

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 1982 to June 24, 1983
Chapters 453-End

AND AT THE

FIRST SPECIAL SESSION
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Chapters 583-588

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J.S. McCarthy Co., Inc.
Augusta, Maine
1983

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

CONTINUED

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND ELEVENTH LEGISLATURE

1983

CHAPTER 453

H.P. 1009 - L.D. 1334

AN ACT to Clarify the Decision-making
Process within the Department of
Environmental Protection.

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

Sec. 1. 38 MRSA §344, sub-§§1 and 2, as enacted by PL 1977, c. 300, §9, are repealed and the following enacted in their place:

1. Acceptance and notification. The Commissioner of Environmental Protection shall, within 10 working days of receipt of an application, determine whether the application is in a form acceptable for processing and shall notify the applicant of the official date on which the application was accepted or the reasons why the application was not accepted.

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

A. For those applications delegated to the commissioner under subsection 2 which do not fall under the permit by rule provisions of subsection 7, the commissioner shall issue a draft permit or license and shall give reasonable notice to the applicant and to any other person who has notified the commissioner of his interest in the application before he takes final action on the application. The draft permit or license shall be made available to the applicant and to all interested persons at the Augusta office of the department at least 5 working days before the commissioner takes final action on the application.

B. For those applications not delegated to the commissioner under subsection 2, the commissioner shall provide a summary of the application to the board and all interested governmental agencies and other interested parties in a manner prescribed by the board in the regulations. At least 10 working days shall be provided for the receipt of comments on the application prior to the preparation of a draft permit or license. The com-

missioner shall prepare a draft permit or license and shall give reasonable notice to the applicant and to any other person who has notified the commissioner of his interest in the application of the date the board will act on the application. The draft permit or license shall be made available to the applicant and to all interested persons at the Augusta office of the department at least 15 working days before the board acts on the application.

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

2. Delegation. Authority is delegated to the Commissioner of Environmental Protection and the department staff to approve, approve with conditions or disapprove the following categories of applications:

A. All applications under section 393, pertaining to great ponds permits;

B. Applications under section 413 for a waste discharge license with a maximum daily discharge of less than 100,000 gallons per day and for a cooling water waste discharge license, regardless of the amount;

C. All applications under section 418, pertaining to log storage permits;

D. Applications under section 474 pertaining to coastal wetlands permits for pile supported piers;

E. Applications under section 483 for site location development permits for subdivisions of less than 75 acres, with fewer than 25 lots to contain fewer than 25 housing units;

F. All applications under section 543, pertaining to oil discharge licenses;

G. All applications under section 545, pertaining to oil terminal facility licenses;

H. Applications under section 590 pertaining to air emissions licenses for all petroleum storage facilities, for incinerators or boilers with capacities of less than 150,000,000 British Thermal Units per hour and for all general process sources;

I. All applications under section 1303-A, pertaining to hazardous waste transporting licens-

ing;

J. All applications under section 1304, subsection 8, paragraph A, pertaining to solid waste, sludge or septage waste facility permits; and

K. Applications for permit or license renewals where the permittee or licensee has operated in substantial compliance with the most recent permit or license and where the proposed pollution control equipment is substantially unchanged from that previously permitted or licensed and where applicable laws or rules on which the permit or license would be considered have not changed since the last permit or license was issued.

The board may delegate by regulation to the commissioner the authority to approve, approve with conditions or disapprove any other applications for approvals by the board made pursuant to any of the laws which the board is required to administer.

The board, after a majority of the members present and voting vote to do so, may delegate to the commissioner the authority to approve, approve with conditions or disapprove individual applications not otherwise delegated under this subsection.

Decisions made by the commissioner pursuant to any such delegation shall be made in accordance with the standards found in the applicable statute, with all procedural steps applicable to applications not delegated, and with regulations adopted by the board, which regulations shall include assurance that any interested person aggrieved by a decision of the commissioner made pursuant to this section shall have a right to appeal that decision to the board.

Sec. 2. 38 MRSA §344, sub-§3, as amended by PL 1977, c. 694, §753, is repealed and the following enacted in its place:

3. Time limits for processing applications. Whenever the commissioner receives a properly completed application for any permit or license in a category delegated under subsection 2, he shall make a decision as expeditiously as possible. For those delegated applications which fall under the permit by rule provisions of subsection 7, the decision shall be made within 20 working days after receipt of the notification. For those delegated applications which do not fall under the permit by rule provisions, the commissioner shall make a decision within 60 working days after acceptance of the application. If the commissioner determines that an application for a permit or license in a category delegated to him

under subsection 2 is policy setting or precedent setting or has generated substantial public interest, he shall request that the board act on the application.

Whenever the commissioner accepts a properly completed application for any permit, license, approval or certificate not delegated to him under subsection 2, the board shall make a decision as expeditiously as possible, but in no case may this decision be later than 105 working days after acceptance of the application.

Sec. 3. 38 MRSA §344, sub-§4, as enacted by PL 1977, c. 300, §9, is repealed and the following enacted in its place:

4. Exceptions. The commissioner may waive the time limit requirements of subsection 3, at the request of the applicant.

The board may waive the time limit requirements of subsection 3 after consultation with the applicant, if 2/3 of the members of the board eligible to vote do so vote.

Sec. 4. 38 MRSA §344, sub-§7, is enacted to read:

7. Permit by rule. The Board of Environmental Protection may permit, by rule, any class of activities which would otherwise require the individual issuance of a permit or approval by the board, if the board determines that activities within the class will have no significant impact upon the environment. Any such rule shall describe with specificity the class of activities covered by the rule, and may establish standards of design, construction or use as may be deemed necessary to avoid adverse environmental impacts. Any such rule shall require notification to the commissioner prior to the undertaking of the regulated activity.

Sec. 5. 38 MRSA §474, sub-§1, as enacted by PL 1979, c. 504, §3, is amended to read:

1. Wetlands permit. If the applicant for the wetlands permit demonstrates, to the satisfaction of the board or municipality as appropriate, that the proposed activity will not unreasonably interfere with existing recreational and navigational uses; nor cause unreasonable soil erosion; nor unreasonably interfere with the natural flow of any waters; nor unreasonably harm wildlife or freshwater, estuarine or marine fisheries; nor lower the quality of any waters, the board or municipality shall grant the permit upon such terms as are necessary to insure that the proposed activity will comply with the fore-

going standards.

Within 30 days after receipt of a completed application for a permit, the board or municipality shall either issue the permit or deny the permit setting forth the reasons therefor or order a hearing thereon within 30 days of the order for which hearing adequate public notice shall be given. Within 30 days after the adjournment of such hearing, the board or municipality shall either issue the permit or deny the permit setting forth the reasons therefor. In the event that a permit applied for is denied either by the municipality or the board, the applicant may request a hearing before either of the above with reasonable public notice given.

In municipalities that have been delegated the authority to issue permits under this Article, within 30 days after receipt of a completed application for a permit, the municipality shall either issue the permit or deny the permit setting forth the reasons therefor or order a hearing thereon within 30 days of the order for which hearing adequate public notice shall be given. Within 30 days after the adjournment of the hearing, the municipality shall either issue the permit or deny the permit setting forth the reasons therefor. In the event that a permit applied for is denied by the municipality, the applicant may request a hearing before the municipality with reasonable public notice given.

The board shall issue no permit without notifying the municipality in which the proposed alteration is to occur and considering any comments filed within a reasonable period by said that municipality.

No permit issued by a municipality shall ~~may~~ become effective until 30 days subsequent to its issuance, but if approved by the board in less than 30 days then the effective date shall be the date of approval. A copy of the application for the permit and the permit issued by the municipality shall be sent to the board immediately upon its issuance by registered mail. The board shall review ~~such~~ that permit and either approve, deny or modify it as it deems necessary. Failure of the board to act within 30 days of the receipt of the permit by the municipality shall constitute its approval and the permit shall be effective as issued.

When winter conditions prevent the board or municipality from evaluating a permit application, the board or municipality, upon notifying the applicant of ~~such~~ that fact, may defer action on the application for a reasonable period. The applicant shall not during the period of deferral fill or cause to be filled, dredge or cause to be dredged, drain or cause

to be drained or otherwise alter ~~such~~ that coastal wetland.

Sec. 6. 38 MRSA §483, sub-§2, as enacted by PL 1981, c. 449, §7, is amended to read:

2. Application. Any person intending to construct or operate a development shall, before commencing construction or operation, notify the ~~board~~ department in writing of his intent and of the nature and location of the development, together with other information as the board may by regulation require. The board or the commissioner shall ~~within 30 days of receipt of the notification,~~ either approve the proposed development, upon such terms and conditions as are appropriate and reasonable or disapprove the proposed development setting forth the reasons therefor or schedule a hearing thereon in the manner hereinafter provided.

Any person as to whose development the board has issued an order without a hearing may request, in writing, within 30 days after notice of the board's decision, a hearing before the board. This request shall set forth, in detail, the findings and conclusions of the board to which ~~such~~ that person objects, the basis of the objections and the nature of the relief requested. Upon receipt of the request, the board shall schedule and hold a hearing limited to the matters set forth in the request. Hearings shall be scheduled in accordance with section 484.

Sec. 7. 38 MRSA §625, first ¶, as enacted by PL 1979, c. 465, is amended to read:

The board shall, ~~within 30 days of receipt of a completed application,~~ either approve the proposed small hydroelectric power project, upon such terms and conditions as are appropriate and reasonable, or disapprove the proposed small hydroelectric power project setting forth the reasons therefor, ~~or schedule a hearing thereon in the manner provided in this section.~~

Effective September 23, 1983.

CHAPTER 454

H.P. 1165 - L.D. 1546

AN ACT to Authorize Court Appointed
Receivers.