. Executive Session

### II. Consent Agenda Items

None

### III. Regular Agenda

3. CHAPTER 375, SECTION 10. CONTROL OF NOISE – CITIZEN INITIATED RULEMAKING (BEP preliminary discussion)

Staff: James Cassida, Bureau of Land and Water Quality

Staff: Mike Mullen, Bureau of Land and Water Quality

NOTE: No review documentation for this item

***Next Regular Meeting –Thursday, August 4, 2011– location to be determined, Augusta***

***Updated agenda and documents expected availability (08/02/11)***

BOARD OF ENVIRONMENTAL PROTECTION  
[[www.maine.gov/dep/bep/index.htm](http://www.maine.gov/dep/bep/index.htm)]  
Civic Center, Augusta at 09:00 a.m.  
August 8, 2011

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**I. DEPARTMENTAL**

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

**II. CONSENT AGENDA ITEMS**

None

**III. REGULAR AGENDA**

1. CHAPTER 375, SECTION 10. CONTROL OF NOISE – CITIZEN INITIATED RULEMAKING (review staff recommendation – post for additional public comment)  
Staff: James Cassida, Bureau of Land and Water Quality  
Staff: Mike Mullen, Bureau of Land and Water Quality

*Next Regular Meeting – Thursday, September 1, 2011 – location to be determined, Augusta*

BOARD OF ENVIRONMENTAL PROTECTION  
[www.maine.gov/dep/bep/index.htm]  
Civic Center, Augusta at 09:00 a.m.  
September 1, 2011

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**I. DEPARTMENTAL**

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

**II. CONSENT AGENDA ITEMS**

- 003 1. MINUTES BEP Meeting June 16, 2011 (approval)
- 009 2. MINUTES BEP Meeting July 7, 2011 (approval)
- 013 3. MINUTES BEP Meeting July 21, 2011 (approval)
- 019 4. MINUTES BEP Meeting July 28, 2011 (approval)
- 021 5. MINUTES BEP Meeting August 8, 2011 (approval)

**III. REGULAR AGENDA**

- 025 1. STATE OF MAINE / STATE PLANNING OFFICE DEP Permit S-020700-WD-W-M 375, MODIFICATION – JUNIPER RIDGE LANDFILL (petition to modify as submitted by Penobscot Energy Recovery Company and Municipal Review Committee)  
Staff: Cyndi Darling, Bureau of Remediation and Waste Management  
Staff: Paula Clark, Bureau of Remediation and Waste Management
- 2. CHAPTER 375, SECTION 10. CONTROL OF NOISE – CITIZEN INITIATED RULEMAKING (tentatively schedule in the event additional discussions are necessary)  
Staff: Mike Mullen, Acting Director, Bureau of Land and Water Quality

*Next Regular Meeting – Thursday, September 15, 2011 – location to be determined, Augusta*

BOARD OF ENVIRONMENTAL PROTECTION  
[www.maine.gov/dep/bep/index.htm]  
Civic Center, Augusta at 09:00 a.m.  
September 15, 2011

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**I. DEPARTMENTAL**

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

**II. CONSENT AGENDA ITEMS**

- 003 1. MINUTES BEP Meeting June 16, 2011 (approval)
- 009 2. MINUTES BEP Meeting July 7, 2011 (approval)
- 013 3. MINUTES BEP Meeting July 21, 2011 (approval)
- 019 4. MINUTES BEP Meeting July 28, 2011 (approval)
- 021 5. MINUTES BEP Meeting August 8, 2011 (approval)

**III. REGULAR AGENDA**

- 000 1. CHAPTER 375, SECTION 10. CONTROL OF NOISE – CITIZEN INITIATED RULEMAKING (provisional adoption)  
Staff: Mike Mullen, Acting Director, Bureau of Land and Water Quality



**I. DEPARTMENTAL**

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

**II. CONSENT AGENDA ITEMS**

None

**III. REGULAR AGENDA**

- 003 1. RULEMAKING – INTRODUCTION (overview of agency rulemaking)  
Staff: Mary Sauer, Assistant Attorney General  
Staff: Cynthia S. Bertocci, BEP Executive Analyst
- 007 2. CHAPTER 692, SITING OF OIL STORAGE FACILITIES / AMENDMENTS (post to public hearing)  
Staff: Ron Dyer, Director Bureau of Remediation and Waste Management  
Staff: George Seel, Bureau of Remediation and Waste Management
- 023 3. CHAPTER 378, VARIANCE CRITERIA FOR THE EXCAVATION OF ROCK, BORROW, TOPSOIL, CLAY OR SILT AND PERFORMANCE STANDARDS FOR THE STORAGE OF PETROLEUM PRODUCTS / AMENDMENTS (post to public hearing)  
Staff: Mike Mullen, Acting Director, Bureau of Land and Water Quality  
Staff: Mark Stebbins, Bureau of Land and Water Quality

Informational Session

- New Board Member Operational Review

**Public Hearing at 9:00 a.m. In The Matter Of:**

CHAPTER 692, SITING OF OIL STORAGE FACILITIES / AMENDMENTS

**Public Hearing at 9:30 a.m. In The Matter Of:**

CHAPTER 378, VARIANCE CRITERIA FOR THE EXCAVATION OF ROCK, BORROW, TOPSOIL, CLAY OR SILT AND PERFORMANCE STANDARDS FOR THE STORAGE OF PETROLEUM PRODUCTS / AMENDMENTS

Board to Consider the Remainder of the Agenda Immediately Following Public Hearings

**I. DEPARTMENTAL**

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

**II. CONSENT AGENDA ITEMS**

- 003 1. BEP MEETING MINUTES – September 15, 2011 (Approval)
- 007 2. BEP MEETING MINUTES – October 6, 2011 (Approval)

**III. REGULAR AGENDA**

- 011 1. CHAPTER 305, PERMIT BY RULE, SECTION 20 ACTIVITIES LOCATED IN, ON OR OVER HIGH OR MODERATE VALUE INLAND WATERFOWL AND WADING BIRD HABITAT, OR SHOREBIRD NESTING, FEEDING, AND STAGING AREAS AMENDMENTS (post to public hearing)

Staff: Mike Mullen, Director Bureau of Land and Water Quality

Informational Session

- Water Quality Classification System  
Staff: David Courtemanch, Division Director, Bureau of Land and Water Quality
- Overview of Natural Resource Protection Act (NRPA) and Site Law licensing standards  
Staff: Cynthia Bertocci, BEP Executive Analyst

**Public Hearing at 9:00 a.m. In The Matter Of:**

CHAPTER 305 PERMIT BY RULE, SECTION 20, ACTIVITIES LOCATED IN, ON OR OVER HIGH OR MODERATE VALUE INLAND WATERFOWL AND WADING BIRD HABITAT, OR SHOREBIRD NESTING, FEEDING, AND STAGING AREAS // AMENDMENTS.

**Board to Consider the Remainder of the Agenda Immediately Following Public Hearing**

**I. DEPARTMENTAL**

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

**II. CONSENT AGENDA ITEMS**

- 003 1. BEP MEETING MINUTES – November 3, 2011 (Approval)

**III. REGULAR AGENDA**

- 007 1. INNOVATIVE RESOURCE ENVIRONMENTAL CORP. // COMMERCIAL WASTE OIL STORAGE FACILITY -- MAINE HAZARD WASTE, SEPTAGE AND SOLID WASTE MANAGEMENT ACT, Winthrop (permit approval)  
Staff: Richard Kaselis, Bureau of Remediation and Waste Management
- 031 2. PETER BENARD // MCKEARNEY VILLAGE – SITE LOCATION OF DEVELOPMENT ACT and NATURAL RESOURCES PROTECTION ACT (appeal by Mary Dowd – BEP Chair Ruling to Dismiss Appeal)  
Staff: Lisa Vickers, Bureau of Land and Water Quality

BOARD OF ENVIRONMENTAL PROTECTION  
[[www.maine.gov/dep/bep/index.htm](http://www.maine.gov/dep/bep/index.htm)]

Dept. Public Safety – Florian Hall  
45 Commerce Drive, Augusta  
December 15, 2011 at 12:00 (noon)

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**Public Hearing Continuation at 12:00 (noon) In The Matter Of:**

CHAPTER 305 PERMIT BY RULE, SECTION 20, ACTIVITIES LOCATED IN, ON OR OVER HIGH OR MODERATE VALUE INLAND WATERFOWL AND WADING BIRD HABITAT, OR SHOREBIRD NESTING, FEEDING, AND STAGING AREAS // AMENDMENTS.

**Note:** The Board held a public hearing on the proposed amendments on December 1, 2011. At the conclusion of testimony, the Board voted to continue the hearing for the purpose of receiving technical information and testimony from wildlife biologists from the Department of Inland Fisheries and Wildlife with expertise in inland waterfowl and wading bird habitat.

**I. DEPARTMENTAL -- NONE**

**II. CONSENT AGENDA ITEMS -- NONE**

**III. REGULAR AGENDA**

1. Chapter 305 Permit by Rule, Section 20, Activities located In, On or Over High or Moderate Value Inland Waterfowl and Wading Bird Habitat, or Shorebird Nesting, Feeding, and Staging Areas // Amendments (Deliberative Session)  
Staff: Mike Mullen, Director Bureau of Land and Water Quality  
Cynthia Bertocci, BEP Executive Analyst

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*Next Regular Meeting – Thursday, January 5, 2012 – Florian Hall (Dept. of Public Safety), Augusta*