Chapter 534: WASTEWATER TREATMENT PLANT OPERATOR CERTIFICATIONS - REVOCATION OR SUSPENSION

SUMMARY: The Maine Department of Environmental Protection (Department) may revoke or suspend wastewater treatment plant operator certifications pursuant to Maine’s *Wastewater* *Treatment Plant Operators* law, 32 M.R.S. § 4175-A and the Department’s *Wastewater Treatment Plant Operator Certification,* 06-096 C.M.R. ch. 531*.* This rule provides the procedure for the Commissioner’s consideration of revoking or suspending a wastewater treatment plant operator certification through notice and opportunity for a hearing pursuant to the *Maine Administrative Procedure Act (MAPA)*, 5 M.R.S. §§ 8001-11008.

1. **Applicability.** Notwithstanding other procedural rules of the Department, this rule governs the process for consideration of revocation or suspension of wastewater treatment plant operator certifications under 32 M.R.S. § 4175-A, 06-096 C.M.R. ch. 531, and other applicable rules or statutes.
2. **Definitions.** For the purposes of this Chapter, the following words and phrases have the following meanings:
3. **Board.** “Board” means the Board of Environmental Protection, an independent citizen board that is part of the Department and that, among its duties, decides selected applications and considers appeals of Commissioner license decisions.
4. **Certificate** or **Certification.** “Certificate” or “certification” means a certificate of competency issued by the Department to a person certifying that the applicant has met the requirements for the specified operator classification pursuant to 06-096 C.M.R. ch. 531.

1. **Commissioner.** “Commissioner” means the Commissioner of the Department of Environmental Protection or their designee.
2. **Conference.** “Conference” means a pre-hearing, mid-hearing, or post-hearing meeting scheduled by the Presiding Officer at which the Presiding Officer and the parties discuss matters pertaining to the adjudicatory proceeding.
3. **Department.** “Department” means the Department of Environmental Protection, which includes the Commissioner and the Board.
4. **Hearing.** “Hearing” means an adjudicatory hearing conducted in accordance with the procedural requirements of 5 M.R.S. §§ 9051–9064 and this rule.
5. **Interested person.** “Interested person” means a person who requests, in writing, receipt of notices related to the hearing.
6. **Intervenor.** “Intervenor” means a person who, in accordance with the *MAPA*, 5 M.R.S. § 9054(1) or (2), and this rule, has been granted leave to participate as a party in an adjudicatory hearing.
7. **Operator.** “Operator” means a person who is certified by the Department as being competent to supervise, manage, or operate a wastewater treatment plant and to ensure that the plant is operated in accordance with state and federal laws, rules, and certifications, pursuant to 06-096 C.M.R. ch. 531.
8. **Party.** “Party” means:
   * 1. the person whose legal rights, duties, or privileges are being determined in a suspension or revocation proceeding; or
     2. an intervenor.
9. **Person.** “Person” means an individual, partnership, corporation, government entity, association, or public or private organization of any character other than the Department.
10. **Presiding Officer.** “Presiding Officer” means the individual authorized pursuant to the *MAPA* and this rule to preside over a suspension or revocation proceeding in which a hearing is to be held.
11. **Written testimony.** “Written testimony” means the sworn written testimony of a party submitted for inclusion in the record of an adjudicatory proceeding.
12. **Form, Service, and Filing of Documents.**
13. **Form of papers.** A party must print all petitions, motions, proposed findings, briefs, responses, pre-filed written testimony, and proposed orders on 8.5-inch by 11-inch paper. The upper left side of the first page must have a caption in capital letters identifying:
    * 1. the name of the Operator;
      2. the type of hearing (suspension or revocation);
      3. the Certification number issued by the Department, if applicable; and
      4. the location of the activity subject to hearing, including the county and town.

The upper right side of the first page must identify the party filing the document and the title of the document. The final page must be dated and signed by, or on behalf of, the party filing the document and include under the signature line that person’s printed name, capacity, mailing address, electronic mail address, and telephone number.

* 1. **Service list.** The Presiding Officer will maintain a service list with the contact information of the individual designated by each party to receive service of papers and communications on its behalf. Unless otherwise indicated in the first document filed by any party in a proceeding, the name and mailing address of the individual filing the first document will be used by the Department and all parties for the purposes of document service. Any subsequent change of the designated representative must be served on all parties by the party making the change.
  2. **Service on parties.** Unless the Presiding Officer provides otherwise, every document or communication filed with the Department by a party or a state, federal, municipal, or other governmental agency participating as intervenors must be served upon all parties. Service is deemed complete when a filing is delivered:
     1. by U.S. mail, or electronic mail to the party’s designated representative; or
     2. by delivery in-hand to the party’s designated representative or to the office of the party’s designated representative.
  3. **Filing with the Department.** The original of all documents, materials and other submissions must be filed with the Department by delivery to the Maine Department of Environmental Protection, Office of the Commissioner, 17 State House Station, Augusta, Maine 04333, unless otherwise specified by the Presiding Officer.

Filing with the Department is complete when the Department receives the submission by the close of business on the date due (5:00 p.m., as determined by the received time stamp on the document, telefax, or electronic mail), unless otherwise specified by the Presiding Officer, by:

* + 1. U.S. mail;
    2. in-hand delivery;
    3. telefax, only if followed by receipt of an identical original physical document within five (5) working days; or,
    4. electronic mail to the address specified by the Department for receipt of filings in the adjudicatory proceeding, with attachments supplied in a format showing a handwritten or electronic signature acceptable to the Department, only if followed by receipt of an identical original physical document within five (5) working days.

Persons filing materials with the Department are encouraged to confirm receipt by the Department to avoid inadvertently missing a deadline. Submissions not received by the Department by a prescribed deadline will be deemed untimely, absent a showing of good cause. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

* 1. **Computation of time.** As used in this rule, “days” are calendar days unless otherwise specified by the Presiding Officer. “Working days” excludes Saturdays, Sundays, State holidays and any other day State offices are closed for business. In computing any period of time prescribed or allowed by this rule, the day of the act or event that starts the period is not included. The last day of the period so computed is included unless it is not a working day or the State office location at which the filing must be made is partially or fully closed for business, in which event the period runs until the close of business (5:00 p.m.) on the next full working day. Whenever a party has the right or is required to take some action within a prescribed period of time after the service of notice or other paper upon the party and the notice or paper is provided by U.S. mail, three (3) days will be added to the prescribed period. This “3-day rule” does not affect any date-certain deadline established by the Presiding Officer.
  2. **Documents issued by the Department.** The Presiding Officer will ensure that all orders, decisions and notices of hearings issued by the Department are provided to parties and interested persons. Except for public notices, or as otherwise stated in this rule or by order of the Presiding Officer, these documents may be provided electronically.

1. **Communications with Operator.**
   1. Unless otherwise provided or waived, all notices and communications will be mailed to the last address on record with the Department.
   2. If the Department is notified by an Operator or their attorney that the Operator will be represented by the attorney in relation to the hearing, all subsequent correspondence and communication from the Department relative to the proceeding will be forwarded to the attorney.
   3. In the event an attorney no longer represents the Operator, the Operator or the attorney shall file a written statement of this fact with the Department, allowing subsequent correspondence and communication from the Department to be directed to the Operator.
   4. An Operator or their legal representative may request or agree that all further communications and notices be sent electronically and thereby waive the requirement of further notice or correspondence being sent by U.S. mail.
2. **Notice of Opportunity for Hearing.** 
   1. The notice must state the following, where applicable:
      1. The grounds or criteria under 32 M.R.S. § 4175-A or 06-096 C.M.R. ch. 531 under which the Department is seeking to suspend or revoke the Certification;
      2. The Certification that the Department seeks to suspend or revoke;
      3. The procedure for requesting a hearing;
      4. The date by which that request for hearing must be made;
      5. A copy of the Notice of Violation that predicated the notice of opportunity for hearing, where applicable; and
      6. A copy of this rule will be attached to the notice of opportunity for hearing.
   2. **Service**. Notice under this section may be served upon the Operator by U.S. mail to the last known address of the Operator, in person by Department staff, by the sheriff or deputy sheriff within the appropriate county, or other delivery method whereby delivery can be confirmed.
3. **Request for Hearing.** The Operator has fifteen days from the issuance of the notice of opportunity for hearing to request a hearing in writing.
4. **Notice of Hearing.**
   1. If the Operator requests a hearing, a notice of hearing will be issued by the Department. The notice must include:
      1. A statement of the legal authority and jurisdiction under which the proceeding is being conducted;
      2. A reference to the particular substantive statutory and rule provisions involved;
      3. A short and plain statement of the nature and purpose of the proceeding and of the matters asserted;
      4. A concise list of the facts alleged that support the nature and purpose of the proceedings and matters asserted;
      5. A statement of the time and place of the hearing; and
      6. A statement of the manner and time within which evidence and argument may be submitted to the Department for consideration.
   2. The notice shall include a copy of this rule.
   3. **Service**. Notice under this section may be served upon the Operator by U.S. mail to the last known address of the Operator, in person by Department staff, by the sheriff or deputy sheriff within the appropriate county, or other delivery method whereby delivery can be confirmed.
   4. Notice of the hearing will also be provided by U.S. mail to:
      1. The Legislators of the geographic area or areas affected by the issue;
      2. Intervenors;
      3. Persons who have made timely requests to be notified of a specific hearing; and
      4. Persons who have filed a written request, within the calendar year, to be notified of hearings.
5. **Response to Notice**.
   1. Upon receipt of a notice of hearing, the Operator must file an answer to the allegations contained in such notice not later than ten days prior to the date of hearing contained in the notice.
   2. The answer must contain:
      1. Specific admission or denial of each fact alleged in the notice, or if the Operator is without knowledge or information sufficient to form a belief as to the truth or falsity of an allegation, a statement to that effect; and
      2. A concise statement of the facts constituting all grounds for defense.
   3. Failure to answer or to respond to any factual allegations will be deemed as an admission by the Operator of such facts.
6. **Disposition Without Full Hearing.**
   1. Unless otherwise provided by law, the Department may:
      1. Make informal disposition of any suspension or revocation proceeding by stipulation or consent order;
      2. Limit the issues to be heard if the parties and the Department agree to such limitation or variation, and if no prejudice to any party will result.
7. **Informal Disposition Through Settlement Agreement and Consent Order.**
   1. At any time prior to ten days before a scheduled hearing, the Department and the Operator may agree to file with the Presiding Officer a settlement agreement, which includes a proposed order, proposing a resolution of the matters to be considered during the scheduled hearing.
   2. **Content of agreement.** Every proposed settlement agreement must contain, in addition to an appropriate proposed order, a recitation of all facts supporting the proposed order and express waivers of further procedural steps relating to the hearing and of the Operator’s right to appeal. The settlement agreement must also contain a statement that it will not become part of the official record until it is accepted by the Commissioner or designee. The proposed consent order will only be presented to the Commissioner or Presiding Officer upon agreement of both the Operator and the Department.
   3. **Disposition of proposed agreement**. Upon receiving such a proposed settlement agreement, the Commissioner or Presiding Officer may:
      1. Accept it and issue a consent order, as agreed upon;
      2. Reject it, in which case the Commissioner or designee must send a notice of rejection and notice that the hearing will be scheduled for a date, place and time certain, not less than fifteen days from the date of notice of rejection; or
      3. Take such other action as it deems appropriate.
   4. The provisions of this rule do not preclude settlement of the proceedings in any other manner.
8. **Intervenors.** 
   1. If a hearing is going to be held, persons substantially and directly affected by the proceeding may petition for intervenor status.
      1. Petition. A person who is or may be substantially and directly affected by the proceeding may file a timely petition to intervene as a party to the proceeding. All petitions must be made in writing and received by the Presiding Officer at least five days before the scheduled hearing.
      2. Information required. The petition must include:
         1. A statement of facts demonstrating that the petitioner’s interests are or may be substantially and directly affected by the proceeding or that the petitioner qualifies as an intervenor pursuant to any provision of State law; and
         2. A statement of the reasons and purposes for which intervention is sought.
      3. Responsibilities of Presiding Officer. Prior to the hearing, the Presiding Officer will issue an order granting, in full or with limitations, or denying each petition for intervention. If a petition is granted on a limited basis or denied, the order will specify any conditions and briefly state the reasons for the limitation or denial. The Presiding Officer may modify the order at any time, stating the reasons on the record.
      4. Conditions imposed on intervenors. The Presiding Officer may impose conditions on the intervenor’s participation in the proceeding, either at the time that intervention is granted or at any subsequent time. The Presiding Officer is responsible for establishing reasonable conditions on intervenors in order to limit the presentation of redundant evidence, to reasonably restrict questions and argument to relevant matters, to protect the interests of the parties, including the right to a timely decision, and to prevent avoidable delay. Such conditions may include, but are not limited to, the following:
         1. Restricting the intervenor’s participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;
         2. Limiting the intervenor’s use of cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and
         3. Requiring two or more intervenors to consolidate their presentations of evidence and argument, cross-examination, and other participation in the proceeding.
9. **Conferences.** Conferences may be held at the discretion of the Presiding Officer at any time prior to, during, or after a hearing. Members of the public may attend conferences, but participation is limited to the parties to the proceeding, except by leave of the Presiding Officer.
   1. **Purpose.** Conferences may be held for any purpose including, but not limited to, the following:
      1. Review relevant statutory and regulatory criteria and clarify or narrow issues to be addressed at the hearing;
      2. Discuss consolidation of parties;
      3. Discuss the organization of the hearing;
      4. Establish specific procedural requirements;
      5. Impose limits, if necessary, on the number of witnesses and the time allocated to each party or issue at the hearing;
      6. Obtain stipulations of fact and stipulations as to the admissibility into evidence of documents and other exhibits;
      7. Establish schedules and deadlines; and
      8. Consider such other matters that may be necessary or advisable in order to facilitate an orderly and fair hearing process and to expedite the hearing process.
   2. **Notice.** The Presiding Officer will provide reasonable notice of all conferences to the parties and any other person whom the Presiding Officer deems appropriate.
   3. **Conference procedure.** A conference is an informal meeting of the parties and the Presiding Officer. The Presiding Officer may limit participation to one representative per party.
   4. **Procedural Orders.** Any actions taken or agreements made at a conference, or any rulings of the Presiding Officer made at or following a conference, will be set forth in a procedural order or otherwise provided in writing to the parties, except that actions, agreements or rulings made at a conference which occurs during the hearing will be stated on the record.
   5. **Failure to attend.** All parties are required to attend conferences. Any party failing to attend a conference waives its right to object to matters discussed or decided at the conference unless the Presiding Officer determines that the party has demonstrated good cause for its absence.
10. **Subpoenas.** Any party may request the issuance of a subpoena in the name of the Department to require the attendance and testimony of witnesses and the production of any evidence relating to any issue of fact in the adjudicatory proceeding. Prior to requesting a subpoena, the party must exhaust all other reasonable means of procuring attendance of the witness or the information sought such as asking for voluntary attendance or submission of the information. Requests for subpoenas must be directed to the Presiding Officer for determination and action.
    1. **For documents.** The Department may issue subpoenas pursuant to 38 M.R.S. § 345-A(4) to compel the production of books, records and other data relevant to the matters in issue at a hearing. If any person served with a subpoena demonstrates to the satisfaction of the Department that the production of the information would, if made public, divulge methods or processes which are entitled to protection as trade secrets, or if the information is otherwise protected by law, the information will be disclosed only at a non-public portion of the hearing and will be confidential and not available for public inspection.
    2. **For attendance of witnesses.** The Department may issue a subpoena compelling the attendance of a witness to provide testimony relevant to the matters in issue at a hearing if it first obtains the approval of the Attorney General or of any deputy attorney general pursuant to 5 M.R.S. § 9060.
    3. **Department Staff, outside agency review staff, and Department hired consultants.** Department staff, outside agency review staff, and Department hired consultants who assist the Presiding Officer or Commissioner are not subject to subpoena.
    4. **Public records.** Prior to requesting a subpoena for public records, the party must exhaust all other means of procuring the documents, including making a request for copies of public records pursuant to 1 M.R.S. § 400–414 (the Freedom of Access Act).
    5. **Form.** Subpoenas will be in the form used by the courts of the State. Every subpoena will bear the name of the Department, the name of the issuing officer, and the name and address of the party at whose request it was issued. Each subpoena will command the person to whom it is directed to attend and give testimony or produce specified documents or things at a designated time and place. The subpoena will also advise of the procedure to vacate or modify subpoenas provided herein. Witnesses may only be subpoenaed within Maine’s territorial limits and in the same manner as witnesses in civil cases before the courts, unless another territory or manner is provided by law.
    6. **Service.** Service of a subpoena must be arranged by the requesting party and made by delivering a copy of the subpoena to the person named in it. Unless the witness will accept service by other means, a subpoena must be served by a person who is not a party to the proceeding and is not less than eighteen years of age. Fees for attendance and mileage must be served simultaneously with the subpoena and must be the same as those paid witnesses in the Superior Courts of this State and must be paid for by the party requesting the subpoena.
    7. **Return.** The person serving the subpoena must make proof of service by filing the subpoena and affidavit or acknowledgement of service with the Presiding Officer. Failure to make such proof of service does not affect the validity of the subpoena and service.
    8. **Vacating or modifying subpoena**. Any person subpoenaed to produce records or provide testimony may petition the Presiding Officer to vacate or modify a subpoena issued by the Department. The Department will give prompt notice of such a petition to the party who requested issuance of the subpoena and all other parties. The Presiding Officer may vacate or modify the subpoena when, after such investigation as the Presiding Officer considers appropriate, he or she finds that:
       1. the testimony or evidence whose production is required does not relate with reasonable directness to any matter in question in the adjudicatory proceeding;
       2. a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive;
       3. the subpoena has not been issued sufficiently in advance of the time specified for the appearance of the witness or the production of evidence;
       4. the subpoena would require the disclosure of privileged or confidential material where no waiver or exception applies; or
       5. the subpoena would require production of an un-retained expert’s opinion, including experts employed by government agencies.

The decision to grant or deny a petition to vacate or modify a subpoena will be in writing.

* 1. **Enforcement.** If any person fails or refuses to obey a subpoena, the Department may apply to any Justice of the Superior Court for an order compelling that person to comply with the subpoena. The Superior Court may issue an order and may punish failure to obey the order as civil contempt.
  2. **Costs.** The Presiding Officer may condition issuance of the subpoena upon the advancement by the party on whose behalf the subpoena was issued of the reasonable cost of producing the books, papers, records, documents, data, electronic records, or tangible things.

1. **Presiding Officer.**
   1. **Designation**. The Presiding Officer at all hearings may be either:
      1. The Commissioner;
      2. An employee or representative of the Department designated by the Commissioner; or
      3. A third party hired by the Department and designated by the Commissioner.
   2. **Substitute Presiding Officer.** Whenever a Presiding Officer is disqualified or it becomes impractical for them to continue in that capacity, another Presiding Officer may be designated by the Commissioner to continue with the hearing. If it is shown that substantial prejudice to any party will result from the substitution, the substitute officer will commence the hearing anew.
   3. **Authority.** The Presiding Officer has the authority to:
      1. Identify statutes and rules that are applicable to the proceeding;
      2. Act upon requests for subpoenas;
      3. Rule upon the admissibility of evidence;
      4. Limit the issues to be heard if the parties and the Presiding Officer agree to such limitation, or if no prejudice to any party will result;
      5. Grant or deny petitions for intervention which have not previously been ruled upon by the Commissioner or designee;
      6. Administer oaths and affirmations;
      7. Conduct conferences;
      8. Regulate the course of the proceeding, set the time and place for hearings, and fix the time for filing of pre-filed written testimony, exhibits, evidence, briefs, and other written submissions;
      9. Rule upon issues of procedure;
      10. Vary from any procedure prescribed by this rule or the *MAPA*, chapter 375, subchapter IV, if the parties and the Presiding Officer agree to such variation, or if the variance will achieve greater fairness or economy and no prejudice to any party will result; and
      11. Take such other action that is necessary for the efficient and orderly conduct of the hearing.
   4. **Ruling appeals.** Rulings made by the Presiding Officer pursuant to section 14(C)(1)-(5) are appealable to the Commissioner or designee in proceedings in which the Commissioner is not the Presiding Officer. Unless determined necessary by the Presiding Officer, the course of a proceeding is not stayed by an appeal of a Presiding Officer’s ruling. An appeal of the Presiding Officer’s ruling is not a prerequisite to preserve a party’s objection for the purpose of judicial appeal.
2. **General Conduct of Hearings.**
   1. **Opening statement.** The Presiding Officer will open the hearing by describing in general terms the purpose of and general procedure for the hearing and by reading the notice of the alleged violation.
   2. **Issues resolved at the hearing.** The issues at the hearing will be limited to those outlined in the applicable statute, rule, order, or Certification and will be stated for the record by the Presiding Officer at the beginning of the hearing.
   3. **Hearings recorded.** All hearings will be recorded in a form susceptible to transcription. The Department will transcribe the recording upon the filing of an appeal.
   4. **Ex parte communication.** The Presiding Officer may not communicate directly or indirectly in connection with any issue of fact, law, or procedure with any party or other persons legally interested in the outcome of the proceeding, except upon notice and opportunity for all parties to participate.
      1. A Presiding Officer may:
         1. Communicate in any respect with other members of the agency or other presiding officers; or
         2. Have the aid or advice of those members of the Department staff, counsel or consultants retained by the agency who have not participated and will not participate in the proceeding in an advocate capacity.
   5. **Presentation of evidence; official notice.**
      1. Relevancy. Evidence will be admitted if it is relevant and material to the subject matter of the hearing and is of a kind upon which reasonable persons are accustomed to rely on in the conduct of serious affairs. Evidence that is irrelevant, immaterial, or unduly repetitious may be excluded. The Department’s experience, technical expertise, and specialized knowledge may be utilized in the evaluation of all evidence.
      2. Privileges**.** The rules of evidence observed by courts do not apply; however, the rules of privilege recognized by law will be observed.
      3. Officialnotice**.** Official notice may be taken of any facts of which judicial notice could be taken; of any general, technical, or scientific matters within the Department’s specialized knowledge; and of statutes, regulations, and non-confidential agency records. Parties will be notified of material so noticed and will be afforded an opportunity to contest the substance or materiality of the matters noticed. Facts officially noticed will be included and indicated as such in the record.
      4. Documentaryevidence**.** All documents, materials, and objects offered into evidence as exhibits must be uniquely numbered or otherwise identified. Documentary evidence may be received in the form of copies and excerpts if the original is not readily available. Exhibits submitted in electronic format typically must be accompanied by a paper copy of the content unless the Presiding Officer determines that a paper copy is not needed or is impractical. The Presiding Officer will prescribe the number of copies of exhibits required. Where an exhibit is not easily reproduced due to its form, size, or character, the Presiding Officer may allow copies to be provided in alternate formats.
      5. Pre**-**hearingobjections**.** Objections to evidence submitted prior to the hearing must be made within ten (10) working days of service of the evidence on the objecting party, unless otherwise specified by the Presiding Officer.
      6. Offerofproof**.** An offer of proof will be allowed in connection with an objection to any testimony, evidence, or question of a witness. Such offer of proof must consist of a summary statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness. Comment or argument by any party will be allowed on the offer of proof.
   6. **Testimony and questions.**
      1. Testimony will be received in the following order:
         1. Direct Testimony:
            1. Department staff and Consultants;
            2. Other Departmental Witnesses;
            3. Operator or Representative;
            4. Operator’s Witnesses;
            5. Intervenors, if approved to provide testimony; and
            6. Intervenors’ witnesses, if intervenors are approved to provide witnesses.
         2. CrossExaminationandadditionalquestioning. At the conclusion of the direct testimony of each witness, the questioning of witnesses will be in the following order:
            1. The Department;
            2. The Operator or Representative;
            3. Intervenors, if approved to question witnesses;
            4. The Department, Operator, or intervenors that have been approved to question witnesses may request to question a witness related to information provided during cross-examination.
   7. **Objections during hearing.** All objections to rulings made by the Presiding Officer during the course of the hearing regarding evidence or procedure and the grounds therefore must be timely made during the course of the hearing. Only objections made to Presiding Officer rulings pursuant to their authority in section 14(C)(1)-(5) are appealable to the Commissioner.
   8. **Record.**
      1. The Presiding Officer will make a record consisting of:
         1. All applications, filings, motions, preliminary and interlocutory rulings and orders;
         2. Evidence received or considered;
         3. A statement of any facts or documents officially noticed;
         4. Offers of proof, objections and rulings thereon;
         5. Proposed findings and exceptions, if any;
         6. Staff memoranda, excluding memoranda of counsel to the agency;
         7. The draft decision by the Presiding Officer;
         8. Comments received relating to the draft decision; and
         9. The Commissioner or designee’s final order.
      2. Copies of recordings, any made transcriptions of recordings, and copies of the full record will be available to any person at actual cost. Affected parties may object to the release of confidential, proprietary, or otherwise protected material or information pursuant to 5 M.R.S. § 9057(6).
3. **Draft Findings and Decision.**
   1. The Presiding Officer will prepare a draft decision that will be provided to the parties at least 30 days prior to issuing a final decision. The parties may submit comments on the draft decision to the Presiding Officer. These written comments will be due within thirty days of receipt of the draft decision and copies must be provided to all other parties and the Presiding Officer. Comments on the draft decision may not include or reference evidence that is outside of the record.
   2. The comments may contain:
      1. A statement of the party’s position and the reason for it;
      2. A listing of any alleged errors or omissions made by the Presiding Officer during the hearing; and
      3. Any relevant legal arguments the party wishes to offer.
4. **Final Orders.**
   1. After consideration of the record or in the event the Operator does not request a hearing, fails to answer as required, or fails to appear at the hearing, the Commissioner or designee will as soon as practicable issue an order regarding the relief requested by the Department. The order may:
      1. Close the hearing without further action;
      2. Suspend the Certification at issue in the hearing; or
      3. Revoke the Certification at issue in the hearing.

The order will state the date upon which it becomes effective and will advise the Operator of their right to appeal under appropriate provisions of the law.

* 1. Decisions relating to suspensions and revocations will be made based on the preponderance of the evidence presented.
  2. The Commissioner or designee will make all final findings and decisions in consideration of the record, draft decision, and comments that were timely submitted.
  3. Final Orders will be in writing and will include findings of fact sufficient to apprise the parties and any interested member of the public of the basis for the decision.
  4. A copy of the Final Order will be delivered or mailed to the Operator or their representative and approved intervenors.
  5. A copy of the Final Order will be posted on the Department website and provided to interested persons.
  6. The Final Order of the Commissioner or designee constitutes final agency action by the Department.

1. **Notice of Right to Appeal.**
   1. Written notice of the Operator or former Operator’s right to appeal the decision to either the Board or Superior Court, of the action required to file the appeal, and of the time within which this action must be taken in order to exercise the rights of appeal will be given with the decision, pursuant to 5 M.R.S. § 11002 and 38 M.R.S. § 341-D.
   2. All interlocutory decisions by the Presiding Officer are not final agency actions and therefore are not appealable to either the Board or the Superior Court.
   3. A decision by the Commissioner or designee to close the hearing without further action is within the Commissioner or designee’s sole discretion and is not appealable to either the Board or the Superior Court.
2. **Correction or Amendment of Hearing Decision.** Either at the request of a party or on their own initiative, a Presiding Officer may correct or amend a decision in order to correct a ministerial or typographical error, to clarify or correct the record, or to rule upon any issue that was heard but not ruled upon prior to the Commissioner or designee issuing a final decision. If the correction or amendment is substantive, the appeal period will restart and the Commissioner or designee will reiterate the timeline for appeal of the decision.
3. **Reopening of Hearings.**
   1. Either at the request of a party or on their own initiative, the Commissioner or designee may, upon notice to all parties, reopen the record of any hearing under the following circumstances:
      1. A party to the original hearing has discovered new evidence which could reasonably have affected the outcome of the proceeding but could not have been discovered by due diligence in time to present during the original proceeding;
      2. There was fraud or misrepresentation regarding an issue of fact material to the original proceeding, which could reasonably be determined to have affected the outcome of the proceeding if known at the time; or
      3. All parties agree to reopen.
   2. A request to amend or reconsider a decision or to reopen the hearing after a final decision has been made does not extend the appeal period.
4. **Extension of Time Within Which to Comply with Orders.**
5. **Extension of time within which to comply with orders.** When by these rules or by law or order of the Department an act is required or allowed to be done at or within a specified time, the Commissioner or designee may for good cause shown at any time within its discretion order the period enlarged if the petition is received before the expiration of the period originally prescribed; or upon petition made after the expiration of the period originally prescribed, where the failure to act was the result of excusable neglect.
6. **Petitions for extensions of time within which to comply with orders.** Any person affected by an order of the Department issued under this rule may petition the Commissioner or designee for an extension of time within which to comply with the terms of such order. Such petition must be made no earlier than sixty days before compliance with such order is required. Such a petition must contain a concise statement by the petitioner of the facts which they believe warrant an extension; must include, where appropriate, affidavits of engineers and contractors, engineering drawings and other material which will aid the Commissioner or designee in acting upon the petition; and must state a definite date to which extension is desired.
7. **Signing of Filings.** Every filing by an Operator must be signed by such Operator or their attorney or representative. This signature will constitute a certification by such person that they have read the filing, that to the best of their knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. If a filing is not signed or is signed with intent to defeat this rule, it may be stricken, and the action may proceed as though the filing had not been served and filed.
8. **Enforcement.** Failure to comply with a final order of the Commissioner or designee may be enforced pursuant to 38 M.R.S. § 347-A, 32 M.R.S. § 4182, 5 M.R.S. § 9064, or other relevant statute.

STATUTORY AUTHORITY: 32 M.R.S. § 4179, 32 M.R.S. § 4175-A; 38 M.R.S. § 341-H

EFFECTIVE DATE:

April 30, 2024 – filing 2024-099