

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-SIX

—
H.P. 1489 - L.D. 2210

**An Act to Clarify Board of Environmental Protection Procedures Regarding
Appeals of Licensing or Permitting Decisions of the Commissioner of
Environmental Protection**

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

Sec. 1. 38 MRSA §341-D, sub-§4, as amended by PL 2023, c. 512, §2, is further amended to read:

4. Appeal or review. The record on appeal for appeals decided by the board is the administrative record relied upon by the commissioner in the commissioner's review of a license or permit application, including the record of any adjudicatory hearing held by the department, any supplemental evidence admitted by the board on appeal and, if the board holds a hearing on the appeal, any additional evidence obtained by the board from that hearing. The board shall review, may hold a hearing at its discretion on and may affirm, amend, reverse or remand to the commissioner for further proceedings any of the following:

A. Final license or permit decisions made by the commissioner when a person aggrieved by a decision of the commissioner appeals that decision to the board within 30 days of the date of the decision. An appellant shall identify in the appeal the licensing or permitting criterion or standard the appellant believes was not satisfied in the commissioner's final license or permit decision and shall include in the appeal all information required to be submitted by rules adopted pursuant to this section. Any proposed supplemental evidence offered by an appellant must be included with the filing of the appeal. The board staff shall issue to the appellant; the licensee or permittee, if the licensee or permittee is not the appellant; interested persons; and to any other persons who have requested to be notified of the license or permit decision written notice of the filing of the appeal and, which must identify any proposed supplemental evidence offered by the appellant. For the purposes of this paragraph, "interested person" means any person that submitted written comments on the application that is the subject of the appeal. Within 30 days of the issuance of the written notice by the board staff of the filing of the appeal by the board staff, the licensee or permittee, if the licensee or permittee is not the appellant, and any interested parties identified by the commissioner pursuant to section 344, subsection 4-A, paragraph B may submit proposed supplemental evidence to the board and the

appellant addressing the issues raised in the appeal. The chair of the board may allow admit proposed supplemental evidence into the record to be supplemented when it the chair finds that the evidence offered is relevant and material to the appeal and that:

- (1) ~~An interested party seeking to supplement the record~~ The person that submitted the proposed supplemental evidence has shown due diligence in bringing the evidence to the licensing or permitting process at the earliest possible time; or
- (2) The evidence is newly discovered and could not, by the exercise of diligence, have been discovered in time to be presented earlier in the licensing or permitting process.

The board shall admit into the record additional evidence and analysis submitted by department staff in response to issues raised in the appeal and any supplemental evidence allowed by the board in accordance with this paragraph. The licensee or permittee, if the licensee or permittee is not the appellant, may submit to the board a written response to the merits of the appeal. The board is not bound by the commissioner's findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner. Any changes to a final license or permit decision of the commissioner made by the board under this paragraph must be based upon the board's review of the record, ~~any supplemental evidence admitted by the board and any other evidence obtained by the board through any hearing on the appeal held by the board on appeal.~~

If the board modifies or reverses a final license or permit decision of the commissioner pursuant to this paragraph, the licensee or permittee shall implement any changes to the project necessary to comply with the decision of the board, which may include, but are not limited to, deconstruction and site restoration, and the department may initiate enforcement actions pursuant to section 347-A and impose penalties pursuant to section 349 if the licensee or permittee fails to satisfactorily implement those changes;

C. License or permit decisions appealed to the board under another law. Unless the law provides otherwise, the standard of review is the same as provided under paragraph A;

D. License or permit decisions regarding an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to section 480-HH or section 636-A. In reviewing an appeal of a license or permit decision by the commissioner under this paragraph, the board shall base its decision on the ~~administrative record of the department, including the record of any adjudicatory hearing held by the department, and any supplemental information allowed by the board for supplementation of the record on appeal.~~ The board may remand the decision to the department for further proceedings if appropriate. The chair of the Public Utilities Commission or the chair's designee may serve as a nonvoting member of the board and is entitled to fully participate but is not required to attend meetings and hearings when the board considers an appeal pursuant to this paragraph. The chair's participation on the board pursuant to this paragraph does not affect the ability of the Public Utilities Commission to submit information to the department for inclusion in the record of any proceeding before the department; and

E. Decisions on insurance claims-related matters heard under section 568-A, including but not limited to decisions on eligibility for coverage, eligibility of costs and waiver

and amount of deductible. Except as provided in board rules, an applicant must file the appeal not later than the 30th day after the applicant receives the decision made under section 568-A. If the board overturns the decision made under section 568-A, the department must pay reasonable costs, including reasonable attorney's fees, incurred by the aggrieved applicant in pursuing the appeal to the board from the Maine Ground and Surface Waters Clean-up and Response Fund established under section 551. Reasonable attorney's fees include only those fees incurred from the time of an insurance claims-related decision forward. Decisions of the board are subject to judicial review pursuant to Title 5, chapter 375, subchapter 7.