

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 715

H. P. 634 House of Representatives, February 9, 1981
Referred to the Committee on Energy and Natural Resources. Sent up for
concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Damren of Belgrade.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Permit Applicants for Waste Discharge Licenses and Air Emission Licenses to Request Hearings Thereon before the Board of Environmental Protection.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 38 MRSA § 414, sub-§ 4-A is enacted to read:

4-A. Request for hearing. Any person to whom the board has issued a waste discharge license without a hearing may request, in writing, within 30 days after notice of the issuance of the license, a hearing thereon before the board. The request shall set forth the findings and conclusions of the board and the terms of the license to which the person objects, the basis of the objections and the relief requested. Within 30 days of receipt of the request, the board shall schedule and hold a hearing limited to the issues raised by that request.

Sec. 2. 38 MRSA § 590, as last amended by PL 1979, c. 381, §§ 12-14, is repealed.

Sec. 3. 38 MRSA § 590-A is enacted to read:

§ 590-A. Licensing

1. No activity without a license. After ambient air quality standards and emission standards have been established within a region, the board may by regulation provide that no person may operate or maintain therein any air

contamination source or emit any air contaminants therein without an emission license from the board.

2. **Application.** Application for such licenses shall be made in such form and contain such information relating to the proposed air contamination source and emission of air contaminants as the board may by regulation prescribe.

3. **Hearings.** The board may hold a hearing on any application. All hearings under this paragraph shall be held in some municipality within the region where the proposed emission is to be located. At the hearing, the board shall solicit and receive testimony concerning the nature of the proposed emissions, their effect on existing ambient air quality standards within the region, the availability and effectiveness of air pollution control apparatus designed to maintain the emission for which license is sought at the levels required by law and the expense of purchasing and installing the apparatus. If, after hearing, the board finds that the proposed emission will be receiving the best practicable treatment, will not violate applicable emission standards or can be controlled so as not to violate the standards, and that the proposed emission, either alone or in conjunction with existing emissions, will not violate or can be controlled so as not to violate applicable ambient air quality standards, it shall grant the license, imposing such appropriate and reasonable conditions thereon as may, in the board's judgment, be necessary to secure compliance with these standards.

4. **Hearing at request of applicant.** Any person to whom the board has issued an air emission license without a hearing may request, in writing, within 30 days after notice of the issuance of the license, a hearing thereon before the board. The request shall set forth the findings and conclusions of the board and the terms of the license to which the person objects, the basis of the objections and the relief requested. Within 30 days of receipt of the request, the board shall schedule and hold a hearing limited to the issues raised by that request.

5. **Board denial.** The board shall have the power to deny an air emission license for a new or modified major emitting source if it determines that emissions from the source will cause an adverse impact on air quality-related value, including visibility for federally mandated Class I areas, notwithstanding the fact that the source will not cause or contribute to air pollution concentrations which exceed the ambient increments for a Class I area.

STATEMENT OF FACT

Present law governing the Board of Environmental Protection does not give applicants for waste discharge licenses and air emission licenses the right to a hearing before the board before the licenses are issued. In practice, these licenses are the product of negotiation between the Department of Environmental Protection staff and the applicant. The product is then presented to the board at its regular meeting where further argument by the applicant is not allowed. Thus, if an applicant disagrees with the Department of Environmental Protection staff

as to any portion of a proposed waste discharge or air emission license, that applicant cannot presently carry his case to the board, the administrative agency charged with final decision-making authority.

Such a deprivation of hearing appears inconsistent with due process and the spirit of the Administrative Code and is also internally inconsistent with the Department of Environmental Protection's own laws, since applicants for site location approval presently have the right to a hearing before the board.