



# BEP INFORMATION SHEET

## **Purpose / Board of Environmental Protection**

Date: March 2013 Contact: (207) 287-2811 or 287-2452

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### **Purpose**

The Board of Environmental Protection is a citizen board created by the Legislature. As set forth in statute, the purpose of the Board is to provide informed, independent and timely decisions on the interpretation, administration, and enforcement of the laws relating to environmental protection and to provide for credible, fair, and responsible public participation in Department decisions. The Board fulfills its purpose through major substantive rulemaking, decisions on selected permit applications, decisions on appeals of the Commissioner's licensing and enforcement actions, and recommending changes in the law to the Legislature [see 38 M.R.S. § 341-B].

Statute directs the Board to exercise independent judgment on the matters before it. The Board is not bound by the views of others or, in the case of an appeal, by the Commissioner's decision.

### **Member Qualifications and Requirements**

The Board consists of 7 members who are nominated by the Governor and confirmed by the Legislature. Members of the Board are chosen to represent a broad range of interests and experience. At least 3 members must have technical or scientific backgrounds in environmental issues and no more than 4 members may reside in the same Congressional district. Members are appointed for staggered four-year terms, and no member may serve more than two consecutive four-year terms. The Chair is appointed by the Governor [38 M.R.S. § 341-C]. Board members are not employed by the State; rather, they volunteer their time and expertise to serve the State in this capacity. For information on current members please visit the Board's webpage at: [www.maine.gov/dep/bep/bepbio.html](http://www.maine.gov/dep/bep/bepbio.html)

### **Operation**

The Board is staffed by an Executive Analyst and an Administrative Assistant, and is assisted by the professional staff of the Department of Environmental Protection and the Office of the Attorney General.

The Board conducts regular meetings in Augusta on the first and third Thursdays of each month, but the schedule may expand or contract depending on the workload. Public hearings on applications of significant public interest are scheduled separately and in a location near the site of the proposed project.

Four members of the Board constitute a quorum. A quorum is required to open a meeting and for a vote of the Board [38 MRS § 341-E]. Minutes of Board meetings are posted on the Board's webpage at: [www.maine.gov/dep/bep](http://www.maine.gov/dep/bep).

## **Board / Duties and Responsibilities**

The board is charged with the following duties and responsibilities.

### A. Rule-making

Under provisions of 38 M.R.S. § 341-H, the Board has the authority to adopt, amend or repeal those rules of the Department of Environmental Protection designated as major substantive pursuant to Title 5, chapter 375, subchapter 2-A of the Maine Administrative Procedure Act. The Board also has authority to adopt, amend or repeal those routine technical rules governing the conduct of the Board's business, including rules governing the processing of applications, the conduct of hearings, and other administrative matters. All other rules of the Department are adopted by the Commissioner. Proposed rules can be found on the Department's webpage at: [www1.maine.gov/dep/rules/index.html](http://www1.maine.gov/dep/rules/index.html)

### B. Appeal of a Licensing Decision

Final license decisions of the Commissioner may be appealed to the Board. Under provisions of 38 M.R.S. § 341-D(4), the Board "shall review, may hold a hearing at its discretion on and may affirm, amend, reverse or remand" any of the following:

- Final license or permit decisions made by the Commissioner when a person aggrieved by a decision of the Commissioner appeals that decision to the Board within 30 days of the filing of the decision with the Board staff.
- License decisions appealed to the Board under another law.

The Board's decision may be appealed to Maine's Superior Court [38 M.R.S. § 346(1)], except that a decision regarding an expedited wind energy development may be appealed directly to the Maine Supreme Judicial Court sitting as the law court [38 M.R.S. § 346(4)].

### C. Permit and License Applications

State law requires that certain license applications be decided by the Board; however, the majority of license applications are processed at the staff level and decided by the Commissioner or the Commissioner's designee. The statutory criteria for Board jurisdiction are set forth in 38 M.R.S. § 341-D(2):

"The Board shall decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance. A project of statewide significance is a project that meets at least 3 of the following 4 criteria:

- Will have an environmental or economic impact in more than one municipality, territory or county;
- Involves an activity not previously permitted or licensed in the State;
- Is unlikely to come under significant public scrutiny; and
- Is located in more than one municipality, territory or county. "

The Board may not assume jurisdiction over an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4; for a certification for a small-scale wind

energy development pursuant to Title 35-A, section 3456; for a general permit for an offshore wind energy demonstration project pursuant to section Title 38, section 480-HH; or a general permit for a tidal energy demonstration project pursuant to Title 38, section 636-A.

D. License Modification or Corrective Action

At the request of the Commissioner and after written notice and opportunity for hearing, the Board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, whenever the Board finds that the following criteria have been met:

- The licensee has violated any condition of the license;
- The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;
- The licensed discharge or activity poses a threat to human health or the environment;
- The license fails to include any standard or limitation legally required on the date of issuance;
- There has been a change in any condition or circumstance that requires a corrective action or a temporary or permanent modification of the terms of the license;
- The licensee has violated any law administered by the Department; or
- The licensee fails to include any standard or limitation required pursuant to the Federal Clean Air Act Amendments of 1990. [38 M.R.S. §341-D(3) and §342(11-B)].

E. Enforcement

Under provisions of 38 M.R.S. § 341-D(6), the Board hears appeals of emergency orders issued by the Commissioner pursuant to 38 M.R.S. § 347-A(3).

F. Reports to the Legislature

Under provisions of 38 M.R.S. § 341-D(7), the Board has a statutory responsibility to report periodically to the Legislature.

"The Board shall report to the joint standing committee of the Legislature having jurisdiction over natural resource matters by January 15th of the first regular session of each Legislature on the effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the Board."

These reports summarize the matters which have come before the Board since the prior report and present issues for consideration by the Legislature as it considers changes to law. Recent reports to the Legislature can be found at: [www.maine.gov/dep/bep/legislative-reports.html](http://www.maine.gov/dep/bep/legislative-reports.html)

**For more information:** Visit the Board's web page at: [www.maine.gov/dep/bep](http://www.maine.gov/dep/bep).