

§344. Processing of applications

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. 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.

A. [PL 1989, c. 890, Pt. A, §20 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

B. [PL 1989, c. 890, Pt. A, §20 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

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

[PL 1991, c. 804, Pt. B, §2 (AMD); PL 1991, c. 804, Pt. B, §7 (AFF).]

1-A. Governing rules. An application for a permit, license or approval is processed under the substantive rules in effect on the date the application or request for approval is determined to be complete for processing. Notwithstanding Title 1, section 302, after the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under Section 402 (c)(1) of the Federal Water Pollution Control Act, as amended, any waste discharge license issued or modified by the State pursuant to its authority to grant permits under the Federal Water Pollution Control Act must comply with State statutory or regulatory requirements that take effect prior to final issuance of that license.

[PL 1997, c. 794, Pt. A, §4 (AMD).]

2. Delegation.

[PL 1989, c. 890, Pt. A, §21 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

2-A. Processing time limits, decisions and appeals. After the commissioner accepts an application for processing, the commissioner may approve, approve with conditions, disapprove or refer the application as follows.

A. Except as otherwise provided in this paragraph, the commissioner shall decide as expeditiously as possible if an application meets 3 of the 4 criteria set forth in section 341-D, subsection 2 and shall request that the board assume jurisdiction of that application. If an interested person requests that the commissioner refer an application to the board and the commissioner determines that the criteria are not met, the commissioner shall notify the board of that request. If at any subsequent time during the review of an application the commissioner decides that the application falls under section 341-D, subsection 2, the commissioner shall request that the board assume jurisdiction of the application.

(1) The commissioner may not request the board to assume jurisdiction of an application for any permit or other approval required for an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, a certification pursuant to Title 35-A, section 3456 or a general permit pursuant to section 480-HH or section 636-A. Except as provided in subparagraph (2), the commissioner shall issue a decision on an application for an expedited wind energy development, an offshore wind power project or a hydropower project, as defined in section 632, subsection 3, that uses tidal action as a source of electrical or mechanical power within 185 days of the date on which the department accepts the application as complete pursuant to this section or within 270 days of the department's acceptance of the application if the commissioner holds a hearing on the application pursuant to section 345-A, subsection 1-A.

(2) The expedited review periods of 185 days and 270 days specified in subparagraph (1) do not apply to the associated facilities, as defined in Title 35-A, section 3451, subsection 1, of the development if the commissioner determines that an expedited review time is unreasonable due to the size, location, potential impacts, multiple agency jurisdiction or complexity of that portion of the development. If an expedited review period does not apply, a review period specified pursuant to section 344-B applies.

The commissioner may stop the processing time with the consent of the applicant for a period of time agreeable to the commissioner and the applicant. [PL 2011, c. 304, Pt. H, §18 (AMD).]

B. The commissioner shall decide whether an application meets the permit by rule provisions under subsection 7 within 20 working days after notifying the applicant of acceptance of the application, except that, in the case of an application to undertake an activity that requires a permit under chapter 3, subchapter 1, article 6, the commissioner shall decide whether the application meets the permit by rule provisions under subsection 7 within 90 calendar days after notifying the applicant of acceptance of the application unless the commissioner establishes a different time period for the decision pursuant to section 344-B. [PL 2023, c. 45, §1 (AMD).]

C. For those applications that do not fall under the permit by rule provisions of subsection 7, the commissioner shall decide upon the application pursuant to the provisions of section 344-B. [PL 1991, c. 804, Pt. B, §3 (AMD); PL 1991, c. 804, Pt. B, §7 (AFF).]

D. For an application for a permit for a grid-scale wind energy development, as defined in Title 35-A, section 3451, subsection 6, the following procedures apply.

(1) The commissioner shall accept public comment on an application during the course of processing the application. The commissioner shall set a deadline for receiving public comments.

(2) The commissioner may not issue the final decision until 10 business days after the close of the public comment period. The commissioner's final decision must include responses to the public comments. [PL 2015, c. 264, §1 (RPR).]

Any person aggrieved by a final license or permit decision of the commissioner may appeal that decision to the board. The filing of an appeal with the board is not a prerequisite for the filing of a judicial appeal.

[PL 2023, c. 45, §1 (AMD).]

2-B. Conflict with federal requirements. The commissioner may waive the time requirements of this section for those activities which require a federal permit or license when those provisions are inconsistent with federal law.

[PL 1989, c. 890, Pt. A, §22 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

3. Time limits for processing applications.

[PL 1989, c. 890, Pt. A, §23 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

4. Exceptions.

[PL 1989, c. 890, Pt. A, §24 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

4-A. Draft decisions and commissioner recommendations. Draft permits and licenses and commissioner recommendations are subject to the following provisions.

A. For those applications to be decided by the commissioner that do not fall under the permit by rule provisions of subsection 7, the commissioner shall, if requested by the applicant or any interested party, issue a draft permit or license and shall give reasonable notice to the applicant and to any other person who has notified the commissioner of an interest in the application before the commissioner takes final action on the application. The draft permit or license must be made available to the applicant and to all interested persons at the Augusta and appropriate regional offices of the department at least 5 working days before the commissioner takes final action on the application. [PL 1989, c. 890, Pt. A, §25 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

B. For those applications to be decided by the board, the commissioner shall provide a summary of the application to the board, all interested governmental agencies and other interested parties in a manner prescribed by the board by rule. The rule must provide at least 10 working days for the receipt of comments on the application prior to the preparation of a draft permit or license. If requested by the applicant or any interested party, the commissioner shall prepare a draft permit or license and shall give reasonable notice of the date the board will act on the application to the applicant and to any other person who has notified the commissioner of an interest in the application. The draft permit or license must be made available to the applicant and to all interested persons at the Augusta and appropriate regional offices of the department at least 15 working days before the board acts on the application. [PL 1989, c. 890, Pt. A, §25 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

The commissioner may incorporate comments on draft permits at the discretion of the commissioner. The commissioner may make any revised draft available for public comment. If the commissioner decides the draft is substantially revised, the commissioner shall make it available for public comment. [PL 1989, c. 890, Pt. A, §25 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

5. Reconsideration.

[PL 1989, c. 890, Pt. A, §26 (RP); PL 1989, c. 890, Pt. A, §40 (AFF).]

6. Fees. The commissioner may establish reasonable fees for the reproduction of materials in the department's custody, including all or part of any application submitted to the department and any records of public hearings. All such fees may be retained by the department and deposited in the Maine Environmental Protection Fund to reimburse expenses incurred in reproducing these materials.

[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §3 (AMD).]

7. Permit by rule. The Board of Environmental Protection may 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. Any such rule must describe with specificity the class of activities covered by the rule and may establish standards of design, construction or use as may be considered necessary to avoid adverse environmental impacts. Any such rule must require notification to the commissioner prior to the undertaking of the regulated activity.

[PL 2011, c. 120, §2 (AMD).]

8. Effective date of license. Except as provided in this subsection, a license granted by the commissioner is effective when the commissioner signs the license. The commissioner may attach a condition to the license requiring up to a 30-day delay in any physical alteration of the project area and any construction activity authorized by the license. A license granted by the board is effective when the chair of the board or the chair's designee signs the license.

[PL 1989, c. 890, Pt. A, §27 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

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.

[PL 2023, c. 139, §4 (AMD).]

10. Voluntary surrender. Unless otherwise provided in this Title or rules adopted pursuant to this Title, a license may be voluntarily surrendered by the license holder upon department approval.

[PL 2009, c. 121, §5 (NEW).]

SECTION HISTORY

PL 1977, c. 300, §9 (NEW). PL 1977, c. 694, §§753,754 (AMD). PL 1983, c. 453, §§1-4 (AMD). PL 1983, c. 779, §1 (AMD). PL 1985, c. 589, §1 (AMD). PL 1985, c. 746, §§7-9 (AMD). PL 1987, c. 274, §§1,2 (AMD). PL 1989, c. 546, §§5,6 (AMD). PL 1989, c. 890, §§A20-27, B3 (AMD). PL 1989, c. 890, Pt. A, §40 (AFF). PL 1991, c. 183 (AMD). PL 1991, c. 804, §§A3,B2,3 (AMD). PL 1991, c. 804, §B7 (AFF). PL 1997, c. 794, §A4 (AMD). PL 2007, c. 661, Pt. B, §5 (AMD). PL 2009, c. 121, §5 (AMD). PL 2009, c. 615, Pt. E, §3 (AMD). PL 2011, c. 120, §2 (AMD). PL 2011, c. 304, Pt. H, §18 (AMD). PL 2011, c. 538, §4 (AMD). PL 2013, c. 325, §4 (AMD). PL 2015, c. 264, §1 (AMD). PL 2023, c. 45, §1 (AMD). PL 2023, c. 139, §4 (AMD).

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