Chapter 2: PROCESSING OF APPLICATIONS AND OTHER ADMINISTRATIVE MATTERS

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Chapter 2: PROCESSING OF APPLICATIONS AND OTHER ADMINISTRATIVE MATTERS

**SUMMARY**: This rule governs the administrative procedures of the Department of Environmental Protection, including the Board of Environmental Protection, for actions including the processing of license applications, appeals of Commissioner license decisions and insurance claim-related decisions made pursuant to 38 M.R.S. § 568‑A, administrative consent agreements, license revocations, suspensions, and surrenders, and other administrative matters, such as requests for an advisory ruling.

**1. Definitions.** The following terms, as used in this rule, have the following meanings unless the context indicates otherwise:

* 1. **Abutter**. “Abutter” means a person who owns property that is contiguous with the property on which a project requiring a license from the Department is proposed.
  2. **Administrative consent agreement.** “Administrative consent agreement” means a legally binding agreement initiated by the Commissioner and voluntarily entered into by a person to resolve one or more violations of any law or rule administered by the Department. The Board and the Office of the Maine Attorney General must approve an administrative consent agreement for it to be legally binding.
  3. **Aggrieved person.** “Aggrieved person” means any person whom the Board determines may suffer a particularized injury as a result of a license decision or an insurance claim-related decision. The Board will interpret and apply the term “aggrieved person” whenever it appears in statute or rule consistent with State of Maine court decisions that address judicial standing requirements for appeals of final agency actions.
  4. **Amendment application.** “Amendment application” means an application that is not a permit by rule or a minor revision to modify a license previously granted by the Department.
  5. **Application processing period.** “Application processing period” means the period of time from the date an application is accepted by the Department as complete for processing through the date the application is decided by the Department.
  6. **Board.** “Board” means the Board of Environmental Protection, whose members are appointed by the Governor and confirmed by the Legislature and which has independent decision-making responsibilities and duties prescribed by 38 M.R.S. § 341-D.
  7. **Chair.** “Chair” means the Chair of the Board of Environmental Protection. When the Chair is recused from or otherwise unable to serve as Chair for a particular matter before or meeting of the Board, the Chair may designate another member of the Board serve as the Presiding Officer over that matter or Board meeting. The Chair’s designee is referred to as the “Board Presiding Officer.”
  8. **Commissioner.** “Commissioner” means the Commissioner of the Department of Environmental Protection, or his or her designee.
  9. **Condition compliance application.** “Condition compliance application” means an application for approval of a licensing decision of the Commissioner made pursuant to a condition of an existing license.
  10. **Department.** “Department” means the Department of Environmental Protection, which includes the Commissioner and the Board.
  11. **Department staff.** “Department staff” means all staff of the Department. Department staff serve as staff to the Board for matters before the Board.
  12. **Hearing.** “Hearing” means a hearing conducted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 4.
  13. **Interested person.** “Interested person” means a person who submits timely written comments on an application or who requests, in writing, receipt of materials related to a particular application pending before the Department. The Department will maintain a list of interested persons for each licensing proceeding.
  14. **Intervenor.** “Intervenor” means a person who, in accordance with the Maine Administrative Procedure Act, 5 M.R.S. §§ 9054(1) and (2), and the Department’s rules governing hearings, has been granted leave to participate as a party in a license application or in an appeal proceeding when a decision has been made by the Board to hold a hearing.
  15. **License.** “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 terms “license” and “permit” are used interchangeably in some Department decision documents and Maine statutes administered by the Department.
  16. **Licensee.** “Licensee” means the person to whom a license has been issued. The terms “licensee” and “permittee” are used interchangeably in some Department decision documents and Maine statutes administered by the Department.
  17. **Minor revision.** “Minor revision” means an application to modify a license previously granted by the Department, where the modification does not significantly expand the project or associated environmental impacts; does not change the nature of the project; and does not substantively modify any Department findings with respect to any licensing criteria.
  18. **Permit by rule or PBR.** “Permit by rule” or “PBR” means a license that is issued by rule as authorized by 38 M.R.S. § 344(7) for a class of activities that would otherwise require the issuance of an individual license or approval.
  19. **Person.** “Person” means an individual, partnership, corporation, government entity, association, or public or private organization of any character other than the Department.
  20. **Processing time.** “Processing time” means the time established by the Department to process an application for a license, as published pursuant to 38 M.R.S. § 344-B(1) or otherwise provided by law.
  21. **Project.** “Project” means all portions of the development or activity for which Department approval is required.
  22. **Transfer of ownership.** “Transfer of ownership” means a change in the legal entity that owns a property, facility or structure that is the subject of a license issued by the Department. A sale or exchange of stock (or in the case of a limited liability corporation, of membership interests), or a merger, is not a transfer of ownership for the purposes of this rule provided the legal entity that owns or operates the property, facility or structure remains the same.

**2. Scope of Rule.**

A. **General Scope.** Except as provided in section 2(B) or other sections of this rule, this rule applies to the processing of license applications, appeals of Commissioner license decisions, appeals of insurance claim-related decisions made pursuant to 38 M.R.S. § 568‑A to the Board, petitions and motions to modify, revoke or suspend licenses, petitions for corrective action orders, and other determinations on specific matters as described in this rule. This rule applies in the absence of more specific procedural requirements imposed by statute or rule. Where other specific procedural requirements apply, those requirements control.

NOTE: Examples of other specific procedural requirements in Department rules which control in the event of overlapping requirements include but are not limited to Chapter 115 for major and minor source air emission licenses, Chapter 140 for part 70 air emission licenses, Chapter 400 for solid waste licenses, Chapter 450 for hydropower licenses, and Chapters 521 and 522 for waste discharge licenses.

B. **Exceptions.** Unless otherwise specified in this rule, the following types of applications and submissions are not subject to the procedural requirements of this rule:

1. ground and surface water oil clean-up fund claims;
2. voluntary response action plans;
3. applications for one-time disposal of special waste;
4. asbestos and lead licenses and certifications;
5. third party damage claims;
6. licenses or permits by rule;
7. registrations or notifications;
8. waste transporter licenses;
9. reimbursement claims;
10. closure plans;
11. public benefit determinations;
12. occupational licenses;
13. condition compliance applications; and
14. minor revisions.

**3. Filing of Forms and Submissions.** An application, appeal or petition must include a designated contact person to whom all orders, notices and correspondence regarding the application, appeal or petition will be sent. Whenever a Department rule, license, procedural order or ruling of the Chair or a presiding officer requires or allows the filing of any written submission, that filing is complete when filed in accordance with this section.

1. **Completeness.** Service upon the Department is complete when the Department receives the submission by, unless otherwise specified, 5:00 p.m. on the prescribed due date. Filings received after the due date will be rejected, absent a showing of good cause. Service upon an applicant, a party to a proceeding, or other persons to whom service is required is complete when the submission is delivered to the recipient or the recipient’s designated representative in accordance with section 3(B) of this rule. The Department may require documentation that service to participants was properly made.
2. **Delivery.** Unless otherwise specified, submissions filed with the Department must be made by U.S. mail, in-person delivery, telefax, or electronic mail. When a submission is made using an electronic method, the Department may also require the submission of the original document in paper form.
3. **Signatory Requirements.** Whenever a signature is required on a form or submission filed with the Department, the printed or typewritten name of all signatories must be provided and must be accompanied by:
4. the original handwritten signature of all signatories;
5. an electronic scanned copy of the original handwritten signatures of all signatories; or
6. an electronic or digital signature of all signatories.

In instances where multiple signatures are required, signatures may be collected on separate signature pages for submission. A printed or typewritten name without an accompanying handwritten, electronic, or digital signature is not sufficient for filing forms with the Department when a signature is required, and any such filing may be rejected as incomplete.

1. **Computation of Time.** As used in this rule, “days” are calendar days unless otherwise specified. “Working days” excludes Saturdays, Sundays, holidays observed by the State of Maine, and any other day State of Maine 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 office at which the filing must be made is closed for business for that day, in which event the period runs until the close of business (5:00 p.m.) the next full working day. Whenever a person has the right or is required to take some action within a prescribed period of time after filing of notice or other paper 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 Department.

The risk of material not being received in a timely manner is on the sender, regardless of the method used. Submissions not received by the Department by a prescribed deadline will be deemed untimely and will not be considered by the Department in the absence of good cause shown.

**4. Advisory Rulings.** Any person may request that the Department issue an advisory ruling with respect to the applicability of any statute or rule administered by the Department to that person’s property or to acts or events in which that person has a substantial interest. A request for an advisory ruling must be based on existing facts and not on hypothetical situations.

1. **Request.** A request for an advisory ruling must be in writing and must include:
   1. the name, address, and telephone number of the person requesting the ruling;
   2. the name of the legal owner of the property that is the subject of the request;
   3. the statute or rule of which an interpretation is requested;
   4. a clear and definite statement of the ruling requested, and the issues presented by the request;
   5. all facts that are necessary to issue the advisory ruling;
   6. all assumptions that relate to the advisory ruling;
   7. facts that establish the substantial interest of the requesting person in the acts, events or property with respect to which the ruling is requested; and
   8. a statement of whether, to the requester’s knowledge, the issue upon which an advisory ruling is sought is the subject of a pending Department licensing or enforcement proceeding or a prior advisory ruling.

The written request must be clearly captioned as “REQUEST FOR ADVISORY RULING” and directed to the division of the Department responsible for administering the statute or rule in question. A request that does not specify that it is for an advisory ruling will be treated as a request for an informal staff opinion in accordance with section 4(D) of this rule.

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.

1. **Department Action.** Issuance of advisory rulings by the Department is discretionary and will be determined on a case-by-case basis. As expeditiously as possible, but no later than 90 days from the filing of a request, the Department will either issue a written advisory ruling or notify the requester of the reasons that an advisory ruling will not be rendered.
2. **Advisory Ruling Not Binding.** No advisory ruling constitutes *res judicata* or legal precedent with respect to the issues raised before the Department. Advisory rulings are not binding on the Department in any subsequent enforcement action; however, justifiable reliance on the ruling is considered in mitigation of any penalty sought to be assessed. Advisory rulings are not final agency actions and are not appealable to the Board or Superior Court.
3. **Informal Staff Opinions.** Any person may informally inquire of the Department staff with respect to the applicability of any statute or rule administered by the Department. The staff may decline to respond to such requests because the facts are not sufficiently complete or detailed to form the basis of an opinion, because resources or time are not available to the staff for the purposes of preparing an opinion, or because the matter is properly the subject of an advisory ruling or legal opinion. A written or oral opinion provided by Department staff under this subsection does not bind the Department in any subsequent proceeding. Informal staff opinions are not final agency actions and are not appealable to the Board or Superior Court.

**5. Right of Inspection and Entry.** Employees and agents of the Department have the rights of inspection and entry as provided in statute or rule, including 38 M.R.S. § 347-C.

**6. Public Access to Information.**

1. **Inspection of Public Records.** Except as made confidential by law, the Commissioner will make all public records in the Department’s possession available to the public for inspection and copying at reasonable times and locations.
2. **Confidential Records.** The Commissioner may keep confidential only those records that are not public records as defined by the Freedom of Access Act, 1 M.R.S. § 402(3).
3. **Payment of Costs.** The Department may charge reasonable fees to cover the costs of copying and fees to cover the actual cost of searching for, retrieving and compiling requested public records. Payment of those fees must be made to the Maine Environmental Protection Fundand must be paid prior to the Commissioner releasing the copies, unless the Commissioner elects to bill the person requesting the copies.

**7. Hearings.**

* 1. **Conduct of Hearings.** Hearings conducted pursuant to this rule are held in accordance with the Maine Administrative Procedure Act, 5 M.R.S. §§ 8001–11008 and any applicable rules administered by the Department.
  2. **Request for a Hearing on a License Application.** The Department will provide an opportunity for the applicant or any person to request a hearing with respect to any application or appeal. A hearing is an opportunity for an applicant, an appellant, any intervenors, and members of the public to provide testimony under oath and for witnesses to be cross-examined on the substance of their testimony. A request for a hearing on an application must be received by the Department, in writing, no later than 20 days after the application is accepted as complete for processing. The request must indicate the interest of the person filing the request and specify the reasons why a hearing is warranted.
  3. **Criteria for Holding Hearings.** Hearings are discretionary unless otherwise provided by law. The Commissioner may conduct a hearing on any application. The Board may conduct a hearing on any application over which it has assumed jurisdiction or on any appeal of a Commissioner license decision. The Department will hold a hearing in those instances where the Department determines there is credible conflicting technical information regarding a licensing criterion and it is likely that a hearing will assist the Department in understanding the evidence. When the Board assumes jurisdiction over an application, it will hold a hearing unless it votes otherwise at the time it assumes jurisdiction.

* 1. **Timing and Notification of Decision.** The Department will decide, as expeditiously as possible following acceptance of an application as complete for processing or the timely receipt of a request for a hearing, whether to hold a hearing. Within five days of the Department’s decision whether to hold a hearing, the Department will notify the person who requested a hearing, the applicant, and any person whose legal rights, duties or privileges are at issue of the decision. Hearings will be scheduled as expeditiously as possible following a decision to hold one. Upon determining that a hearing will be held, the Department will also establish a date by which a person seeking participation in the hearing must file with the Department a petition to intervene.

**8**. **Public Meetings on License Applications.** At the Commissioner’s or Board’s discretion, the Commissioner or Board may schedule and hold public meetings in accordance with 38 M.R.S. § 345-A(5) for the purpose of collecting comments that become part of the record. Any such meeting must be held during the period when written public comments may be submitted to the Department.Such meetings are not subject to the procedural requirements of the Maine Administrative Procedure Act or the Department’s hearing rules. Persons commenting on the application are not under oath and there is no opportunity for cross-examination. The holding of a public meeting does not change any other obligation the Department has to hold hearings that are mandatory under statute or required after a timely request is filed. The Department must notify the applicant, interested persons, and the municipal office(s) of the municipality(ies) where the project would be located of public meetings scheduled by the Department. If the project is located in the unorganized or deorganized areas of the State, the Department will also notify the corresponding county commissioners.

**9.** **Pre-Application and Pre-Submission Meetings on Applications.**

1. **Purpose.**
   * + 1. **Pre-Application Meetings.** Pre-application meetings between the applicant and the Department are an opportunity for the applicant to determine the statutory and regulatory requirements that apply to a specific project, and to identify issues, processing times, fees and the types of information and documentation necessary for the Department to properly assess the project. Any applicant may request a pre-application meeting. The pre-application meeting must be attended by the applicant or the applicant’s authorized agent. If the applicant is an agency, company, corporation, or other organization, the request for a pre-application meeting must include the organization’s name and the name of the person who will represent the applicant at the meeting. If the applicant chooses to be represented by an agent in the pre-application process, contact information for both the applicant and the agent and documentation that the agent is authorized to act on behalf of the applicant must be provided with the request. The applicant must consult the appropriate bureau licensing staff to determine what information the applicant must provide before or during a pre-application meeting. The Department will make a date available for the meeting as expeditiously as possible, but no later than 60 days from receipt of a written request or when all information required by the Department for the pre-application meeting is submitted. The Department will prepare a written summary of all pre-application meetings.
       2. **Pre-Submission Meetings.** A pre-submission meeting between the applicant and the Department occurs after the applicant has finished preparing the application for submission. The meeting is an opportunity to review the assembled application to ensure that the necessary information has been included prior to filing the application with the Department. The applicant or its authorized agent must attend the pre-submission meeting. If the applicant is an agency, company, corporation, or other organization, the request for a pre-submission meeting must include the organization’s name and the name of the person who will represent the applicant at the meeting. If the applicant chooses to be represented by an agent at the pre-submission meeting, contact information for both the applicant and the agent and a letter from the applicant authorizing the agent to act on its behalf must be provided with the request. An applicant may request a pre-submission meeting by contacting the project manager, or the division licensing coordinator if no project manager has been identified. The Department will make a date available for the meeting as expeditiously as possible, but no later than 45 days from receipt of a written request or when all information required by the Department for the pre-submission meeting is submitted.
2. **Pre-Application Meetings Required.** A pre-application meeting is required prior to submission to the Department of an application for any of the following:
3. a new Site Location of Development Law license (38 M.R.S. § 481, *et seq*.);
4. a Natural Resources Protection Act (38 M.R.S. § 480-A, *et seq*.) permit for a Tier 3 wetland alteration; a project requiring compensation pursuant to 38 M.R.S. § 480-Z; construction of a new building on a frontal dune, as defined by 06-096 C.M.R. 355(3)(U); a project that results in more than 50,000 cubic yards of dredge spoils; a dam removal, including a dam removal pursuant to 38 M.R.S. § 634(4); a small scale wind certification; or a new crossing of an outstanding river segment, as defined by 38 M.R.S. § 480-P;
5. a new waste discharge license for a discharge greater than 25,000 gallons per day (38 M.R.S. § 413, *et seq*.);
6. a new or expanded solid waste disposal facility license (38 M.R.S. § 1310‑N, *et seq*.);
7. a new or expanded hazardous waste facility, waste oil facility, or biomedical waste facility license, but not abbreviated licenses (38 M.R.S. § 1319‑O, *et seq*.);
8. a mining permit pursuant to 38 M.R.S. § 490-LL, *et seq.*; or
9. a project or activity requiring a new or amended license from more than two bureaus, not including minor revisions.

When a pre-application meeting is required by this rule, the prospective applicant must hold a public informational meeting in accordance with section 12 of this rule.

1. **Pre-submission Meeting Required.** A pre-submission meeting is required prior to submission to the Department of an application for any application for which a pre-application meeting was held or any application that has been previously returned pursuant to section 10(B) of this rule.
2. **Waiver.** The Department may waive, in writing, the requirement to hold a pre-application or pre-submission meeting if the Department is satisfied that such a meeting is not necessary to achieve the purposes set forth in section 9(A) of this rule. Waiver of a pre-application or pre-submission meeting does not waive the public informational meeting requirement of section 12 of this rule.

**10. Application Requirements.**

1. **General Requirements.** Applicants must use the application form(s) provided by the Department.

Applications must include the physical address of the proposed project site and, when available, Global Positioning System (GPS) reference data. All GPS data must be in the form of Universal Transverse Mercator (UTM), Zone Nineteen North, North American Datum of 1983 (NAD83) coordinates of the proposed project. The applicant may contact the appropriate Department bureau staff to determine whether additional or more specific project location information is required.

An application submitted to the Department by a corporation must be made in the corporation’s registered corporate name and must include either documentation that the corporation is in good standing with the Maine Department of the Secretary of State, or a statement signed by a corporate officer affirming that the corporation is in good standing.

Applications must be filed in care of the appropriate bureau, Maine Department of Environmental Protection, 17 State House Station, Augusta, ME 04333, or other Department office as directed by the Department. When required, applications must be filed electronically in accordance with the instructions provided with the application.

1. **Acceptance of Application.** The Commissioner will, within 15 working days of receipt of an application by the Department, provide notice to the applicant that contains the date the application was accepted as complete for processing, or return the application and specify in writing the reasons it was returned. An applicant whose application has been returned must attend a pre-submission meeting in accordance with section 9(C) of this rule before resubmitting an application for the same project. If the Commissioner does not provide notice to the applicant of acceptance or rejection of the application within 15 working days, the application is deemed accepted as complete for processing on the 16th working day after receipt by the Department.

A determination that an application, including any supplemental application forms, is accepted as complete for processing is based on Department staff’s determination that the application is properly filled out and information is provided for each of the items included on the form, including evidence that (1) the correct application fee has been paid pursuant to section 11 of this rule; (2) sufficient title, right or interest has been demonstrated pursuant to section 10(D) of this rule; and (3) notice, when required, has been provided in accordance with section 13 of this rule. The acceptance of an application as complete for processing is not a review of the sufficiency of the information provided and does not preclude the Department from requesting additional information during the application processing period. Failure to provide in a timely manner information that is necessary for the processing of the application may result in denial of the application.

1. **Projects Requiring Multiple Licenses.** Upon filing of an application for a project which will require more than one license from the Department, the Department may require the applicant to submit applications in a specific sequence as deemed necessary for administrative efficiency. The Department may return an application that is inconsistent with a sequence that has been specified for a particular project. The processing time for consolidated applications is the longest processing time associated with any of the applications. An applicant for a project requiring approval from more than two bureaus should contact the Office of the Commissioner in the early phase of project development to arrange a pre-application meeting and to discuss application coordination.

1. **Title, Right or Interest (TRI).** Title, right or interest is a threshold determination made by the Department for purposes of deciding whether to accept an application as complete for processing.

Prior to the Department’s acceptance of an application as complete for processing, an applicant must demonstrate to the Department’s satisfaction that it has sufficient TRI in all the property that is proposed for development or use.

When TRI is disputed before or during the application processing period by information that the Department determines is credible, the Department may require the applicant to provide additional information to address TRI or the disputed evidence. An applicant must maintain sufficient TRI throughout the application processing period.

Methods of demonstrating TRI include, but are not limited to, the following.

* + - 1. When the applicant owns the property, a copy of the deed(s) to the property must be supplied.
      2. When the applicant has a lease or easement on the property, a copy of the lease or easement must be supplied. The lease or easement must be of sufficient duration and terms, as determined by the Department, to permit the proposed construction and reasonable use of the property, including decommissioning, reclamation, closure and post-closure care, when required or anticipated to be required. If the project requires a submerged lands lease from the State, evidence must be supplied that the lease has been issued, or that an application is pending before the appropriate state agency.
      3. When the applicant has an option to buy or lease the property, a copy of the option agreement must be supplied. The option agreement must be sufficient, as determined by the Department, to give rights to title, or a leasehold or easement of sufficient duration and terms to permit the proposed construction and use of the property including decommissioning, reclamation, closure and post-closure care, when required or anticipated to be required.
      4. When the applicant has eminent domain power over the property, evidence must be supplied as to the ability and intent to use the eminent domain power to acquire sufficient TRI to the site of the proposed development or use.
      5. When the applicant has either a valid preliminary permit or a notification of acceptance for filing of an application for a license from the Federal Energy Regulatory Commission for the site which is proposed for development or use, a copy of that permit or notification must be supplied. This provision applies only to those portions of a project where eminent domain authority exists under federal law.
      6. When the applicant has a written agreement with a landowner to spread waste material that will be agronomically utilized by the landowner, a copy of that agreement must be supplied.

The Department may return an application before or during the application processing period if the Department determines that the applicant does not have or no longer has sufficient TRI. The Department may refuse to accept an application as complete and may return an application at any time for a lack of sufficient TRI, if it determines that the activity proposed in the application would likely be prohibited by federal, state, or municipal law or fall within a temporary moratorium on the activity. With the exception of applications returned because of a moratorium, application processing fees will not be refunded if an application is returned during the application processing period due to failure to maintain sufficient TRI.

1. **Signatory Requirement.** Each application submitted to the Department must include the signature of the applicant or the applicant’s duly authorized officer or agent in accordance with section 3 of this rule and under the following certification:

“I certify under penalty of law that I have personally examined the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. Pursuant to 38 M.R.S. § 347-C, I authorize the Department to enter the property that is the subject of this application to determine the accuracy of any information provided herein. I am aware that pursuant to 38 M.R.S. § 349 there are civil and criminal penalties for submitting false information, including the possibility of fine and imprisonment.”

If an application is signed by an agent, the application must include evidence demonstrating that the applicant has authorized the agent to act on its behalf.

NOTE: Some submissions may be subject to the federal Cross Media Electronic Reporting Regulation (CROMERR) requirements pursuant to 40 C.F.R. Part 3.2000(b).

When a submission is made using an electronic signature or telefax, program-specific statutes or rules may also require the submission of an identical original paper document.

1. **Burden of Proof and Governing Law.** An applicant for a license has the burden of proof to affirmatively demonstrate to the Department that all applicable licensing criteria in statute or rule have been met. For those matters relating to licensing criteria that are disputed by evidence the Department determines is credible, the applicant has the burden of proving by a preponderance of the evidence that the licensing criteria are satisfied. Unless otherwise provided by law, all license applications are subject to the substantive laws and rules in effect on the date the application is accepted by the Department as complete for processing.
2. **Local Filing of Applications.** At the time of filing with the Department, a copy of the application and its supporting documents, and all amendments to that application, must be filed by the applicant with the appropriate town or city clerk or, if the project is in an unorganized area, with the corresponding county commissioners.

**11. Application Fees and Processing Times.**

1. **Application Fees.** Application fees must be paid by the applicant in accordance with 38 M.R.S. §§ 352 through 353-C. Except as otherwise provided by law, all required application fees must be paid at the time of filing of the application. Failure to pay all required application fees will result in the application not being accepted as complete for processing pursuant to section 10(B) of this rule and the application will be returned to the applicant. Fees are established and published by the Commissioner in accordance with 38 M.R.S. § 353. If the Commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to cost significantly more to process than the published cost for that type of application, the Commissioner may designate the application as subject to special fees at the time the application is accepted as complete for processing. When that designation is made, any application fees paid at the time of filing the application will be returned or credited toward payment of any special fees.
2. **Processing Times.** Processing times are established and published by the Commissioner in accordance with 38 M.R.S. § 344-B.

If the Commissioner determines that the applicant has significantly modified an application after it was accepted as complete for processing, the processing time for the application stops until the Commissioner and the applicant agree to a new timetable.

The Commissioner may stop the processing time with the consent of the applicant for any period of time agreeable to the Commissioner and the applicant if the Commissioner determines that:

1. additional information is required from the applicant;
2. comments on an application from other governmental agencies are not submitted within the timeframe established by a memorandum of understanding between the agencies; or
3. the applicant wishes to stop the processing period or to extend the deadline.

When the Board assumes jurisdiction over an application, the application processing time is established by the Board pursuant to 38 M.R.S. § 344-B(3)(A)(2).

The Department may not decide an application for which notice must be published sooner than 20 days following the date the notice is published.

**12. Public Informational Meeting.**

1. **Public Informational Meeting Required.** A prospective applicant required to attend a pre-application meeting pursuant to section 9(B) of this rule must hold a public informational meeting prior to filing that application. The purpose of the public informational meeting is for the prospective applicant to inform the public of the proposal and its anticipated environmental impacts, and to inform the public of the opportunity to submit comments to the Department during the application processing period. At least 10 days prior to the public informational meeting, notice of the meeting must be sent to those persons specified in section 13(A) of this rule. At least seven days prior to the meeting, notice must also be published once in a newspaper of general circulation in or as close as possible to the area where the project is located. The notice must contain at least the following information:
   1. the name, U.S. postal and electronic mail addresses and telephone number of the applicant;
   2. citations to the applicable statutes and rules governing the proposed project;
   3. the location and summary description of the proposed project;
   4. the date, time, and location of the public informational meeting; and
   5. a statement that one purpose of the meeting is for the prospective applicant to inform the public of the proposed project, its anticipated environmental impacts, and the opportunity to submit written comment to the Department.

At the meeting, the prospective applicant or its authorized agent must identify all persons appearing for the applicant; present a summary describing the project in sufficient detail for the public to understand the project purpose and need for a Department license(s); provide clear and concise written information that details the anticipated environmental impacts of the project; provide a listing of state, local and federal licenses necessary for the project; and provide adequate opportunity for questions from the public and responses from the applicant. In addition, a fact sheet developed in consultation with the Department explaining public participation in the licensing process must be made available at the meeting by the applicant. At least one copy of all written materials required by this section must be made available for public inspection for the duration of the meeting.

Upon the filing of an application for a proposed project that required a pre-application meeting pursuant to section 9(B) of this rule, the applicant must submit a signed certification attesting that a public informational meeting was noticed and held in accordance with this section. The submission must include the names and affiliations of all persons who appeared for the applicant, an estimate of the number of meeting attendees, and a narrative responsive to any significant issues relevant to the licensing criteria that were raised at the meeting.

A prospective applicant may satisfy the requirements of this section by holding a public informational meeting before a local permitting authority having jurisdiction over the application such as a planning board or city council. In that instance, the prospective applicant must still meet the requirements of this section. Certification that a public meeting that complies with the notice and substantive requirements of this section was held before a local permitting authority is acceptable provided that neither the project nor its anticipated environmental impacts have changed substantially since the date of the public meeting.

1. **Waiver.** The requirement to hold a public informational meeting may be waived in writing by the Department. The Department may waive the requirement if the Department is satisfied that such a meeting would be of limited value in achieving the purposes noted in section 12(A) of this rule. Waiver of this requirement does not waive the pre-application or pre-submission meeting requirements of section 9 of this rule.

**13. Notice of Applications.** Unless exempted by section 13(C) of this rule or other Department rule specific to the type of application, within 30 days prior to filing the application, an applicant must give notice of its intent to file an application for a new license, or license renewal, amendment or transfer in accordance with this section. Additionally, an application that has been previously returned as incomplete pursuant to section 10(B) of this rule must comply with these requirements if the application is not resubmitted within 30 days of the date it was returned to the applicant.

1. **Recipients and Publication.** Notice must be mailed to the following:
2. abutters and all persons owning land within 1,000 feet of the proposed project. Use of local tax records or other reliable means is acceptable for purposes of identifying property owners requiring notice;
3. the municipal office(s) where the proposed project is located; and
4. the county commissioner(s) where the proposed project is located, if the proposed project is located in an unorganized or deorganized area of the State.

Notwithstanding section 13(C) of this rule, notice must also be published once in a newspaper with a general circulation in the vicinity of or as close as possible to the area where the project is located, in accordance with 1 M.R.S. § 601.

Copies of the published notice and a list of persons to whom notice was provided must be submitted with the application. Failure to submit documentation that notice was provided as required may result in a determination that the application is incomplete and not acceptable for processing.

B. **Content.** The notice must include the following information:

* + 1. name, U.S. postal and electronic mail addresses, and telephone number of the applicant;
    2. citations to the applicable statutes and rules governing the proposed project;
    3. location, including physical address where applicable, of the proposed project;
    4. summary of the proposed project;
    5. anticipated date the application will be filed with the Department;
    6. a statement that any requests that the Department hold a hearing on the application pursuant to section 7 of this rule must be submitted to the Department in writing no later than 20 days after the application is accepted as complete for processing;
    7. a statement providing the location of the Department and municipal offices where the application will be available for public inspection during the application processing period;
    8. a statement that public comments on the application may be submitted to the Department during the application processing period with the U.S. postal and electronic mail addresses to which comments must be submitted; and
    9. any other information required by the Department, applicable rule, or law.

1. **Additional Notice.** After an application has been filed and accepted as complete for processing in accordance with section 10(B) of this rule, the Department may require additional notice if the applicant substantially amends its application. In addition, the Department may require additional notice if a substantial period of time has elapsed since the date notice was initially provided.

If a licensee seeks to amend a license regarding an issue that was the subject of a Board decision on appeal of that license, notice of the amendment application must be provided to the prior appellant(s) in accordance with this section.

Where statutes or other applicable rules specify additional or more broadly reaching notice requirements, those requirements must also be met.

1. **Exceptions.**
2. An applicant forrenewal or transfer of a residential overboard discharge license pursuant to 38 M.R.S. § 413 (Waste Discharge Law), a permit by rule pursuant to 38 M.R.S. § 420-D (Storm Water Management Law) or 38 M.R.S. §§ 480-A–JJ (Natural Resources Protection Act) is not required to publish notice in a newspaper but must otherwise provide notice as described in section 13 of this rule.
3. An applicant for a tax exemption certification is not required to provide notice to all persons owning or leasing land within 1,000 feet of the proposed project but must comply with all other notice requirements as described in this section.
4. Upon request made by a prospective applicant, the Department may grant an exception to the requirement that an applicant provide notice to abutters if the abutter is located one mile or more from the proposed project and the exception would not conflict with notice requirements of other applicable rules.

If an application filed as a minor revision is determined by the Department to constitute an amendment application, notice must be provided in accordance with this section. A person may request a hearing in accordance with section 7 of this rule, the deadline for which is based on the date the application is accepted as complete for processing.

**14. Public Comment on Applications.** Public comment on applications is allowed during the application processing period, and the Department will maintain a list of interested persons for each application. The Department may set, and any person may request notification of, a deadline for submission of public comment or other evidence on a specific application. When the Department establishes a deadline for comment on an application that is before a decision on the application is made, the Department will notify the applicant and any interested persons.

**15.** **Commissioner Notification to Board of Applications Accepted as Complete.** At each Board meeting, the Commissioner will provide the Board with a dated report listing all applications accepted as complete for processing by the Department since the last report. The report must include the name and Department number assigned to the application, the date of acceptance as complete for processing, and a brief description of the purpose of the application.

**16. Board Assumption of Jurisdiction Over an Application.**

1. **Categories of Applications Requiring Board Jurisdiction.** Pursuant to 38 M.R.S. § 341-D(2), the Board will assume original jurisdiction over applications for the following:
2. a new mining permit required pursuant to 38 M.R.S. § 490-OO;
3. a license for a new solid waste disposal facility required pursuant to the Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S. § 1310-N;
4. a permit for a new high-impact electric transmission line, as defined in 35-A M.R.S. § 3131(4-A), required pursuant to the Site Location of Development Law, 38 M.R.S. §§ 481–489-E;
5. a license for a new wastewater discharge required pursuant to 38 M.R.S. § 413 that, as determined by the Department, is expected to use more than 20% of the assimilative capacity of the receiving water;
6. a permit for a new offshore wind terminal required pursuant to the Site Location of Development Law, 38 M.R.S. §§ 481–489-E;
7. a permit for a new nuclear power plant, as defined in 35-A M.R.S. § 4352(9), required pursuant to the Site Location of Development Law, 38 M.R.S. §§ 481–489-E; and
8. any application that is referred to the Board jointly by the Commissioner and the applicant.
9. **Commissioner Review of Applications.** The Commissioner will review and decide as expeditiously as possible whether each application filed with the Department is an application that requires Board jurisdiction because it meets the requirements set forth in 38 M.R.S. § 341-D(2). If the Commissioner initially decides that an application does not meet the requirements for Board jurisdiction, but at any subsequent time during review of the application determines that the application does meet the requirements for Board jurisdiction, the Commissioner will notify the applicant of the determination and will promptly refer that application to the Board for further proceedings.

**17. Draft License Decisions.**

A. **Availability of a Draft License Decision.** When an applicant or interested person submits a written request for a draft license decision, that draft decision must be provided to the requester and the applicant, if the applicant is not the requester, and any intervenor or interested person, and must be made available at the Department’s office in Augusta and appropriate regional offices at least five working days prior to the Commissioner taking final action on the application if it is a Commissioner’s decision, or 15 working days before the Board acts on the application if it is a Board decision. In addition, when an interested person notifies the Department of interest in an application, the Department will give reasonable notice to the applicant, intervenor, and any interested person of the date final action is expected to be taken by the Commissioner or Board on the draft license decision. Pursuant to 38 M.R.S. § 344 (2-B), the Commissioner may reduce the time requirements of this section for those activities which require a federal permit or license when these provisions are inconsistent with federal law or rule.

In instances where a hearing has been held, the Department will provide a draft license decision to the applicant, intervenors and interested persons for review and comment.

B. **Comments on a Draft License Decision.** The Department may revise the draft license decision after it has been made available for public comment. If the Commissioner or Board determines that the draft decision should be substantially revised in response to comments received, a new draft must be made available in accordance with this section. Any person who submits written comments on a draft license decision will receive a copy of the license decision and notice of appeal rights.

**18. Decisions.**

1. **Permit by Rule.** The Commissioner will process permit by rule applications in accordance with 38 M.R.S. § 344(2-A)(B) and all applicable rules. The rejection of a permit by rule application is not a final licensing action of the Commissioner and is not appealable to the Board. Permit by rule licensing decisions made by the Commissioner to approve a qualifying project or development are appealable to the Board in accordance with section 23 of this rule.
2. **Commissioner Decisions.** For an application to be decided by the Commissioner, the Commissioner will determine whether to hold a hearing within 45 days after an application is accepted as complete for processing.

If a hearing will not be held, the Commissioner will as expeditiously as possible approve the application, with or without conditions, or deny the application.

For those applications on which a hearing will be held, the processing time published by the Commissioner pursuant to 38 M.R.S. § 344-B is stayed from the date of the Commissioner’s decision to hold a hearing. The processing time resumes at the close of the hearing record. If the record is reopened to continue the hearing, the processing time is tolled until the record closes. The Commissioner will approve, approve with conditions, or deny the application as expeditiously as possible after the close of the hearing record. Failure to decide the application within the remaining processing time will result in the fee forfeiture provided in 38 M.R.S. § 344-B(5).

Every license decision made by the Commissioner will be in writing and will set forth findings of fact sufficient to apprise the applicant and any interested member of the public of the basis for the decision.

A facsimile of the Commissioner’s or Commissioner’s designee’s signature may be used for signing any decision on an application issued by the Commissioner. Each decision must include the date the decision is filed with the Board.

The Commissioner may act on an application for a license or permit renewal, amendment, revision, condition compliance, surrender or transfer at any time, including during the pendency of a judicial appeal of a final decision regarding the license or permit.

1. **Board Decisions.** For those applications to be decided by the Board, the Board will, considering the processing time for that application and as expeditiously as possible: approve the application with or without conditions; deny the application; or schedule a hearing on the application.

For those applications on which a hearing is held before the Board, the Board will approve, approve with conditions, or deny the application as expeditiously as possible after the hearing record is closed. The Board will maintain a record of the vote of each member of the Board with respect to the final license decision. An evenly divided vote of the Board has the effect of denying an application, unless a majority of Board members subsequently vote at that meeting for another action on the application or to table the matter until another meeting. A Board member who voted on the prevailing side of a motion to take final action on a license application may move at that same meeting to reconsider any action taken by the Board. In the case of an evenly divided vote, the findings and reasoning of the Board members voting to deny the application constitute the reasoning for the denial.

Every license decision made by the Board will be in writing and will set forth findings of fact sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A facsimile of the Chair’s signature may be used for signing any decision on an application issued by the Board.

The Board may conduct preliminary votes on any matter before it. A preliminary vote has no effect and may be used by the Board to further its deliberations of any matter before it.

1. **Notice of Application Denial.** Notice to the applicant of the Commissioner’s or Board’s denial of an application will be made by certified mail, return receipt requested.
2. **License Conditions.** The Department may impose as a license condition any requirement it deems necessary to provide for and ensure compliance with applicable statutes or rules. The Department may attach a condition to the license requiring up to a 30-day delay in any physical alteration of the project area and any construction activity authorized by the license. Licenses may be issued with a condition specifying the time frame within which the license is effective and may include an automatic expiration date if a project is not commenced within the specified time frame.
3. **Effective Date of License.** Unless otherwise indicated as a condition of the license, a license is effective on the date the Commissioner or Chair signs the license. For the purposes of this rule, signature of an order approving or denying an application constitutes a final agency action on that application, subject to administrative or judicial appeal.
4. **Report of Decisions.** At each Board meeting, the Commissioner will provide to the Board a report of the license decisions rendered by the Commissioner. The dated report must contain a summary of all application decisions made by the Commissioner since the last report, except for permit by rule notifications, waste transporter applications, and occupational license applications. For each decision, the report must include the name of the licensee, the nature and location of the project or operation proposed, a brief description of the physical or technical information involved, a statement of the decision rendered, and the date the decision was filed with the Board.

**19. Notice of Appeal Rights.** Each license approval or denial, whether issued by the Commissioner or the Board, must be accompanied by a plain statement of the appropriate rights of administrative and judicial review and the time within which those rights must be exercised.

**20. License Renewals, Amendments and Transfers.** Applications for the renewal, amendment or transfer of a license are subject to all provisions of this rule and the following requirements.

1. **Renewals.** Renewal applications must be submitted prior to the expiration of the existing license. If a renewal application is not timely submitted prior to expiration of the existing license or is timely submitted but not accepted as complete for processing in accordance with section 10(B) of this rule, the license lapses. If the renewal application is timely submitted prior to the expiration of the license and accepted as complete for processing in accordance with section 10(B) of this rule, the terms and conditions of the existing license remain in effect until the final Department decision on the renewal application becomes effective. Renewal applications to extend the expiration date for projects that have not commenced construction are subject to the procedural and substantive requirements in effect at the time of acceptance of the renewal application.
2. **Amendments.** Unless exempted from licensing requirements by statute or rule, an amendment or minor revision application must be submitted to the Department before undertaking any modification of a project that is the subject of a Department license. Written approval for the modification must be received before the modification is undertaken. If a licensee seeks to amend a license regarding an issue that was the subject of a Board decision on appeal of that license, notice of the amendment or minor revision application must be provided to the last known address for all appellants in accordance with section 13 of this rule.
3. **Transfers.** Except as provided in this section, 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 and both the transferor and the transferee must sign a transfer application, except as provided in this section.

An application for the transfer of a waste discharge license must be submitted no later than two weeks after any transfer of ownership of property subject to a license. The 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.

The transfer of a license for a hazardous waste facility, solid waste disposal facility, waste oil facility or biomedical waste facility must be approved prior to the transfer of ownership of the property which is the subject of the license.

An application to transfer any other type of license must be submitted within 60 days of the transfer of ownership of property subject to a license. The Department may extend the deadline to submit a transfer application for good cause.

The proposed transferee must 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.

* + - 1. Licenses pertaining to the occupational activities of persons (including but not limited to transporter licenses, underground oil storage tank installer licenses, asbestos or lead professional licenses) are not transferable, unless specifically allowed by statute or rule.
      2. If the proposed transferee demonstrates that the current licensee no longer has sufficient title, right or interest in the property subject to the license, the Department may process the transfer application without the signature of the current licensee.

**21. Petition to Clarify or Correct Clerical Errors or Omissions.** Within 30 days following the effective date of a license, the Commissioner or Board may: (1) on its own initiative with notice to the licensee; or (2) at the request of the licensee issue a corrected license to correct any clerical error or omission, or to clarify the meaning of a license term or condition, provided that the clarification explains but does not modify the substance of that license term or condition. The Commissioner or Board will consider the petition within 30 days of receipt of such request. The filing of a petition under this section does not serve to stay the deadlines for any appeal of a Commissioner or Board license decision, and the effective date of any corrected license will be the same as the original license. A corrected license is not a final agency action and is not appealable to the Board. The date of the original license decision determines the appeal deadlines.

**22. Petition for Recission or Surrender of License.**

1. **Recission of Storm Water Management Law and Site Location of Development Law Permits.** The Commissioner will rescind a license upon petition of the licensee, provided the conditions set forth in 38 M.R.S. § 420-D(14) (Storm Water Management Law) or 38 M.R.S. § 489-C (Site Location of Development Law) are met. If a recission is approved for a permit previously recorded in the registry of deeds, the petition and the written approval must be recorded in the registry of deeds by the licensee.
2. **Surrender.** Any licensee may petition the Commissioner to surrender its license. At the Commissioner’s discretion, the petition may be granted provided no outstanding license violation exists. The petition must state that the licensee waives notice and the opportunity for a hearing. In addition, an agronomic utilization license may be surrendered at any time in accordance with 38 M.R.S. § 1310-N(6-D).

**23.** **Appeals to the Board of Commissioner License Decisions.** Final license decisions of the Commissioner may be appealed to the Board by an aggrieved person. Notwithstanding section 2(B) of this rule, license decisions that may be appealed to the Board include approvals of permit by rule notifications, licensing decisions on applications for new licenses, renewals of licenses, amendments of licenses, transfers of licenses, minor revisions of licenses, condition compliance decisions, waste transporter licenses, and public benefit determinations.

1. **Filing an** **Appeal.** Within 30 days of the date of a final license decision of the Commissioner, an aggrieved person may appeal to the Board for review of the Commissioner’s decision.
2. An appeal must be submitted via U.S. mail or electronic mail and must be addressed to:

Board of Environmental Protection

c/o Board Clerk

17 State House Station

Augusta, ME 04333-0017

[Clerk.BEP@maine.gov](mailto:Clerk.BEP@maine.gov)

The Board may require the submission of the original signed appeal documents in paper format when the appeal is filed electronically.

1. The appellant must provide a copy of the appeal to the Commissioner, the licensee if the appellant is not the licensee and, if a hearing was held on the application, any intervenor. An appellant may contact the Board Clerk for U.S. mail and electronic mail addresses for those to whom a copy of the appeal must be sent. The Board staff will provide notice of the receipt of an appeal to all persons who have requested to be notified of the license decision.
2. **Content of Appeal.** The written appeal must include the following:
3. The signatures of all appellants in accordance with section 3(C) of this rule;
4. Information demonstrating that the appellant(s) has standing as an aggrieved person to file the appeal;
5. Identification of the licensing criterion or standard the appellant believes was not satisfied in the Commissioner’s final license decision, the bases of the objections or challenges, and the remedy sought;
6. A request that the Board hold an evidentiary hearing on the appeal if a hearing is being requested. If a hearing is requested, the appellant must provide an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any expert or technical witnesses would testify.
7. The identification of, and a copy of, any proposed supplemental evidence that the appellant requests be admitted to the record. The appellant must explain how the proposed supplemental evidence meets the criteria for the inclusion of supplemental evidence as provided in section 23(F) of this rule. Any exhibits attached to an appeal must be clearly labeled stating the date and source, and stating whether the exhibit is in the existing record or is proposed supplemental evidence. Appeal exhibits not labeled in accordance with this section may be rejected by the Chair. In the case of lengthy documents, the appellant must specify the relevant portions.
8. Electronic links may be used to provide access to materials submitted with an appeal but may not be used as a substitute for the submission of those materials. Electronic links to materials not provided with the appeal will be rejected.

An appellant who does not request a hearing or propose supplemental evidence in the written appeal is considered to have waived the opportunity for a hearing or inclusion in the record of supplemental evidence. The decision whether to hold a hearing is discretionary with the Board.

1. **Dismissal of an Appeal.** The Chair may dismiss an appeal for the following reasons.
2. **Untimely Appeal.** An untimely appeal will be summarily dismissed by the Chair, unless notice of the Commissioner’s license decision was required to be given to the person filing the appeal and the notice was not given as required. The Chair’s dismissal of an appeal for untimeliness is not subject to appeal to the full Board and is a final agency action.
3. **Lack of Standing as an Aggrieved Person.** The Chair may dismiss an appeal if, based on the information presented in the appeal, the Chair decides the appellant has not satisfactorily demonstrated that it is an aggrieved person. The Chair’s ruling to dismiss an appeal for lack of standing as an aggrieved person is appealable by the appellant to the full Board. Any such appeal must be received by the Board Clerk within 14 days of the date of the Chair ruling and must include a statement articulating the objections or challenges to the Chair ruling. The appeal of a Chair ruling to dismiss an appeal of a Commissioner licensing decision on this basis may not contain new argument or evidence that was not included in the dismissed appeal or underlying administrative record. The Chair may allow the licensee to respond to such an appeal. The appellant and the licensee will each have an opportunity to orally address the Board regarding their arguments. The Board may affirm the Chair’s dismissal or reverse the Chair’s ruling. A Board vote to reverse the Chair’s decision has the effect of reinstating the appeal.

1. **Failure to Comply with Appeal Content Requirements.** The Chair may dismiss an appeal that fails to comply with the requirements of this section. The dismissal of an appeal for failure to comply with the appeal content requirements is appealable by the affected appellant to the Board. An appeal to the Board of a dismissal for failure to comply with the requirements for an appeal must be submitted to the Board Clerk within 14 days of the dismissal. On appeal, the Board will review the original appeal filing and the Chair’s ruling to dismiss the appeal. The appellant and the licensee, if the appellant is not the licensee, will be permitted to make a brief oral argument limited to the Chair’s basis for dismissing the original appeal. The Board may affirm the Chair’s dismissal or reverse the Chair’s decision. A Board vote to reverse the Chair’s decision has the effect of reinstating the appeal.
2. **Service.** Once established, all filings of appeal participants in the appeal proceeding must be copied to the current service list of appeal participants and others as directed by the Board.
3. **Supplemental Evidence.** Within 30 days of the issuance of the written notice of the filing of an appeal by the Board staff, the licensee, if the licensee is not the appellant, and any interested person identified by the Commissioner pursuant to 38 M.R.S. § 344(4-A), may comment on the admissibility of the appellant’s proposed supplemental evidence and may submit to the Board proposed supplemental evidence addressing the issues raised in the appeal. If a person other than the appellant offers supplemental evidence in accordance with this section, the Board staff will notify the appellant of that proposed supplemental evidence, and the appellant may, within 15 days of the written notice, comment on the admissibility of that proposed supplemental evidence. The appellant, or the licensee if the licensee is not the appellant, may request that the Board hold a hearing regarding any supplemental evidence that is admitted to the record. Such a request must be included with the requestor’s comments on the admissibility of that proposed supplemental evidence pursuant to this section and must include an offer of proof consistent with that required by section 24(B)(4).
4. Whenever proposed supplemental evidence is offered in accordance with this rule, the person offering supplemental evidence must provide a copy of the proposed evidence and demonstrate:
5. how the proposed supplemental evidence is relevant and material to the appeal;
6. that the evidence could not have been presented to the Commissioner during the application processing period; and
7. that the person offering supplemental evidence exercised due diligence in bringing the evidence to the Department’s attention at the earliest possible time, or that the evidence is newly discovered and could not, by the exercise of diligence, have been discovered in time to be presented during the application processing period.
8. The Chair will rule on the admissibility of all proposed supplemental evidence within 30 days of receipt of all timely comments regarding admissibility of the proposed supplemental evidence. Chair rulings on proposed supplemental evidence are not appealable to the full Board.
9. The Chair may accept into the record additional evidence and analysis submitted by Department staff in response to issues raised on appeal or in supplemental evidence admitted by the Chair.
10. In in accordance with 5 M.R.S. § 9058, the Board, acting through the Chair, may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters within the Department’s specialized knowledge, and of statutes, regulations and nonconfidential agency records. Appeal participants must be notified of all materials of which the Board has taken official notice, and of the opportunity to contest the substance or materiality of the facts noticed.
11. **Response to Appeal.** A written response to the merits of an appeal may be filed by the licensee, when the licensee is not the appellant; any interested person who submitted written comment on the application; and, in instances of multiple separate appeals of a single license decision, each appellant may submit a response to the merits of any of the other appeals. Persons who are entitled to submit a response to the merits of the appeal and wish to do so must file the response with the Board as follows.
12. If no supplemental evidence is offered by the appellant, the licensee, or an interested person, a complete response to the appeal must be filed not later than 60 days following the date of the Board’s written acknowledgement of receipt of the appeal.
13. If supplemental evidence is offered by the appellant, the licensee, or an interested person, a complete response to the appeal must be filed not later than 20 days following the Chair’s ruling on the admissibility of all proposed supplemental evidence.
14. Following the Chair’s written decision on the admissibility of all proposed supplemental evidence, or the filing of a response to the merits of the appeal, no further argument or evidence may be submitted to the Board by any person for consideration in deciding the appeal.
15. The Chair may extend the procedural deadlines set forth in this section for good cause.
16. **Record on Appeal.** The record for appeals decided by the Board is the administrative record and evidence relied upon by Department staff in its review of the application, any supplemental evidence admitted by the Chair, and additional evidence obtained from a hearing of the appeal, if such a hearing is held. 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 appeal filings. Further evidence may not be provided directly to Board members or distributed at Board meetings or hearings without specific permission of the Chair.
17. **Alternative Dispute Resolution.** If an appellant and licensee agree to use mediation or another form of alternative dispute resolution to resolve the appeal and so notify the Board, the Board will not hear the matter until the conclusion of that effort, provided the participants engaged in the alternative dispute resolution demonstrate satisfactory progress toward resolving the issues. The Board may accept or reject any mediated or negotiated settlement that does not include withdrawal of the appeal. The Chair may notify appeal participants that the Board will resume processing of the appeal for lack of satisfactory progress in resolving the issues in an appeal.
18. **Procedure.** The procedure for hearings on appeals is governed by section 7 of this rule and further governed by Chapter 3, *Rules Governing the Conduct of Licensing Hearings*.
    * + 1. Appeals will be considered based on the administrative record on appeal and oral argument at a regular meeting of the Board as follows:
19. the Board Executive Analyst introduces the appeal, summarizing the subject matter, the appellant’s basis for appeal and the relevant statutes and rules;
20. the appellant makes a presentation discussing objections or challenges to the Commissioner’s decision on the application;
21. when the appellant is a person other than the licensee, the licensee is then provided an opportunity to address the issues raised by the appellant;
22. at the Chair’s discretion, interested persons may comment on the appeal, provided any comments rely on materials in the record; and
23. staff makes an oral presentation of a proposed Board Order that addresses the objections and challenges raised in the appeal and includes a recommendation for disposition of the appeal.
    * + 1. At the Chair’s discretion, the appellant and the licensee, if the licensee is not the appellant, may be provided an opportunity for rebuttal. The Chair may also allow or request that staff address questions raised by the appellant, the licensee, or the Board.
        2. The Chair may provide for additional procedural steps in considering an appeal to assist the Board in understanding the record evidence and arguments on appeal. The Board, its Executive Analyst, and counsel to the Board may at any time address questions to any person participating in the appeal.
        3. At the Chair’s discretion, the appellant, the licensee and staff may utilize visual aids in support of oral arguments. Permission to use visual aids must be obtained from the Chair prior to the Board meeting at which the appeal will be considered and must consist of materials within the administrative record.
24. **Decision on Appeal.** The Board will decide the appeal as expeditiously as possible. The Board may affirm all or part of the decision of the Commissioner, affirm all or part of the decision of the Commissioner with modifications, or new or additional conditions, order a hearing to be held as expeditiously as possible, reverse the decision of the Commissioner, or remand the decision to the Commissioner for further proceedings. The Board’s review is *de novo* and is not bound by the Commissioner’s findings of fact or conclusions of law made in the license decision under appeal. An evenly divided vote of the Board has the effect of affirming the Commissioner’s decision unless a majority of Board members subsequently vote at that meeting for another action on the appeal or to table the matter until another meeting. In the case of an evenly divided vote, the findings and reasoning of the Board members voting in favor of the Commissioner’s decision constitute the Board’s reasoning in the affirmation.

In accordance with 38 M.R.S. § 341-D(4)(A), if the Board modifies or reverses a final license or permit decision of the Commissioner, the licensee or permittee must implement any changes to the project necessary to comply with the decision of the Board.

1. **Chair Authority.** The Chair has the authority to:
2. dismiss an appeal for the reasons set forth in section 23(B) of this rule;
3. regulate the course of the proceeding, set the time and place for meetings and hearings, and fix the time for the filing of written submissions including argument, exhibits, evidence, briefs, and reply briefs;
4. rule on issues of procedure;
5. rule on the admissibility of evidence;
6. administer oaths and affirmations;
7. rule on requests for reconsideration of prior rulings of the Chair;
8. vary from any procedure prescribed by this rule or the Maine Administrative Procedure Act, chapter 375, subchapter IV, if the parties and the Chair agree to such variation, or if the variance will achieve greater fairness or economy and no prejudice to any party will result; and
9. take such other action that is necessary for the efficient and orderly conduct of Board proceedings.
10. **Requests for Reconsideration.** Any request or motion for reconsideration of a prior Chair ruling must be submitted in writing to the Chair within five working days of the underlying ruling and must identify the basis for the request. The decision to act on the request for reconsideration is in the sole discretion of the Chair. A request that is not acted on by the Chair within 30 days is deemed denied. The Chair may allow other appeal participants to respond to a request for reconsideration. The Chair’s disposition of a request for reconsideration is not a final agency action and is not appealable to the full Board.
11. **Application for a Stay.** The filing of an appeal of a Commissioner licensing decision to the Board does not stay the license decision. An application for a stay of a Commissioner licensing decision must be made to the Commissioner. An application for a stay of a licensing decision rendered by the Board must be made to the Board through the Chair. An application for a stay of a Commissioner licensing decision submitted to the Board in the first instance or simultaneously to the Board and the Commissioner will be referred by the Board to the Commissioner for a decision. In the case of a Commissioner decision on a stay request, no action of the Board is necessary to exhaust the administrative remedies for purposes of the Maine Administrative Procedure Act and 5 M.R.S. § 11004.
12. **Court Remands to Board for Further Proceedings.** Except as otherwise directed by court order or prescribed by statute or other applicable Department rule, the Board and Chair will utilize the authorities and procedures set forth in this rule to establish the process and scope of Board proceedings following judicial orders of remand.

**24.** **Appeals to the Board of Insurance Claim-Related Decisions of the Commissioner or the State Fire Marshal.** A person who is aggrieved by an insurance claim-related

decision made pursuant to 38 M.R.S. § 568‑A may appeal that decision to the Board. Unless otherwise established in this section, the Board and Chair will utilize the procedure set forth in section 23 of this rule regarding appeals of Commissioner license decisions for appeals of insurance claim-related decisions of the Commissioner or the State Fire Marshal.

1. **Filing an Appeal.** Within 30 days of the issuance of an insurance claim-related decision made by the Commissioner or State Fire Marshal pursuant to 38 M.R.S. § 568‑A(F-1), a person who is aggrieved by such a decision may appeal to the Board for review of the Commissioner’s or State Fire Marshal’s decision. The provisions of section 23(A) of this rule apply to the filing of appeals of insurance claim-related decision made by the Commissioner or State Fire Marshal.
2. **Dismissal of an Appeal.** The Chair may dismiss an appeal of an insurance claim-related decision made by the Commissioner or State Fire Marshal when the Chair determines that the appeal is untimely, the appellant lacks standing as an aggrieved person, or the appellant fails to comply with the requirements for the content of appeals set forth in section 24(C) of this rule.
3. **Content of Appeal.** The written appeal must include the following.
4. A copy of the Commissioner’s or State Fire Marshal’s decision being appealed.
5. When the appellant is a person other than the person to whom the insurance claim-related decision was issued, demonstrate that the appellant has standing as an aggrieved person.
6. Describe the findings, conclusions, or conditions of the insurance claim-related decision that the appellant believes are in error or to which the appellant objects; and set forth the bases of the objections or challenges and the remedy sought.
7. Include the signatures of all appellants in accordance with section 3(C) of this rule.
8. Exhibits attached to an appeal must be clearly labeled stating the date and source, and stating whether the exhibit is in the existing record or is proposed supplemental evidence. Appeal exhibits not labeled in accordance with this section may be rejected by the Chair. In the case of lengthy documents, the appellant must specify the relevant portions.
9. Electronic links may be used to provide access to a source of materials submitted with an appeal but may not be used as a substitute for the submission of those materials. Electronic links to materials not provided with the appeal will be rejected.
10. If the appellant requests that supplemental evidence be included in the record for consideration by the Board, such a request, with the proposed supplemental evidence, must be submitted with the appeal and the appellant must explain in sufficient detail how the evidence proposed meets criteria for the inclusion of supplemental evidence as provided in section 23(E) of this rule.
11. If a hearing is requested, the appellant must provide an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any expert or technical witnesses would testify.
12. Appeals must be submitted via U.S. mail or electronic mail and must be addressed to:

Board of Environmental Protection

c/o Board Clerk

17 State House Station

Augusta, ME 04333-0017

[Clerk.BEP@maine.gov](mailto:Clerk.BEP@maine.gov)

The Board may require the submission of the original signed appeal documents in paper format when the appeal is filed electronically.

1. At the time of filing with the Board, the appellant must provide a copy of the appeal to the Commissioner or State Fire Marshal, depending on which agency issued the underlying order. An appellant may contact the Board Clerk for U.S. mail and electronic mail addresses for persons to whom a copy of the appeal must be sent. The Board staff will provide notice of the receipt of an appeal to any interested persons associated with the decision at issue.
2. **Service.** Service must be provided in the same manner as set forth in section 23(D) of this rule.
3. **Record on Appeal, Supplemental Evidence.** The record for appeals decided by the Board is the administrative record and evidence relied upon by the Commissioner or State Fire Marshal in its review of the application, any supplemental evidence admitted by the Chair, and additional evidence obtained from a hearing on the appeal, if a hearing is held. 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 appeal filings.

Unless otherwise specified in this section, section 23(E) of this rule applies.

1. The Chair may accept into the record additional evidence and analysis submitted by Department staff or the State Fire Marshal in response to issues raised on appeal or supplemental evidence offered by an appellant.
2. Within 30 days of the Commissioner’s or State Fire Marshal’s receipt of a complete notice of appeal, the Commissioner or State Fire Marshal must file with the Board those documents from the record that the Commissioner or State Fire Marshal deems pertinent to the issues presented in the notice of appeal, hereinafter referred to as the appellate record. The Commissioner or State Fire Marshal must simultaneously deliver, in paper or electronic format, a copy of the appellate record to the appellant and other parties of record.
3. Within 15 days of receipt of the records filed by the Commissioner or State Fire Marshal pursuant to section 24(E)(2) of this rule, the appellant must file with the Board those documents from the administrative record that the appellant deems necessary to supplement the appellate record as provided by the Commissioner or State Fire Marshal. The appellant must simultaneously deliver a copy of the supplemental documents filed to the Commissioner or State Fire Marshal.
4. **Alternative Dispute Resolution.** The appellant and the Commissioner or State Fire Marshal may engage in an alternative dispute resolution in the same manner as set forth in section 23(H) of this rule.
5. **Procedure.** The procedure for the Board’s consideration of an insurance claim-related decision is as set forth in section 23(I) of this rule.
6. **Decision on Appeal.** The Board will decide the appeal as expeditiously as possible. The Board may affirm all or part of the decision of the Commissioner or State Fire Marshal, affirm all or part of the decision of the Commissioner or State Fire Marshal with modifications, add new or additional conditions, order a hearing to be held as expeditiously as possible, reverse the decision of the Commissioner or State Fire Marshal, or remand the decision to the Commissioner or State Fire Marshal for further proceedings. The Board’s review is *de novo* and is not bound by the Commissioner’s or State Fire Marshal’s findings of fact or conclusions of law made in the decision under appeal. An evenly divided vote of the Board has the effect of affirming the Commissioner’s or State Fire Marshal’s decision unless a majority of Board members subsequently vote at that meeting for another action on the appeal or to table the matter until another meeting. In the case of an evenly divided vote, the findings and reasoning of the Board members voting in favor of the Commissioner’s or State Fire Marshal’s decision constitute the Board’s reasoning in the affirmation. Board decisions on appeal are subject to judicial review pursuant to 5 M.R.S. § 11001.
7. **Costs and Attorney Fees.**

Pursuant to 38 M.R.S. § 341-D(4)(E), if the Board overturns the Commissioner’s or State Fire Marshal’s decision, reasonable costs, including reasonable attorney fees incurred by the aggrieved applicant in pursuing the appeal to the Board from the time of a claim-related decision forward, will be paid by the Maine Ground and Surface Waters Clean-up and Response Fund established under 38 M.R.S. § 551. In order to receive payment, the prevailing party must, within 30 days of the Board decision, submit to the Department documentation substantiating its costs and fees. Parties will be notified of the date of the meeting when the submission will be considered by the Board. At such time, the Board will consider comments by the Commissioner or State Fire Marshal regarding the reasonableness of the amount that has been submitted for approval. An hourly rate for “reasonable attorney fees” is the established hourly rate of the attorney, but may not exceed $200.00 per hour. However, the Board has the right to approve less than the amount of the costs or fees requested based upon its determination of what is reasonable under the circumstances of a particular case. The decision of the Board regarding attorney fees will be stated in the minutes of the meeting and no separate order will be issued.

1. **Chair Authority.** The Chair’s authority is as set forth in section 23(J) of this rule.
2. **Request for Reconsideration.** Requests for reconsideration will be processed in the same manner as set forth in section 23(K) of this rule.

**25. Revocation or Suspension of a License.**

1. **Authority.** Notwithstanding 5 M.R.S. § 10051, after written notice and opportunity for a hearing pursuant to 5 M.R.S. §§ 9051-9064, the Commissioner may revoke or suspend a license whenever the Commissioner finds that any of the criteria set forth in section 27 of this rule has been met. Additionally, the Board may modify a waste discharge license and the Commissioner may revoke or suspend a waste discharge license when the Board or Commissioner finds that any of the criteria in section 27 of this rule has been met.
2. **Filing of Petition with the Commissioner.** Any person may petition the Commissioner to initiate proceedings to revoke or suspend a license. The petition must state which of the criteria listed in section 27 of this rule is being invoked and must specifically describe the factual basis for the petition. The petitioner must serve a copy of the petition on the licensee at the time the petition is filed with the Commissioner. The petition, once filed, may not be supplemented. The licensee’s response to the petition must be filed within 30 days of the filing of the petition with the Commissioner unless the Commissioner, upon a request by the licensee and for good cause shown, extends that deadline. No later than 21 days following receipt of the licensee’s response to a petition to revoke or suspend a license, the Commissioner will dismiss the petition or initiate proceedings by providing the licensee with written notice and opportunity for a hearing. The written notice must state which of the criteria listed in section 27 of this rule is being considered and the factual basis for the Commissioner’s decision to initiate proceedings.
3. **Action Initiated by Commissioner.** If the Commissioner decides on his or her own initiative to initiate proceedings to revoke or suspend a license, the Commissioner will provide the licensee with written notice and opportunity for hearing. The written notice will state which of the criteria listed in section 27 of this rule is being considered and the factual basis for the Commissioner’s decision to initiate proceedings.
4. **Hearing.** The licensee must submit its request for a hearing within 15 days of the Commissioner’s written notice of opportunity for a hearing. If the licensee requests a hearing, it will be held within 45 days of the request for hearing unless the Commissioner and the licensee agree to extend the time period. The procedure for hearings is governed by section 7 of this rule and the Department’s rules pertaining to suspension, revocation, and modification proceedings. If the proceeding was initiated as a result of a petition, the petitioner is deemed to be a party to the hearing and need not petition to intervene.
5. **Commissioner’s Decision.** Based on the administrative record, including evidence from the licensing proceeding and evidence developed during any hearing, the Commissioner may decide that no action is warranted or may make findings of fact that one or more of the criteria listed in section 27 of this rule has been met and revoke or suspend the license. The Commissioner’s decision to revoke or suspend a license may include provisions requiring the licensee or former licensee to take action necessary to protect human health or the environment, including but not limited to remediation, monitoring, proper closure, decommissioning, or cessation of activity at any licensed facility or site.
6. **Decision Discretionary.** A decision by the Commissioner to dismiss a petition or to take no action at the conclusion of the proceedings is within the Commissioner’s sole discretion and is not subject to Board or judicial review.

**26. Modification of License or Order Prescribing Corrective Action.**

1. **Authority.** At the request of the Commissioner and after written notice and opportunity for a 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 any of the criteria set forth in section 27 of this rule has been met. The Board may modify a license or order corrective action as authorized by 38 M.R.S. § 341-D(3) and this section at any time, including during the pendency of a judicial appeal of a final decision regarding the license.
2. **Filing of Petition with the Commissioner.** Any person may petition the Commissioner to recommend that the Board initiate proceedings to modify a license or prescribe corrective action on a license. The petition must state which of the criteria listed in section 27 of this rule is being invoked and must specifically describe the factual basis for the petition. The petitioner must serve a copy of the petition on the licensee at the time the petition is filed with the Commissioner. The petition, once filed, may not be supplemented. The licensee’s response to the petition must be filed within 30 days of the filing of the petition with the Commissioner unless the Commissioner, upon a request by the licensee and for good cause shown, extends that deadline. No later than 21 days following receipt of the licensee’s response to a petition to modify a license or prescribe corrective action on a license, the Commissioner will dismiss the petition or recommend to the Board that it initiate proceedings to modify a license or prescribe corrective action.
3. **Content of Written Recommendation.** The Commissioner’s recommendation to the Board must state which of the criteria listed in section 27 of this rule is being invoked and the factual basis for the Commissioner’s recommendation to initiate proceedings to modify a license or prescribe corrective action. The Commissioner will provide the licensee with a copy of the written recommendation.
4. **Board Consideration of Recommendation.** The Board will consider the Commissioner’s recommendation at a regular Board meeting. After hearing from the Commissioner and the licensee, the Board will decide whether to initiate proceedings to modify a license or prescribe corrective action. If the Board decides to initiate proceedings, the licensee must be provided with written notice and opportunity for a hearing. The written notice must state which of the criteria listed in section 27 of this rule is being invoked and the factual basis for the Board’s decision to initiate proceedings.
5. **Hearing.** The licensee may request a hearing within 15 days of the Board’s written notice of opportunity for a hearing. If the licensee requests a hearing, it will be scheduled as expeditiously as possible. The procedure for hearings is governed by 5 M.R.S. § 8001, *et seq.* and Department rules pertaining to hearings in revocation, suspension, or modification proceedings. If the Commissioner’s recommendation to initiate proceedings was the result of a petition, the petitioner is deemed to be a party to the hearing and need not petition to intervene.
6. **Board’s Decision.** Based on the administrative record, including evidence from the licensing proceeding and evidence developed during any hearing, the Board may decide that no action is warranted or may make findings of fact and modify in whole or in part any license, or issue an order prescribing necessary corrective action.
7. **Decision Discretionary.** A decision by the Commissioner to dismiss a petition is within the Commissioner’s sole discretion and is not subject to Board or judicial review. A decision by the Board not to initiate proceedings or to take no action at the conclusion of the proceedings, is within the Board’s sole discretion and is not subject to judicial review.

**27. Criteria for Revocation, Suspension, Modification or Corrective Action.**

The Department may revoke, suspend, or modify a license or prescribe necessary corrective action only if the Commissioner, pursuant to section 25 of this rule, or the Board, pursuant to section 26 of this rule, finds that:

1. the licensee has violated any condition of the license;
2. the licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;
3. the licensed discharge or activity poses a threat to human health or the environment;
4. the license fails to include any standard or limitation legally required on the date of issuance;
5. there has been a change in any condition or circumstance that requires revocation or suspension of a license;
6. 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;
7. the licensee has violated any law administered by the Department; or
8. the license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990.

Additionally, the Department may initiate modification of a waste discharge license for the reasons set forth in 38 M.R.S. § 414-A(5)(B)(1) through (7).

The Commissioner may revoke or suspend a license as authorized 38 M.R.S. § 342(11)(B) and this section at any time, including during the pendency of a judicial appeal of a final decision regarding the license.

**28.** **Judicial Review of a Department Decision.** Any person may seek judicial review of a final Commissioner or Board decision by filing a petition in Superior Court in accordance with 38 M.R.S. § 346, 5 M.R.S. § 11001, *et seq.* and Maine Rules of Civil Procedure Rule 80C, except where otherwise provided by law. The filing of an appeal to the Board is not a prerequisite for a judicial appeal. Pursuant to 38 M.R.S. § 346(5), when a license or permit decision or other final action of the Board or the Commissioner is appealed to a court in accordance with this section, the Board or the Commissioner may toll for the pendency of the judicial appeal the running of time for any deadline established in the license, permit or action under appeal.

**29. Administrative Consent Agreements.** Pursuant to 38 M.R.S. § 341-D(6)(G), the Board will consider for approval all administrative consent agreements negotiated by the Commissioner. If the Board finds acceptable the terms, conditions, and any stipulated corrective actions to resolve violations of the laws and rules administered by the Department and any environmental impacts resulting from the violations, the Board will approve the agreement. A vote of the Board to decline approval of an administrative consent agreement has the effect of requesting the Commissioner to conduct further negotiation or take other action. The development of administrative consent agreements, including notice and public participation requirements, is governed by 38 M.R.S. §§ 347-A and 349.

1. **Procedure.** Following notice in accordance with the Freedom of Access Act, 1 M.R.S. § 406, of the Board’s scheduling for consideration an administrative consent agreement for approval, the procedure for considering administrative consent agreement at a meeting of the Board is as follows.
2. Department staff makes a presentation discussing the violations, any restoration or mitigation efforts completed or sought, and any monetary penalty agreed to and corrective actions ordered by the proposed administrative consent agreement.
3. The violator may address the Board.
4. When, in the Chair’s judgment, comments from members of the public are likely to assist the Board in understanding the facts surrounding the administrative consent agreement, the Chair may allow members of the public to address the Board.
5. The Board, the Board Executive Analyst, and counsel to the Board may ask questions of any person addressing the Board during the meeting.
6. **Decision.** The Board will deliberate and vote to either approve the administrative consent agreement as presented or reject the administrative consent agreement for the reason(s) identified by Board members during deliberation. An evenly divided vote of the Board has the effect of rejecting the administrative consent agreement unless a majority of Board members subsequently vote at that meeting to approve the administrative consent agreement or table the matter until another meeting.

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STATUTORY AUTHORITY:

5 M.R.S. § 8051

38 M.R.S. § 341-H

EFFECTIVE DATE:

August 1, 1994 – filing 94-176

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 8, 1996 – filing 96-190

REPEAL AND REPLACE EFFECTIVE:

April 1, 2003 – filing 2003-77

AMENDED:

May 29, 2013 – filing 2013-120

AMENDED:

August 25, 2013 – filing 2013-179 affecting Section 1(B) (Final adoption, major substantive)

AMENDED:

October 19, 2015 – filing 2015-185

June 9, 2018 – filing 2018-092

REPEAL AND REPLACE EFFECTIVE:

September 15, 2024 – filing 2024-212