Comments on Proposed Change to Section 19(A) Permit by Rule

Natural Resources Council of Maine
3 Wade Street • Augusta, Maine 04330 • (207) 622-3101 • Fax: (207) 622-4343 • www.nrcm.org

April 7, 2015

Jeff Crawford
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

RE: Maine Department of Environmental Protection (DEP) Proposed Chapter 2 Rule Changes

Dear Mr. Crawford,

The Natural Resources Council of Maine -- Maine's largest environmental advocacy group with over 16,000 members and supporters -- strongly objects to DEP's proposed change to Section 19(A), Permit by Rule. This proposal would reduce DEP's current review period of 15 working days to 14 calendar days. This will hamper DEP staff's ability to ensure that permit by rule projects do not damage Maine's environment. DEP staff will also be less able to consult with other agencies about the impacts of projects. This is not how the permit by rule process is supposed to work.

We are unaware of any reason to justify reducing the review period for the permit by rule process. The current 15-day period has worked well for decades. We ask that you reconsider this unwise proposal.

Sincerely,

Nick Bennett
Staff Scientist

MAINE AUDUBON

20 Gilsland Farm Road
Falmouth, Maine 04105
207-781-2330
www.maineaudubon.org

April 8, 2015

Jeff Crawford
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

RE: Maine Department of Environmental Protection Proposed Chapter 2 Rules

Dear Mr. Crawford,

On behalf of Maine Audubon and our 20,000 members and supporters, I am submitting comments in strong opposition to a portion of the proposed Chapter 2 rule changes. Specifically, we are very concerned with the proposed change to Section 19(A) governing the Permit by Rule notice to the Department. Currently, the DEP has 15 working days to review a Permit by Rule. This is already a very tight timeline. Shortening the window by changing it to 14 calendar days makes no sense. DEP's consultation with other agencies also needs to be squeezed within this timeframe. Given that Permits by Rule are intended to ensure that activities in, on or adjacent to protected natural resources are conducted in a such a manner as to avoid and minimize impacts to the resources, and that there is already a very short period of time the Department has to review the notice, this change is a bad idea. We urge the Department to reconsider.

Thank you for your consideration.

Sincerely,

Jennifer Burns Gray

Jennifer Burns Gray

Comments on Proposed Changes to Sections
1(R) Definition of Transfer of Ownership and 21(C) Transfers

clf
conservation law foundation

For a thriving New England

CLF Maine 47 Portland Street, Suite 4
Portland, ME 04101
P: 207.210.6439
F: 207.221.1240
www.clf.org

April 6, 2015

Jeff Crawford
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

RE: Proposed Amendments to Chapter 2: Rules Concerning the processing of Applications and Other Administrative Matters

Dear Mr. Crawford:

The Conservation Law Foundation is very pleased to note the proposed change to Chapter 2.21.C(2) of the Department "Rules." We are aware that modern business practices have made it difficult for the Department, using the current language in the Rule, to assess the potential impact of a change in the legal entity that owns property subject to licensure of environmentally sensitive facilities such as hazardous waste, solid waste disposal, waste oil, and biomedical waste. The long-standing procedure for transfer of licenses is critically important for assuring the technical and financial capacity of a new owner to meet its statutory responsibilities for proper environmental oversight and long-term stewardship of Maine's most sensitive disposal facilities. Modern financial conventions such as sale or exchange of stock, or merger, have at times allowed what are essentially new owners to evade this responsibility.

We urge the Department to adopt the proposed amendment without additional changes.

Very truly yours,

Sean Mahoney
Executive Vice President
Director, CLF Maine

100% PCW

PIERCE ATWOOD LLP

DIXON P. PIKE

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

P 207.791.1374
F 207.791.1350
C 207.653.9479
dpike@pierceatwood.com
pierceatwood.com

Admitted in: ME

April 8, 2015

VIA ELECTRONIC MAIL AND FACSIMILE

Jeff Crawford
Bureau of Air Quality
Department of Environmental Protection
17 State House Station
Augusta, ME 04333

Re: Comments for the Rulemaking Record on Proposed Changes to Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters

Dear Mr. Crawford:

On behalf of the Maine Pulp and Paper Association (MPPA), I am submitting these comments for the rulemaking record on proposed changes to Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters.

MPPA is a trade group representing nearly all of Maine's operating pulp and paper mills.[1] Our mission is to ensure that long-term viability and competitiveness of Maine's pulp and paper mills are achieved in a global economy.

MPPA is commenting only on the proposed change to the definition of "Transfer of Ownership" in Section 1(R) of Chapter 2 and related proposed changes to Section 21(C)(2).

Section 1(R).

The Department proposes to revise the definition such that a sale or exchange of 50% or more of the stock of, or interest in, a corporation or partnership may constitute a "Transfer of Ownership." Whereas, the current definition specifically excludes from the definition the sale or exchange of stock. MPPA opposes the proposed change for the following reasons.

- MPPA believes that this change would burden the DEP staff with numerous unnecessary permit transfer applications, every time 50% or more of a company stock changes hands. We recall that this is the reason why Maine DEP successfully sought to amend the statutory definition in 1995, and why other government agencies, like the Federal Energy Regulatory Commission, do not require approval of controlling stock transfers.

[1] MPPA members include: Sappi North America – Westbrook Mill, Sappi North America – Somerset Mill, UPM Madison, Lincoln Paper and Tissue, Cascades Auburn Fiber, Woodland Pulp and Saint Croix Tissue, Catalyst Paper and Expera Old Town LLC.

- We believe that the 1995 state legislation (which removed the 50% control component from the definition of "Transfer of Ownership" in 38 M.R.S.A. § 361-A(6)) reflects the Legislature's intent with respect to what constitutes a "Transfer of Ownership"; and that 50% standard not be included as a component of the definition of "Transfer of Ownership." We believe the Department's definition should be consistent with Legislative intent of the statute.

- Acquisitions of businesses and/or controlling interests in businesses or partnerships by new individuals and/or entities are transactions that are vitally important to Maine's economy. Although exceptions exist, such transactions usually involve a situation where a prospective new owner identifies an opportunity to invest in a business and improve the business and their investment value. Thus, such transactions usually result in stronger, more financially stable businesses than existed prior to such investments. One of the primary concerns of any prospective purchaser of a business or interest in a business is whether the business will have all governmental permits, including environmental permits, necessary to continue operation. This is a risk that prospective investors must evaluate. It becomes a bigger risk when the continuation of such permits depends on Department approval of the financial and technical capacity of the prospective investor. MPPA believes Maine should be seeking avenues to reduce hurdles to attracting investment in Maine businesses. In contrast, we believe the Department's proposal has the potential to expand hurdles to investment in Maine's businesses.

- We are not aware of any practical way for a publically-traded company to ensure compliance, nor for the Department to track compliance, with the proposed language. Stock in a publically-traded company is often traded on a daily basis. It is entirely possible that 50% or more of the stock will change hands over time. If this occurs, would it constitute a "Transfer of Ownership"? What if 50% or more of the stock in a company changed hands as the result of single stock sale? Stock sales over the course of a year? Over the course of five years? Ten years?

- The Department is proposing the change to "allow for more complete assessment of both the financial and technical capacity of a prospective licensee, before any license or hazardous waste facility, solid waste disposal facility, waste oil facility, and biomedical waste facility license is transferred." However, the proposed change to the definition of "Transfer of Ownership" would also apply to other DEP-issued licenses, such as minor source air emissions licenses, Natural Resources Protection Act permits, and wastewater discharge licenses. Many of these licenses involve relatively minor activities, for which a change in stock ownership should not be subject to the same scrutiny as ownership of facilities that have greater potential to raise environmental concerns.

In sum, MPPA does not believe the Department's proposed change is necessary nor workable.

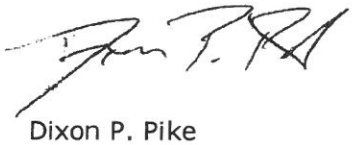
Section 21(C)(2).

In section 21(C)(2), the Department proposes to eliminate the reference to "transfer of ownership", a defined term, with a general reference to "...any change in the legal entity that owns the property..." Here, the Department's proposed language would not even include the 50% threshold. Thus, the sale of a single share of stock, or a 1% membership interest could trigger the requirements in Section 21 for license transfers. These example events could be considered "any change" in the legal entity that owns the licensed facility – in fact, this result appears to be implied by the last clause of the section which makes reference to sales of stock or membership interests, which when read with the remainder of the section could be interpreted to mean any sale of stock or membership interest for the listed type of facilities requires DEP approval. For publicly traded companies in particular, there are changes in who owns the stock on a constant basis. The Department's language is simply unworkable, especially for publicly-traded companies. And, consider a privately held company that offers its employees ownership interests as part of their compensation. MPPA recommends that the section maintain its reference to "transfer of ownership" regardless of how that term is defined to ensure that the events that trigger the need for license transfers are well-defined for the types of facilities listed in Section 21(C)(2).

* * *

On behalf of MPPA, we appreciate the opportunity to comment on the Department's proposal and the Department's consideration of these comments. If you have any questions, please do not hesitate to call me at (207) 791-1374.

Very truly yours,



Dixon P. Pike

cc: MPPA Environmental Committee

Bertocci, Cynthia S

From: Jeremy Payne <jpayne@renewablemaine.org>
Sent: Wednesday, April 08, 2015 2:52 PM
To: DEP Rule Comments
Cc: Crawford, Jeff S
Subject: Comment on Chapter 2 Rules Concerning the processing of Applications and Other Administrative Matters (Amendments)

To Whom It May Concern:

The Maine Renewable Energy Association respectfully requests a public hearing on this proposed rulemaking change.

It is our understanding the intent of the proposed rulemaking is in response to the issues regarding the change in ownership at the former Verso mill in Bucksport. However, the proposed changes are quite broad and may unintentionally pull in other entities it does not seek to further regulate.

Specifically, we seek greater consideration and focus be provided to Chapter 2, 1-R.

> 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'' includessale or exchange of 50 percent or more of thestock 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 aAmerger,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.

Thank you for your consideration of this request.

Respectfully,
S/ Jeremy N. Payne

Jeremy N. Payne
Executive Director
Maine Renewable Energy Association
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April 8, 2015

Via Electronic Mail
Jeff Crawford
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

Re: Chapter 2 Rule Concerning the Processing of Applications and Other Administrative Matters (Amendments)

Dear Mr. Crawford,

Please accept the following comments on behalf of Waste Management regarding the Department's proposed amendments to Chapter 2. Specifically, these comments address the proposed amendments to transfer of ownership requirements found at Section 1(R) and Section 21(C)(2).

Waste Management Disposal Services of Maine, Inc. operates the Crossroads Landfill facility in Norridgewock. Waste Management of Maine, Inc. operates a transfer station in Brewer and provides waste collection services out of Portland, Norridgewock and Brewer, Maine. We appreciate the Department's need to ensure that these and all licensed facilities are operated by entities with the technical and financial capacity to do so. However, we believe that the existing requirements governing license transfers strike an appropriate balance between protecting the environment and minimizing unnecessary regulatory burdens. Accordingly, we request that the proposed amendments to Section 1(R) and 21(C)(2) be eliminated.

First, there are already a number of stringent financial assurance requirements that govern solid disposal waste facilities and therefore it seems particularly unnecessary to impose a more stringent definition of transfer of ownership for such facilities. For example, solid waste disposal facilities are already required to maintain liability insurance coverage in excess of $2 million annually, see 06-096 CMR 400(10), and to maintain instruments of financial assurance (e.g. bonds) ensuring funding for all costs associated with landfill closure and post closure. See 06-096 CMR 400(11)(A). Prior to a transfer, a new owner must have in place its own adequate financial assurance instruments for closure costs. See 06-096 CMR 400(11)(A)(2)(b). And solid waste disposal facilities are already required to maintain instruments of financial assurance for all "known releases, violations, or environmental damage." See 06-096 CMR 400(11)(B). As

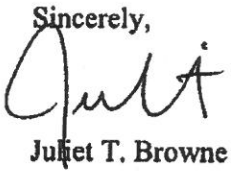
such, it is unnecessary to impose additional regulatory burdens to assure that financial capacity is maintained in the event of a transfer.

Second, the Department's proposed change to the definition of transfer of ownership in Section 1(R) reinstates a requirement that in 2003 the Board determined was unnecessary. Specifically, when Chapter 2 was first adopted in 1994, the term "transfer" was defined to include both a change in the permitted entity and "the sale or other transfer of over 50% of the stock of a corporation to one legal entity." In 2003, the definition of "transfer of ownership" was amended to include language explicitly stating that "a sale or exchange of stock, or a merger, is not a transfer of ownership for the purposes of this rule provided that the legal entity that owns the property, facility or structure remains the same." That change was made so that Chapter 2 would be consistent with Department practice. See Response to Comments for 2003 Amendments at 2 (attached for the Department's convenience). The 2003 changes were appropriate and eliminated a regulatory burden that the Board concluded was not necessary. We respectfully request that the Department not reinstate the requirement to go through a permit transfer process based solely on the sale or exchange of stock in the licensed entity.

Finally, the Department's proposed changes to Section 21(C)(2) are particularly onerous and may have unintended consequences. For example, for hazardous waste, solid waste disposal, waste oil and biomedical waste facilities, the proposed amendment would require Department approval prior to "any change in the legal entity that owns the property subject to the license." It is unclear what "any change" means. The language is broad enough to capture an event as minor and unrelated to financial and technical capacity as the sale of one percent of the licensee's stock and other non-substantive organizational changes such as a name change. To the extent the Department concludes that the generally applicable definition of transfer of ownership should include the sale of 50 percent or more of stock or other ownership interest in the licensed entity, we request that the same requirement, not a more stringent requirement, apply to solid waste disposal facilities.

Thank you for the opportunity to submit these comments. As always, Waste Management is committed to ongoing cooperation with the Department and rigorous environmental stewardship.

Sincerely,



Juliet T. Browne

JTB/prf
Attachments
cc: Jeff McGown
Steve Poggi

8199104

BASIS STATEMENT
August 1, 1994

The Board of Environmental Protection enacted Chapter 2 to replace the Department's outdated procedural and fee rules, and to provide for a clearer and more efficient system of processing applications that reflects recent changes in law and practice. This rule balances the interest of the applicant in a streamlined process, the interest of the public in an open and accessible process and the interest of the Department in a process that can be easily and fairly administered. Chapter 2 supersedes Chapters 1 and 50, which are repealed as of August 1, 1994.

BASIS STATEMENT
March 6, 2003

The repeal and replace of Chapter 2 adopted in 2003 updated the rule based on experience since its adoption in 1994, incorporating statutory changes and ideas for improvement originating from experience with the 1994 rule. A primary amendment was to restructure the process for handling appeals once they are filed in order to clarify and speed up the time it takes to get teh appeal before the Board. In additon, the rule was reorganized and a table of contents added.

Chapter 2: *Rules Concerning the Processing of Applications and other Administrative Matters*

Response to Comments for 2003 amendments

This document notes the substantive comments offered by the commenters at hearing and in writing, and the Departments response to those comments. The letter in parentheses at the end of the comment corresponds to the commenters noted below. The comments are arranged in ascending order corresponding to the sections they refer to.

Commenters:
A) Cynthia Bertiocci, Executive Director for the BEP
B) Thomas Doyle, Maine Pulp and Paper Association
C) Ann Gosline, Dispute Resolution Services
D) Sue Jones, Natural Resources Council of Maine

1) In section 1(B) and section 24(B), the rule should be amended to require a showing of particularized injury by aggrieved persons, and provide a process so challenges to standing can be determined prior to argument on the substance of the appeal (B).

Response: The Department agrees, and has added language to section 24 B(1) and (2) to allow the Chair to dismiss an appeal if the Chair determines the person is not an aggrieved person, and also to require a showing of particularized injury in the appeal document.

2) In section 1(A), the definition of abutter be changed to define abutters as those within a 500 foot radius of the project location (B).

Response: No change. The definition of abutter is critical because it defines the universe of people who receive specific notice of a project. The current provision has a two part test: the person must have property that is <u>both</u> adjoining and within 1 mile of the location of the project. Many different variations have been considered, trying to balance the need to notify those who might be most directly impacted by a project with the need for a sensible and workable system that does not unduly burden an applicant, or result in notice going to people who do not care or are not affected. The current definition cannot contemplate all situations, but was designed to ensure that those who have a readily identifiable property interest directly adjacent to the project site receive specific notice. Limiting notice to 500 feet of a project site would mean that property owners adjoining the parcel, but beyond 500 feet, would not receive specific notice. Depending on the type of project, this may not be sufficient notice to individuals who may bear the greatest impact of the project. In an effort to alleviate some of the concern and expense of providing certified mailing to all abutters, the rule has been amended to allow the use of certificates of mailing [see §14(A)].

At the request of the Board at adoption of the rule, the phrase "location on which the project will take place" was deleted and replaced in the final rule with the phrase "delineated project boundary" to clarify the definition.

3) In section 1(Q), the rule should be amended to include a clarification that a sale or exchange of an entities stock or membership interests, or a merger, is not a "transfer of ownership" (B).

Response: The Department agrees, and consistent with past interpretations has amended the definition of "transfer of ownership" so it is clear that a sale or exchange of stock, or a merger, is not considered a transfer of ownership for the purpose of requiring the transfer of licenses, provided the legal entity that owns the property, facility or structure remains the same.

4) In section 3, "may" should be changed to "must" to make it clear that the designated contact person is the person to whom documents are sent (A).

Response: The Department concurs.

5) In the note following section 7 draft Title 5 air emission licenses should be added to the list of licenses requiring the opportunity for hearing (D).

Response: The Department concurs based on Chapter 140, section 2(K)(3)(f) of the Department's rules.

6) In section 13, the requirement that the Department's fact sheet on public participation be available at all public meetings under this section is overkill and should be eliminated, or made a recommendation (B).

Response: The Department agrees and has amended the rule to make the fact sheet a recommendation. Making the availability of the fact sheet an absolute requirement may create severe consequences in situations where public participation is adequately explained, but the fact sheet is not provided. The Department will ensure that the fact sheet is made available to applicants early on in the process, provide it to interested persons, and make it available on our website. If, despite these measures, it appears the public is not aware of its rights in an application process, the Department will seek to amend the rule to make this provision mandatory.

7) In section 13, it should be clarified that at the public meeting, the public has the right to participate (D).

Response: The Department agrees and has added language to that effect to section 13(E).

8) In section 13, the Department should schedule and conduct all public meetings instead of letting the applicant do it (D).

Response: No change. While the Department often advises applicants about the conduct of public meetings and sometimes attends public meetings held under this section, it does not have the resources to schedule, attend and conduct all public meetings.

9) In section 14(B), former appellants should not receive notice as abutters when a licensee seeks to amend a license (B).

Response: No change. This change was made at the request of Board members. The Department agrees that when a person who is not an abutter is concerned enough about a project to go through the appeals process, that person has evidenced a substantial interest in the project and should receive specific notice of proposed changes to the project that rise to the level of being an amendment.

10) In section 16, public comment should be allowed during the processing of the application, or 45 days after the application is accepted as complete, whichever is shorter (B).

Response: No change. The current rule provides that public comment is allowed at any time while an application is pending. The appropriate time limit for public comment on pending applications received a great deal of attention during the original rulemaking for Chapter 2. The challenge is to provide a predictable and efficient process with abundant opportunity for public input. The Department believes the existing process provides maximum opportunity and does not believe the existing process has had a negative effect on the time it takes to process applications.

11) In section 16, language should be added to allow requests for hearing or for the Board to assume jurisdiction once a draft license has been issued for a Title 5 air license (D).

Response: No change. Allowing requests for Board jurisdiction at the time a draft permit is issued would mean that the Board might begin an entirely new process at the point at which the Department has concluded its review and is prepared to issue a license. This would create a great deal of uncertainty, and very lengthy process. If a person is not satisfied with a license decision of the Commissioner, he or she can appeal that decision to the Board. Since Chapter 140 already provides for the opportunity to request a hearing on a draft order and since the bureau specific rule supercedes the provisions of chapter 2, there is no need to amend Chapter 2 to provide for the Title 5 process.

Response: The Department agrees, and has changed the response time for respondents to 30 days. In addition, after discussion at the Board at the time of adoption,5 days were added to the time allowed an appellant to file a rebuttal to a respondant's filings.

16) In section 24(B)(2), is should be clear that mediation is not an expected prerequisite to having an appeal considered (B).

Response: No change. Mediation is not an expected prerequisite. As contemplated in this rule, while the Board encourages mediation and other alternative dispute resolution mechanisms, if the parties do not agree to that path, the appeal will be processed normally.

17) In section 24(B)(2), the rule should include a provision allowing the Board to extend the time for mediation beyond six months if all parties agree to the extension (C).

Response: No change. One of the principle features of this amendment of the rules is to change the way appeals are handled in order to speed them to resolution. The Department believes that six months is adequate time for an appellant and a respondent to reach resolution. In addition, providing a firm time by which the matter will return to the Board will serve to compel the parties to actively engage in a search for resolution sooner rather than later.

21) In a new section, the rule should include a transition clause so it is clear whether the old or new Chapter 2 applies to a particular application (B).

Response: No change. It is critical that it be clear which version of the rule provides the substantive rights and responsibilities for any matter being considered by the Department. The Department believes that section 2(C) provides that clarity. It is the Department's interpretation that applications accepted as complete, or requests for review filed, on or after the effective date of the revised Chapter 2 will be governed by the new provisions. Applications accepted as complete or requests for review filed prior to that date will be processed under the old Chapter 2.

RULEMAKING FACT SHEET
TITLE 5 MRSA § 8057-A

AGENCY: Department of Environmental Protection

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Brooke E. Barnes, Deputy Commissioner
#17 State House Station
Augusta, Maine 04333-0017
(207) 287-2811

CHAPTER NAME AND RULE TITLE:

Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters

STATUTORY AUTHORITY:

38 MRSA sec. 341-D(1-B), and 5 MRSA §8051, Alternative Dispute Resolution ("ADR")

DATE AND PLACE OF PUBLIC HEARING:

November 7, 2002
1:30 PM
Holiday Inn, Augusta, Maine

COMMENT DEADLINE: December 7, 2002

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

In 1994, the Department substantially revised the rules governing how we process applications, deal with appeals, and many other administrative type activities. The Department is proposing to repeal and replace Chapter 2 to incorporate changes to the overall organization of the rule as well as many minor and major adjustments throughout the rule including the method of acceptance of filed materials and how appeals are handled.

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

These regulations provide a roadmap through the regulatory process and these amendments are largely in response to comments by the regulated communities seeking process improvements in the area of efficiency and consistency with Department policy. These rules facilitate an efficient licensing process, while ensuring adequate public participation. Additionally, the Department conducted an evaluation of the use of Alternative Dispute Resolution as required 5 MRSA §8051 incorporating methods to utilize this tool as appropriate related to the appeals process before the Board of Environmental Protection.

FISCAL IMPACT OF THE RULE, INCLUDING IMPACT ON SMALL BUSINESS (5 MRSA 8052(5-A)): The proposed amendment will not have a fiscal impact.

Administrative Procedure Act
CHECKLIST

Agency: Maine Department of Environmental Protection

Chapter Number and Title of Rule:

1. Was this rule listed on the last regulatory agenda? NO

2. Date of notification of: Anyone on mailing list October 8, 2002

   Any trade, industry or professional group October 8, 2002

   Any trade publications None

3. Date Notice of Rulemaking Proposal (MAPA-3) sent to Secretary of State: October 8, 2002

4. Date Fact Sheet sent to Executive Director of Legislative Council: October 18, 2002

5. Date of publication in Secretary of State's rule-making ad.: October 16, 2002

6. Date of hearing(s): November 7, 2002 7. Comment deadline: December 7, 2002

8. Was comment deadline extended or comment period reopened? No

   If yes, date of second notice publication in Secretary of State's rule-making ad: N/A

9. Is adopted rule consistent with what was proposed? Yes
   (If not, please address the changes in the comments and responses section of your filing.)

10. Is the person signing the Certification Statement (MAPA-1, #9) authorized to do so as stated in your statutes or in 5 MRSA, c.71? Yes

11. Was the rule adopted within 120 days of the comment deadline? Yes

12. Was the rule approved and signed by the Office of the Attorney General within 150 days of the comment deadline? Yes

13. Is a Basis Statement included? Yes Is a copy of the Fact Sheet included? Yes

    Are comments, with names and organizations, and your responses included? Yes

MAPA-4

Notice of Agency Rule-making Adoption

AGENCY: Department of Environmental Protection

CHAPTER NUMBER AND TITLE: Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters

ADOPTED RULE NUMBER: (LEAVE BLANK - ASSIGNED BY SECRETARY OF STATE)
2003-77

CONCISE SUMMARY

In 1994, the Department substantially revised the rules governing the processing of applications, appeals, and many other administrative activities. The Department is now proposing to repeal and replace Chapter 2 to incorporate changes to the overall organization of the rule as well as many minor and major amendments to the rule. Additionally, the Department conducted an evaluation of the use of Alternative Dispute Resolution as required 5 MRSA §8051, incorporating methods to utilize this tool as appropriate related to the appeals process before the Board of Environmental Protection.

The Board of Environmental Protection conducted a public hearing on November 7, 2002 and kept the record open for written comments until December 9, 2002. A total of 4 individuals provided verbal and/or written comment regarding the proposed changes to the rule.

The Department evaluated the comments offered at hearing and in writing and a summary of which is contained in the Response to Comments.

Copies of this rule are available upon request by contacting the Agency contact person listed below.

EFFECTIVE DATE: April 1, 2003

AGENCY CONTACT PERSON: Brooke E. Barnes, Deputy Commissioner
AGENCY NAME: Department of Environmental Protection
ADDRESS: #17 State House Station
Augusta, Maine 04333-0017
TELEPHONE: (207) 287-2811
E-MAIL: Brooke.E.Barnes@Maine.gov

Please approve bottom portion of this form and assign appropriate MFASIS number.

APPROVED FOR PAYMENT Terry A. Hanson DATE: 3/20/03
Authorized signature

FUND	AGENCY	ORG	APP	JOB	OBJT	AMOUNT
014	06A	1113	142			

RECEIVED
MAR 24 2003
OFFICE OF THE SECRETARY OF STATE
AUGUSTA, MAINE

MEREDA

Maine Real Estate &
Development Association

Supporting Responsible Development

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Michael P. O'Reilly
Bangor Savings Bank.

Vice President
Paul Peck
Drummond & Drummond

Treasurer
William Shanahan
Northern New England Housing Investment Fund

Assistant Treasurer
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Thomas N. Lea
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Malone Commercial Brokers
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Gary Vogel
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Richard McGoldrick
Tim O'Neil
Stephen Kasprzak
Joseph Wishcamper

April 7, 2015

Jeff Crawford
Bureau of Air Quality
Department of Environmental Protection
17 State House Station
Augusta, ME 04333

Re: Comments and request for public hearing on proposed changes to Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters

Dear Mr. Crawford,

Thank you for this opportunity to comment and request a public hearing on proposed changes to Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters.

The Maine Real Estate and Development Association (MEREDA) is a non-profit entity with a mission to promote fair and responsible development and ownership of real estate throughout the state of Maine. MEREDA membership of about 300 firms encompass a wide array of non-profit and for-profit real estate-related businesses including developers, builders, managers, brokers, engineers, accountants, attorneys, lenders, appraisers, municipalities, community development advocates and housing authorities.

MEREDA is concerned about the proposed rule change to the definition of "Transfer of Ownership" in section 1(R) of Chapter 2 for the reasons set forth below:

- This proposed rule will have a very broad application. MEREDA is concerned that with the current level of activity in transferring ownerships of corporations and partnerships, this proposed rule change would increase the demands on staff at the Department of Environmental Protection ("the Department"), and dilute attention on matters of greater need pending before the Department. This would be exacerbated when detractors of currently operating projects take advantage of this opportunity to challenge the permit transfer(s) even though no actual change in operation or management is contemplated and the site is operating in full compliance with its permit(s).

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- In many instances, this rule would cause unnecessary notice to abutters of facilities because the control and management of the project would not change. For example, when a project is funded with new markets tax credits, the owner/investor who benefits from the tax credits is the majority owner, but does not have control of the project. When the tax credit compliance period expires, there is a transfer of the majority ownership, but the majority owner had never had management control over the project. To subject the owner with controlling interest, who is already operating in compliance with all permits, to a permit transfer process would be superfluous and unnecessarily burdensome.

- In 1995, the Maine Legislature amended 38 M.R.S.A. §361-A(6) to remove from the definition of "Transfer of ownership" "a sale of over 50% of the stock of a corporation." This reversion to the greater than 50% rule is inconsistent with Legislative intent and therefore beyond the Department's authority.

- At the very least, should the Department adopt this rule, MEREDA would advocate for an exception from this rule when transfers do not change the party with the control and/or management responsibilities of the site.

For the reasons set forth above, MEREDA respectfully requests a public hearing to air the various considerations and ensure that the Department is accomplishing its objective, but not in a manner that burdens the department and permit holders unnecessarily.

Again, thank you for the opportunity to comment.

Sincerely,

Andrea Cianchette Maker, Esq. Pierce Atwood
MEREDA Public Policy Counsel

cc: Shelly Clark, Vice President of Operations, MEREDA
Gary Vogel, Director, MEREDA

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MEREDA

Maine Real Estate &
Development Association

Supporting Responsible Development

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Stephen Kasprzak
Joseph Wishcamper

June 1, 2015

Jeff Crawford *via email and US Mail*
Bureau of Air Quality
Department of Environmental Protection
17 State House Station
Augusta, ME 04333

Re: Follow up to comments made at public hearing on proposed changes to Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters

Dear Mr. Crawford,

As you may recall, I testified on behalf of MEREDA at the public hearing on the proposed rule changes to the Chapter 2 rules, and in particular, the rule changes concerning transfer of ownership. Commissioner Aho requested that we provide some proposed language in support of the position proposed by MEREDA, that the definition of Transfer of Ownership should not apply unless there is a change of control of the entity that holds the permit issued by the Department.

As an initial matter, we note that if the primary concern is over the waste license transfers identified in Section 21(C)(2) of the Chapter 2 Rules, perhaps the simplest way to address the concerns of the Department are to adopt the changes to Section 21(C)(2) without adopting the changes to the definition of Transfer of Ownership. This would avoid more difficult procedural matters of addressing and reviewing applications to confirm that the application does not involve a change of control.

In the event that the Department wants to address a change of control requirement in connection with the Transfer of Ownership definition, then we would suggest that the Transfer of Ownership definition be revised to read as follows:

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 company), or a change of 50 percent or more of the partnership interest in a partnership, provided that in each case,

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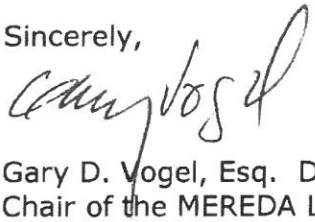
such transfer of ownership also constitutes a Change of Control. A merger, is not a transfer of ownership for the purposes of this rule provided the legal entity that owns the property, facility or structure remains the same.

A proposed definition of "Change of Control" may read as follows:

Change of Control. "Change of Control" means a transfer of more than 50% of the common voting stock of a corporation, or a transfer of more than 50% of the mananging member interest or managers interest in a limited liability company, or a transfer of more than 50% of the general partner interests in a partnership.

Again, thank you for the opportunity to comment.

Sincerely,



Gary D. Vogel, Esq. Drummond Woodsum
Chair of the MEREDA Legislative Committee

cc: Patricia Aho, Commissioner, DEP
Shelly Clark, Vice President of Operations, MEREDA
Andrea Maker, Esq., Pierce Atwood
Sharon Newman, Esq., Preti Flaherty
(all via email)

Brookfield

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Brookfield Power US Asset Management LLC
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April 8, 2015

BY ELECTRONIC AND U.S. MAIL

Mr. Jeffrey Crawford
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

Re: Proposed Rule No. 2015-P029 – Maine DEP Rules Chapter 2

Dear Mr. Crawford:

By this letter, Brookfield Power US Asset Management LLC ("Brookfield") (1) submits comments on the above-referenced proposed rule, and (2) requests that the Department of Environmental Protection ("DEP" or "Department") hold a public hearing on this proposed rule.

The focus of Brookfield's comments is with regard to the changes being proposed to DEP Rules Chapter 2, Section 1(R), 06-096 CMR 2.1(R), related to the transfer of environmental permits/licenses. In particular, Brookfield is concerned with the portion of the rule amendment (the "proposed amendment") proposing that sale or exchange of fifty percent of more of the stock of or interest in a corporation that owns a property, facility or structure that has a DEP license triggers the formal license transfer process in DEP Rules Chapter 2, Section 21(C), 06-096 CMR 2.21(C). Brookfield respectfully suggests that a public hearing on the proposed rule would allow the Department to more fully understand and consider several areas of potential concern.

First, a public hearing would allow the Department to consider the proper treatment of a routine corporate reorganization pursuant to which a wholly-owned DEP-permitted operational subsidiary is moved from one parent to another affiliated parent (for tax or other reasons). In this circumstance, the entity that holds the license remains the same, its business is not changed at all, and the ultimate upstream parent company remains the same. It would thus appear that it is unnecessary from a practical perspective for such a licensee-subsidiary to go through the transfer process, as the proposed amendment would appear to require. A public hearing would allow the Department to fully understand such circumstances and consider the undesirable effects of burdening such frequent corporate transactions with significant delay and added expense via needless license transfer processes.

Second, a public hearing would also allow the Department to understand and consider the proper treatment of stock sale acquisitions. This is another circumstance in which the entity that holds the license remains the same and its business is not changed at all. Even though the upstream parent may have changed in a stock sale acquisition, it is no different in substance from the merger circumstance that the proposed amendment exempts from application of the proposed

rule when "the legal entity that owns the property, facility or structure remains the same." A public hearing would allow the Department to explore the tension between (a) exempting such mergers from the proposed rule, but (b) applying it to both the corporate reorganizations and stock sale acquisitions described above. It would also allow the Department to consider extending a similar exemption to the latter two circumstances, as the legal entity that owns the property, facility or structure remains the same in mergers, corporate reorganizations, and stock sale acquisitions.

Third, a public hearing would allow the Department to understand and consider the apparent effects of applying the proposed amendment as currently drafted. There is room to interpret the current draft as allowing for a process that could open up the permit terms via the permit transfer application and review process in non-merger circumstances, even when the legal entity that owns the property, facility or structure remains the same. The end result of that could require all of the permit transfer process be undertaken, including sending certified letter notifications to all abutters of each of the projects, addressing public comments on the application, and participating in public meetings or hearings that might be requested. A public hearing on the proposed amendment would allow the Department to understand both the costs and considerable risks this would pose to the settled expectations of permit holders, and whether there is reason for such risks to be incurred when the operational aspects of the projects have not changed.

Fourth, a public hearing would also allow the Department to understand and consider the problems presented by the language associated with the changes to the "transfer of ownership" definition under the proposed amendment. As currently drafted, it appears that the Department's intent is to apply that definition to all existing regulations concerning transfer of licenses. In that case, a number of issues and questions arise, such as:

- Who is the transferor and who is the transferee in the context of the change of a corporate parent of the wholly-owned licensee when the licensee and its operations are remaining the same? See language of existing Section 21(C) of Chapter 2, 06-096 CMR 2.21(C). If they are the parent companies that are transferring the licensed entities, this provisions would make entities other than the licensee jointly and severally bound to the conditions of the license. The parent company has no such obligation currently.

- If the proposed rule would result in the parent becoming the transferee, why should the transferee be responsible for making a demonstration of technical capacity if the operational licensee is not changing and the technical capacity of that existing license holder remains the same?

- Further, financial capacity would only be relevant if there were some sort of parental corporate guarantee of the licensee's financial assurance requirements. A public hearing would allow the Department to consider financial assurance regulations as

the more direct way to address such a concern, rather than in the permit transfer requirements.

In sum, the proposed rule, as drafted, raises a number of public policy issues and practical questions that would benefit from the further consideration afforded by a public hearing. Brookfield respectfully suggests that the Department's and Maine's interests would be best be served by fully understanding the burdens being proposed for both the restructuring of affiliated entities within a corporate family and the acquisition of license holders through stock sales. A hearing would allow the Department to consider more reasonable alternatives, such as the same kind of exemption afforded mergers – where the legal entity that owns the property, facility or structure remains the same – before placing a heavy and unnecessary regulatory burden on common corporate transactions.

We look forward to the Department holding a public hearing on the proposed amendment.

Very truly yours,

Christopher T. Wynn
Vice President, Northeast Operations

PretiFlaherty

Portland, ME
Augusta, ME
Concord, NH
Boston, MA
Washington, DC

Sharon G. Newman
snewman@preti.com
Direct Dial: 207.791.3241

June 1, 2015

BY ELECTRONIC AND U.S. MAIL

Jeffrey Crawford
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04222

RE: Proposed Amendments to Chapter 2

Dear Mr. Crawford:

On behalf of Brookfield Power US Asset Management LLC ("Brookfield"), this letter provides the following additional comment on the proposed amendments to Maine Department of Environmental Protection ("DEP" or the "Department") rules (Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters).

As indicated in my written and oral testimony before the Board at the public hearing on May 21, 2015, Brookfield is concerned that corporate reorganizations and stock sales (or equity interest purchases in the case of limited liability corporations) will trigger needless permit transfers under the proposed rule by virtue of the proposed redefinition of the term "Transfer of Ownership" in Section 1(R).

Notwithstanding statements made by the Department at the hearing, the permit transfer process places a significant burden on the applicant. Even, before the application can be submitted, abutters to the property, project or facility in question must first be identified and confirmed, so they can be notified. This, in and of itself, can be a lengthy and expensive process, depending on the size, complexity, and location of the real estate involved, and the availability and condition of the applicable real estate records. Preparation of the remainder of the application and review of the draft transfer order usually requires the involvement of legal assistance in order to ensure that the application is complete and the transfer order is correct.

Pursuant to Chapter 2, DEP is entitled to 15 *working* days (a minimum of 21 calendar days, depending on holidays and weekends) in which to determine whether the application is complete for processing. While this time frame can be reduced (with careful advance preparation and the Department's cooperation), that is not a given. It is only after the application has been deemed complete that a subsequent 20-day public comment period may commence. If the applicant makes the prudent request to review a written copy of the draft transfer order, the public comment period must then be extended by 5 additional *working* days (usually, 7 calendar days). Only then can the transfer order be signed, subject to the availability of the Commissioner (or a delegee). Thus, an applicant must allow for a minimum of 46 days for the processing of a permit transfer application from submittal to issuance of the final transfer order, even assuming

the Department receives no comment on the transfer application. The transfer order is then subject to a 30 day appeal period, which may include a request for a hearing (which may be granted at DEP's discretion).

As I noted in my written and oral testimony at the May 21st hearing, in a recent transaction in which Brookfield purchased seven hydropower projects in Maine, the corporate structure of the transaction involved the purchase of the membership interests in several LLCs (limited liability companies) holding DEP hydropower permits. Under Maine's existing rule regarding transfer of hydropower facilities governed by the Maine Waterways Development and Conservation Act, 38 MRSA 360 *et seq.* ("MWDCA"), there still exists a regulatory provision that requires going through an MWDCA permit transfer process whenever there is a transfer of 50 percent or more of an interest in a corporation that owns the property.[1] In that transaction, the end result was that each permit-holding operating company transferred the MWDCA permit from itself to itself.

Aside from that nonsensical result, the process itself required the expenditure of funds for almost 100 hours of lawyer time plus 30 hours of paralegal time, not to mention internal company time, simply on this one aspect of the transaction. Hence, not only should the proposed revision to the definition of "transfer of ownership" in Chapter 2 be rejected, the antiquated language on that topic in Chapter 450 related to hydropower facilities should be amended to reflect the currently-existing language in Chapter 2.

In sum, the current permit transfer process already presents a burden on transactions in terms of both time and resources. It can delay time-sensitive transactions and create uncertainty. It should be required only where the permit-holding legal entity in question is changing.

---

[1] *See* Maine DEP Rules Chapter 450(9)(C)(10), 06-096 CMR 450(9)(C)(10), which states:

> C. **Standard Conditions of Approval.** Unless otherwise specifically stated in the approval, all Board, Commissioner, Commission, and Director approvals shall be subject to the following standard conditions:
>
> ...
>
> (10) Assignment or Transfer of Approval. This approval shall expire upon the assignment or transfer of the property covered by this approval unless written consent to transfer this approval is obtained from the Board or Commission. To obtain approval of transfer, the permittee shall notify the Board or Commission 30 days prior to assignment or transfer of property which is subject to this approval. Pending Board or Commission determination on the application for a transfer or assignment of ownership of this approval, the person(s) to whom such property is assigned or transferred shall abide by all of the terms and conditions of this approval. To obtain the Board's or Commission's approval of transfer, the proposed assignee or transferee must demonstrate the financial capability and technical ability to (1) comply with all terms and conditions of this approval and (2) satisfy all other applicable statutory criteria.
>
> A "transfer" is defined as the sale or lease of property which is the subject of this approval, or the sale of 50 percent or more of the stock of or interest in a corporation or a change in a general partner of a partnership which owns the property subject to this approval.

Therefore, the current definition of Transfer of Ownership in Chapter 2 need not, and should not be amended.

Very truly yours,

Sharon G. Newman

SGN/bh
Enclosure (May 21, 2015 written testimony)

Testimony of Sharon G. Newman, Esq., on behalf of Brookfield Power US Asset Management LLC

Before the Board of Environmental Protection May 21, 2015

Proposed Amendments to Chapter 2 (Rules Concerning the Processing of Applications and Other Administrative Matters)

Mr. Chairman, members of the Board of Environmental Protection and Commissioner Aho, my name is Sharon Newman of Preti Flaherty and on behalf of our client, Brookfield Power US Asset Management LLC ("Brookfield"), I am providing testimony regarding the changes to the definition of "Transfer of Ownership" in the proposed amendments to the Department's Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters. DEP has indicated in its rulemaking fact sheet that the proposed amendments are to allow for more complete assessment of a prospective licensee before a solid waste, hazardous waste, waste oil or biomedical waste facility is transferred. However, the proposed amendments reach much more broadly and have consequences for companies such as Brookfield, although they do not operate and have no plans to acquire waste facilities.

The focus of my testimony pertains to the amendment of the definition of "Transfer of Ownership," in proposed Chapter 2, Section 1(R). In particular, Brookfield is concerned with DEP's proposal to define a "change" in the legal entity holding a license that would trigger the formal license transfer process under Chapter 2, Section 21(C) as including a sale or exchange of 50 percent of 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 a partnership interest in a partnership.

Brookfield's primary concern is the effect the proposed rule amendments would have on routine corporate reorganizations pursuant to which a wholly-owned DEP-permitted operational subsidiary is moved from one parent to another affiliated parent (for tax or other reasons). In this circumstance, the entity that holds the license remains the same, its business is not changed at all, and the ultimate upstream parent company remains the same. From a practical perspective, it is unnecessary for such a licensee-subsidiary to go through the transfer process. However, the proposed amendment would burden these types of corporate transactions, which occur not infrequently, with significant delay, expense, and uncertainty.

In addition, similar to corporate reorganizations, stock sale acquisitions and equity interest purchases of limited liability companies constitute another set of circumstances in which the entity that holds the license remains the same and its business is not changed at all. Even though the upstream parent may have changed in a stock sale acquisition or an equity interest purchase, it is no different in substance from a merger that the proposed amendment exempts from application of the proposed rule when "the legal entity that owns the property, facility or structure remains the same." The Department should consider extending the same exemption to all circumstances where the legal entity that owns the property, facility or structure remains the

same, whether in the context of a merger, a corporate reorganization, a stock sale, or an equity interest purchase.

Further, the proposed amendments may be interpreted as allowing for a process that could open up the permit terms via the permit transfer application and review process in non-merger circumstances, even when the legal entity that owns the property, facility or structure remains the same. The permit transfer process requires the applicant to send certified letter notifications to all abutters of each facility to be transferred, inviting public comment on the application (with the possibility that public meetings or hearings may be requested). This would not only cause the operational permit holder to incur significant cost and delay, but also to bear the risk that its settled expectations could be upended in the permit transfer process, even though the operational aspects of the projects or facilities in question have not changed.

The Maine Legislature amended the definition of "Transfer of Ownership" in 1995, as set forth in 38 M.R.S. Section 361-A(6), to repeal the 50% stock sale threshold and replace it with the current definition: "'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." The Department then amended Chapter 2 to be consistent with the new definition. Chapter 2 was further clarified by the Department in 2003 to ensure that the permit transfer process would not be triggered merely by a corporate merger or the sale or exchange of an entity's stock or membership interests so long as the entity itself remained unchanged. Since 1995, the amendments to Chapter 2 have been consistent with the legislative intent of the underlying statute. By contrast, not only is the current proposed redefinition of "Transfer of Ownership" clearly <u>not</u> consistent with the legislature's intent in revising Section 361-A(6), the proposed amendment to Chapter 2 would effectively overturn the underlying intent of the statute.

Brookfield has had recent experience with what it means for a permit transfer to be triggered, even though the permitted entity remained unchanged, when it acquired a number of Maine hydropower projects in 2013 by way of an equity interest purchase of certain limited liability companies. Several of those hydropower projects were and are permitted under the Maine Waterway Conservation and Development Act ("MWDCA"), which has its own administrative rules separate and apart from Chapter 2. The pertinent provisions of Chapter 450 (Administrative Regulations for Hydropower Projects), issued pursuant to the MWDCA, were never updated to conform to the current Chapter 2 transfer of ownership definition. In particular, the definition of "transfer" in Chapter 450 is similar to what is now being proposed – *i.e.*, a "transfer" is defined as including sale of 50% or more of the stock of a corporation or a change in a general partner of a partnership which owns the property subject to the permit.

As a result of that regulatory artifact, Brookfield was required to apply to transfer some of the MWDCA permits (the DEP determined that other projects with MWDCA licenses did not have to be transferred under Chapter 450 because only the parent entities of those permittees were being acquired, not the entities themselves). The Department, after much internal deliberation, determined that, under these circumstances, the transfer would be from the permitted entity back to the *very same permitted entity*. Thus, after investment of considerable time and resources by both the Department and applicant, the permits were duly "transferred" from the permittee to itself, although nothing about the operation of the facilities in question had

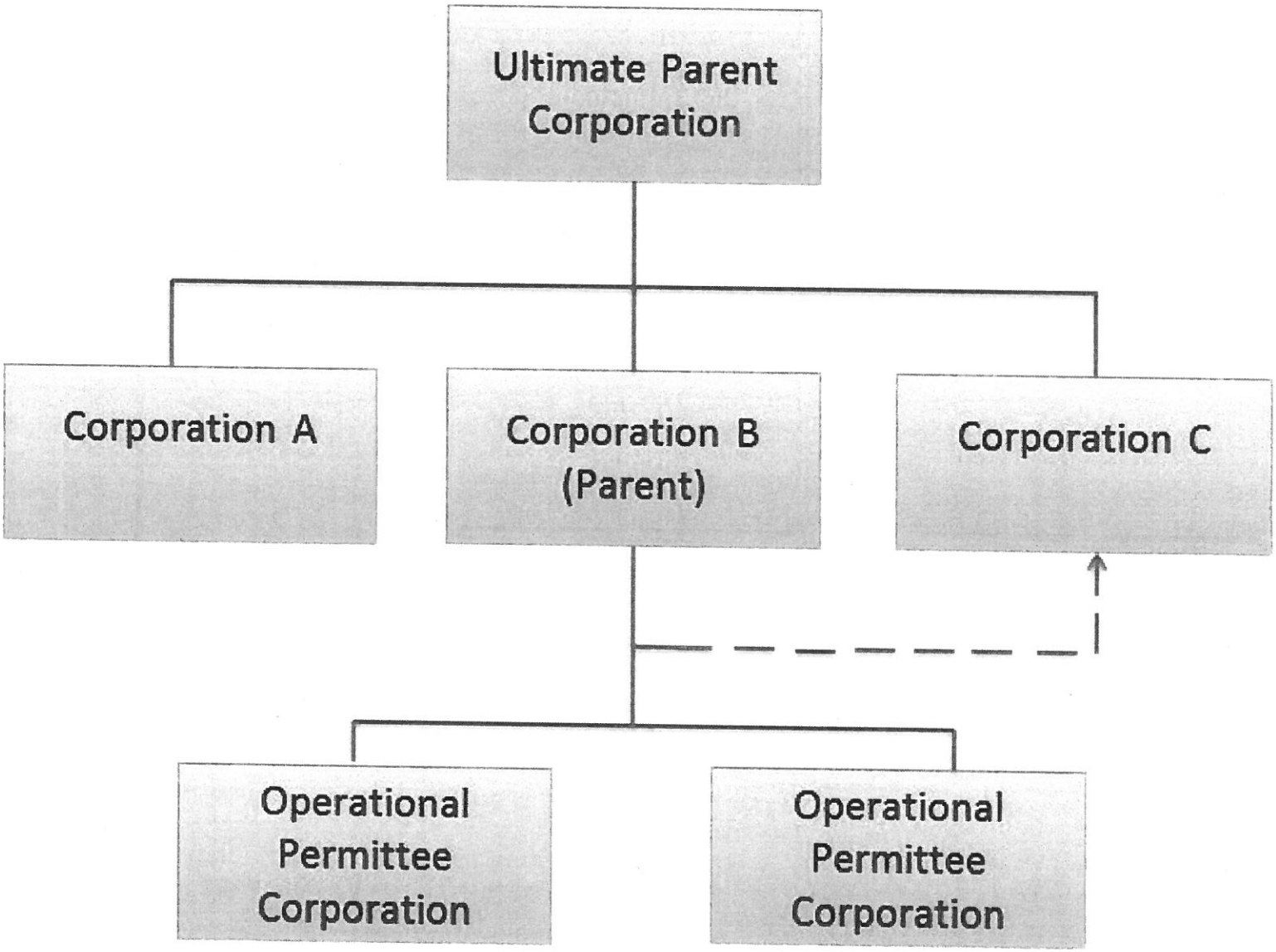
changed, the same personnel (possessing the same technical capacity) managed the operations of the projects, and the same entity demonstrated the same financial capability to operate the projects.

There is nothing be gained by such an exercise. Rather, it serves an excellent example of why the Chapter 2 rules were amended to remove such trigger points in the first place (and then further clarified to eliminate all doubt) – *i.e.,* to ensure that the permit transfer process is reserved for appropriate circumstances where the permitted entity is actually changing. Instead of rewinding the clock, the Department should retain the existing definition of "transfer of ownership" in Chapter 2. (If anything, the Department should consider amending the definition of "transfer" in Chapter 450 to avoid pointless transfers of MWDCA permits in the future.)

Returning to the context of Chapter 2, it is not known how the Department would handle a stock sale or the purchase of the membership interests of a limited liability company if the "transfer of ownership" provisions are revised as proposed. Would the DEP require the transfer to be between the permitted entity and itself, as it recently did when requiring Brookfield to transfer hydropower permits from and to the same corporation? What if two related parent companies (themselves subsidiaries) are transferring a licensed entity from one parent to the other? Would these two parent companies then become the transferor and transferee? Would the parent-transferee then be required to demonstrate financial and technical capacity, even though it is the subsidiary entity that will continue to operate the facility? At minimum, these issues raised by the current proposed amendments should be clarified before the Department proceeds any further.

As it stands, the proposed amendment to the definition of "Transfer of Ownership" under Chapter 2 will trigger numerous unnecessary permit transfers without any apparent environmental benefit, but at significant cost in terms of time and effort to both the DEP and to the applicant. Moreover, it will unduly complicate and burden transactions that are designed to bring additional capital to and investment in the Maine economy.

To the extent the Department is concerned that the operations of a permittee may change and that such changes will result in adverse environmental impacts, it has the ability at any time to enforce the requirements of such permittee's license as an ongoing compliance matter, including the requirement to operate within the terms of a given license and to maintain the necessary financial and technical capacity to do so. It is simply not necessary to amend the transfer of ownership provisions of Chapter 2 to accomplish this goal.


Ultimate Parent Corporation
Corporation A
Corporation B (Parent)
Corporation C
Operational Permittee Corporation
Operational Permittee Corporation

PretiFlaherty

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David B. Van Slyke
dvanslyke@preti.com
Direct Dial: 207.791.3221

June 1, 2015

BY ELECTRONIC AND U.S. MAIL

Mr. Jeffrey Crawford
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

Re: Proposed Rule No. 2015-P029 – Maine DEP Rules Chapter 2

Dear Mr. Crawford:

Thank you for the opportunity to submit these comments to the Maine Department of Environmental Protection ("DEP" or "Department") on the above-referenced proposed rule.

The changes being proposed to DEP Rules Chapter 2, Sections 1(R) and 21(C), 06-096 CMR 2.1(R) and 21(C), related to the transfer of environmental permits/licenses, constitute a troublesome and unnecessary burden on modern corporate business dealings – including both corporate restructurings and corporate acquisitions.

The needless license transfers that will occur as a result of the proposed amendments will significantly delay and increase the administrative costs of what would otherwise be routine corporate transactions. The proposed amendments to Chapter 2 would return Maine to the unwieldy and frequent permit transfer processes that were rightly rejected by the Maine legislature in the 1990's. The current proposed amendment sends the wrong message to companies that want to invest in Maine.

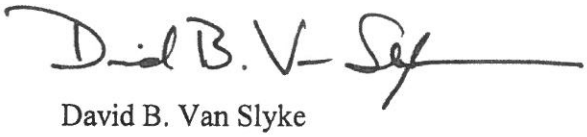
The proposed amendment of Section 21(C), specifically related to waste facilities, would trigger a permit transfer process resulting from "*any* change in ownership" of the facility in question. This provision reaches far too broadly. It appears to require a waste facility permit to be transferred if even a single share of stock or a *de minimis* percentage of a membership interest changed hands at any given time, whether in a parent of a wholly-owned permit-holding subsidiary or in a permit-holding entity itself, even though nothing else about the permit-holding entity is otherwise changing.

Waste facilities have a current and ongoing obligation to comply with existing law and regulations, including maintaining the technical ability and financial capacity to operate and to provide, as applicable, financial assurance with regard to facility closure and post-closure care. In the event a waste facility is suspected to be out of compliance, the Department possesses both

information request authority to determine compliance status and enforcement authority to demand compliance. These authorities are available at any time, whether or not a facility is part of a broader corporate restructuring, acquisition, or similar transaction.

We urge the Department to reconsider the amendments proposed in Sections 1(R) and 21(C) of DEP Rules Chapter 2. The Maine legislature determined in 1995 that the transfer process should be triggered only where the legal entity holding the permit in question is changing. In the absence of further direction from the legislature to the contrary, these provisions should be left intact.

Very truly yours,



David B. Van Slyke

DVS:jac