

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1334

6
7 H.P. 1009

House of Representatives, March 25, 1983

8 Submitted by the Department of Environmental Protection pursuant to
9 Joint Rule 24.

10 Referred to Committee on Energy and Natural Resources. Sent up for
concurrency and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Hall of Sangerville.

11 Cosponsors: Senator Brown of Washington, Representative Michaud of
E. Millinocket and Representative Jacques of Waterville.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Clarify the Decision-making
18 Process within the Department of
19 Environmental Protection.
20

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

23 Sec. 1. 38 MRSA §342, sub-§3, as enacted by PL
24 1971, c. 618, §8, is repealed and the following
25 enacted in its place:

26 3. Granting of licenses; initiate enforcement
27 actions and negotiate agreements. He may, subject to
28 the provisions of this chapter, grant licenses, ini-
29 tiate enforcement actions pursuant to law, negotiate
30 and enter into agreements with federal, state and
31 municipal agencies. Since it is the intent of this
32 chapter to permit the commissioner to exercise the
33 delegated authority to issue certain permits and
34 licenses, as well as to provide professional exper-
35 tise and guidance to the board as its chairman, ser-

1 vice in both capacities shall not in itself consti-
2 tute a conflict of interest nor be deemed a violation
3 of any of the provisions of the Maine Administrative
4 Procedure Act, Title 5, chapter 375, provided that
5 the commissioner may not participate in any board
6 deliberations involving an appeal to the board by any
7 person aggrieved by a decision made by the commis-
8 sioner.

9 Sec. 2. 38 MRSA §342, sub-§4, as repealed and
10 replaced by PL 1977, c. 596, §1, is amended to read:

11 4. Organization of department. The commissioner,
12 subject to the approval of a majority of after con-
13 sultation with the Board of Environmental Protection,
14 shall organize the department into the bureaus, divi-
15 sions, regional offices and other administrative
16 units that he deems necessary to fulfill the duties
17 of the department and support the duties of the Board
18 of Environmental Protection. With the approval of a
19 majority of After consultation with the Board of
20 Environmental Protection, he shall prescribe the
21 functions of the bureaus and other administrative
22 units to insure that the powers and duties of the
23 board are administered efficiently so that all li-
24 cence applications and other business of the depart-
25 ment may be expeditiously completed in the public
26 interest.

27 Sec. 3. 38 MRSA §344, sub-§§1 and 2, as enacted
28 by PL 1977, c. 300, §9, are repealed and the follow-
29 ing enacted in their place:

30 1. Acceptance and notification. The Commissioner
31 of Environmental Protection shall, within 10 working
32 days of receipt of an application, determine whether
33 the application is in a form acceptable for process-
34 ing and shall notify the applicant of the official
35 date on which the application was accepted or the
36 reasons why the application was not accepted.

37 Notice shall be provided to the public for each
38 application for a permit or license accepted by the
39 commissioner. Comments shall be solicited from the
40 public for each application in a manner prescribed by
41 the board in the regulations.

1 A. For those applications delegated to the com-
2 missioner under subsection 2 which do not fall
3 under the permit by rule provisions of subsection
4 7, the commissioner shall issue a draft permit or
5 license and shall give reasonable notice to the
6 applicant and to any other person who has noti-
7 fied the commissioner of his interest in the
8 application before he takes final action on the
9 application. The draft permit or license shall
10 be made available to the applicant and to all
11 interested persons at the Augusta office of the
12 department at least 5 working days before the
13 commissioner takes final action on the applica-
14 tion.

15 B. For those applications not delegated to the
16 commissioner under subsection 2, the commissioner
17 shall provide a summary of the application to the
18 board and all interested governmental agencies
19 and other interested parties in a manner pre-
20 scribed by the board in the regulations. At least
21 10 working days shall be provided for the receipt
22 of comments on the application prior to the pre-
23 paration of a draft permit or license. The com-
24 missioner shall prepare a draft permit or license
25 and shall give reasonable notice to the applicant
26 and to any other person who has notified the com-
27 missioner of his interest in the application of
28 the date the board will act on the application.
29 The draft permit or license shall be made avail-
30 able to the applicant and to all interested per-
31 sons at the Augusta office of the department at
32 least 15 working days before the board acts on
33 the application.

34 All correspondence notifying the applicant of board
35 or commissioner decisions shall be by certified mail,
36 return receipt requested.

37 2. Delegation. Authority is delegated to the
38 Commissioner of Environmental Protection and the
39 department staff to approve, approve with conditions
40 or disapprove the following categories of applica-
41 tions:

42 A. All applications under section 393, pertain-
43 ing to great ponds permits;

- 1 B. Applications under section 413 for a waste
2 discharge license with a maximum daily discharge
3 of less than 100,000 gallons per day and for a
4 cooling water waste discharge license, regardless
5 of the amount;
- 6 C. All applications under section 418, pertain-
7 ing to log storage permits;
- 8 D. Applications under section 474 pertaining to
9 coastal wetlands permits for pile supported
10 piers;
- 11 E. Applications under section 483 for site loca-
12 tion development permits for subdivisions of less
13 than 75 acres, with fewer than 25 lots to contain
14 fewer than 25 housing units;
- 15 F. All applications under section 543, pertain-
16 ing to oil discharge licenses;
- 17 G. All applications under section 545, pertain-
18 ing to oil terminal facility licenses;
- 19 H. Applications under section 590 pertaining to
20 air emissions licenses for all petroleum storage
21 facilities, for incinerators or boilers with
22 capacities of less than 150,000,000 British Ther-
23 mal Units per hour and for all general process
24 sources;
- 25 I. All applications under section 1303-A, per-
26 taining to hazardous waste transporting licens-
27 ing;
- 28 J. All applications under section 1304, subsec-
29 tion 8, paragraph A, pertaining to solid waste,
30 sludge or septage waste facility permits; and
- 31 K. Applications for permit or license renewals
32 where the permittee or licensee has operated in
33 substantial compliance with the most recent
34 permit or license and where the proposed pollu-
35 tion control equipment is substantially unchanged
36 from that previously permitted or licensed and
37 where applicable laws or rules on which the
38 permit or license would be considered have not

1 changed since the last permit or license was
2 issued.

3 The board may delegate by regulation to the commis-
4 sioner the authority to approve, approve with condi-
5 tions or disapprove any other applications for
6 approvals by the board made pursuant to any of the
7 laws which the board is required to administer.

8 The board, after a majority of the members present
9 and voting vote to do so, may delegate to the commis-
10 sioner the authority to approve, approve with condi-
11 tions or disapprove individual applications not dele-
12 gated under this subsection.

13 Decisions made by the commissioner pursuant to any
14 such delegation shall be made in accordance with the
15 standards found in the applicable statute, with all
16 procedural steps applicable to applications not dele-
17 gated, and with regulations adopted by the board,
18 which regulations shall include assurance that any
19 interested person aggrieved by a decision of the com-
20 missioner made pursuant to this section shall have a
21 right to appeal that decision to the board.

22 Sec. 4. 38 MRSA §344, sub-§3, as amended by PL
23 1977, c. 694, §753, is repealed and the following
24 enacted in its place:

25 3. Time limits for processing applications.
26 Whenever the commissioner receives a properly com-
27 pleted application for any permit or license in a
28 category delegated under subsection 2, he shall make
29 a decision as expeditiously as possible. For those
30 delegated applications which fall under the permit by
31 rule provisions of subsection 7, the decision shall
32 be made within 20 working days after acceptance of
33 the application. For those delegated applications
34 which do not fall under the permit by rule provi-
35 sions, the commissioner shall make a decision within
36 60 working days after acceptance of the application.
37 If the commissioner determines that an application
38 for a permit or license in a category delegated to
39 him under subsection 2 is policy setting or precedent
40 setting or has generated substantial public interest,
41 he shall request that the board act on the applica-
42 tion.

1 Section 1 clarifies the role of the commissioner
2 as chairman of the Board of Environmental Protection
3 and his role in the licensing process. This section
4 explains legislative intent which states that the
5 dual roles do not constitute a conflict of interest.

6 Section 2 gives the Commissioner of Environmental
7 Protection the authority to organize and establish
8 the functions of the department, after consultation
9 with the Board of Environmental Protection.

10 Sections 3 to 5 accomplish the following.

11 1. New procedures are established for the review
12 and comment period of delegated and nondelegated
13 applications.

14 2. The number of permit and license applications
15 delegated by the board to the commissioner is
16 expanded.

17 3. The time limit in which the board must act
18 upon a permit or license application is lowered from
19 180 days to 105 working days.

20 4. A 60-working day and 20-working day, for
21 permit by rule applications, time limit is estab-
22 lished for the review of those license and permit
23 applications delegated to the commissioner.

24 5. Application time limit waiver procedures are
25 altered so that they conform to the newly proposed
26 time limits. Only a 2/3 vote of the board can waive
27 time limits when the applicant objects.

28 Section 6 authorizes the board to develop a
29 permit by rule program in order to more efficiently
30 process routine applications by category that have no
31 significant impact upon the environment.

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