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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

February 12, 2003

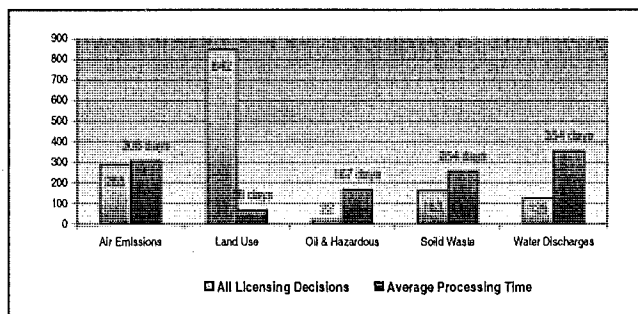
The Honorable Senate Chair John Martin and House Chair Ted Koffman
Joint Standing Committee on Natural Resources
121st Maine Legislature
State House Room 437
Augusta, Maine 04333

Subject: Report of DEP License Issuance Timeliness During Calendar Year 2002

Dear Chairman Martin and Chairman Koffman:

Individuals and businesses submit many kinds (or classes) of licensing applications to the Department of Environmental Protection (DEP) each year that require individual decisions to be made, and published, by our staff.¹ Of those classes, Maine law requires the DEP to annually publish a list that establishes the maximum number of days that should be used in processing and issuing decisions on applications for *new* licenses.² (see 38 M.R.S.A. § 344-B(1)) This so-called "timetable" assigns specific maximum processing times to each of the 200+ types of *new* license decisions that may be issued by DEP.

Exceeding the maximum processing time without an appropriate extension results in a payment equal to 50% of the processing fee being returned to the applicant; if the decision is greater than 120-days late, 100% of the processing fee is returned. (§ 344-B(5))



Maximum processing time periods may be extended, or put "on-hold" in two ways -- by DEP or by agreement with an applicant. The expiration of a maximum processing time period may be extended by DEP where: (1) a public hearing on the application is required; (2) the Board of Environmental Protection assumes jurisdiction over the application; or (3) the application has been significantly modified during processing. (§ 344-B(3)(A)) The DEP and an applicant may agree to extend a processing deadline where: (1) additional information is required from the applicant in order for a decision to be made; (2) government agencies other than DEP have failed to respond with required comments within agreed upon time deadlines; or (3) the applicant wishes to stop the processing period. (§ 344-B(3)(B)) DEP takes these provisions very seriously, and therefore requires our project managers to exchange written documentation with an applicant before an extension can become effective. Regardless of any oral agreement to the contrary,

¹ License and permit classifications include *Amendment, Condition Compliance, Minor Revision, New, Renewal, and Transfer.*

² Decisions on *new* license or permit applications constituted approximately 39% of all those made by DEP in 2002; In our divisions, those *new* application decisions were approximately 15% of the total number made regarding air emissions, 55% regarding land use, 27% regarding oil and hazardous waste management, 24% regarding solid waste management, and 17% regarding wastewater discharges.

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MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

NRC Committee Chairs
February 12, 2003
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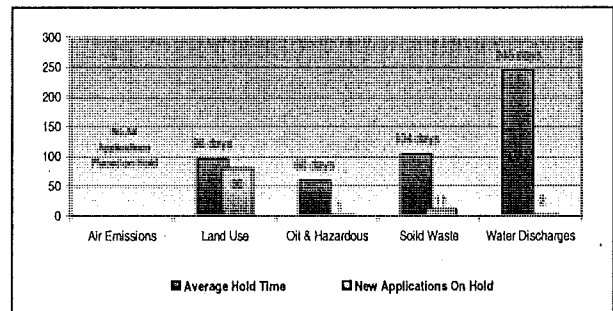
we count a decision as late if it exceeded a guaranteed processing time without a written extension.

The following information details the DEP's issuance goals and performance under the processing timetable for the period between January 1, 2002, and December 31, 2002 (CY02). DEP is required to annually report our performance in meeting these deadlines to your committee. (§ 344-B(6))

98.9% of the new licenses issued by DEP in 2002 were on-time.

Since 1995, DEP has used 95% as its goal for the minimum proportion of its *new* application licensing decisions which will be issued within the deadlines published in our annual timetable. During CY02, the DEP issued 570 decisions on applications for *new* licenses. The average processing time for these new decisions was 84 days. Of these 570 decisions, seven (7) exceeded established maximum processing times without having the deadline adequately extended.³ This results in a performance rate for issuing decisions on-time in CY02 of greater than 98.88%. The seven (7) decisions failing to meet deadlines resulted in our returning \$1,957.50 in processing fees to applicants.

Of DEP's 570 new decisions in CY02, 94 were placed on hold, extending the processing deadline. The average duration of extension was 101 days. The primary reason for deadline extension was the submittal of applications that lack some of the information necessary to make a positive finding on a standard. When DEP receives a deficient application, information in an application raises specific questions regarding a project, or public comments raise new issues, the options are to deny the project or request additional information. When a licensing decision requires detailed engineering data to demonstrate that a project will comply with State laws, which is often the case with extensions, supplementing an application with such data is often time consuming. As a result, extending the deadline for issuing a permit or license is routine, primarily because of the technical requirements inherent in our decision making.



Please feel free to contact me with any questions regarding the DEP's performance or the data upon which this report is based.

Sincerely,

Brooke E. Barnes
Acting Commissioner

³ Of the seven (7), three (3) had been placed on hold but the project managers failed to further document extensions of them.