

Information Sheet

Public Participation in the Licensing Process

Dated: April 2018 Contact: (207) 287-7688

SUMMARY

Maine law charges the Commissioner of the Department of Environmental Protection (D.E.P.) with evaluating license applications for many different activities that affect Maine's environment. Individuals and legal entities may participate at various points during license application processing. Individuals must recognize that the Commissioner's charge may, under certain circumstances, be overtaken by the Board of Environmental Protection (Board). This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to in this document, will assist with your understanding of the potential opportunities for participation in the Commissioner's process; other specific provisions that apply to the Board are not addressed in this INFORMATION SHEET. A failure to participate during the licensing process will result in a person's only option for influence over that decision being the filing of an appeal. D.E.P.'s *Rules Concerning the Processing of Applications and Other Administrative Matters (Chapter 2)*, 06-096 C.M.R. ch. 2, was promulgated, in part, to provide guidance on this process.

1. **PUBLIC ACCESS TO INFORMATION.** Records submitted to D.E.P. are generally available to the public under Maine's Freedom of Access Act, 1 M.R.S. §§ 400-414. Other than portions claimed to be confidential by law when submitted to D.E.P., all license application materials are readily available for review and copying at our offices in Augusta, Portland, Bangor, and Presque Isle.
2. **PUBLIC NOTICE.** Maine law requires applicants to publicly make known their intent to submit an application to D.E.P. It is the responsibility of an individual who is interested in following or participating in the license decision-making process to act after seeking out that notice or, if you are an abutter, to act when noticed directly by mail.
 - A. **Public Informational Meetings.** Informational meetings are held by persons prior to submitting a licensing application to D.E.P. for the purpose of informing the public about an anticipated project. These meetings are held at a location near to a proposed project and are by design open to the public. Abutters to the anticipated project location receive notice in the mail of the meeting time and location, and notice is also published in newspapers serving the area of the project.
 - B. **Application Filing.** Prior to filing an application with D.E.P., abutters to the project location receive notice in the mail of the anticipated filing date, and it is also published in newspapers serving the area of the project.
3. **INTERESTED PERSONS.** Individuals can acquire materials submitted to D.E.P., attend public informational meetings, request that a public hearing be held on a filed application, request that the Board take jurisdiction over an application, and provide comments on an application or a draft decision.
 - A. **Maximum Participation.** Participation in a D.E.P. licensing decision to the maximum extent possible requires a person to submit a written request stating his or her desire to acquire material related to an application. The individuals who do are known as "interested persons." Once a request is filed, interested persons will be provided with the opportunity to inspect and copy materials on file at D.E.P.; they also receive direct notice of public informational, pre-application and pre-submission meetings, and public

- hearings. The timing of an interested person's request to be part of the process will determine the number of events potentially available to him or her.
- B. **Public Informational Meetings.** Informational meetings are held to inform the public about environmental impacts that are anticipated from a project. Interested persons may ask questions at such a meeting. Questioners should be aware that answers may not be available during the meeting.
 - C. **Pre-application and Pre-Submission Meetings.** D.E.P. often meets with potential applicants to identify regulatory and processing issues that need consideration. Pre-application and pre-submission meetings will typically not be attended by interested persons, in part because such a meeting is not, by law, a "public proceeding" freely open to attendance under Maine's Freedom of Access Law. Although the decision to allow individuals other than an applicant to attend is D.E.P.'s to make, interested persons invited to attend such a meeting should expect only to observe, since public input cannot be received at this time in the licensing process.
 - D. **Application Comments.** Interested persons and any other member of the public may submit written comments, including technical information, at any time during the course of an application's processing. It is in that person's interest to submit information early in the process in order to ensure adequate time for consideration by the D.E.P. staff member evaluating the application.
 - E. **Draft Order Comments.** Interested persons will receive the Commissioner's draft licensing decision at least five (5) working days prior to final action. Written comments may be submitted on that draft decision. Reasonable notice of when the Commissioner anticipates issuing a final decision on the draft order will also be provided to interested persons.
 - F. **Public Hearing Requests.** People may request that a public hearing be held on a filed application within 20 days after its acceptance as complete for processing by D.E.P. Such a request must satisfy requirements found in Section 7 of Chapter 2. The Commissioner will typically order that a hearing be held where credible conflicting technical information appears to exist regarding a licensing criterion.
 - G. **BEP Jurisdiction Requests.** People may request that the Board assume jurisdiction over a filed application within 20 days after D.E.P. accepts it as complete for processing. Such a request must satisfy Section 17 of Chapter 2. Board jurisdiction is not available for wind power development projects or general permits for tidal energy demonstration projects.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the D.E.P. by calling (207) 287-7688. All Maine D.E.P. rules and laws are available via the internet by following the links provided at: <http://www.maine.gov/dep/>.

Note: D.E.P. provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs every citizen's rights.
