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**To:** Committee on Environment and Natural Resources  
**From:** John Fitzgerald, Volunteer Legislative Team Co-Chair, Sierra Club Maine  
**Date:** January 10, 2024  
**Re:** Testimony in Support of LD 2058: **An Act Regarding Compliance with Environmental Permit and License Application Requirements**

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Dear Senator Brenner, Representative Gramlich, and esteemed members of the Committee on Environment and Natural Resources:

I am submitting the following testimony on behalf of Sierra Club Maine, representing over 22,000 supporters and members statewide. Founded in 1892, Sierra Club is one of our nation's oldest and largest environmental organizations. We work diligently to amplify the power of our 3.8 million members nationwide as we work towards combating climate change and promoting a just and sustainable economy. We urge the Committee to vote "ought to pass" on LD 2058, with some additions.

The Sierra Club Maine Chapter is aware that the Department of the Environment (DEP) does not always have the resources it needs to fulfill its duties within the time that applicants for permits and the public would like. In order to strengthen LD 2058, we urge the Committee to adopt the modest amendments we suggest below so as to better ensure timely compliance with the law in order to foster the conservation and reasonable sustainable use of Maine's natural resources.

These additions are based on similar provisions in the laws of other states and in Federal environmental laws authored, preserved and funded by such leaders as Maine's Senators Edmund Muskie, Margaret Chase Smith, and George Mitchell, and Rep. Chellie Pingree and others. We believe these additions would fulfill the laudable legislative purpose and intent of the bill and its title.

The first amendment we recommend is to remove the word "knowingly" in Section 1 as it could be construed to put a heavy burden of proof on the DEP, when the general rule is that ignorance of the law is no excuse for those who violate it and when the phrase after that in the paragraph does not require the DEP prove a knowing violation of a previous permit but merely the fact of a violation.

The second amendment would authorize and require the DEP to assess a fee and post a bond sufficient to restore any illegal harm that had been done and limit further use to a pace sufficient to foster and monitor restoration of the protected resource and to pay reasonable expenses of any person who brought the violation to the attention of the DEP. If no harm has been caused by the unpermitted use, the DEP would be allowed to advise the permittee of the law but proceed with a permit.

The third and final amendment would cover reasonable fees for the expert witnesses and counsel of any person who proves a violation of DEP rules has occurred or would if a permit were to be granted as proposed. This would make it practicable for others who wish to use those resources in a responsible and legal manner to help the DEP enforce the law and to provide the opportunity for the economic or recreational use of those resources that might otherwise be denied them by the illegal overuse or degradation by others.

We appreciate the opportunity to submit this testimony and would be happy to answer any questions the Committee may have ahead of the work session.

Sincerely,

John Fitzgerald  
Volunteer Legislative Team Co-Chair  
Sierra Club Maine

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## An Act Regarding Compliance with Environmental Permit and License Application Requirements

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

**Sec. 1. 38 MRSA §344, sub-§1**, as amended by PL 1991, c. 804, Pt. B, §2 and affected by §7, is further amended to read:

**1. Acceptance and notification.** The commissioner shall notify the applicant in writing of the official date on which the application was accepted as complete for processing or the reasons the application was not accepted. If a written notice of acceptance or nonacceptance is not mailed to the applicant within 15 working days of receipt of the application, the application is deemed to be accepted as complete for processing on the 15th working day after receipt by the department. If the application is not accepted, the commissioner shall return the application to the applicant with the reasons for nonacceptance specified in writing. A reason for nonacceptance of an application may include, but is not limited to, submission of the application after the activity requiring a permit or license pursuant to this Title has begun if the applicant knowingly violated a requirement to obtain the permit or license for the activity or the applicant previously violated a requirement to obtain a permit or license pursuant to this Title. **Before granting a permit to any applicant for the use of the resource that was previously subjected to unpermitted use, the commissioner shall require the applicant who conducted the unpermitted use to pay a fee and post a bond sufficient to cover the costs of the DEP using that bond to restore any harm or depletion caused by that unpermitted use and the reasonable costs of any person who brought the violation to the attention of the DEP, and shall limit any activities by any future permittee that the commissioner permits to levels that will foster the timely and effective restoration of that resource with such restoration progress being confirmed no less than every two years by the DEP using the bonds posted to cover the costs of such monitoring.** Any applicant whose application has not been accepted by the commissioner shall attend a presubmission meeting with the department before resubmitting

that application. The commissioner shall notify the board of all applications accepted as complete.

An application is acceptable as complete for processing if the application is properly filled out and information is provided for each of the items included on the form. Acceptance of an application as complete for review does not constitute a determination by the department on the sufficiency of that information and does not preclude the department from requesting additional information during processing.

The commissioner shall require the applicant to provide notice to the public for each application for a permit or license accepted. The commissioner shall solicit comments from the public for each application in a manner prescribed by the board in the rules **which shall require the DEP to award reasonable expert witness and attorneys' fees to any person who demonstrates that a violation of DEP rules has occurred or would if the permit were to be granted.**

All correspondence notifying an applicant of denial of an application by the board or commissioner must be by certified mail, return receipt requested.

### **SUMMARY**

This bill provides that the Department of Environmental Protection may specify as a reason for nonacceptance of a permit or license application that the application was submitted after the activity requiring the permit or license has begun if the applicant knowingly violated a requirement to obtain a permit or license for the activity or the applicant previously violated a requirement to obtain a permit or license. **It also requires the DEP to assess the costs of restoring resources that were degraded by unpermitted use or pollution and to award fees and costs to those who prove that unpermitted degradation has occurred.**