

Proposed Amendments to  
Site Location of Development Act Regulations Chapters 373, 375 and 380

Comments Received and October 15, 2015 Public Hearing Transcript





10/26/2015

VIA Email (Mark.T.Margerum@maine.gov) and U.S. Mail  
 Mark Margerum  
 Maine Dept. of Environmental Protection  
 17 State House Station  
 28 Tyson Drive  
 Augusta, Maine 04333-0017

**RE: Proposed Amendments to Site Location of Development Act Regulations: Chapters 373, 375 and 380**

Dear Mr. Margerum:

Catalyst Paper Operations Inc, Rumford Division (CPOI) provides the following comments on amendments to Chapters 373, 375 and 380 of the Site Location of Development Act (Site Law) regulations proposed by the Maine Department of Environmental Protection (DEP). These proposed amendments were the subject of a hearing before the Board of Environmental Protection (BEP) held on October 15, 2015.

**Chapter 375:**

At the October 15, 2015 hearing, Ms. Cindy Bertocci, BEP Executive Analyst, recommended to Mark Bergeron, Director of the DEP Bureau of Land, that Section 16(A), regarding adequate provision for solid waste "disposal," be broadened to reference solid waste "management" so as to include Beneficial Use projects licensed under Chapter 418 of the Solid Waste Management Act (38 M.R.S.A., Section 1301 et seq.) rules.

CPOI believes that the extensive requirements of the rules governing Beneficial Use projects sufficiently address these concerns. Modifying Chapter 375 as proposed would create unnecessary and duplicative regulations, and result in confusion for both the regulated community and the Department. Therefore, CPOI recommends keeping the language as originally proposed by the DEP.

**Chapter 380:**

CPOI seeks to clarify that proposed Chapter 380 does not apply to the expansion of existing solid waste facilities, which are already sufficiently regulated pursuant to the Solid Waste Management Act (38 M.R.S.A. Section 1301 *et seq.*). Therefore, CPOI recommends that Section 2(A) be modified as follows:

A long term construction project that is not anticipated to be completed within ten years typically occupies large areas of land that will be developed over a significant period of time, such as large-scale mixed-use developments, airports, schools or postsecondary institutions and ski resorts. *Long term construction projects do not include solid waste facilities regulated pursuant to the Maine Solid Waste Management Rules, 06-096 Chapters 400 et seq.*

Thank you for your consideration of these comments.

Respectfully,

A handwritten signature in black ink, appearing to read "Roland M. Arsenault".

**Roland M. Arsenault** | Catalyst Paper | Environmental Engineer |

Office: 207-369-2260 | Pager: 207-580-7944 | [Roland.Arsenault@catalystpaper.com](mailto:Roland.Arsenault@catalystpaper.com)

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# Verrill Dana<sub>LLP</sub>

Attorneys at Law

JULIET T. BROWNE  
 jbrowne@verrilldana.com  
 Direct: 207-253-4608

ONE PORTLAND SQUARE  
 PORTLAND, MAINE 04112-0586  
 207-774-4000 • FAX 207-774-7499  
 www.verrilldana.com

October 26, 2015

VIA E-MAIL

Mr. Mark Margerum  
 Bureau of Land and Water Quality  
 Maine Department of Environmental Protection  
 17 State House Station  
 Augusta, ME 04333

Re: Comments on Chapters 373 and 375 Rulemaking

Dear Mark:

I am providing the following comments on the proposed changes to Chapters 373 and 375 of the Department's Site Location of Development Law ("Site Law") regulations. By way of background, I am a partner at the law firm of Verrill Dana, LLP where I Co-Chair the Environmental and Energy Practice Groups. I have represented many clients on Site Law matters over the last 20 years in Maine, including on a number of energy infrastructure projects. These comments are not submitted on behalf of any individual client, but reflect my experience on the issues that typically arise during the permitting process.

Financial Capacity Requirements; Chapter 373.2.

The Department is proposing that a developer who is self-financing a project provide copies of bank statements or other evidence that the funds have been "set aside" for the proposed development. Chapter 373.2.B(3)(b)(ii). This amounts to a de facto requirement that the funds be placed into escrow, and it is neither necessary nor practicable. For example, a large company with significant assets does not typically deposit funds for a single project into a dedicated account. Indeed, funds for a project may be drawn from a number of different resources and will change over time as a project progresses through various phases of construction and operation. A requirement that funds for the entire project be set aside at the outset of construction will unnecessarily restrict allocation of resources and capital and will strongly discourage investment in the State.<sup>1</sup>

Moreover, it is not clear why the Department is proposing this change. To the extent that the Department is concerned that a developer may not complete construction, which is typically the most capital-intensive phase of the development, it has the flexibility to require the developer to post a performance bond. See Chapter 373.2.C.(3). That tool more directly addresses the

<sup>1</sup> A similar requirement (that funds have been "dedicated" to the development costs) is reflected in Chapter 373.2.C(3), and I suggest deleting that language as well.

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potential harm to the environment that would result from a developer beginning construction and then failing to complete construction – due to lack of financial resources or potentially changed market or other circumstances that render the project less desirable.

The requirements related to self-financing also require submission of audited financial statements or evidence on why audited reports are not available. Chapter 373.2.B(3)(b). I recommend changing the word “evidence” to “explanation”. Additionally, it is not clear what additional explanation of the financial reports and/or annual report the Department is seeking in its proposed changes to that section. Finally, in that same section the proposed language suggests that the annual reports are audited, whereas I believe the Department is requesting audited financial statements, that are often just one component of an annual report.

The Department has also proposed more detailed requirements related to cost estimates to be provided in support of the financial capacity showing. Chapter 373.2.B(1). Some of that information is business sensitive including, for example, the cost of land acquisition, so the developer should have the ability to provide a cost estimate that combines the elements delineated in the proposed rule. I suggest that the breakdown include development costs, construction costs, maintenance costs and other costs, and that developers not be required to provide detailed cost estimates of the categories delineated by the Department in this section.

Somewhat inexplicably, the Department has proposed more relaxed requirements for non-profit organizations. Chapter 373.2.B(3)(d). For example, a non-profit must provide only a plan for how funds will be obtained, including projections of fundraising and status of fundraising conducted to date. It appears that non-profits may begin construction without all the necessary funds in hand for construction and operation. I suggest that all developers be provided with similar flexibility.

The Department’s proposed changes related to phased development and allowing a demonstration of financing for each phase, is a very positive and practical addition. Chapter 373.2.B(4). Allowing a developer to proceed with discrete phases of construction and then beginning the next phase only upon an updated showing of financial capacity sufficient for that next phase will send an important message to businesses that the Department will work in a practical and cooperative way to balance the need to protect the environment with the challenges of financing projects in a difficult economic climate. For clarity, I suggest adding the following to the last sentence of this section: “for that phase.”

#### Technical Capacity Requirements; Chapter 373.3.

The Department’s proposed changes to the description of personnel are impracticable. Chapter 373.3.B(2). Specifically, the personnel who are responsible for operating and maintaining the development are not likely to be identified until after construction is complete, in which case it is not possible to provide the information at the application stage, which may be two to three years before a project is complete.

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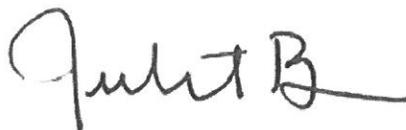
Sound Rules for Wind Energy Developments; Chapter 375.10.I.

The sound rules for wind energy developments were adopted to address the unique aspects of wind turbine sound. The applicability language of that section does not state whether the wind turbine sound rules apply to the entirety of the wind energy development, or just the wind turbine sound, which has created some ambiguity and potentially unintended consequences. Accordingly, I suggest the following language be added to clarify that the sound rules for wind energy developments apply only to wind turbine sound and not to other more typical aspects of such developments:

“This subsection applies to sound generated from wind turbines that are part of grid-scale wind energy developments as defined by 35-A M.R.S.A. § 3451(6) and small-scale wind energy developments governed by 35-A M.R.S.A. §3456, hereinafter referred to as “wind energy developments.” The provisions in Section 10(C)(1), 10(D)(2), 10(F), and 10(H) of this Rule do not apply to sound generated from wind turbines that are part of wind energy developments.”

Thank you for consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Juliet B", with a long horizontal flourish extending to the right.

Juliet T. Browne

JTB/prf

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