06-096 DEPARTMENT OF ENVIRONMENTAL PROTECTION
DRAFT
3/5/15

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

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SUMMARY: This rule governs various administrative activities of the Department of Environmental Protection. Included within this rule are sections which apply to the processing of applications, appeals of Commissioner license decisions to the Board of Environmental Protection, petitions to modify, revoke or suspend a license, and license surrenders. The rule also addresses advisory opinions, inspections and public access to information.

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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 a 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. The Board will interpret and apply the term "aggrieved person", whenever it appears in statute or rule, consistent with Maine state court decisions that address judicial standing requirements for appeals of final agency action.

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

   D. **Board.** "Board" means the Board of Environmental Protection, an independent citizen board that is part of the Department and that, among its duties, decides selected applications and considers appeals of Commissioner license decisions.

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

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

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

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

   I. **Hearing.** "Hearing" means a hearing conducted in accordance with the procedural requirements of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 4.

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

application. The Department shall maintain a list of interested persons for each licensing proceeding.

K. **Intervenor**. "Intervenor" means a person who, in accordance with the Maine Administrative Procedure Act, 5 M.R.S. §9054(1) and (2), and the Department's rules governing hearings, has been granted leave to participate as a party in a license application or appeal proceeding where a decision has been made to hold a hearing.

L. **License.** "License" means the whole or any part of a new license, amended license, renewal license, transfer, surrender, variance, certification, approval, or similar form of permission issued by the Department that is required by law, and represents the State's exercise of regulatory or police powers. The term "permit" is used interchangeably with "license" in some Department statutes.

M. **Licensee.** "Licensee" means the person to whom a license has been issued.

N. **Minor Revision.** "Minor Revision" means a 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 Department by rule.

O. **Permit by Rule.** "Permit by Rule" means a license that is issued by rule as authorized by 38 M.R.S. §344(7) for a class of activities that would otherwise require the issuance of an individual permit or approval.

P. **Person.** "Person" means an individual, partnership, corporation, government entity, association, or public or private organization of any character; other than the Department.

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

R. **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 "transfer of ownership" includes sale or exchange of 50 percent or more of the stock of or interest in a corporation (including the membership interest in a limited liability corporation), or a change of 50 percent or more of the partnership interest in a partnership. ~~(or in the case of a limited liability corporation, of membership interests), or a~~ 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 Rule**

A. **General Scope.** This rule applies to processing of license applications, appeals of Commissioner license decisions to the Board, petitions to modify, revoke or suspend licenses, and other determinations on specific matters as described in this rule, except as noted in section 2(B) or elsewhere in this rule. This rule applies 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; voluntary response action plans; applications for one-time disposal of special waste; asbestos and 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.

C. Effect. This rule applies to all license applications accepted as complete, appeals of Commissioner license decisions to the Board, and petitions to modify, revoke or suspend a license filed on or after the effective date of this rule, or any amendments to this rule.

3. Filing of Submissions and Computation of Time. An application, appeal or petition must include a designated contact person to whom all orders, notices and correspondence regarding the application, appeal or petition must be sent.

Whenever a Department rule or order requires or allows the filing of any paper or submission, that filing is complete:

A. On the Department. Upon the Department, when the Department receives the submission by the close of business on the due date (5:00 p.m., as determined by the received time stamp on the document, telefax or electronic mail) by:

(1) mail;

(2) in-hand delivery;

(3) telefax~~, only if followed by receipt of an identical original paper document within five (5) working days~~; or

(4) electronic-mail~~, with attachments supplied in an unalterable format~~ ~~showing~~ containing ~~a~~ either a facsimile or scanned copy of a handwritten signature or an electronic signature in a form acceptable to the Department and with attachments supplied in an unalterable format~~ only if followed by receipt of an identical original paper document within five (5) working days~~.

NOTE: When a submission is made using an electronic signature or telefax, program-specific statutes and/or rules may also require the submission of an identical original paper document.

NOTE: When a submission is an application, and the applicant submits either a telefaxed or scanned copy of a handwritten signature, the applicant shall also submit a signature pursuant to Section 11(E) of this Chapter.

The risk of material not being received in a timely manner is on the sender, regardless of the method used. Submissions not received by the Department by a prescribed deadline will be

deemed untimely and will not be considered by the Department in the absence of good cause shown.

B. **On Others.** Upon the applicant or any other person, when the submission is sent to the recipient or the recipient's designated representative by:

(1) mail;

(2) in-hand delivery;

(3) telefax; or

(4) electronic mail.

C. **Computation of Time.** For the purpose of this rule, "days" are calendar days unless otherwise specified. "Working days" excludes Saturdays, Sundays, state holidays and any other day state offices are closed for business. In computing any period of time prescribed or allowed by this rule, the day of the act or event that starts the period is not included. The last day of the period so computed is included unless it is not a working day or the state office at which the filing must be made is partially or fully closed for business, in which event the period runs until the close of business (5:00 pm) the next full working day. Whenever a person has the right or is required to take some action within a prescribed period of time after filing of notice or other paper and the notice or paper is provided by mail, three (3) days shall be added to the prescribed period. This "3-day rule" does not affect any date-certain deadline established by the Department.

4. **Advisory Rulings.** Any person may request that the Department issue an advisory ruling with respect to the applicability of any statute or rule administered by the Department to that person's property or to acts or events in which that person has a substantial interest. A request for an advisory ruling must be based on existing facts and not on hypothetical situations.

A. **Request.** A request for an advisory ruling must be in writing and must include:

(1) The name, address, and telephone number of the person requesting the ruling;

(2) The statute or rule of which an interpretation is requested;

(3) A clear and definite statement of the ruling requested and the issues presented by the request;

(4) All facts that are necessary to issue the advisory ruling;

(5) All assumptions that relate to the advisory ruling;

(6) Facts that establish the substantial interest of the requesting person in the acts, events or property with respect to which the ruling is requested; and

(7) A statement indicating whether, to the requester's knowledge, the issue upon which an advisory ruling is sought is the subject of a pending Department licensing or enforcement proceeding or a prior advisory ruling.

The written request must be clearly captioned as "REQUEST FOR ADVISORY RULING" and directed to the division responsible for administering the statute or rule in question.

B. Department Action

(1) Issuance of advisory rulings by the Department is discretionary and will be determined on a case-by-case basis.

(2) As expeditiously as possible, but no later than sixty (60) days from the filing of a request, the Department shall either issue a written advisory ruling or notify the requester of the reasons that an advisory ruling will not be rendered.

C. Advisory Ruling not Binding. No advisory ruling constitutes *res judicata* or legal precedent with respect to the issues raised before the Department. Advisory rulings are not binding on the Department in any subsequent enforcement action; however, justifiable reliance on the ruling is considered in mitigation of any penalty sought to be assessed. Advisory rulings are not appealable to the Board and are not final agency action.

D. Informal Staff Opinions. Any person may informally inquire of the Department staff with respect to the applicability of any statute or rule administered by the Department. The staff may decline to respond to such requests because the facts are not sufficiently complete or detailed to form the basis of an opinion, because resources or time are not available to the staff for the purposes of preparing an opinion, or because the matter is properly the subject of an advisory ruling or legal opinion. A written or oral opinion provided by Department staff under this subsection does not bind the Department in any subsequent proceeding.

5. Inspection. Authorized representatives of the Department may enter any property at reasonable hours and enter any building with the consent of the property owner, occupant or agent, or pursuant to an administrative search warrant, in order to inspect the property or structure, including the premises of an industrial user of a publicly owned treatment works, and to take samples, inspect records relevant to any regulated activity and conduct tests as appropriate to verify any information contained in an application or to determine compliance with any laws administered by the Department or the terms and conditions of any order, regulation, license, permit, approval, or decision of the Commissioner or of the Board.

6. Public Access to Information

A. Confidential. Except as made confidential by law, the Commissioner shall make all records in the Department's possession available to the public for inspection and copying.

B. Records that are Confidential. The Commissioner shall keep confidential only those records that are confidential pursuant to the Freedom of Access Law, 1 M.R.S. §§ 401-410.

C. **Inspection of Public Records.** At reasonable times and locations the Commissioner shall provide facilities for the inspection of public records.

D. **Payment of Costs.** The Department may charge reasonable fees to cover the costs of copying and fees to cover the actual cost of searching for, retrieving and compiling requested public records. Payment must be made to the Maine Environmental Protection Fund and must be paid prior to the Commissioner releasing the copies, unless the Commissioner elects to bill the person requesting the copies.

7. **Hearings**

A. **Request for a Hearing on a License Application.** The Department shall provide an opportunity for the applicant or any person to request a hearing with respect to any application. A hearing is an opportunity for an applicant, an appellant, any intervenors, and members of the public to provide testimony under oath and for witnesses to be cross-examined on the substance of their testimony. A request for a hearing on an application must be received by the Department, in writing, no later than 20 days after the application is accepted as complete for processing. The request must indicate the interest of the person filing the request and specify the reasons why a hearing is warranted.

B. **Criteria for Holding Hearings.** Hearings are discretionary unless otherwise provided by law. The Commissioner may conduct a hearing on any application. The Board may conduct a hearing on any application over which it has assumed jurisdiction or on any appeal of a Commissioner license decision. The Department will hold a hearing in those instances where the Department determines there is credible conflicting technical information regarding a licensing criterion and it is likely that a hearing will assist the Department in understanding the evidence. When the Board assumes jurisdiction over an application, it will hold a hearing unless it votes otherwise at the time it assumes jurisdiction.

C. **Conduct of Hearings.** Hearings are held in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 4, and the Department's rules governing licensing hearings. Hearings must be scheduled at the earliest possible date. Upon determining that a hearing will be held, the Commissioner or Board shall also establish a date by which petitions for intervention must be submitted to the Department.

8. **Public Meetings on License Applications**. At the Board's or Commissioner's discretion, the Board or Commissioner may schedule and hold public meetings in accordance with Title 38 §345-A(5) on license applications in the geographic area of a proposed project or activity for the purpose of collecting comments that become part of the record in a pending action. Any such meeting must be held during the period when written public comments may be submitted to the Department. Such meetings are not subject to the procedural requirements of the Maine Administrative Procedure Act or the Department's hearing rules. Persons commenting on the application are not under oath and there is no opportunity for cross-examination. The conduct of a public meeting does not change any other obligation the Department has to hold hearings that are mandatory by statute or required after a timely request is filed. The Department shall notify the applicant, interested persons, and the municipal office of the municipality(ies) where the project would be located of public meetings scheduled by the Department. If the project is

located in the unorganized or deorganized areas of the state, the Department shall also notify the appropriate county commissioners.

9. **Preliminary Vote.** The Board may take preliminary votes on any matter before it if the Board member making or seconding the motion requests a preliminary vote on the record. A preliminary vote has no effect and may be used by the Board to further its deliberations and formulate a resolution to any matter before it.

10. **Pre-Application and Pre-submission Meetings on Applications**

A. Purpose

(1) **Pre-application meetings**. Pre-application meetings between the applicant and the Department are an opportunity for the applicant to determine the statutory and regulatory requirements that apply to a specific project or activity and to identify the Department staff member who will serve as Project Manager for the application. The purpose of these meetings is to identify issues, processing times, fees and the types of information and documentation necessary for the Department to properly assess the project. The applicant shall consult the appropriate bureau licensing staff to determine what information the applicant must provide before or during a pre-application meeting. Any applicant may request a pre-application meeting. The Department shall make a date available for the meeting as expeditiously as possible, but no later than 30 days from receipt of a written request and all information required for a pre-application meeting by the bureau. The Department shall prepare a written summary of all pre-application meetings.

(2) **Pre-submission meetings**. A pre-submission meeting between the applicant and the Department occurs after the applicant has finished preparing the application for submission. The meeting is an opportunity to review the assembled application to ensure that the necessary information has been included prior to filing the application with the Department. An applicant may request a pre-submission meeting by contacting the Project Manager, or the Division Licensing Coordinator if no Project Manager has been identified. The Department shall make a date available for the meeting as expeditiously as possible, but no later than 20 days from receipt of a written request.

B. Pre-application Meetings Required. A pre-application meeting is required prior to submission to the Department of an application for the following:

(1) New Site Location of Development license (38 M.R.S. §481, *et seq.*);

(2) Natural Resources Protection Act Tier 3 wetland permit; wetland projects requiring compensation; construction of new buildings on frontal dunes; dredging projects greater than 50,000 cubic yards; or new crossings of Outstanding River Segments as defined by 38 M.R.S. §480-P;

(3) New wastewater discharge license for a discharge greater than 25,000 gallons per day (38 M.R.S. §413, *et seq.*);

(4) New or expanded solid waste disposal facility license (38 M.R.S. §1310-N, *et seq.*);

(5) New or expanded hazardous waste facility, waste oil facility, or biomedical waste facility license but not abbreviated licenses (38 M.R.S. §1319-O, *et seq.*); or

(6) Projects requiring new or amended licenses from more than two bureaus, not including minor revisions.

An applicant with an application that requires a pre-application meeting pursuant to this section shall hold a public informational meeting in accordance with section 13 of this rule prior to filing the application.

C. Pre-submission Meeting Required. A pre-submission meeting is required prior to submission to the Department of an application for the following:

(1) Any application for which a pre-application meeting was held; or

(2) Any application that has been previously rejected pursuant to section 11(B) of this rule.

D. Waiver. The requirement of a pre-application or pre-submission meeting may be waived by the Department. The Department will agree to waive a pre-application or pre-submission meeting if the Department is satisfied that such a meeting would be of limited value in achieving the purposes noted in section 10(A) of this rule. Waiver of a pre-application or pre-submission meeting does not waive the public informational meeting requirement of section 13 of this rule.

11. Application Requirements

A. General Requirements. Application forms must be developed by the Commissioner and must require the information the Commissioner deems necessary to make the findings required for each license.

When available, applications must include the "911" address of the project and Global Positioning System ("GPS") reference data. All GPS data must be in the form of Universal Transverse Mercator ("UTM"), Zone Nineteen North, North American Datum of 1983 ("NAD83") coordinates of the proposed activity. Appropriate bureaus should be contacted to determine specific requirements for location and level of accuracy for GPS data.

An application from a corporation must be submitted in the corporation's registered corporate name, and must include either a *Certificate of Good Standing* or a statement signed by a corporate officer affirming that the corporation is in good standing.

Applications must be filed in care of the appropriate bureau, Maine Department of Environmental Protection, 17 State House Station, Augusta, ME 04333, or other office as provided by the Department.

B. Acceptance of Application. The Commissioner shall, within 15 working days of receipt of an application by the Department, provide notice to the applicant that contains the date the application was accepted as complete for processing, or return the application and specify in writing the reasons it was returned. An applicant whose application has been rejected shall attend a pre-submission meeting in accordance with section 10(C) of this rule before resubmitting an application for the same project or activity. If the Commissioner does not provide notice to the applicant of acceptance or rejection of the application within 15 working days, the application is deemed accepted as complete for processing on the 16th working day.

A determination that an application is accepted as complete for processing is based on staff's determination that the application fee has been paid pursuant to section 12 of this rule, that sufficient title, right or interest has been demonstrated pursuant to section 11(D), and that the application form is properly filled out and information is provided for each of the items required by the forms. It is not a review of the sufficiency of that information and does not preclude the Department from requesting additional information during processing or denying the application for failure to provide information necessary for the processing of that application.

C. Projects Requiring Multiple Licenses. Upon filing of an application which involves an activity or project which will require more than one license from the Department, the Department may require the applicant to submit all other required applications before any such application will be accepted as complete for processing. The processing time for consolidated applications is the longest processing time associated with any of the applications. An applicant for a project requiring approval from more than two bureaus should contact the Commissioner's Office in the early phase of project development to arrange a departmental pre-application meeting and application coordination.

D. Title, Right or Interest. Prior to acceptance of an application as complete for processing, an applicant shall demonstrate to the Department's satisfaction sufficient title, right or interest in all of the property that is proposed for development or use. An applicant must maintain sufficient title, right or interest throughout the entire application processing period. Methods of proving title, right or interest include, but are not limited to, the following:

(1) When the applicant owns the property, a copy of the deed(s) to the property must be supplied;

(2) When the applicant has a lease or easement on the property, a copy of the lease or easement must be supplied. The lease or easement must be of sufficient duration and terms, as determined by the Department, to permit the proposed construction and reasonable use of the property, including reclamation, closure and post closure care, where required. If the project requires a submerged lands lease from the State, evidence must be supplied that the lease has been issued, or that an application is pending;

(3) When the applicant has an option to buy or lease the property, a copy of the option agreement must be supplied. The option agreement must be sufficient, as determined by the Department, to give rights to title, or a leasehold or easement of sufficient

duration and terms to permit the proposed construction and use of the property including closure and post closure care, where required;

(4) When the applicant has eminent domain power over the property, evidence must be supplied as to the ability and intent to use the eminent domain power to acquire sufficient title, right or interest to the site of the proposed development or use;

(5) When the applicant has either a valid preliminary permit or a notification of acceptance for filing of an application for a license from the Federal Energy Regulatory Commission for the site which is proposed for development or use, a copy of that permit or notification must be supplied. This provision applies only to those portions of a project where eminent domain authority exists under federal law; or

(6) When the applicant has a written agreement with the landowner where said agreement permits the applicant to spread waste material that will be agronomically utilized by the landowner, a copy of that agreement must be supplied.

The Department may return an application, after it has already been accepted as complete for processing, if the Department determines that the applicant did not have, or no longer has, sufficient title, right or interest. No fees will be refunded if an application is returned for lack of continued title, right or interest.

E. Signatory Requirement.

(1) Each application submitted to the Department must include the original signature of the applicant, or the applicant's duly authorized officer or agent, under the following certification:

"I certify under penalty of law that I have personally examined the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I authorize the Department to enter the property that is the subject of this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein. I am aware there are significant civil and criminal penalties for submitting false information, including the possibility of fine and imprisonment."

If an application is signed by an agent, the application must include evidence of the agency signed by the applicant.

(2) Electronic signatures. In lieu of an original handwritten signature, an applicant may sign an application using an electronic signature in a form acceptable to the Department under the certification set forth above in Section 11(E)(1).

NOTE: Some submissions may be subject to the federal Cross Media Electronic Reporting Regulation (CROMERR) requirements pursuant to 40 CFR 3.20000(b).

NOTE: When a submission is made using an electronic signature or telefax, program-specific statutes and/or rules may also require the submission of an identical original paper document.

F. **Burden of Proof and Governing Law.** An applicant for a license has the burden of proof to affirmatively demonstrate to the Department that each of the licensing criteria in statute or rule has been met. Unless otherwise provided by law, all license applications, including renewal, amendment and transfer applications, are subject to the substantive laws and rules in effect on the date the application is accepted as complete for processing. For those matters that are not disputed, the applicant shall present sufficient evidence that the licensing criteria are satisfied. For those matters relating to licensing criteria that are disputed by evidence the Department determines is credible, the applicant has the burden of proving by a preponderance of the evidence that the licensing criteria are satisfied.

G. **Local Filing of Applications.** At the time of filing with the Department, a copy of the application, its supporting documents and all amendments to an application must be filed by the applicant with the appropriate town or city clerk, or, if the project is in an unorganized area, with the county commissioners.

12. Application Fees and Processing Times

A. **Application Fees.** Application fees must be paid by the person submitting an application in accordance with 38 M.R.S. §§ 352-353-B. Except as otherwise provided by law, all required application fees must be paid at the time of filing of the application. Failure to pay all required application fees will result in the application not being accepted as complete for processing pursuant to section 11(B) and the application will be returned to the applicant. Fees are established by the Commissioner, subject to the statutory maximums. The Commissioner shall publish a schedule of fees on November 1 of each year. The schedule of fees is reviewed and republished annually. If the Commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs to process than the published cost for that type of application, the Commissioner may designate the application as subject to special fees at the time the application is accepted as complete for processing. When this designation is made, any application fees paid at the time of filing the application shall be returned or credited toward payment of any special fees.

B. **Processing Times.** Processing times are established by the Commissioner in accordance with 38 M.R.S. §344-B. The Commissioner shall publish processing timetables for each type of license issued by the Department by November 1 of each year.

If the Commissioner determines that the applicant has significantly modified the application, the processing time for the application stops until the Commissioner and the applicant agree to a new timetable.

The Commissioner may stop the processing time with the consent of the applicant for any period of time agreeable to the Commissioner and the applicant if the Commissioner determines that:

(1) additional information is required from the applicant,

(2) agencies other than the Department that are required to comment on an application do not respond within the time frames established by a memorandum of understanding between the agencies, or

(3) the applicant wishes to stop the processing period or to extend the deadline.

For applications to be decided by the Board, the processing time is a time agreed upon between the Board and the applicant pursuant to 38 M.R.S. §344-B(3)(A)(2).

13. Public Informational Meeting

A. Public Informational Meeting Required. An applicant intending to file an application that requires a pre-application meeting pursuant to section 10(B) of this rule must hold a public informational meeting prior to filing that application. The purpose of the meeting is for the applicant to inform the public of the project and its anticipated environmental impacts, and to educate the public about the opportunities for public comment to the Department during the application process. At least 10 days prior to the public informational meeting, notice of the informational meeting must be sent by certified mail or certificate of mailing to abutters and to the municipal office of the municipality(ies) where the project is located and, if the project is located in the unorganized or deorganized areas of the state, to the appropriate county commissioners. At least 7 days prior to the informational meeting, notice must also be published once in a newspaper of general circulation in the area where the project is located. The notice must contain at least the following information:

(1) Name, address and telephone number of the applicant;

(2) Citation of the statutes or rules under which the application will be processed;

(3) Location and summary description of the activity;

(4) The date, time and place of the public informational meeting; and

(5) That a purpose of the meeting is for the applicant to inform the public of the project and its anticipated environmental impacts and to educate the public about the opportunities for public comment on the project.

At the meeting, the applicant or its designee shall present a summary of the project; provide clear and concise written information that details the expected environmental impacts of the project and lists the state, local and federal licenses necessary for the project; and provide adequate opportunity for public questions and responses from the applicant. In addition, a fact sheet obtained from the Department explaining public participation in the licensing process must be made available at the meeting by the applicant.

The applicant must submit a signed certification attesting that a public informational meeting was noticed and held in accordance with this section. The submission must include an

estimate of the number of attendees and a narrative responsive to any significant issues relevant to the licensing criteria that are raised at the meeting. The certification must be submitted with any application that requires a pre-application meeting pursuant to section 10(B) of this rule. Certification of a public meeting before a local permitting authority (e.g., planning board or city council) that complied with the notice and substantive requirements of this section is acceptable provided that neither the project nor its anticipated environmental impacts have changed substantially since the date of the public meeting.

B. Waiver. The requirement of a public informational meeting may be waived by the Department. The Department will agree to waive a public informational meeting if the Department is satisfied that such a meeting would be of limited value in achieving the purposes noted in section 13(A). Waiver of a public informational meeting does not waive the pre-application or pre-submission meeting requirements of section 10 of this rule.

14. Public Notice of Applications

A. Content and Delivery of the Notice. Unless exempted in section 14(C) of this rule, within 30 days prior to filing, an applicant shall give public notice of Intent to File a new, renewal, amendment or transfer application. An application that has been previously returned as incomplete pursuant to section 11(B) of this rule must comply with these requirements if the application is not resubmitted within 30 days of the date it was returned to the applicant. The notice must be mailed by certified mail or Certificate of Mailing to abutters, as determined by local tax records or other reliable means, to the municipal office of the municipality(ies) where the project is located and, if the project is located in the unorganized or deorganized areas of the state, to the appropriate county commissioners. The notice must also be published once in a newspaper circulated in the area where the project is located. Copies of the published Notice of Intent to File and a list of abutters to whom notice was provided must be submitted with the application. The notice must include the following information:

(1) Name, address and telephone number of the applicant;

(2) Citation of the statutes or rules under which the application is being processed;

(3) Location of the activity;

(4) Summary of the activity;

(5) Anticipated date for filing the application with the Department;

(6) A statement that requests for the Board of Environmental Protection to assume jurisdiction over the application or requests for a hearing on the application must be submitted to the Department in writing no later than 20 days after the application is accepted as complete for processing;

(7) A statement providing the local filing location where the application can be examined;

(8) A statement that public comments on the application may be provided to the Department, together with the name and email address of the Department contact person and the mailing address of the Department; and

(9) Any other information required by applicable rule or law.

B. **Additional Notice.** After an application has been filed, if the Department determines that the applicant submits significant new or additional information or substantially modifies its application at any time after acceptance of the application as complete, the applicant shall provide additional notice to abutters and interested persons. The Department may require additional public notice.

If a modification application filed as a minor revision is determined during processing to constitute an amendment, Notice of Intent to File in accordance with this section must be provided. The Department may not act on the amendment application earlier than 20 days after the public notice is published.

If a licensee seeks to amend a license regarding an issue that was the subject of an appeal to the Board, notice of the amendment application must be provided to the prior appellant(s) as if they were abutters, in accordance with section 14(A) of this rule.

C. **Exceptions.** An applicant for renewal or transfer of an overboard discharge license is not required to publish public notice but must provide notice to abutters and the municipality at the time an application is filed with the Department in the same manner as described in section 14(A) of this rule. An applicant for tax exemption certification is not required to provide notice to abutters, but must comply with other notice requirements of this section.

NOTE: Some applications may have additional statutory or regulatory notice requirements, including but not limited to: 38 M.R.S. §1310-S(1-A) for solid waste disposal facilities; 38 M.R.S. §§1319-R & 1319-S for hazardous waste facilities; 06-096 CMR 140 (2)(D) for a new, renewal or modification of a part 70 air emission license, or a development proposal within the unorganized or deorganized areas of the state submitted to the Department under 38 M.R.S. §489-A-1.

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15. **Board Notice of Applications.** At each Board meeting, the Commissioner shall provide the Board with a dated report listing applications accepted as complete for processing by the Department since the last report. The report must include the name and Department number assigned to the application, the date of acceptance as complete for processing, a brief description of the purpose of the application and any action taken on the application to date. The report does not include Permit by Rule notifications, waste transporter applications or occupational licenses.

16. **Public Comment on Applications.** Public comment on applications is allowed during the course of processing the application. Requests for the Board to assume jurisdiction or for a hearing on the application must be received by the Department, in writing, no later than 20 days after the date the application is accepted as complete for processing. The Department shall maintain a list of interested persons for each application.

17. **Board Assumption of Jurisdiction over an Application**

A. Any person may request that the Board assume jurisdiction over an application by submitting the request to the Department in writing no later than 20 days after the application is accepted as complete for processing.

B. Within 45 days after an application has been accepted as complete for processing, the Commissioner shall make a preliminary determination as to whether the Board should assume jurisdiction of the application. At the next regularly scheduled Board meeting after such a determination is made, the Commissioner shall provide a recommendation to the Board for those applications where the Commissioner recommends that the Board consider jurisdiction. The Commissioner's recommendation must be provided to the applicant, all interested governmental agencies and interested persons prior to consideration of the recommendation by the Board. The Board shall provide an opportunity for the applicant, governmental agencies and interested persons to comment on the Commissioner's recommendation.

If a request for Board jurisdiction has been made and the Commissioner determines that the criteria for Board jurisdiction as identified in statute and section 17(C) of this rule are not met, the Commissioner shall notify the Board of the request and the Commissioner's determination. If upon such notification by the Commissioner the Board determines the criteria for Board jurisdiction have been met, the Board may assume jurisdiction over the application.

The Board may assume jurisdiction over any application on its own initiative if it finds that at least 3 of the 4 criteria in section 17(C) are met.

C. The Board shall assume jurisdiction over and decide each license application 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:

(1) Will have an environmental or economic impact in more than one municipality, territory or county;

(2) Involves an activity not previously permitted or licensed in the State;

(3) Is likely to come under significant public scrutiny; and

(4) Is located in more than one municipality, territory or county.

The Board may not assume jurisdiction over an application for an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4; for a certification for a small-scale wind energy development pursuant to Title 35-A, section 3456; for a general permit for an offshore wind energy demonstration project pursuant to Title 38, section 480-HH; or for a general permit for a tidal energy demonstration project pursuant to Title 38, section 636-A.

D. The Board shall also decide each license application that is referred to it jointly by the Commissioner and the applicant.

18. Availability of Draft License Decisions.

A. **Availability of a Draft License Decision.** When an applicant or interested person submits a written request for a draft license decision, that draft decision must be provided to the requester, and made available at the Augusta Office and appropriate regional offices of the Department, at least 5 working days prior to the Commissioner taking final action on the application if it is a Commissioner's decision, or 15 working days before the Board acts on the application if it is a Board decision. In addition, the Department shall give reasonable notice to the applicant, intervenor, and any interested person of the date final action is expected to be taken by the Commissioner or Board on the draft license decision.

In instances where a hearing has been held, the Department shall provide the draft license decision to the applicant, intervenors and interested persons for review and comment.

B. **Comments on a Draft License Decision.** The Department shall accept and may incorporate comments on the draft license decision after it has been made available. If the Commissioner or Board determines that the draft decision should be substantially revised as a result of comments received, a new draft must be made available in accordance with this section. Any person who submits written comments on a draft order will receive a copy of the final order and notice of appeal rights.

19. Decisions

A. **Permit by Rule.** The Commissioner shall, within 14~~15~~ calendar ~~working~~ days of receipt of a permit by rule notification, provide notice to the applicant indicating whether the notification meets the permit by rule provisions of the applicable Department rules. If the notice to the applicant is not provided within 14~~15~~ calendar ~~working~~ days of receipt, the permit by rule notification is deemed accepted. The rejection of a permit by rule notification is not appealable to the Board and is not final agency action. The acceptance of a permit by rule notification is appealable to the Board in accordance with section 24 of this rule.

B. **Commissioner Decisions.** For an application to be decided by the Commissioner, the Commissioner shall determine whether to hold a hearing within 45 days after an application is accepted as complete for processing, unless that application is recommended by the Commissioner to the Board pursuant to section 17 of this rule. If the Board votes not to assume jurisdiction over the application pursuant to section 17, the Commissioner shall determine whether to hold a hearing within 10 working days after the date of the Board's decision not to assume jurisdiction.

If no hearing is to be held, the Commissioner shall, considering the processing time for that application and as expeditiously as possible:

(1) Approve the application, with or without conditions, or

(2) Deny the application.

For those applications on which a hearing is held, the processing time is stayed from the date of the Commissioner's decision to hold a hearing. The processing time resumes at the close of the hearing record. The Commissioner shall approve, approve with conditions or deny the application within the remaining processing time after the close of the hearing record.

Every license decision made by the Commissioner shall be in writing and shall set forth findings of fact sufficient to appraise the applicant and any interested member of the public of the basis for the decision.

A facsimile of the Commissioner's signature may be used for signing any decision on an application issued by the Commissioner. Each decision must include the date the decision is filed with the Board.

C. **Board Decisions.** For those applications to be decided by the Board, the Board shall, considering the processing time for that application and as expeditiously as possible after voting to assume jurisdiction:

(1) Approve the application, with or without conditions,

(2) Deny the application, or

(3) Schedule a hearing on the application.

For those applications on which a hearing is held before the Board, it shall approve, approve with conditions, or deny the application as expeditiously as possible after the hearing record is closed. The Board shall maintain a record of the vote of each member of the Board with respect to the final license decision. An evenly divided final vote of the Board has the effect of denying an application unless a majority of Board members subsequently vote at that meeting for another action on the application or table the matter until another meeting. In the case of an evenly divided vote, the findings and reasoning of the Board members voting to deny the application constitute the reasoning for the denial. A Board member who voted on the prevailing side of a motion to take final action on a license may move at that same meeting to reconsider any action taken by the Board.

Every license decision made by the Board shall be in writing and shall set forth findings of fact sufficient to appraise the applicant and any interested member of the public of the basis for the decision.

D. **License Conditions.** The Department may impose any requirement as a license condition to provide for and ensure compliance with applicable State law or rule. The Department may attach a condition to the license requiring up to a 30-day delay in any physical alteration of the project area and any construction activity authorized by the license. Licenses may be issued with a condition specifying the time frame within which the license is effective and may include an automatic expiration date if a project is not commenced within the specified time frame.

E. **Effective Date of License.** Unless otherwise indicated as a condition of the license, a license granted by the Commissioner is effective on the date the Commissioner, or his or her designee, signs the license. Unless otherwise indicated as a condition of the license, a license granted by the Board is effective on the date the Chair signs the license. For the purposes of this Chapter, signature of an order approving or denying an application constitutes a final agency action on that application, subject to administrative appeal.

F. **Report of Decisions.** At each Board meeting the Commissioner shall make a report to the Board of the license decisions rendered by the Commissioner. The dated report must contain a summary of all application decisions made by the Commissioner since the last report. For each decision, the report must include the name of the licensee, the nature and location of the project or operation proposed, a brief description of the physical or technical information involved, a statement of the decision rendered, and the date the decision was filed with the Board.

20. **Notice of Appeal Rights.** Each license approval or denial, whether issued by the Board or by the Commissioner, must be accompanied by a plain statement of the appropriate rights of administrative and judicial review and the time within which those rights must be exercised. Correspondence notifying the applicant of the Board's or Commissioner's denial must be made by certified mail, return receipt requested.

21. **License Renewals, Amendments and Transfers.** Applications for renewed, amended or transferred licenses are subject to all of the provisions of this rule and the following requirements:

A. **Renewals.** Renewal applications must be submitted prior to the expiration of the existing license. If a renewal application is not timely submitted prior to expiration of the existing license, or is timely submitted but not accepted as complete for processing in accordance with section 11(B) of this rule, the license lapses. If the renewal application is timely submitted prior to the expiration of the license and accepted as complete for processing in accordance with section 11(B) of this rule, the terms and conditions of the existing license remain in effect until the final Department decision on the renewal application becomes effective. Renewal applications to extend the expiration date for projects that have not commenced construction are subject to the procedural and substantive requirements in effect at the time of acceptance of the renewal application.

B. **Amendments.** An amendment application or request for minor revision must be submitted to the Department before undertaking any modification, not exempted from licensing requirements by statute or rule, to a project or activity that is the subject of a Department license. Written approval for the modification must be received before the modification is undertaken. If a licensee seeks to amend a license regarding an issue that was the subject of an appeal to the Board, notice of the amendment application must be provided to the prior appellant(s) as if they were abutters, in accordance with section 14(A) of this rule.

C. **Transfers.** Except as provided in this subsection, every license issued by the Department is non-transferable unless the Department approves the license transfer. The proposed transferee must submit a license transfer application in a form approved by the Department. Both the transferor and the transferee must sign a transfer application, except as provided in this subsection.

(1) Except as described below, written consent must be applied for no later than two weeks after any transfer of ownership of property subject to a license. Pending determination on the application for approval of a transfer, the transferee shall abide by all of the conditions of such license, and is jointly or severally liable with the original licensee for any violation of the terms and conditions thereof. The transferee shall demonstrate to the Department's satisfaction the technical and financial capacity and intent to: (a) comply with all terms and conditions of the applicable license, and (b) satisfy all applicable statutory and regulatory criteria.

(2) The transfer of a license for a hazardous waste facility, solid waste disposal facility, waste oil facility and biomedical waste facility must be approved prior to ~~the transfer of ownership of the property which is the subject of the license~~ any change in the legal entity that owns the property subject to the license issued by the Department, including the sale or exchange of stock, a membership interest in a limited liability corporation or a merger.

(3) A license pertaining to the occupational activities of persons (e.g. transporter licenses, underground oil storage tank installers, asbestos or lead abatement professionals) is not transferable, unless specifically allowed by statute or rule.

(4) If the proposed transferee demonstrates that the original licensee no longer has sufficient title, right or interest in the property subject to the license, the Department may allow the transfer application to be processed without the signature of the original licensee.

22. **Petition for Corrected License.** Within 30 days following the effective date of a license, any person, including the Department, may request in writing that the Commissioner or Board issue a corrected license to correct any clerical error or omission, or to clarify the meaning of a license term or condition when that clarification explains, but does not modify the substance of that license term or condition. The Commissioner or Board shall consider the petition within 30 days of receipt of such request. The filing of a petition under this section does not serve to stay the deadlines for any appeal of a Commissioner or Board Order.

23. **Petition for Surrender of License.** Any licensee may petition the Commissioner to surrender its license if the licensee demonstrates to the Department's satisfaction that it has never used the license for its intended purpose nor begun any of the activities approved under the license and does not intend to do so in the future. The petition must also provide that the licensee waives notice and opportunity for hearing. In addition, an agronomic utilization license may be surrendered at any time in accordance with 38 M.R.S. §1310-N(6-D) and a Site Location license for a partially constructed development or a completed borrow, clay or topsoil mining operation may be rescinded in accordance with 38 M.R.S. §489-C.

The Commissioner may require written and photographic documentation, certified statements and sampling analyses, in addition to any other relevant information, as demonstration that the activities described in the license have not been undertaken. The Commissioner shall require that a petition for surrender of a license and written approval of that surrender be recorded in the registry of deeds for any license previously recorded in the registry of deeds.

When the Commissioner approves the surrender, the license is deemed null and void as of the date of approval.

24. **Appeal to the Board of Commissioner License Decisions.** Final license decisions of the Commissioner may be appealed to the Board by persons who have standing as aggrieved persons. Notwithstanding Section 2(B), license decisions that may be appealed to the Board include acceptances of permit by rule notifications, decisions on minor revisions, and public benefit determinations.

A. 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. The written appeal must specify whether the appellant desires the Board to hold a hearing on the appeal and whether the appellant requests that supplemental evidence be included in the record on appeal. An appellant who does not request a hearing or propose supplemental evidence in the written appeal is considered to have waived any opportunity for a hearing or inclusion in the record of supplemental evidence. The decision to hold a hearing is discretionary with the Board. An untimely appeal must be summarily dismissed by the Chair unless notice of the Commissioner's license decision was required to be given to the person filing an appeal and the notice was not given as required. The Chair's dismissal of an appeal for untimeliness is not subject to appeal to the full Board and is final agency action. In response to a motion by the licensee, the Chair may dismiss an appeal if the Chair decides an appellant is not an aggrieved person. The Chair's ruling to dismiss an appeal for lack of standing as an aggrieved person is appealable to the full Board. The filing of an appeal to the Board does not stay the license decision.

B. Content of Appeal

(1) The written appeal must include 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.

(2) Exhibits attached to an appeal must be clearly labeled indicating date and source, and indicating whether the exhibit is in the existing record or is proposed supplemental evidence. Unlabeled exhibits may be rejected by the Chair. Electronic links to documents will not be accepted. In the case of lengthy documents, the appellant must specify the relevant portions.

(3) If the appellant requests 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. A request to supplement the record must address the criteria for inclusion of supplemental evidence set forth in section 24(D).

(4) If a hearing is requested, the appellant must provide an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any expert or technical witnesses would testify.

(5) An appeal must be addressed to:

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

(6) Appeals must be copied to the Commissioner, the licensee and, if a hearing was held on the application, any intervenor. The Board staff shall provide notice of the appeal to persons on the Department's interested persons list for the application or license at issue.

C. **Response to Appeal.** A written response to the merits of an appeal may be filed by a licensee (if the licensee is not the appellant) and any person who submitted written comment on the application (hereafter collectively referred to as the respondents). All proposed supplemental evidence is subject to the labeling and form requirements of section 24(B)(2) and the criteria for inclusion of supplemental evidence set forth in section 24(D).

(1) If no supplemental evidence is offered by an appellant, the following provisions apply:

(a) If no supplemental evidence is offered by an appellant, a respondent's complete response to the merits of the appeal must be filed within 30 days of the date of the Board's written acknowledgement of receipt of the appeal with a copy to the appellant.

(b) If no supplemental evidence is offered by an appellant, but a respondent offers supplemental evidence in response to the appeal, the appellant may file argument addressing only the admissibility of the proposed supplemental evidence within 45 days of the date of the Board's written acknowledgement of receipt of the appeal.

(2) If supplemental evidence is offered by an appellant, the following provisions apply:

(a) If supplemental evidence is offered by an appellant, a respondent may submit written comment on the admissibility of the proposed supplemental evidence and may offer proposed supplemental evidence in response to the appellant's proposed supplemental evidence and the issues raised on appeal. The respondent's submission is due within 30 days of the date of the Board's written determination as to which of the appellant's exhibits constitute proposed supplemental evidence.

(b) If a respondent offers any supplemental evidence, the appellant may submit written comment on the admissibility of the proposed supplemental evidence within 15 days of the date of the Board's written determination as to which of the respondent's exhibits constitute proposed supplemental evidence.

(3) The Chair shall rule on the admissibility of all proposed supplemental evidence in accordance with section 24(D) within 10 days of receipt of all comments regarding admissibility of all of the proposed supplemental evidence.

(4) Within 20 days after the Chair's decision on the admissibility of all of the proposed supplemental evidence, the respondent's complete response to the merits of the appeal must be filed.

(5) Further evidence may not be provided directly to Board members or distributed at Board meetings or hearings without specific permission of the Chair.

D. Record on Appeal, Supplemental Evidence. The record for appeals decided by the Board is the administrative record prepared by Department staff in its review of the application, unless the Board admits supplemental evidence or decides to hold a hearing on the appeal.

(1) If an appellant or respondent seeks to supplement the record, that person shall provide copies of all proposed supplemental evidence with the written appeal or in response to the appeal as provided in section 24(B)(2) and section 24(C).

(2) 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.

(3) The Chair may accept into the record additional evidence and analysis submitted by Department staff in response to issues raised on appeal or supplemental evidence offered by the appellant(s) or licensee(s).

E. Alternative Dispute Resolution. If the appellant(s) and licensee(s) 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.

F. 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 the administrative record on appeal and oral argument at a regular meeting of the Board as follows:

(1) 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;

(2) the appellant makes a presentation discussing objections or challenges to the Commissioner's decision on the application;

(3) 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;

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

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

(6) 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.

G. **Decision on Appeal.** The Board shall, as expeditiously as possible, affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board's decision is based on the administrative record on appeal, including any supplemental evidence admitted into the record 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. Revocation or Suspension of a License

A. **Authority.** After written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the Commissioner may act to revoke or suspend a license whenever the Commissioner finds that any of the criteria set forth in section 27 has been met.

B. **Filing of Petition with the Commissioner.** Any person may petition the Commissioner to initiate proceedings to revoke or suspend a license. The petition must state which of the criteria listed in section 27 is being invoked, and must specifically describe the factual basis for the petition. The petitioner shall serve a copy of the petition on the licensee at the time the petition is filed with the Commissioner. The petition once filed may not be supplemented. The licensee's response to the petition must be filed within 30 days of the filing of the petition with the Commissioner unless the Commissioner, upon a request by the licensee and for good cause shown, extends that deadline. No later than 21days following receipt of the licensee's response to a petition to revoke or suspend a license, the Commissioner shall dismiss the petition or initiate proceedings by providing the licensee with written notice and opportunity for a hearing. The written notice shall state which of the criteria listed in section 27 is being invoked and the factual basis for the Commissioner's decision to initiate proceedings.

C. **Action Initiated by Commissioner.** If the Commissioner decides on his or her own motion to initiate proceedings to revoke or suspend a license, the Commissioner shall provide the licensee with written notice and opportunity for hearing. The written notice shall state which of the criteria listed in section 27 is being invoked and the factual basis for the Commissioner's decision to initiate proceedings.

D. **Hearing.** The licensee must request a hearing within 15 days of the Commissioner's written notice of opportunity for a hearing. If the licensee requests a hearing, it shall be held within 30 days of the request for hearing unless the Commissioner and the licensee agree to another time. The procedure for hearings is governed by section 7(C). If the proceeding was initiated as a result of a petition, the petitioner is deemed to be a party to the hearing and need not petition to intervene.

E. **Commissioner's Decision.** Based on the administrative record, including evidence developed during any hearing, the Commissioner may decide that no action is warranted or may make findings of fact that one or more of the criteria listed in section 27 has been met and refer the matter to the Attorney General's Office to bring an action in District court to revoke or suspend the license.

F. **Decision Discretionary.** A decision by the Commissioner to dismiss a petition or to take no action at the conclusion of the proceedings is within the Commissioner's sole discretion and is not subject to judicial review.

26. Modification of License or Order Prescribing Corrective Action

A. **Authority.** At the request of the Commissioner and after written notice and opportunity for a hearing, 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 any of the criteria set forth in section 27 has been met.

B. **Filing of Petition with the Commissioner.** Any person may petition the Commissioner to recommend that the Board initiate proceedings to modify a license or prescribe corrective action on a license. The petition must state which of the criteria listed in section 27 is being invoked, and must specifically describe the factual basis for the petition. The petitioner shall serve a copy of the petition on the licensee at the time the petition is filed with the Commissioner. The licensee's response to the petition must be filed within 30 days of the filing of the petition with the Commissioner unless the Commissioner, upon a request by the licensee and for good cause shown, extends that deadline. No later than 21days following receipt of the licensee's response to a petition to modify a license or prescribe corrective action on a license, the Commissioner shall dismiss the petition or recommend to the Board that it initiate proceedings to modify a license or prescribe corrective action.

C. **Recommendation Initiated by Commissioner.** The Commissioner may on his or her own motion recommend to the Board that it initiate proceedings to modify a license or prescribe corrective action.

D. **Content of Written Recommendation.** The Commissioner's recommendation to the Board shall state which of the criteria listed in section 27 is being invoked and the factual basis for the Commissioner's recommendation to initiate proceedings to modify a license or prescribe corrective action. The Commissioner shall provide the licensee with a copy of the written recommendation.

E. **Board Consideration of Recommendation.** The Board shall consider the Commissioner's recommendation at a regular Board meeting. After hearing from the Commissioner and the licensee, the Board shall decide whether to initiate proceedings to modify a license or prescribe corrective action. If the Board decides to initiate proceedings, the licensee shall be provided with written notice and opportunity for a hearing. The written notice shall state which of the criteria listed in section 27 is being invoked and the factual basis for the Board's decision to initiate proceedings.

F. Hearing. The licensee must request a hearing within 15 days of the Board's written notice of opportunity for a hearing. If the licensee requests a hearing, it shall be held within 30 days of the request for hearing unless the Board and the licensee agree to another time. The procedure for hearings is governed by section 7(C). If the Commissioner's recommendation to initiate proceedings was the result of a petition, the petitioner is deemed to be a party to the hearing and need not petition to intervene.

G. Board's Decision. Based on the administrative record, including evidence developed during any hearing, the Board may decide that no action is warranted or may make findings of fact and modify in whole or in part any license, or issue an order prescribing necessary corrective action.

H. Decision Discretionary. A decision by the Commissioner to dismiss a petition, or a decision by the Board not to initiate proceedings or to take no action at the conclusion of the proceedings, is within the Commissioner's or Board's sole discretion and is not subject to judicial review.

27. Criteria for Revocation, Suspension, Modification or Corrective Action

The Department may take action to revoke, suspend, or modify a license or prescribe necessary corrective action only if the Commissioner, pursuant to section 25, or the Board, pursuant to section 26, finds that:

A. The licensee has violated any condition of the license;

B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;

C. The licensed discharge or activity poses a threat to human health or the environment;

D. The license fails to include any standard or limitation legally required on the date of issuance;

E. There has been a change in any condition or circumstance that requires revocation or suspension of a license;

F. There has been a change in any condition or circumstance that requires a corrective action or a temporary or permanent modification of the terms of the license;

G. The licensee has violated any law administered by the Department; or

H. The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990.

For the purposes of this section and sections 25 and 26, "license" includes any license, permit, order, approval or certification issued by the Department and "licensee" means the holder of the license.

28. Judicial Review of a Department Decision. Any person may seek judicial review of a final Commissioner or Board decision by filing a petition in Superior Court in accordance with 5 M.R.S. section 11001 *et seq.* and M.R.Civ.P.80C, except where otherwise provided by law. The filing of an appeal to the Board is not a prerequisite for a judicial appeal.

STATUTORY AUTHORITY: 38 M.R.S.A., sections 341-D and H, 343-B, Resolve 2011 ch. 144

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