



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

Memorandum

To: Board of Environmental Protection
Commissioner Patricia W. Aho

From: Jeffrey S. Crawford, Office of the Commissioner

Date: August 20, 2015

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

BACKGROUND:

Chapter 2 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 licensing 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.

Since Chapter 2 specifies procedural rules for both the Board and Commissioner, this is a joint rulemaking proceeding before the Board and the Commissioner.

DISCUSSION:

On February 5, 2015, the Board and the Department posted proposed amendments to Chapter 2 for a 30-day written public comment period ending on March 20, 2015. The proposed amendments allow the submission of electronic signatures in a form acceptable to the Department, and eliminate the requirement to submit an original paper document within five working days of an electronic submission. The proposal also amends the permit by rule provisions of Chapter 2 to provide for a 14 calendar day review period, which is consistent with the Department's Chapter 305 Natural Resources Protection Act- Permit by Rule Standards.

After posting this proposal to public comment, the Department subsequently identified additional changes to Chapter 2 intended to revise the transfer of ownership provisions in sections 1(R) and

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21(C)(2) of the rule to allow for a more complete assessment of both the financial and technical capacity of a prospective licensee before any license for a hazardous waste facility, solid waste disposal facility, waste oil facility, and biomedical waste facility license is transferred. The Department provided an additional written comment period on the proposed transfer of ownership provisions, and subsequently held a public hearing on May 21, 2015.

The Department received comments and/or testimony on this proposal from 12 interested parties; with these comments falling within the following categories:

- **General Comments.** Several commenters requested that the Department hold a public hearing on the proposed amendments to Chapter 2. As noted above, the Department subsequently held a public hearing in response to this request.
- **Comments on Permit by Rule Review Period.** Two commenters expressed concerns that a 14 calendar day review period for permit by rule projects would hamper DEP staff's ability to ensure that permit by rule projects do not damage Maine's environment. As noted in the Basis Statement, the Department's experience in administering Chapter 305 Natural Resources Protection Act- Permit by Rule Standards has demonstrated that a 14 calendar day review period is adequate to thoroughly review a permit by rule application for compliance with the relevant performance standards, and to ensure that Maine's environment is protected. No changes were made to the proposal as a result of this comment.
- **Comments on the Transfer of Ownership Proposals.** A number of commenters expressed concerns regarding the proposed changes to the definition of "transfer of ownership" and the transfer requirements for hazardous waste and other disposal facilities¹. These commenters stated that the proposed amendments would place a heavy and unnecessary burden on the regulated community since most common corporate transactions do not affect the operation or oversight of a licensed entity. Commenters were particularly concerned with the proposed changes to the "transfer of ownership" definition, noting that the proposal could have significant impacts on both the Department and the regulated community.

Given the scope and significance of the comments received on the transfer of ownership proposals, the Department is withdrawing these portions of the proposal from consideration at this time, and intends on proposing amendments to these provisions in a future rulemaking.

REQUESTED ACTION:

The Department is requesting the Board and the Commissioner adopt the proposed amendments allowing the submission of electronic signatures in a form acceptable to the Department, and providing a 14 calendar day review period for permit by rule applications.