



BEP INFORMATION SHEET

Guidance on Participation in a Board Licensing Hearing

Date: October 2020 Contact: (207) 287-2811 or 314-1458

Purpose of the Hearing

A hearing on an application is an opportunity for the Board of Environmental Protection (Board) and Department of Environmental Protection (Department or DEP) staff to gather evidence and receive testimony from the applicant, intervenors, and interested persons on whether a proposed project will comply with the applicable environmental laws. The public hearing is an effective way for the Board to evaluate conflicting technical information through the cross-examination of witnesses. It also provides an opportunity for interested persons to learn more about the proposed project and to state their views.

General Conduct of the Hearing

At a hearing, the Board receives testimony from the applicant and its witnesses and from people who live or work in the area of the proposed project or who would otherwise be impacted by the project, organizations that support or oppose the project, and representatives of federal, state or municipal governmental agencies. Testimony is sworn and persons testifying must affirm that the testimony they give is true to best of their knowledge and belief. Board members, Board staff, Board legal counsel, and DEP employees serving as staff to the Board may ask questions of any witness at the hearing to clarify issues or obtain further relevant information. All testimony at the hearing is recorded and transcribed. Hearings are conducted in accordance with the requirements of the Maine Administrative Procedure Act [5 M.R.S. § 9051 to 9064], the DEP's statutes [38 M.R.S. § 345-A], and Department rule Chapter 3 *Rules Governing the Conduct of Licensing Hearings* [06-096 C.M.R. ch. 3]. The DEP's statutes and rules are available online at www.maine.gov/dep.

Participation in the Hearing

- **Applicant.** At the hearing, the applicant's witnesses (including persons such as engineers and biologists who designed the facility or helped prepare the application) will present evidence regarding the applicant's proposed project and explain how the applicant believes the project meets the relevant licensing standards. The applicant's witnesses are subject to cross-examination by intervenors and questioning by Board members and staff.
- **Intervenors.** Persons (including individuals, corporations, public or private organizations, citizen groups, and municipalities and other governmental entities) who want to present detailed, technical information regarding the proposed project may want to file a petition to intervene. Persons granted intervenor status become parties to the proceeding and have certain rights and responsibilities. Intervenors are required to attend conferences and comply with procedures and schedules established by the Board for the filing of documents and the conduct of the hearing. Intervenors are often required to file their testimony and evidence in advance of the hearing and must have their witnesses (persons who can attest to the technical information they offer) available at the hearing to respond to questions from the Board, and to be cross-examined by the applicant.

and other intervenors. When a group or organization is granted intervenor status, the group or organization must identify a person who can represent and speak on behalf of the group at conferences and meetings of the Board.

- Interested Members of the Public. The Board will reserve a portion of the hearing to receive testimony from interested members of the public. Members of the public who want to address the Board at the hearing or to submit written statements or evidence about the proposed project do not need to file a petition to intervene. The Board values testimony from the people who live, work, or use the natural resources in the vicinity of a proposed project and encourages them to attend the hearing and share their information and views. Because Board members are required to make their decision on information which is available to all, interested persons are encouraged to testify at the hearing so that their statements may be recorded and transcribed. Persons who cannot attend the hearing may submit written comments on the application directly to the DEP for distribution to the Board. All comments submitted become part of the record of the proceeding.
- Governmental Agencies. A representative of an interested federal, state, municipal or other governmental agency that does not petition to intervene will be given a reasonable opportunity to participate in the hearing, introduce evidence, and question the witnesses of the parties provided the agency's representative presents the position of the agency and not his or her personal views and opinions. While not required to seek intervenor status, a governmental agency that would like to participate in the hearing should notify the Board of its interest early in the hearing preparation process so that the Board may allocate time for the agency at the hearing and ensure that the agency receives copies of testimony and other materials the agency may need to prepare for the hearing.

Criteria Governing Petitions to Intervene

Maine law [5 M.R.S.A §9054(1)] states that, “On timely application made pursuant to agency rules, the agency conducting the proceedings shall allow any person showing that he is or may be, or is a member of a class which is or may be, substantially and directly affected by the proceeding, or any other agency of federal, state or local government, to intervene as a party to the proceeding.”

When the Board assumes jurisdiction over an application and decides that it will hold a hearing on the application, it will publish a notice of the opportunity to intervene in a newspaper in general circulation in the area of the proposed project. The notice will describe the proposed project and the licenses required, state the deadline for the filing of a petition to intervene, and provide specific contact information for the project.

The requirements for the filing of a petition to intervene are found in Section 11 of the Department's Chapter 3 *Rules Governing the Conduct of Licensing Hearings*. In brief, the petition must include: identification of the petitioner, the name of the petitioner's spokesperson, a description of the effect of the proposed project on the petitioner, the petitioner's specific concerns about the project as they relate to the criteria for approval, and a statement regarding the ability of the petitioner to participate in the

hearing and pre-hearing conferences. If the petitioner is a group or organization, the petition must include a general description of the purpose and membership of the group or organization. The Board will review and rule on petitions to intervene at one of its regularly scheduled meetings. The Board Chair may grant or deny petitions to intervene that have not previously been ruled upon by the Board. The Board may require persons granted intervenor status to consolidate or join, in whole or in part, their appearance at the hearing with other intervenors that have similar interests and positions in order to simplify or expedite the conduct of the hearing.

Steps in the Application Review Process following a Hearing

Major steps in the application review process following the close of the hearing are set forth in Chapter 3 *Rules Governing the Conduct of Licensing Hearings* and are summarized below.

- Close of the Evidentiary Record. At the close of the hearing, no further evidence is admitted to the record unless the Board Chair requests additional information on a specific matter.
- Post-Hearing Briefs. Parties to the proceeding (the applicant and any intervenors) have an opportunity to submit post-hearing briefs summarizing their positions regarding whether the proposed project meets the relevant licensing standards.
- Board Deliberative Session. The Board reviews the evidence with Board and Department staff at a meeting of the Board. The Board meeting is open to the public; however, participation is limited to Board members and staff.
- Draft Board Order. Following one or more deliberative sessions, staff will draft a license decision in the form of a draft Board Order. The draft Board Order will be made available to the parties and interested persons for review and comment.
- Decision. The Board will receive a copy of all comments submitted on the draft Board Order. Following its review of the comments received, staff will draft a proposed Board Order for the Board's consideration and vote at a meeting of the Board.

With the exception of certain energy projects, any appeal of the Board's decision to approve, approve with conditions, or deny an application is made to Superior Court.

For more information: Contact the Board's Executive Analyst at (207) 314-1458.

Note: This Information Sheet is provided for general guidance only; it is not intended to be legally binding or to be used as a legal reference.