Chapter 2: RULES CONCERNING THE PROCESSING OF APPLICATIONS AND OTHER ADMINISTRATIVE MATTERS

SUMMARY: These rules govern various administrative activities of the Department of Environmental Protection. Included within these rules are sections which apply to advisory opinions, license application requirements, application fees, public notice, public access to information, processing times, license transfers, and appeals to the Board of Environmental Protection.

1. **Definitions.** The following terms, as used in this Chapter, have the following meanings unless the context indicates otherwise:

   A. **Abutter.** "Abutter" for the purposes of the notice provisions of this rule, means any person who owns property that is both (1) adjoining and (2) within 1 mile of the delineated project boundary, including owners of property directly across a public or private right of way.

   B. **Aggrieved person.** "Aggrieved person" means any person whom the Board determines may suffer particularized injury as a result of a licensing or other decision.

   C. **Amendment application.** "Amendment application" means any application to modify a license previously granted by the Department, except for minor revisions.

   D. **Board.** "Board" means the Board of Environmental Protection.

   E. **Chair.** "Chair" means the Chair of the Board of Environmental Protection, or his or her designee.

   F. **Commissioner.** "Commissioner" means Commissioner of the Department of Environmental Protection, or his or her designee.

   G. **Department.** "Department" means the Department of Environmental Protection, including the Board and the Commissioner.

   H. **Department staff.** "Department staff" means all staff, except staff to the Board.

   I. **Interested person.** "Interested Person" means any person who submits written comments on an application or who requests, in writing, receipt of materials related to a particular application.

   J. **License.** "License" means any license, license amendment, license renewal, transfer, permit, variance, approval or certification issued by the Department.

   K. **Licensee.** "Licensee" means the person named on the license.

L. **Minor revision.** "Minor Revision" means any proposal to modify a license previously granted by the Department, where the modification significantly decreases or eliminates an environmental impact, does not significantly expand the project, does not change the nature of the project or does not modify any Department findings with respect to any licensing criteria. This term may be further defined by the Board through bureau specific rules.

M. **Party.** "Party" means:

(1) The specific person whose legal rights, duties or privileges are being determined in the proceeding; and

(2) Any person participating in an adjudicatory proceeding pursuant to 5 M.R.S.A. section 9054(1) or (2).

N. **Permit by rule.** "Permit by Rule" means any license or notification that is designated by the Board through rule under the authority of 38 M.R.S.A. section 344(7).

O. **Person.** "Person" means any individual; partnership; corporation; Federal, state or local government entity; association; or public or private organization of any character; except the agency conducting the proceeding.

P. **Processing time.** "Processing Time" means the time established by the Department to process an application, as published pursuant to 38 M.R.S.A. section 344-B(1) or otherwise provided by law.

Q. **Transfer of ownership.** "Transfer of Ownership" means a change in the legal entity that owns a property, facility or structure that is the subject of a license issued by the Department. A sale or exchange of stock, or a merger, is not a transfer of ownership for the purposes of this rule provided the legal entity that owns the property, facility or structure remains the same.

2. **Scope of rules.**

A. **General scope.** These rules apply to processing of applications made to the Department for new, renewed, amended or transferred licenses, and other determinations on specific matters made by the Department, except as noted in section 2(B) of this rule. These rules apply in the absence of procedural requirements imposed by statute or rule. Where other specific procedural requirements apply, those requirements control.

B. **Exceptions.** Groundwater oil clean up fund claims, applications for one-time disposal of special waste; asbestos or lead abatement licenses and certifications; third party damage claims; license or permit by rule; registrations or notifications; waste transporter licenses; reimbursement claims; closure plans; public benefit determinations; occupational licenses and minor revisions are not subject to this chapter, unless specifically included.

The procedure for review is the same as for an appeal of a Commissioner's final license decision as described in section 24(B) of this rule.

B. Appeal to the Board of a Commissioner's decision.

(1) Appeal period. Within 30 days of the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision and must specify whether the appellant desires the Board to hold a public hearing on its appeal. An appellant who does not request a public hearing in the written notice of appeal is considered to have waived any opportunity for a public hearing. The decision to hold a public hearing is discretionary with the Board. If notice to an appellant was required and was given as required, an untimely appeal must be summarily dismissed by the Chair. If the Chair decides an appellant is not an aggrieved person, the Chair may dismiss the appeal. The Chair's ruling to dismiss an appeal for lack of standing as an aggrieved person is appealable to the full Board.

(2) Content of appeal. The written notice of the appeal must include, but need not be limited to, evidence demonstrating the appellant's standing as an aggrieved person, the findings, conclusions or conditions objected to or believed to be in error, the basis of the objections or challenge, and the remedy sought. If the appellant is requesting that supplemental evidence be included in the record and considered by the Board, such a request, with the proposed supplemental evidence, must be submitted with the appeal. If participants in an appeal agree to use mediation or another form of alternative dispute resolution to resolve the appeal and so notify the Board, the Board will not hear the matter until the conclusion of that effort, provided the effort at resolution does not extend beyond six months of filing of the appeal. The Board may accept, reject or modify any mediated settlement that does not include withdrawal of the appeal.

NOTE: The Board encourages the use of mediation and other forms of Alternative Dispute Resolution as means to reach mutually agreeable resolutions.

A Notice of Appeal must be addressed to:

Chair, Board of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

Notices of appeal must be copied to the Commissioner and the licensee. The Board staff shall provide written notice of the appeal to all interested persons.

(3) Response to appeal if no supplemental evidence is offered by an appellant. If no supplemental evidence is offered by an appellant, the complete response to the appeal must be filed within 30 days of filing of the appeal. If the response to the appeal includes proposed supplemental evidence, the appellant may file a rebuttal addressing only the admissibility of that supplemental evidence within 45 days of the filing of the appeal.

(4) Response to an appeal if supplemental evidence is offered by an appellant. If supplemental evidence is offered by an appellant, a response to the appeal addressing the admissibility of the proposed supplemental evidence and providing any proposed supplemental evidence offered by the respondent must be filed within 30 days of filing of the appeal. If the respondent proposes supplemental evidence, the appellant may file a rebuttal addressing only the admissibility of that supplemental evidence within 45 days of the filing of the appeal.

(5) Supplemental Evidence. The record for appeals heard by the Board is the administrative record prepared by the Department in its review of the application.

If any person seeks to supplement the record, that person shall provide copies of all new documents and, if a public hearing is requested, summaries of all proposed testimony, including the name and qualifications of each witness, to the Board, Department staff and all other persons notified of the appeal. The names and addresses of persons notified of the appeal may be obtained from the Board staff.

The Board may allow the record to be supplemented on appeal when it finds that the evidence offered is relevant and material and that:

(a) the person seeking to supplement the record has shown due diligence in bringing the evidence to the attention of the Department at the earliest possible time; or

(b) the evidence is newly discovered and could not, by the exercise of reasonable diligence, have been discovered in time to be presented earlier in the licensing process.

The Chair shall rule on the admissibility of supplemental evidence no later than 50 days after the filing of the appeal. All additional argument on the appeal must be filed within 20 days of the Chair's decision. Further evidence may not be provided directly to Board members or distributed at Board meetings or hearings without specific permission of the Chair. The Chair may accept into the record additional evidence and analysis submitted by the Department in response to issues raised on appeal or new evidence offered by the participants.

(6) Procedure. The procedure for hearings on appeals is governed by section 7(C) of this rule. Appeals decided without a hearing will be considered based on written submissions and oral argument at a regular meeting of the Board as follows:

(a) the executive analyst for the Board briefly introduces the appeal, indicating the subject matter, the appellant's basis for appeal and the relevant statutes and rules;

(b) the appellant or its representative makes a presentation discussing objections or challenges to the Commissioner's decision on the application and presenting such additional evidence as the Chair has previously determined to be admissible;

(c) when the appellant is a person other than the licensee, the licensee is then provided an opportunity to address the issues raised by the appellant;

(d) at the Chair's discretion, other persons may comment on the appeal;

(e) Department staff makes a presentation addressing the objections and challenges of the appellant and indicating the Commissioner's recommended disposition of the appeal;

(f) at the Chair's discretion, the appellant and licensee may be provided with a final opportunity for rebuttal.

The Board, its staff and legal representative may at any time address questions to any person participating in the appeal.

(7) Decision. The Board shall, as expeditiously as possible, affirm all or part, affirm with conditions, order a public hearing to be held as expeditiously as possible, or reverse all or part of the decision of the Commissioner. The Board's decision is based on the administrative record prepared by the Department in its review of the application, any additional evidence admitted into the record pursuant to section 24(B)(4) of this rule and any evidence admitted during the course of a hearing on the appeal. The Board is not bound by the Commissioner's findings of fact or conclusions of law. An evenly divided vote of the Board has the effect of affirming the Commissioner's decision unless a majority of Board members subsequently vote at that meeting for another action on the appeal or table the matter until another meeting. In the case of an evenly divided vote, the findings and reasoning of the Board members voting in favor of the Commissioner's decision constitute the Board's reasoning in the affirmation.

25. Petition for reconsideration of a Board decision. Within 30 days from the effective date of a Board decision approving or denying a license application, any aggrieved person may petition the Board in writing to request reconsideration of that decision. A person may file only one petition and may not file a petition to reconsider a decision that is an appeal or review of a final license or permit decision made by the Commissioner. The petition must set forth in detail the findings, conclusions or conditions objected to or believed to be in error, the basis for the objections, the nature of any additional evidence to be offered, and the nature of the relief requested, including any request for a public hearing. A petitioner who does not request a public hearing in the