



BEP INFORMATION SHEET

Guidance on Participation in a Board Licensing Hearing

Date: March 2013 Contact: (207) 287-2811 or 287-2452

What is the purpose of a public hearing on an application?

A public hearing on an application is an opportunity for the Board of Environmental Protection (Board) and Department of Environmental Protection (DEP) staff to gather and examine testimony and evidence from the applicant and persons who support or oppose a proposed project so that the Board can better determine whether the project will comply with the applicable environmental laws. The public hearing is a good way for the Board to evaluate conflicting technical information through cross-examination of the witnesses. It also provides an opportunity for interested persons to learn more about the proposed project.

Who participates in a public hearing on an application?

At the public hearing, the Board hears testimony from the applicant, local officials, people who live or work in the area of the proposed project or who would otherwise be impacted by the project, organizations that support or oppose the project, and federal, state or municipal agencies. Testimony is sworn and persons testifying must affirm that the testimony they give is true to best of their knowledge and belief. Additionally, DEP employees who are staff to the Board may ask questions of any witness at the hearing to clarify issues or obtain further relevant information. Staff may also respond to questions from the Board regarding information in the record. Public hearings are conducted in accordance with the requirements of the Maine Administrative Procedure Act [5 M.R.S. § 9051 to 9064], the DEP's statutes [38 M.R.S. § 345-A] and Chapter 3 of the DEP's rules governing hearings [06-096 CMR 3]. The DEP's statutes and rules are available online at www.maine.gov/dep.

What is intervenor status and who should petition to intervene?

Persons (including individuals, corporations, public or private organizations, citizen groups, municipalities, other governmental entities, etc.) who want to present detailed, technical information and expert witnesses regarding the proposed project and to cross-examine the witnesses of the other parties should file a petition to intervene. Persons granted intervenor status become parties to the proceeding and have certain rights and responsibilities. Intervenors are required to attend conferences and comply with procedures and schedules established by the Board for the filing of documents and the conduct of the hearing. Intervenors are often required to file their testimony and evidence in advance of the hearing and must have their witnesses (persons who can attest to the technical information they offer) available at the hearing to respond to questions from the Board, and to be cross-examined by the applicant and other intervenors.

Do I have to petition to intervene in order to testify and present evidence at a public hearing?

No. Members of the public who want to address the Board at the hearing or to submit written statements or evidence about the proposed project do not need to file a petition to intervene. The Board values testimony from the people who live, work or use the natural resources in the vicinity of a

proposed project and encourages them to attend the hearing and share their views. Persons who cannot attend the hearing may submit written comments on the application directly to the DEP.

Additionally, a representative of an interested federal, state, municipal or other governmental agency that does not petition to intervene will be given a reasonable opportunity to participate in the hearing, introduce evidence, and question the witnesses of the parties provided the agency representative presents the position of the agency and not his or her personal views and opinions. While not required to seek intervenor status, a governmental agency that would like to participate in the hearing should notify the Board of its interest early in the hearing preparation process so that the Board may allocate time for the agency at the hearing and ensure that the agency receives copies of testimony and other materials the agency may need to prepare for the hearing.

What are the criteria for intervenor status in a licensing hearing and how do I apply?

Maine law [5 M.R.S.A §9054(1)] states that, “On timely application made pursuant to agency rules, the agency conducting the proceedings shall allow any person showing that he is or may be, or is a member of a class which is or may be, substantially and directly affected by the proceeding, or any other agency of federal, state or local government, to intervene as a party to the proceeding.”

When the Board assumes jurisdiction over an application and decides that it will hold a public hearing on the application, it will publish a notice of the opportunity to intervene in a newspaper in general circulation in the area of the proposed project. The notice will describe the proposed project and the licenses required, state the deadline for the filing of a petition to intervene, and provide specific contact information for the project.

The requirements for the filing of a petition to intervene are stated in section 11 of the Department’s Chapter 3 Rules Governing the Conduct of Licensing Hearings. In brief, the petition must include: identification of the petitioner, the name of the petitioner’s spokesperson, a description of the effect of the proposed project on the petitioner, the petitioner’s specific concerns about the project as they relate to the criteria for approval, and a statement regarding the ability of the petitioner to participate in the hearing and pre-hearing meetings. If the petitioner is a group or organization, the petition must include a general description of the purpose and membership of the group or organization. The Board will review and rule on petitions to intervene at one of its regularly scheduled meetings.

For more information: Contact the Board’s Executive Analyst at (207) 287-2452.

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.