

Maine Revised Statutes

Title 38: WATERS AND NAVIGATION

Chapter 2: DEPARTMENT OF ENVIRONMENTAL PROTECTION

§344-A. OUTSIDE REVIEW OF APPLICATIONS

The commissioner may enter into agreements with individuals, partnerships, firms and corporations outside the department, referred to throughout this section as "outside reviewers," to review applications or portions of applications submitted to the department. The commissioner has sole authority to determine the applications or portions of applications to be reviewed by outside reviewers and to determine which outside reviewer is to perform the review. When selecting an outside reviewer, all other factors being equal, the commissioner shall give preference to an outside reviewer who is a public or quasi-public entity, such as state agencies, the University of Maine System or the soil and water conservation districts. Except for an agreement for outside review regarding review of an application for a wind energy development as defined in Title 35-A, section 3451, subsection 11, a certification pursuant to Title 35-A, section 3456, an application for an offshore wind power project as defined in section 480-B, subsection 6-A or a general permit pursuant to section 480-HH or section 636-A or an application for a hydropower project, as defined in section 632, subsection 3, that uses tidal action as a source of electrical or mechanical power, the commissioner may enter into an agreement with an outside reviewer only with the consent of the applicant and only if the applicant agrees in writing to pay all costs associated with the outside review. [2009, c. 615, Pt. E, §4 (AMD).]

1. Standards for outside review. Prior to entering into an agreement with an outside reviewer, the commissioner must determine that:

- A. The agreement protects the public interest and the interest of the applicant; [1991, c. 471, (NEW).]
- B. The agreement ensures a fair, consistent and adequate review of the application; [1991, c. 471, (NEW).]
- C. The agreement provides the public with the same opportunity to comment on the application as would be provided if the application were reviewed by the department; [1991, c. 471, (NEW).]
- D. The outside reviewer meets the minimum qualification standards established by the commissioner; and [1991, c. 471, (NEW).]
- E. The application can not be reviewed by existing departmental personnel in a reasonable period of time. [1991, c. 471, (NEW).]

[1991, c. 471, (NEW) .]

2. Qualifications. The commissioner shall establish qualification standards for outside reviewers and shall develop a list of qualified outside reviewers. Standards established by the commissioner must include initial qualification standards and standards ensuring that outside reviewers continue to maintain a high level of scientific and regulatory expertise in one or more relevant areas of knowledge.

[1991, c. 471, (NEW) .]

3. Conflict of interest. An outside reviewer may not review any portion of an application submitted by an applicant who directly or indirectly employed the reviewer in any capacity at any time during the 12-month period immediately preceding the submission of the application. An outside reviewer must sign a

written agreement with the commissioner not to be employed, directly or indirectly, by any applicant whose application was reviewed by that reviewer for at least 12 months from the date the review of the application is complete.

[1991, c. 471, (NEW) .]

4. Penalty. Notwithstanding section 349, any person who knowingly violates subsection 3 is guilty of a Class D crime. Notwithstanding Title 17-A, sections 4-A and 1301, the fine for each violation may not be less than \$5,000 nor more than \$25,000.

[1991, c. 471, (NEW) .]

5. Repeal.

[1993, c. 356, §2 (RP) .]

SECTION HISTORY

1991, c. 471, (NEW). 1993, c. 356, §2 (AMD). 2007, c. 661, Pt. B, §6 (AMD). 2009, c. 270, Pt. A, §1 (AMD). 2009, c. 615, Pt. E, §4 (AMD).

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