STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JANET T. MILLS
GOVERNOR

MELANIE LOYZIM
COMMISSIONER

TESTIMONY OF
Rob Wood, Director of the Bureau of Land Resources

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN SUPPORT OF L.D. 2058

AN ACT REGARDING COMPLIANCE WITH ENVIRONMENTAL PERMIT AND LICENSE APPLICATION REQUIREMENTS

SPONSORED BY REP. BRIDGEO

BEFORE THE JOINT STANDING COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE OF HEARING:

JANUARY 10, 2024

Senator Brenner, Representative Gramlich, and members of the Committee, I am Rob Wood, Director of the Bureau of Land Resources at the Department of Environmental Protection, speaking in support of L.D. 2058. I appreciate Rep. Bridgeo for sponsoring this bill on the Department's behalf.

L.D. 2058 would allow the Department to decline to accept an application as complete for processing if the activity requiring the permit has already begun and the applicant

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

website: www.maine.gov/dep

was aware that a permit was required before commencing the activity or the applicant has previously violated a requirement to obtain a permit from the Department.

Many of the laws administered by the Department under Title 38 prohibit certain types of activities from taking place until a permit is obtained from the Department. While most permit applications are received and processed by the Department before the proposed activities are carried out, the Department sometimes processes applications for activities that have already begun or been completed, known as after-the-fact (ATF) permit applications. These cases typically arise due to lack of knowledge or understanding of the law. For example, a summer camp operator may construct a new building without realizing that the cumulative footprint of structures on their property (built after 1970) now exceeds three acres and requires a permit under the Site Location of Development Law (Site Law). The summer camp would be in violation of the Site Law until it either removes the building or obtains an ATF permit for the development. Rather than remove the building, the summer camp would typically apply for an ATF permit, and the Department will often find that the development is permittable, sometimes with certain modifications or conditions.

However, in rare instances, the availability of ATF permitting can be abused. Once an activity has occurred or a development has been built, it can be challenging or infeasible to reverse course. When a developer understands this dynamic, it can sometimes prove more beneficial for the developer to knowingly carry out an unpermitted activity, knowing that they can apply for a permit after the fact. There are financial consequences to choosing this route; ATF permit fees are double the standard permit fees (38 M.R.S. §352(2)(G)), and the Department may assess penalties for conducting an activity without the required permit (38 M.R.S. §349). However, if the benefits of moving forward with the unpermitted development outweigh these costs, the developer may simply choose to absorb the penalties and higher permitting fees.

L.D. 2058 would change this calculus. In the rare cases when an applicant has knowingly violated the requirement to obtain a permit before conducting an activity—or when the applicant should know that there is a permitting requirement, based on their previous violation of Department permitting requirements—this bill would give the Department the discretionary authority to not accept an ATF application for the activity. In practical terms, if the Department chooses not to accept the ATF application, the only option to resolve the violation is to restore the site to its previous condition. In short, this would create a substantial deterrent against knowing violations of permitting requirements under Title 38.

The Department acknowledges that a previous violation of permitting requirements might not always mean that the past violator is aware of all current permitting requirements. If the previous violation occurred 15 or 20 years ago, it might not be as relevant as a recent violation. While the bill as written would allow the Department to take this into account, the Department offers the suggestion that the bill language could be more narrowly tailored by requiring that the Department could only take into account previous violations that have occurred in the past five years when deciding whether to accept an ATF permit application. I would be happy to discuss this suggestion further if the Committee wishes.

Thank you for the opportunity to provide testimony. I am available to answer questions of the Committee, both now and at work session.