



BEP INFORMATION SHEET

Guidance on Requests for Board Jurisdiction over an Application

Date: October 2020 Contact: (207) 287-2811 or 314-1458

What is “Board jurisdiction”?

“Board jurisdiction” means that the Board of Environmental Protection (Board), rather than the Commissioner of the Department of Environmental Protection, is responsible for reviewing an application with the assistance of Department staff and deciding whether to grant a license. When the Board assumes jurisdiction over an application, the Board will hold a public hearing on the application unless it votes not to hold a hearing at the time it assumes jurisdiction.

Most license applications are processed at the Department staff level, and the decision to grant or deny a license is made by the Commissioner or the Commissioner’s designee. However, some applications are referred directly to the Board for review and a decision. This may happen because: (1) state law requires that the Board decide the matter (for example, an application for a commercial hazardous waste facility), (2) the application is referred to the Board jointly by the Commissioner and the applicant, or (3) more commonly, because the project meets the definition of a project of statewide significance.

Definition of Project of Statewide Significance

State law requires that the Board decide each application for approval of permits and licenses that in the Board’s judgment represents a project of statewide significance. (38 M.R.S. § 341-D(2)). A project is of statewide significance if it meets at least 3 of the following 4 criteria:

- The project will have an environmental or economic impact in more than one municipality, territory or county;
- The project involves an activity not previously permitted or licensed in the State;
- The project is likely to come under significant public scrutiny; and
- The project is located in more than one municipality, territory or county.

Projects the Board Cannot Assume Jurisdiction Over

By law, the Board cannot assume jurisdiction over an application for an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4; for a certification for a small-scale wind energy development pursuant to Title 35-A, section 3456; for a general permit for an offshore wind energy demonstration project pursuant to Title 38, section 480-HH; or a general permit for a tidal energy demonstration project pursuant to Title 38 section 636-A.

Public Request for Board Jurisdiction

Any person may submit a written request for the Board to assume jurisdiction over an application. Requests must be submitted to the Commissioner of the Department of Environmental Protection no later than 20 days after the application is accepted as complete for processing. The person requesting Board jurisdiction should consult Chapter 2, section 17 of the Department’s *Rule Concerning the*

Processing of Applications and Other Administrative Matters for guidance. In general, the request should state why the project meets the definition of a “project of statewide significance.” A request must be received at the Department by 5:00 p.m. on a regular business day either by mail, in-hand delivery, fax, or electronic mail at the following address:

Dept. of Environmental Protection, Attn Commissioner
#17 State House Station
38 Tyson Drive
Augusta, Maine 04333-0017
Fax: (207) 287-2814
Call 207-287-2811 for the appropriate email address.

If the request is sent by electronic mail, it must contain either a facsimile or scanned copy of a handwritten signature or an electronic signature in a form acceptable to the Department, with any attachments supplied in an unalterable format such as a pdf.

Review of Public Requests for Board Jurisdiction

The Commissioner reviews all requests for Board jurisdiction and makes a preliminary determination on whether the statutory criteria for Board jurisdiction are met.

- If the Commissioner determines that the criteria for Board jurisdiction are met, the Commissioner prepares a written recommendation for the Board’s consideration. The Commissioner’s recommendation is provided to the Board, the person requesting jurisdiction, the applicant, interested governmental agencies, and other interested persons¹. The Commissioner’s recommendation is considered by the full Board at a Board meeting.
- In instances where the Commissioner determines that the criteria for Board jurisdiction are not met, a letter stating the Commissioner’s determination is sent to the person requesting jurisdiction. The Board receives a copy of the request and the Commissioner’s determination. If upon notification the Board determines that the criteria for Board jurisdiction may be met, the Board may schedule the matter for consideration at a Board meeting.

Other Ways an Application may be Referred to the Board

Commissioner Initiated. Even if a public request is not received, all applications filed with the Department are screened by staff to determine whether they meet the criteria for Board jurisdiction. If the Commissioner determines that an application meets at least three of the four criteria for jurisdiction, the Commissioner will recommend that the Board take jurisdiction. The Board will consider the Commissioner’s recommendation at a Board meeting.

Referral by Commissioner and Applicant. If both the Commissioner and the applicant request Board jurisdiction over an application, the Board will assume licensing jurisdiction.

¹ Interested person. “Interested Person” means any person who submits written comments on an application or who requests, in writing, receipt of materials related to a particular application. [Chapter 2, section 1(J.)]

Board Initiated. The Board may assume jurisdiction over an application on its own initiative if it finds that at least three of the four criteria for jurisdiction are met. In these cases, the Board will notify the Commissioner of its interest in considering Board jurisdiction over an application, and the matter will be considered by the Board at a Board meeting.

Board Consideration of Requests for Jurisdiction over an Application

Recommendations that the Board assume licensing jurisdiction over an application are considered at a regularly scheduled meeting of the Board. At the meeting, the Board will provide an opportunity for the person requesting Board jurisdiction, the applicant, interested governmental agencies, and interested persons to comment on the request. Following discussion, the Board will deliberate on a motion and vote on the matter. The Board's decision on a request for Board jurisdiction is not subject to judicial review.

Note: This Information Sheet is provided for general guidance only; it is not intended to be legally binding or to be used as a legal reference.