

CHAPTER 1: REGULATIONS FOR THE PROCESSING OF APPLICATIONS

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1. Scope of Regulations

These regulations shall be applicable to processing of all applications made to the Board of Environmental Protection (hereinafter called “the Board”) or the Commissioner for new, renewed, amended or transferred licenses, permits, certificates, approvals, variances or other determinations on specific matters including but not limited to:

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- R. Ambient air quality or emissions standards variances (38 MRSA Section 587);
- S. Air emission licenses (38 MRSA Section 590);
- T. Low sulfur fuel emergency variance (38 MRSA Section 603-A);

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3. Delegation

Nothing in these regulations shall prohibit the Board, where appropriate, from delegating authority to the Commissioner. Nor shall anything in these regulations prohibit the Commissioner, where appropriate from delegating authority to the staff.

NOTE: 38 MRSA Section 344 provides delegation as follows: Authority is delegated to the Commissioner of Environmental Protection and the department staff to approve, approve with conditions or disapprove the following categories of applications:

- A. Applications under section 590 pertaining to air emissions licenses for all petroleum storage facilities, for incinerators or boilers with capacities of less than 250,000,000

British Thermal Units per hour, or which do not result in a net increase in emissions at any industrial or commercial facility, and for all general process sources.

B. Applications for permit or license renewals where the permittee or licensee has operated in substantial compliance with the most recent permit or license and where the proposed pollution control equipment is substantially unchanged from that previously permitted or licensed and where applicable laws or rules on which the permit or license would be considered have not changed since the last permit or license was issued.

4. Application Requirements

A. Forms. Application forms shall be promulgated by the Department and shall require such information as the Commissioner deems necessary or desirable in order to obtain information relevant to the appropriate license, permit or certificate.

B. Acceptance of Application. The Commissioner shall within 10 working days of receipt of an application notify the applicant of the date the application was accepted by the Department or return it specifying in writing the reasons for returning the application.

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5. Public Notice of Application

A. The Department shall cause to be given public notice of an application, inviting written comment on the application and offering an opportunity to request a public hearing. Such notice shall include the following information:

1. Name, and address of the applicant;
2. Title and legal citation of the statutes under which the application is being processed;
3. Location of the activity;
4. Summary of the activity;
5. Telephone number and mailing address of the Division Director responsible for processing the application and to which inquiries and written comments should be directed.

B. Except for applications for out-of-state hazardous waste transporter licenses where the applicant will not be located within the State of Maine, a copy of the application, its supporting documents and amendments to an application shall be filed with the appropriate

town clerk, city clerk or if the project is in an unorganized area, with the appropriate
plantation clerk or county clerk. * * * * *

6. Public Access to Information

A. Except as expressly made confidential by law; the commissioner shall make all documents available to the public for inspection and copying including the following:

1. All applications or other forms and documents submitted in support of any license application:
2. All correspondence, into or out of the Department, and any attachments thereto:
3. Written comments received from any source regarding any application for a license;
4. The transcripts of all hearings and the official, approved minutes of all Board meetings; and
5. All draft or final licenses, orders, permits or other determinations.

B. The Commissioner shall keep confidential only those documents which may remain confidential pursuant to 1 MRSA Section 402. * * * * *

C. The Commissioner shall provide facilities for the inspection of information and shall insure that Department employees honor requests for such inspections promptly without undue requirements or restrictions. Persons wishing to copy papers and documents shall make the necessary arrangements with the Commissioner.

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7. Hearings

A. The Commissioner shall provide an opportunity for the applicant, or any interested agency, person or group of persons, to request a public hearing with respect to any application. Any such request for a public hearing shall indicate the interest of the party filing such request and specify the reasons why a hearing is warranted.

B. Hearings on applications are generally discretionary; however, Maine law requires that hearings be held, or opportunity for hearings provided, with regard to * * * * *

3. Granting of a variance from air emission licenses (38 MRSA Section 587);

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C. A hearing shall be held, or an opportunity for a hearing shall be provided, prior to any revocation, suspension or amendment made during the term of any license or permit.

D. The commissioner may conduct a hearing for any application or petition prior to the issuance of a draft permit, license or order. The board may conduct a hearing at any time for any application under consideration by the Board. Hearings shall be conducted pursuant to the Regulations for Hearings on Applications (Chapter 20 of the Department of Environmental Protection Rules), except that, where the Board or Commissioner determines that the subject matter of the application is of significant public interest, the hearing shall be conducted pursuant to the Special Regulations for Hearings on Applications of Significant Public Interest (Chapter 30 of the Department of Environmental Protection Rules).

14. Decisions

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B. For those applications delegated to the Commissioner under the authority of 38 MRSA Section 344, sub-section 2, the Commissioner shall, within 60 working days after the application is deemed acceptable for processing:

1. Approve the application, without conditions other than standard conditions approved by the Board, and set forth, in writing, findings that the applicant has met each of the criteria of the appropriate statute;
2. Approve the application, subject to conditions not specifically required by the Board, as a pre-condition for approval and set forth, in writing, findings with a sufficient explanation to make interested persons aware of the basis of the approval;
3. Deny the application and set forth, in writing, findings with a sufficient explanation to make interested persons aware of the basis for disapproval; or
4. Schedule a hearing on the application.

C. For those applications acted upon by the Board, the Board shall, within 105 working days after the application is deemed acceptable for processing:

1. Approve the application, without conditions other than standard conditions approved by the Board, and set forth, in writing, findings that the applicant has met each of the criteria of the appropriate statute;
2. Approve the application, subject to conditions not specifically required by the Board, as a pre-condition for approval and set forth, in writing, findings with a sufficient explanation to make interested persons aware of the basis of the approval;
3. Deny the application and set forth, in writing, its findings with a sufficient explanation to make interested persons aware of the basis for disapproval;
4. Schedule a hearing on the application; or
5. Waive the 105 working day time limit requirement.

Should the Board be evenly divided as to whether to approve or deny the application, such a vote shall have the effect of denying the application.

D. The municipality within which an activity is located for which a license or permit is applied for shall be notified of any decision regarding an application.

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12. Burden of Proof

An applicant for a new, renewed or transferred license or permit shall have the burden of proof and the burden of going forward unless otherwise provided by law or regulation. The “burden of proof” shall be defined as the burden of presenting sufficient evidence for the Board or Commissioner to make the affirmative findings required by law or regulation regarding matters about which no questions are raised and the burden of presenting a preponderance of the evidence regarding matters about which a question is raised.

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14. Availability of Draft Orders, Licenses and Permits

A. All draft orders, licenses and permits issued by the Commissioner shall be made available at the Augusta Office of the Department to any person at least 5 working days prior to the Commissioner taking final action on the application. At least 7 working days prior to the

Commissioner action on any application, a notice indicating when the Commissioner will act on the application and that a draft order, license or permit is available at the Augusta office of the Department shall be mailed to the applicant and any other person who has notified the Commissioner or the appropriate Division Director of his/her interest in the application.

B. All draft orders, licenses and permits issued by the Board shall be made available at the Augusta office of the Department to any person at least 15 working days prior to the Board taking final action on the application. At least 17 working days prior to the Board action a notice indicating when the Board will act on the application and that a draft order, license or permit is available at the Augusta office of the Department shall be mailed to the applicant and any other person who has notified the Commissioner or the appropriate Division Director of his/her interest in the application.

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AUTHORITY: 38 MRSA Sections 343 and 344

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