

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 140 - L.D. 219

**An Act Regarding Appeals of License or Permit 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Sec. 1. 38 MRSA §341-D, sub-§3, as repealed and replaced by PL 2011, c. 304, Pt. H, §7, is amended to read:

3. Modification or corrective action. At the request of the commissioner and after written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, whenever the board finds that any of the criteria in section 342, subsection 11-B have been met. The board may modify a license or order corrective action as authorized by this subsection at any time, including during the pendency of a judicial appeal of a final decision regarding the license.

For the purposes of this subsection, "license" includes any license, permit, order, approval or certification issued by the department.

Sec. 2. 38 MRSA §341-D, sub-§4, ¶A, as enacted by PL 1989, c. 890, Pt. A, §13 and affected by §40, is amended to read:

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 filing of the decision with the board staff. The board staff shall give written notice to persons that have asked to be notified of the decision. Any proposed supplemental evidence offered by an appellant must be included with the filing of the appeal. The board may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that:

- (1) An interested party seeking to supplement the record has shown due diligence in bringing the evidence to the licensing 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 process.

The board may admit into the record supplemental evidence offered by a respondent in response to proposed supplemental evidence offered by an appellant and the issues

raised on appeal. The board may admit into the record additional evidence and analysis submitted by department staff in response to issues raised on appeal or supplemental evidence offered by an appellant, respondent or interested party. 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 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 hearing held by the board;

Sec. 3. 38 MRSA §342, sub-§11-B, as amended by PL 2017, c. 137, Pt. A, §4, is further amended by amending the first blocked paragraph to read:

The commissioner may revoke or suspend a license as authorized by this subsection at any time, including during the pendency of a judicial appeal of a final decision regarding the license. For the purposes of this subsection, "license" includes any license, permit, order, approval or certification issued by the department and "licensee" means the holder of the license.

Sec. 4. 38 MRSA §344, sub-§9, as amended by PL 2011, c. 538, §4, is further amended to read:

9. License or permit renewals, amendments, revisions, condition compliance, surrenders and transfers. For purposes of this section, a request for a license or permit renewal, amendment, revision, condition compliance, surrender or transfer is considered an application that, unless specifically exempted by law, is subject to a decision by the department.

The commissioner may act on an application for a license or permit renewal, amendment, revision, condition compliance, surrender or transfer at any time, including during the pendency of a judicial appeal of a final decision regarding the license or permit.

Sec. 5. 38 MRSA §346, sub-§1, as amended by PL 2009, c. 642, Pt. B, §3, is further amended to read:

1. Appeal to Superior Court. Except as provided in subsection 4 and section 347-A, subsection 3 or 4, any person aggrieved by any order or ~~decision~~ other final action of the board or commissioner may appeal to the Superior Court. These appeals to the Superior Court must be taken in accordance with Title 5, chapter 375, subchapter 7.

Sec. 6. 38 MRSA §346, sub-§5 is enacted to read:

5. Tolling of deadlines. When a license or permit decision or other final action of the board or the commissioner is appealed to a court in accordance with this section, the board or the commissioner may toll for the pendency of the judicial appeal the running of time for any deadline established in the license, permit or action under appeal.