



BEP INFORMATION SHEET

Guidance on Request for Board Jurisdiction

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

What is “Board jurisdiction”?

“Board jurisdiction” is the term used to refer to situations when the Board will review an application and decide whether to grant a license. Most license applications are processed at the DEP 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 processing and a decision. This could happen because: (1) state law requires that the Board decide the matter (for example, an application for a commercial hazardous waste facility), (2) the project meets the definition of a project of statewide significance, or (3) the application is referred to it jointly by the Commissioner and the applicant.

When the Board assumes jurisdiction over an application, the Board becomes the decision maker and will hold a public hearing on the application unless it votes not to hold a hearing at the time it assumes jurisdiction over the application. If the Board decides to hold a public hearing, individuals who want to provide detailed technical information and expert testimony at the hearing may petition to intervene. Persons granted intervenor status by the Board are formally recognized as parties in the proceeding and have certain rights and responsibilities. These include the right to present evidence and witnesses at the hearing and to participate in cross-examination of the witnesses presented by the other parties. Intervenors also have an obligation to attend certain meetings and comply with schedules for the filing of documents in preparation for the hearing.

When is a project of statewide significance?

State law requires that the Board decide each application for approval of permits and licenses that in its 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.

Are there projects the Board cannot assume jurisdiction over?

Yes. A project must be of statewide significance as defined above. In addition, 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.

How is an application referred to the Board?

An application may be referred to the Board in the following ways: (a) the Commissioner may refer an application to the Board in response to a written request from a member of the public; (b) the Commissioner may recommend that the Board assume jurisdiction based upon his or her assessment of the issues raised by the application even if a request for Board jurisdiction has not been made; (c) the Board may assume jurisdiction on its own initiative if it finds that the statutory criteria for Board jurisdiction have been met; or (d) the application may be referred to the Board jointly by the Commissioner and the applicant.

a) **Public Request.** Any member of the public may submit a written request for Board jurisdiction. A written request for the Board to assume jurisdiction over an application 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 over a license application should consult Chapter 2, section 17 of the Department’s Rules Concerning the Processing of Applications and Other Administrative Matters for guidance. A request must be received by 5:00 p.m. on a regular business day either by:

- Mail (U.S. Postal Service): Dept. of Environmental Protection, Attn Commissioner
#17 State House Station, Augusta, Maine 04333
- In-hand delivery: Dept. of Environmental Protection, Attn Commissioner
28 Tyson Drive, Augusta, Maine 04330
- Fax (207-287-2814), if followed by receipt of a signed original within five (5) working days, or
- Electronic mail to the Commissioner, if followed by receipt of a signed original within five (5) working days.

The Commissioner reviews all requests for Board jurisdiction and makes a preliminary determination concerning whether to recommend that the Board take jurisdiction over the application and the licensing process. The Commissioner’s determination is based on an assessment of whether the statutory criteria for Board jurisdiction are likely to be met.

In instances where the Commissioner determines that the criteria for Board jurisdiction are likely to be 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, with copies to the applicant, the Chair of the Board and the Board’s Executive Analyst. The full Board is advised of the Commissioner’s determination at a Board meeting.

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(I.)]

- b) Commissioner Initiated. In the absence of a public request, the Commissioner shall initiate a recommendation for Board jurisdiction over an application if the Commissioner determines, based upon the Department’s review of an application and its assessment of the issues involved, that the application meets at least three of the four criteria for jurisdiction stated above. In these cases, the Commissioner will prepare a written recommendation for the Board’s consideration at a Board meeting.
- c) 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 a particular application, and the matter will be considered by the Board at a Board meeting.
- d) Referral by Commissioner and Applicant. Statute provides that the Board shall decide an application for approval of a permit or license if the matter is referred to the Board jointly by the Commissioner and the applicant.

Recommendations regarding Board jurisdiction over a licensing matter 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 appeal.

<p>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.</p>
