

Maine Department of Environmental Protection
Chapter 2 Rulemaking – Attachment A to December 7, 2023, Staff Memorandum
December 7, 2023

Summary of notable proposed amendments to Chapter 2, *Processing of Applications and Other Administrative Matters*, to post for public comment and hearing.

Rule Title

- Shorten the rule title from *Rule Concerning the Processing of Applications and Other Administrative Matters* to *Processing of Applications and Other Administrative Matters*

Section 1 – Definitions

- Revise the term “abutter” based on proposed changes to the notice requirements
- Add new definitions for “administrative consent agreement,” “appeal,” “application processing period,” “condition compliance application,” “project,” and “respondent”; clarify other definitions

Section 2 – Scope of Rule

- Add condition compliance applications to list of exceptions

Section 3 – Filing of Forms and Submissions

- Add new signatory requirements for electronic submissions

Section 4 – Advisory Rulings

- Expand processing time for advisory rulings from 60 to 90 days
- Clarify that staff opinions are not appealable to Board
- Clarify that the Department may decline to provide an advisory ruling when the person submitting the request does not demonstrate that it has title, right, or interest or the written consent of the property owner to obtain the ruling for the property that is the subject of the request

Section 7 – Hearings

- General clarifications

Section 8 – Pre-Application and Pre-submission Meetings on Applications

- Extend pre-app meeting scheduling from 30 days to 60 days from receipt of request
- Extend pre-submission meeting scheduling from 20 days to 45 days from receipt of request
- Add mining permits to list of those requiring pre-app meeting
- Clarify that a DEP waiver from pre-app/pre/submission meetings must be in writing

Section 9 – Pre-Application and Pre-Submission Meetings on Applications

- Add mining permit applications to the type of applications requiring a pre-application meeting

Section 10 – Application Requirements

- Add authority/support for the electronic filing of certain applications
- Add authority/support to reject an application filed out of sequence when multiple permit types are required for a project
- Clarify intent and purpose of TRI
- Clarify that an applicant must maintain sufficient TRI throughout the application processing period

Section 12 – Public Informational Meeting

- Eliminate requirement to send notice of public informational meeting by certified mail
- Provide that an applicant may satisfy the public meeting requirements by holding a public informational meeting before a local permitting authority, such as a planning board or city council, having jurisdiction over the application.
- Clarify that a DEP waiver from public informational meetings must be in writing

Section 13 – Notice of Applications

- Revise notice of the filing of an application to all persons owning land within 1,000 feet of the land on which the project is proposed
- Revise mailing type from certified mail to regular U.S. mail
- Establish that failure to submit with the application evidence that notice was properly made may result in the application being returned as incomplete for processing
- Clarify notice requirements regarding public comment on applications
- Clarify exceptions from notice requirements; add Storm Water PBR and NRPA Tier 1 applications as exceptions

Section 16 – Board Assumption of Jurisdiction Over an Application

- Add clarifying procedural details

Section 17 – Draft License Decisions

- Add provision that the Commissioner may waive the 5-day draft license requirement for those activities which require a federal permit or license when those provisions are inconsistent with federal law or rule

Section 18 – Decisions

- Revise PBR processing from 14 to 20 days consistent with statute
- Add Site Law PBR and 90-day processing time
- Specify that Commissioner’s report of application decisions to BEP does not include permit by rule notifications, waste transporter applications, and occupational license applications

Section 20 – License Renewals, Amendments and Transfers

- Revise transfer application deadline from 14 days to 60 days for most application types, exceptions apply; provide authority for DEP to expand the transfer application filing deadline for good cause
- Clarify applicability of the statutory requirement that a prospective transferee for a waste discharge license must abide by all terms and conditions of the license it seeks to transfer and is jointly and severally liable with the current licensee for any violation of the terms and conditions of that license during the pendency of the license transfer application

Section 21 – Petition to Clarify or Correct Clerical Errors or Omissions

- Revises who may petition for a license correction from any person to the licensee; clarify that a corrected license is not final agency action

Section 22 –Petition for Recission or Surrender of License

- Add recission, pursuant to 38 M.R.S. §§ 420-D(14) and 489-C

Section 23 – Appeal to the Board of Commissioner License Decisions

- Clarify the types of licensing decisions that are appealable
- Revise authority of Chair to dismiss an appeal for lack of standing based on information provided in the appeal, and not only in response to a motion by the licensee
- Add requirement to sign an appeal and establish new BEP email address Clerk.BEP@maine.gov for use with electronic filings
- Allow appeals to be filed by email
- Clarify roles of various persons in an appeal proceeding
- Revise filing deadline for response to an appeal when no supplemental evidence is offer by the appellant from 45 days to 30 days
- Expand Chair ruling on supp evidence from 10 days to 30 days; clarifies that rulings on supp evidence are not appealable to full Board
- Add authority for Chair to expand procedural deadlines for good cause
- Clarify that citations to legal materials such as public laws, statutes, and legislative history are generally allowed and may be considered by the Board regardless of whether they are included in the record for the appeal
- Eliminate 6-month maximum for alternative dispute resolution (ADR) and instead allows ADR process to continue as long as progress is demonstrated
- Provide authority for Chair to add additional procedural steps in considering an appeal
- Add new section on Chair authority like that for a hearing presiding officer
- Add new sections for dismissal of appeal and requests for reconsideration; clarify procedure for requesting a stay of a license under appeal
- Add provision allowing a rebuttal from staff
- Add allowance for the use of visual aids when approved by Chair
- Add section regarding judicial remands to Board

Section 24 – Appeals to the Board of Insurance Claims-Related Decisions of the Commissioner and the State Fire Marshal

- Add new procedure for appeals to the Board of insurance claims-related decisions of the Commissioner and the State Fire Marshal, pursuant to L.D. 74, *An Act to Update the Responsibilities of the Clean-up and Response Fund Review Board*; 38 M.R.S. §§ 341-D(1-D); and 38 MRS § 568-A(6)(C)

Section 26 – Modification of License or Order Prescribing Corrective Action

- Eliminates 30-day requirement for the Board to hold a hearing on a Title 38, sec. 341-D(3) license modification to “as expeditiously as possible”

Section 27 – Criteria for Revocation, Suspension, Modification or Corrective Action

- Add authority for waste discharge license modification pursuant to 38 M.R.S. § 414-A(5)(B)(1) through (7)

Section 28 – Judicial Review of a Department Decision

- Add provision allowing the tolling of deadlines pursuant to a new law, 38 M.R.S. § 346(5); L.D. 219, *An Act Regarding Appeals of License or Permit Decisions of the Commissioner of Environmental Protection*

Section 29 – Administrative Consent Agreements

- Add new section governing administrative consent agreements proceedings