



# BEP INFORMATION SHEET

## Overview / Board Purpose and Responsibilities

Date: September 2019 Contact: (207) 287-2811 or 287-2452

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### Purpose

The Board of Environmental Protection (BEP or Board) is a seven-member citizen board whose members are appointed by the Governor and confirmed by the Legislature. Its purpose is to provide informed, independent and timely decisions on the interpretation, administration, and enforcement of the laws relating to environmental protection and to provide for credible, fair, and responsible public participation in Department decisions. The Board fulfills its purpose through rulemaking, decisions on selected permit applications, decisions on appeals of the Commissioner's licensing actions, review of the Commissioner's enforcement actions, and recommending changes in the law to the Legislature [see 38 M.R.S. § 341-B].

Statute directs the Board to exercise independent judgment on the matters before it. The Board is not bound by the views of others or, in the case of an appeal, by the Commissioner's decision.

### Member Qualifications

Members of the Board are chosen to represent a broad range of interests and experience. At least three members must have technical or scientific backgrounds in environmental issues and no more than four members may reside in the same Congressional district. Members are appointed for staggered four-year terms, and no member may serve more than two consecutive four-year terms. The Chair is appointed by the Governor [38 M.R.S. § 341-C]. Board members are not employed by the State; rather, they volunteer their time and expertise to serve the State in this capacity. For information on current members please visit the Board's web page at: <http://www.maine.gov/dep/bep>.

### Operations

The Board is staffed by an Executive Analyst and an Administrative Assistant and is assisted by the professional staff of the Department of Environmental Protection and the Office of the Attorney General.

The Board conducts regular meetings in Augusta generally on the first and third Thursdays of each month, but the schedule may expand or contract depending on the workload. Public hearings on applications of statewide significance are scheduled separately and in a location near the site of the proposed project. Four members of the Board constitute a quorum. A quorum is required to open a meeting and for a vote of the Board [38 MRS § 341-E]. Meeting agendas and materials are available on the Board's web page and meetings may be listened to on-line.

### Duties and Responsibilities

The Board works with the Commissioner and Department staff to implement the State's environmental laws. The Board's duties are specified in law and include:

- A. **Rulemaking.** Under provisions of 38 M.R.S. § 341-H, the Board has authority to adopt, amend, or repeal reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of the laws the Department is charged with administering. The Board also has authority to adopt, amend, and repeal rules necessary for the conduct of the Department's business including the processing of applications, the conduct of hearings, and other administrative matters.

Existing and proposed rules can be found on the Department’s web page at:

<http://www.maine.gov/dep>.

- B. Appeal of a Licensing Decision. Final license decisions of the Commissioner may be appealed to the Board [38 M.R.S. § 341-D(4)]. In an appeal, the Board may affirm, amend, or reverse the Commissioner’s licensing decision or remand the matter to the Department for further review. The Board’s decision may be appealed to Maine’s Superior Court [38 M.R.S. § 346(1)], except that a decision regarding an expedited wind energy development may be appealed directly to the Maine Supreme Judicial Court sitting as the law court [38 M.R.S. § 346(4)].
- C. Permit and License Applications. Most license applications are processed at the Department staff level and decided by the Commissioner or the Commissioner’s designee; however, State law requires that certain license applications be decided by the Board. The statutory criteria for Board jurisdiction over an application are set forth in 38 M.R.S. § 341-D(2):

“The Board shall decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance. A project of statewide significance is a project that meets at least 3 of the following 4 criteria:

- Will have an environmental or economic impact in more than one municipality, territory or county;
- Involves an activity not previously permitted or licensed in the State;
- Is likely to come under significant public scrutiny; and
- Is located in more than one municipality, territory or county.”

The Board may not assume jurisdiction over 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 section Title 38, section 480-HH; or a general permit for a tidal energy demonstration project pursuant to Title 38, section 636-A.

- D. License Modification or Corrective Action. At the request of the Commissioner and after written notice and opportunity for hearing, the Board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, whenever the Board finds that such action is necessary to protect public health or the environment or to ensure compliance with environmental laws. The circumstances that may trigger modification of a license or the issuance of a corrective action order are set forth in the Department’s statutes at 38 M.R.S. § 342(11-B).
- E. Enforcement. Under provisions of 38 M.R.S. § 341-D(6), the Board advises the Commissioner on enforcement priorities and activities and the adequacy of penalties for violations; approves administrative consent agreements to resolve violations; and hears appeals of emergency orders issued by the Commissioner pursuant to 38 M.R.S. § 347-A(3).
- F. Reports to the Legislature. The Board is required to report periodically to the Legislature on the effectiveness of the State’s environmental laws and to make recommendations for amending those laws [38 M.R.S. § 341-D(7)]. Recent reports to the Legislature can be found on the Board’s web page.

**For more information:** Visit the Board’s web page at: <http://www.maine.gov/dep/bep>.

<p><b>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</b></p>
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