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TESTIMONY OF

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MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN SUPPORT OF L.D. 36,

**AN ACT TO CLARIFY PROCESSES OF THE BOARD OF ENVIRONMENTAL
PROTECTION**

SPONSORED BY SEN. TEPLER

**BEFORE THE JOINT STANDING COMMITTEE
ON
ENVIRONMENT AND NATURAL RESOURCES**

DATE OF HEARING:

January 27, 2025

Senator Tepler, Representative Doudera, and members of the Committee, I am Bill Hinkel, the Executive Analyst for the Board of Environmental Protection, which is part of the Department of Environmental Protection. I am speaking in support of L.D. 36 on behalf of the Department.

L.D. 36 would amend two sections of Title 38: section 344, subsection 1 regarding notice of applications; and section 1365, subsection 4 regarding Board appeals of uncontrolled hazardous substance site orders issued by the Commissioner.

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Bill Section 1

Section 1 of the bill would amend two aspects of the requirements for the Board to receive notice of applications that are submitted for Department review.

Statute (38 M.R.S. §344, sub-1) requires the Commissioner to notify the Board of all applications accepted as complete for processing. This requirement was associated with the former authority of the Board to take original jurisdiction for licensing projects of statewide significance. However, legislation last year (P.L. 2023, c. 512) amended the Board's roles and responsibilities by listing specific types of license applications that the Board must assume original jurisdiction to decide (38 M.R.S. §341-D, sub-2). This list does not include permit by rule notifications, waste transporter licenses or occupational licenses. L.D. 36 would now eliminate the requirement for the Board to receive notice of these application types, to align with the Board's current responsibilities. The requirement to report these types of applications to the Board has no functional purpose, is vestigial, and results in the need to extract and report data that is no longer used by the Board.

Secondly, statute (38 M.R.S. §344, sub-1) requires all applicants for a license to provide notice to the public of the filing of the application. While the Department agrees that public notice of most application types should be required, a statutory requirement to provide notice for certain types of license applications that do not include any type of development, discharge, or emission, such as waste transporter licenses and occupational licenses, appears to have little value, and is an added burden to those applicants.

Regarding permit by rule notifications, the Board has authority to permit, by rule, "any class of activities that would otherwise require the individual issuance of a permit or approval by the board, if the board determines that activities within the class will have no significant impact upon the environment." 38 M.R.S. § 344(7).

The proposed amendment to Title 38, section 344, subsection 1 would exclude permits by rule from the statutory requirement to provide public notice of the filing of an application. Instead, the Department believes that any appropriate notice requirements for permits by rule – a licensing mechanism for projects that will have no significant impact upon the environment – are best promulgated through program-specific rules, such as Chapter 305 for permits by rule under the Natural Resources Protection Act.

Bill Section 2

Section 2 of the bill would amend two administrative procedures for filing and processing of an appeal by the Board of uncontrolled hazardous substance site orders issued by the Commissioner.

Statute (38 M.R.S. §1365, sub-3) requires service of an order designating an uncontrolled hazardous substance site to be made by a sheriff, deputy sheriff, or hand delivery by a representative of the Department in accordance with the Maine Rules for Civil Procedure. The deadline for filing an appeal of the order with the Board is then calculated from the “date of receipt” by the responsible party (38 M.R.S. §1365, sub-4). It is implied that proper service under the Rules of Civil Procedure ensures receipt by the person being served. LD 36 would align the language between subsections 3 and 4 of the statute and eliminate reliance on unstated implications. The length of time a person has to file such an appeal is unchanged.

Secondly, statute (38 M.R.S. §1365, sub-4) establishes a deadline for the Board to hold a hearing on an appeal of an uncontrolled hazardous substance site order. The current requirement to hold the hearing within 15 days of receiving the appeal is unachievable when factoring in the procedural steps required by the Maine Administrative Procedure Act, particularly steps to ensure due process, such as notice of the hearing and public participation provisions. The proposed amendment would instead obligate the Board to hold the hearing “as expeditiously as possible,” which is consistent with the hearing scheduling requirements set forth in the Department’s Chapter 2 rule, *Processing of*

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Applications and Other Administrative Matters, for other types of appeals to the Board.

For example, see Chapter 2, section (23)(J).

Thank you for the opportunity to provide testimony on L.D. 36. I welcome any questions of the Committee now and at work session.