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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

September 4, 2008

Senator John L. Martin, Senate Chair
Representative Theodore S. Koffman, House Chair
Joint Standing Committee on Natural Resources
123rd Maine Legislature
100 State House Station
Augusta, Maine 04333

**Subject: Report of D.E.P. License Issuance Timeliness During Calendar Year 2007
(38 M.R.S.A. § 344-B(6))**

Dear Chairman Martin and Chairman Koffman:

Individuals and businesses submit many types of licensing applications to the Department of Environmental Protection (D.E.P.) each year that require individual decisions to be made, and published, by our staff.¹ Maine law requires the D.E.P. 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. Exceeding the maximum processing time without a written 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 D.E.P. or by agreement with an applicant. The expiration of a maximum processing time period may be extended by D.E.P. 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 D.E.P. 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 D.E.P. 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)) D.E.P. takes these provisions very seriously, requiring our project managers to exchange written documentation with an applicant be-

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 42% of all those made by D.E.P. in 2007. Those *new* application decisions were approximately 4% of the total number made regarding air emissions, 89% regarding land use, >1% regarding oil and hazardous waste management, 4% regarding solid waste management, and 1% regarding wastewater discharges.

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NRC Committee Chairs
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fore an extension can become effective. Regardless of any oral agreement to the contrary, we count a decision as late if it exceeded a guaranteed processing time without a written extension.

The following information details the D.E.P.'s issuance goals and performance under the processing timetable for the period between January 1, 2007, and December 31, 2007 (CY07). D.E.P. is required to annually report our performance in meeting these deadlines to your committee. (§ 344-B(6))

Since 1995, D.E.P. has used 95% as its goal for the minimum proportion of its *new* application licensing decisions that must issue within the deadlines published in our annual timetable. During CY07, D.E.P. issued 847 decisions on applications for *new* licenses. The average processing time for these new decisions was 113 days. Of these 847 decisions, 29 exceeded established maximum processing times without having the deadline extended in writing. This results in a performance rate for issuing new decisions on-time in CY07 of greater than 96%.

**96.6% of the
new licenses
issued in 2007
were on-time.**

Of D.E.P.'s 847 new decisions, 205 were placed on hold, extending the processing deadline. The primary reason for deadline extension was the submittal of applications that lack some of the information necessary to make a finding on a standard. When D.E.P. 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 D.E.P.'s performance or the data upon which this report is based.

Sincerely,



David P. Littell
Commissioner