

## Excerpts from Relevant Statutes and Rules

### Excerpts from 38 M.R.S. Article 3-A. Dam Registration and Abandonment, Subarticle 4. Water Levels

#### **38 M.R.S. § 840 Establishment of Water Levels**

**1. Power.** The commissioner may on the commissioner's own motion and shall, at the request of the owner, lessee or person in control of a dam, the Commissioner of Inland Fisheries and Wildlife or the Commissioner of Marine Resources, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors or from a water utility having the right to withdraw water from the body of water for which the water level regime is sought, conduct an adjudicatory hearing for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water impounded by any dam that is not:

A. Operating with a license or exemption issued by the Federal Energy Regulatory Commission or determined by the Federal Energy Regulatory Commission to be subject to the jurisdiction of that commission; [1995, c. 630, §2 (AMD).]

B. [1995, c. 630, §2 (RP).]

C. [1995, c. 630, §2 (RP).]

D. Operating with a permit setting water levels issued under the protection of natural resources laws, sections 480-A to 480-S; the site location of development laws, sections 481 to 489-E; the small hydroelectric generating facilities laws, sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; or any other statute regulating the construction or operation of dams; [2011, c. 653, §25 (AMD); 2011, c. 653, §33 (AFF).]

E. A dam regulated by one or more municipalities by ordinance or interlocal agreement pursuant to Title 30-A, chapter 187, subchapter VI; or [1995, c. 630, §2 (AMD).]

F. Regulated by the International Joint Commission. [1995, c. 630, §2 (NEW).]

Notwithstanding the provisions of this subsection, after an order establishing a water level regime or minimum flow requirement has been issued pursuant to this section or former Title 12, section 304, the commissioner is not required to hold a hearing to establish a new water level regime or minimum flow requirement for the same body of water in response to a petition from littoral or riparian proprietors unless the commissioner determines that there has been a substantial change in conditions or other circumstances materially affecting the impact of water levels and minimum flows on the public and private resources identified in subsection 4 since the order was issued.

**5. Order.** Based on the evidence solicited at the hearing, the commissioner shall make written findings and issue an order to the owner, lessee or person in control of the dam establishing a water level regime for the body of water impounded by the dam and, if applicable, minimum flow requirements for the dam. The order must, insofar as practical, require the maintenance of a stable water level, but must include provision for variations in water level to permit sufficient drawdown of the body to accommodate precipitation and runoff of surface waters, minimum flow requirements and to otherwise permit seasonal and other necessary fluctuations in the water level of the body of water in order to protect public health, safety and welfare and the public and private resources identified in subsection 4. The commissioner shall deliver a copy of the order to the

owner, lessee or person in control of the dam, the municipal officers of any municipality in which the dam or the body of water it impounds is located and each petitioner, if any, and shall file a copy of the order in the registry of deeds in the county where the dam is located.

### **38 M.R.S. § 841 Maintenance of Dams**

**1. Prohibition.** After issuance of an order under section 840, subsection 5, establishing a water level regime for any body of water, no owner, lessee or person in control of any dam impounding the body of water, nor any subsequent transferee, may operate or maintain the dam or cause or permit the dam to be operated or maintained in any manner that will cause the level of water to be higher or lower than that permitted by order of the board or commissioner or to otherwise violate the terms of the order of the board or commissioner.

### **Excerpt from Maine Administrative Procedure Act**

#### **5 M.R.S. § 8002(5):**

**5. License.** "License" includes the whole or any part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law which represents an exercise of the state's regulatory or police powers.

### **Excerpts from Chapter 2 Rule Concerning the Processing of Applications and Other Administrative Matters**

**Chapter 2 § 1(L).** "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.

**Chapter 2 § 21(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 and 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...
- (3) A license pertaining to the occupational activities of persons...
- (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.

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