STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R LEPAGE
GOVERNOR

Robert A Foley, Chair

Cynthia S Bertocci
Executive Analyst

MEMORANDUM

TO: Board Members
FROM: Cynthia Bertocci, Executive Analyst
DATE: January 3, 2012
RE: Amendments to Chapter 2: Rules Concerning the Processing of Applications and Other Administrative Matters

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Background:
In 2011, the Legislature enacted Public Law 2011, chapter 304 (LD 1) "An Act to Ensure Regulatory Fairness and Reform." This law made a number of changes to the duties of the Board of Environmental Protection including, among other things, the criteria for the Board to assume jurisdiction, elimination of the provision for reconsideration of a Board decision, and transfer to the Commissioner of the authority to initiate proceedings to revoke or suspend a license.

Proposed Amendments:
The proposed amendments incorporate the changes to Board responsibilities set forth in LD 1 and clarify a number of other provisions of existing rule. Major amendments include the following, as identified in the track changes version:

- Section 1 Definitions. The terms "hearing" and "intervenor" which are used in the rule but were not previously defined are added. The definition of "party" is deleted since it is not used in the rule. The definition of "permit-by-rule" is amended since the enactment of a PBR is a routine technical rule, not subject to Board rulemaking authority.
- Section 2 Scope of rule. The category of voluntary response action plan is added to the list of exceptions to which the Chapter 2 procedural rule does not apply.
- Old Section 8 - Removal of the delegation provision as unnecessary.
- Section 12 Application Fees and Processing Times. This section is simplified. The information in the existing rule is incomplete. Since the Department is required to publish fees annually, the rule should not attempt to incorporate detailed information on the fee structure.
- Section 17 Board assumption of jurisdiction over a licensing application. The rule is amended to specify the procedure and criteria as set forth in LD 1.
- Section 18 Availability of draft license decision. In instances where a hearing has been held, the rule as amended would require that a copy of the draft decision be mailed to the applicant and intervenors. Under the existing rule, the requirement applies only if the parties submit a written request for a copy of the draft decision.
- Section 19D License conditions. The ability to condition a license is clarified.

- Section 24 Board review of Commissioner decisions. This section is revised to improve clarity – no significant changes are intended.
- Old Section 25 Petition for reconsideration of a Board decision. The ability to petition for reconsideration was eliminated in LD 1.
- Old Section 26 Judicial review of a Department decision. This section is relocated to new Section 28.
- Old Section 27 Revocation, modification or suspension of licenses. LD 1 removed the authority of the Board to initiate proceedings to revoke or suspend licenses; authority was transferred to the Commissioner.
- New Section 25 Revocation or suspension of a license. This section establishes a procedure for the Commissioner to initiate proceedings to revoke or suspend a license, either in response to a petition or on the Commissioner's own motion.
- New Section 26 Modification of license or order prescribing corrective action. In accordance with LD 1, at the request of the Commissioner, the Board has the authority to modify a license or issue an order prescribing necessary corrective action. This section sets forth a procedure for the Commissioner to make such a request to the Board, either in response to a petition or on the Commissioner's own motion. If the Commissioner makes such a request, this section establishes a procedure for the Board to consider modification of a license or corrective action.
- New Section 27. Criteria for revocation, suspension, modification or corrective action. This section enumerates the criteria for such actions as set forth in statute.

Hearing: A public hearing on the proposed rule amendments will be held at 9:00 am on January 3, 2013; the comment deadline is January 22, 2013 at 5:00 pm.