

Maine Water News

A Publication of the Maine Water Utilities Association

May 2015, Number 181

Will the Drinking Water Program Move to DEP?

Alan Hitchcock, 2015 President

On March 4, 2015 DEP Commissioner Patricia Aho met with the MWUA Directors in Auburn to discuss a possible transfer of the Drinking Water Program from the Department of Health and Human Services to the Department of Environmental Protection. Apparently there had been some discussion between DHHS Commissioner Mary Mayhew and DEP Commissioner Aho regarding that possibility. Commissioner Aho explained the reasoning and some potential benefits of the move. The Directors had several questions of Ms. Aho which were answered generally with few specifics. This proposal is not new and has come up at least twice in the past several years. In 2001 a comprehensive study was conducted on this very issue with the conclusion that the Drinking Water Program was best left within DHHS.

Following that meeting, the Board and several other interested parties including the Maine Rural Water Association, the Maine Drinking Water Commission, The Southern Maine Regional Water Council, The 5 Rivers Regional Water Council, The Bangor Area Water Managers Group and other interested individuals offered opinions and thoughts regarding the proposed transfer. The Maine Water Utilities Association developed a position paper which was presented at the North Country Convention in Presque Isle on April 2, 2015.

Significant among the comments and included in the MWUA position paper were the following:

1. **Benefits and Efficiencies:** Most stakeholders feel that the DWP works well where it is.
2. **Business Plan:** Is there a business plan for the proposal?
3. **Public Health:** The mission of the Drinking Water Program is public health.
4. **Funding:** Will future funding levels be consistent with current levels?

Many stakeholders think that the DWP is performing well in its current location and have some reservations in moving the program to the DEP. Some think that the DWP would be a good fit within DEP since this is the case in several other states. Perhaps the most significant issue involves the mission of the respective departments. The Department of Health and Human Services includes public health in its mission while the Department of Environmental Protection does not. Public health remains a paramount part of the drinking water profession and its responsibilities to its customers. Whatever the future course of the DWP issue, the MWUA remains committed to supporting its members and their customers with the highest level of quality and service.

The topic at the April 9, 2015 bi-monthly meeting in Lewiston was timely and engaging. The disposal of drinking water to MS4s (Municipal Separate Storm Sewer System) was discussed by DEP staff with many questions from the attendees. Several water districts in the larger metro areas are currently testing for chlorine residuals and developing Best Management Practices for disposal of water from hydrant flushing and water main breaks to storm water systems or to adjacent water bodies. DEP staff presented the Maine Ambient Water Quality criteria of between 7.5-19 ug/L of total residual chlorine for both freshwater and marine waters. There was spirited discussion about where the measurement of discharges should be made, end of pipe or a short distance into the receiving water, and how discharges should be controlled. In the opinion of many attendees, the discussion of this issue was a clear example of the difference in mission between the DWP and DEP.

Well, for most of us summer means construction season and a busy time of year. But be sure to take some time to enjoy the beautiful State of Maine in all its various locales and festivals.

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Material of interest to the water supply profession will be considered for publication. Copy deadline is the 15th day of month preceding publication.

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April Meeting Discussion Generates Heat, Some Light

The April meeting, held in Lewiston, introduced many to the general permit requirements and associated nuances of the Municipal Separate Storm Sewer System (MS4) program. Municipalities located in MS4 areas are required to adopt non-stormwater discharge ordinances which recognize that the releases of water from public water systems are allowable provided such discharges don't violate any water quality criteria. It was also noted that soil erosion is now considered an illicit discharge.

Much of the discussion that day focused on acute and chronic toxicity levels for chlorine. There were questions as to the effectiveness of methods for attenuating chlorine residuals, and where and how chlorine levels should be measured.

When David Ladd of the Maine DEP chose to over-sensationalize the impact of the dewatering of a trench during a recent main break repair by characterizing it to something akin to "gold mining in the Amazon Basin with a hydrant thing and blowing the banks up", the exchange got interesting.

The more enlightened portion of the presentation commenced shortly thereafter as another DEP staffer got into the actual details of what can be done to balance the needs of water system operations with the ecological impact on the next station in the water cycle. He was followed by other professionals who also focused on actions they are involved in to develop and administer best management practices.

The MS4 issue is one that we will be hearing more about. Stay tuned.

June Bi-Monthly Meeting is One Not to Miss

Plans are well underway for the June bi-monthly meeting, to be held at the Houlton Lodge of Elks on June 11th. In addition to the regulatory and legislative updates, the program will feature a discussion of the Right to Know provisions of Maine's Freedom of Access Act. That discussion will either be somewhat dry, if you have never experienced a FOAA request (or perhaps many of them), or it will provide useful information if you ever find yourselves in that position. At the very least, you need to know that elected officials are required to take Freedom of Access training, public agencies must have a public access officer and there are specific requirements and timetables associated with requests for public information.

The more interesting portion of the technical program will feature a presentation on what it takes to survive a cold Maine winter. Techniques and technologies for detecting leaks and frozen services and making repairs will set the stage for an informative discussion.

One of Program Committee member Brian McGuire's pastimes is cooking; he has offered to serve up prime rib and haddock for the meal at lunchtime. We are all looking forward to that.

The day before - on Wednesday - there will be golf, while others will take advantage of local fishing opportunities. Contact the office for details on either of those activities.

Also, on Wednesday evening the Elks Lodge will be open for bowling and revelry. It's a short ride from the lodge to the suggested lodging facilities and there is a taxi service in town.

Mark your calendars and make plans to be in the Shiretown the second week of June!

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Legislature Deals with a Number of Bills, Others in Process

In the March issue of *Maine Water News*, it was reported that only a few pieces of legislation had been brought before the joint standing committees. LD 169 An Act To Amend the Laws Governing Groundwater Rights, a bill that called for the imposition of an excise tax for the privilege of extracting groundwater, was one that the association was closely following. At the hearing on that bill, the sponsor and one other person testified in support. MWUA and many others opposed the bill during the 2-hour hearing. The Taxation Committee ultimately voted Ought Not to Pass on LD 169.

LD 569 and LD 660 sought to either establish insurance or a fund to compensate individuals impacted by water infrastructure failure (e.g. a flooded basement as the result of a main break). The association's preference was to pursue a solution via LD 569 whereby homeowners could purchase an endorsement to their policy to cover such situations. There was also discussion of having an endorsement for a utility's commercial liability policy to cover damage. There was resistance to either of these options from the insurance industry, generally, and the Maine Municipal Association's risk management group, specifically. LD 569 was voted out of the Insurance and Financial Services Committee with an Ought Not to Pass recommendation.

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The association was concerned that either the prospect of an endorsement on a utility's commercial policy (LD 569) or the establishment of a fund to specifically pay for damages (LD 660) might jeopardize the immunity afforded under the Maine Tort Claims Act.

LD 660, An Act To Protect Homeowners from Damage in the Event of a Failure of Public Water Systems, was amended to specify that a water utility's contingency fund can be used to pay for such damages, subject to the discretion of the consumer-owned water utility. The amendment clarifies that such use of the contingency fund does not waive a utility's immunity under the MTCA.

LD 827 An Act to Amend the Fluoridation Laws to

Provide for Customer Choice sought to amend the process whereby fluoridation referendums are brought before the voters. That bill died in committee.

LD 880 An Act to Permit Rate-adjustment Mechanisms for Water Utilities was amended to allow the Public Utilities Commission, of its own volition, to establish or authorize a reasonable rate-adjustment mechanism to decouple water utility revenues from water utility sales through revenue reconciliation when there is a change in sales due to a change in the number of customers or a change in the volume of consumption.

There were four bills dealing with freedom of access (FOAA) legislation. Of those, LD 1086 An Act to Implement the Recommendations of the Right to Know Advisory Committee to Create a Remedy for Unduly Burdensome and Oppressive Requests is the bill that is most germane to what is happening to at least one utility and which could affect others as well. This bill would amend FOAA to authorize a governmental body to deny a FOAA request on the basis the request is unduly burdensome or oppressive. The bill would require that the governmental body file an action in Superior Court in order to receive a judgment that the request is burdensome or oppressive.

MWUA testified on this bill and highlighted the fact that the provision in law that the fee to cover the actual cost of searching for, retrieving and compiling requested

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public record is capped at \$15 per hour (after the first hour of free staff time) creates a situation whereby the requester benefits and the majority of the costs incurred as the result of the request is absorbed by the other customers. Although the Association attempted to amend the bill to increase that \$15 per hour cap, the Judiciary Committee chose not to do that.

Gas Separation Legislation Moving Through Committee

L.D. 1124, An Act to Manage Risks Associated with the Installation of Natural Gas Pipelines, the bill that was submitted by the association, was heard by the Energy, Utilities and Technology Committee on April 15. Among other things, the bill proposed to make changes to the written location process for facilities in the public way and to establish construction standards which would specify clearance between underground facilities, and address other issues such as the crossing of facilities, continuity testing for tracer wire used to mark nonconductive facilities, and notification of other utilities when electric current is applied to gas pipelines for corrosion control purposes.

At the work session on the bill the EUT Committee directed the stakeholders to meet in an attempt to arrive at a compromise. Prior to that meeting the Maine Department of Transportation had offered an amendment that would,



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essentially, adopt the written location process provisions in LD 1124 and specify that, when a local licensing authority has not adopted standards governing the location, depth and height of utilities along public highways within their jurisdiction, the most recent version of the Utility Accommodation Rules adopted by the Maine DOT shall govern.

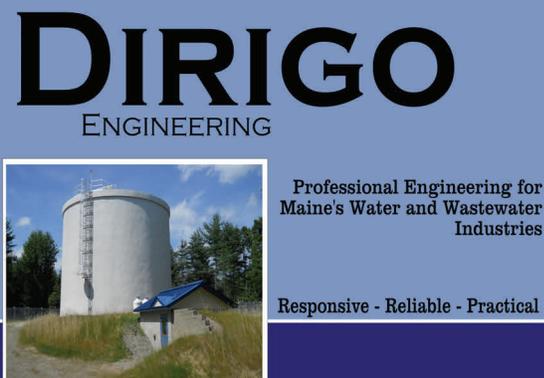
In essence, the Maine DOT standards would require a 3-foot horizontal and 1-foot vertical separation. The EUT Committee ultimately went with that proposal. The association did make it clear that the 6-foot horizontal separation asked for in LD 1124 would accommodate the use of trench boxes, whereas the 3-foot separation would be a challenge.

A related rulemaking on PUC's Chapter 420 Gas Pipeline Safety Standards has been initiated by the Commission. Among other things, the rule proposes that gas operators shall, at their expense, make appropriate accommodations when a utility is excavating in proximity to a gas line for the purpose of accessing their adjacent facilities. Such accommodation would include the temporary removal or relocation of gas facilities when necessary to ensure safety. In addition, the proposed rule calls for the use of a GIS system, or other comparable method to accurately track the location, by GPS coordinates, of all materials utilized for the installation and maintenance of gas mains and service lines. The association will be commenting on that rulemaking.

Liquor Revenues on Track

On the liquor contract front, Department of Administrative and Financial Services Commissioner Richard Rosen, in a report to the Appropriations Committee on March 26, informed them that, in the first year of operations under the new liquor contract, revenues are tracking slightly higher than what was originally projected.

It appears that there will be sufficient funds for the authorized transfers needed to secure the State Revolving Fund grant matches for the Drinking Water and Clean Water capitalization grants.



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MEWARN Is Looking For Committee Members

The Maine Water/Wastewater Agency Response Network (MEWARN) is looking for members to serve on its steering committee whose focus will be to analyze the future and sustainability of the organization. The Steering Committee will review its mission statement and develop an updated business plan.

The next MEWARN meeting will be on June 4th at 10:00 a.m. at the MEMA office. If you are interested in serving on the committee, please contact Jeff McNelly before the June 4th meeting. He can be reached by phone (207-623-9511) or email (jmcnelly@mwua.org).

Potential Transfer of DWP to DEP - Update

On May 7 the Appropriations and Financial Affairs Committee heard from DEP Commissioner Aho as she presented the elements of the Governor's budget change package which proposes to transfer the Drinking Water Program to the DEP. A number of AFA members expressed the opinion that this proposal should, perhaps, be heard by a committee(s) of jurisdiction.

The next day the AFA Committee voted unanimously not to include the portion of the change package, which includes the position transfers, in the committee amendment to the biennial budget. The vote was taken in anticipation of a separate bill which would be referred to the appropriate policy committee or committees.

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As this issue goes to the printer the association is awaiting the next step in this legislative process. The viewpoints of association members are very diverse and span a broad spectrum. The position paper that was developed will continue to serve as the basis of the association's comments and related advocacy.

EPA Issues Health Advisory for Cyanotoxins

The U.S. EPA has issued a health advisory for algal toxins, also known as cyanotoxins.

The health advisory values for algal toxins recommend 0.3 micrograms per liter for microcystin and 0.7 micrograms per liter for cylindrospermopsin as levels not to be exceeded in drinking water for children younger than school age. For all other ages, the health advisory values for drinking water are 1.6 micrograms per liter for microcystin and 3.0 micrograms per liter for cylindrospermopsin. Potential health effects from longer exposure to higher levels of algal toxins in drinking water include gastroenteritis and liver and kidney damage. The health advisory values are based on exposure for 10 days.

On May 26th from 2-3:00 pm, EPA will hold a webinar on current water treatment and distribution system optimization for cyanotoxins. [Register here.](#)

Click [here](#) to access the health advisory on EPA's website.

HOST: John Clark, General Manager, Houlton Water Company

LOCATION: Houlton Lodge of Elks, 86 Main Street, Houlton, ME 04730

DIRECTIONS: I-95 N to Exit 302 (U.S. 1). Turn right onto U.S. 1 / North Street (signs for Houlton Historical District). Turn left onto Market Square. Continue onto Main Street. Lodge will be on the left.

Accommodations:

<p><u>Ivey's Motor Lodge</u> 241 North Road, Houlton (207) 532-4206 At U.S. Route 1 & I-95</p>	<p><u>Shiretown Motor Inn</u> 282 North Road, Houlton (207) 532-9421 At U.S. Route 1 & I-95</p>
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PROGRAM

- 8:30 AM – 9:00 AM **Registration & Continental Breakfast**
- 9:00 AM – 9:10 AM **Introduction & Welcome to Houlton, Maine**
Butch Asselin, Town Manager
- 9:10 AM – 9:30 AM **Overview of Houlton Water Company**
John Clark, General Manager
- 9:30 AM – 10:00 AM **Business Meeting**
Regulatory Update, Larry Giroan, Maine Drinking Water Program
Legislative Update, Jeffrey McNelly, Executive Director
- 10:00AM – 10:15 AM **Break**

**Casual Attire
Requested**

TECHNICAL PROGRAM

- 10:15AM – 10:45 AM *Maine's Freedom of Access Act: Ensuring Compliance with Right-To-Know Provision*
Jeffrey McNelly, Executive Director
- 10:45AM – 12:30 PM *Surviving Cold Weather Issues: How Utilities Prepare & Survive The Cold Maine Winter*
Techniques/technologies for detecting leaks, frozen services and making repairs.
Joe Hersom, E.J. Prescott Co.

- 12:30 PM – 12:45 PM **Q & A**
- 12:45 PM **Lunch**

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REGISTRATION FOR JUNE 11, 2015 BI-MONTHLY MEETING

Please return registrations by: June 4, 2015

2.5 DWP Training Contact Hours / 1.5 DEP Training Contact Hours

Name(s): _____

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