



## **BOARD OF ENVIRONMENTAL PROTECTION INFORMATION SHEET Guidance on Public Comment on Administrative Consent Agreements**

Date: February 2009

Contact: (207) 287-2811 or 287-2452

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### **What is an Administrative Consent Agreement?**

An administrative consent agreement is an enforcement tool authorized by statute (38 M.R.S.A. § 347-A(1)(A)(1)) that is used by the Department of Environmental Protection (DEP) to resolve violations of environmental laws quickly and effectively at the department level without pursuing an action in court. The terms of the agreement are proposed and negotiated by DEP staff in accordance with the DEP's Non-Compliance Response Guidance, Monetary Penalty Calculation Guidance, and the Board of Environmental Protection (Board) Consent Agreement Policy. Proposed agreements are subject to approval by the Office of the Attorney General and the Board. The consent agreement specifies monetary penalties and, if applicable, corrective actions that must be taken by the violator to resolve the violation. When approved, the consent agreement represents a legally binding contract between the State of Maine and the person or entity agreeing to the violation of law. The State will not prosecute or seek additional enforcement action for the violations identified in an approved consent agreement as long as the violator complies with the terms of the agreement.

### **What is the Board's role in the Administrative Consent Agreement Process?**

A proposed administrative consent agreement must be approved by the Board to become effective. By law, the Board's role is to review the proposed agreement for consistency with DEP's enforcement policies and with other enforcement actions in similar cases. If the Board determines that the agreement is appropriate, by vote it will approve the agreement. If the Board does not approve a proposed agreement, the matter is not resolved at that point and the case is referred back to DEP staff generally for further negotiations with the violator. If further negotiations fail, DEP staff may bring an enforcement action in District Court under Rule 80K of the Maine Rules of Civil Procedure, or the Office of the Attorney General may bring an enforcement action in court or may settle the case at its discretion.

### **Is there public notice and opportunity for comment on a proposed administrative consent agreement?**

When an administrative consent agreement is ready for the Board's consideration and vote, it is placed on the Board's meeting agenda. The agenda for each Board meeting, including a link to the proposed consent agreements that will be considered at that meeting, is noticed on the DEP's web page at [www.maine.gov/dep/bep](http://www.maine.gov/dep/bep) approximately one week prior to the Board meeting.

While not required by law, the Board Chair has discretion to allow members of the public to comment orally on a proposed agreement at the Board meeting. It is recommended that any person who would like to comment orally at a Board meeting on a proposed agreement contact the designated DEP staff person, the Board's Executive Analyst, or the Board's Administrative Assistant prior to the meeting so the Board Chair will be aware of the person's interest in the agreement and may plan the meeting accordingly.

In addition, State law (38 M.R.S.A. § 347-A(6)) requires the DEP to publish notice, and provide a 30 day written comment period, for proposed enforcement actions including administrative consent agreements that involve discharges regulated by the Federal Water Pollution Control Act. Notice of the opportunity for comment on these proposed consent agreements, the comment deadline, the relevant contact information, and a link to the proposed consent agreement are provided on the Board's agenda at least 30 days prior to Board action on the proposed agreement. Comments received, along with staff's response to the comments, are provided to the Board for its consideration at the Board meeting.

The public may also submit written comments to the Board at the Board's discretion on an administrative consent agreement that has been approved by the Board. (38 M.R.S.A. §347-A(4)(D))

**For more information:** Contact the Board's Executive Analyst at (207) 287-2452 or the Board's Administrative Assistant at (207) 287-2811.

**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.**

