

Update Regarding Legislative Changes to Board Jurisdiction Over License Applications

The Department of Environmental Protection (Department) consists of the Commissioner of the Department and the Board of Environmental Protection (Board). The Commissioner and the Board have separate responsibilities and duties that are set forth in Maine law. Duties assigned to the Commissioner are set forth in [38 M.R.S. § 342](#); duties assigned to the Board are set forth in [38 M.R.S. § 341-D](#). Department staff serve the Commissioner for matters under the Commissioner's jurisdiction and serve as staff to the Board for matters under the Board's jurisdiction.

The Commissioner and the Board are both responsible for reviewing and deciding applications for licenses and permits; however, Maine law specifies certain types of applications that may only be decided by the Board. In 2024, the Maine Legislature passed a bill, [L.D. 865, *An Act to Clarify the Roles and Responsibilities of the Board of Environmental Protection*](#), that amended the Board's responsibilities and duties with respect to the Board's jurisdiction over license applications. The bill amended the criteria by which the Board assumes jurisdiction over a license or permit application and stipulates the specific categories of license and permit applications over which the Board must assume jurisdiction.

The new law (P.L. 2024, c. 512 and codified at [38 M.R.S. § 341-D\(2\)](#)) went into effect on August 9, 2024, and establishes that the Board must assume original jurisdiction over the following, and only the following, types of license and permit applications.

- A new mining permit required pursuant to the Maine Metallic Mineral Mining Act, 38 M.R.S. § 490-OO;
- A license for a new solid waste disposal facility required pursuant to the Solid Waste Facility Siting Law, 38 M.R.S. § 1310-N;
- A permit for a new high-impact electric transmission line, as defined in 35-A M.R.S. § 3131(4-A), required pursuant to the Site Location of Development Law, 38 M.R.S. § 483-A;
- A license for a new wastewater discharge required pursuant to the Waste Discharge Licenses Law, 38 M.R.S. § 413, that, as determined by the Department, is expected to use more than 20% of the assimilative capacity of the receiving water;
- A permit for a new offshore wind terminal required pursuant to the Site Location of Development Law, 38 M.R.S. § 483-A; and
- A permit for a new nuclear power plant, as defined in Nuclear Power Generating Facilities Law, 35-A M.S.R. § 4352(9), required pursuant to the Site Location of Development Law, 38 M.R.S. § 483-A.

The Commissioner may not decide any of the application types listed above. The Board may not assume jurisdiction over any other type of license or permit application other than those listed above, unless both the applicant and the Commissioner jointly refer the application to the Board.

Questions regarding this topic may be directed to the Board Executive Analyst William F. Hinkel at bill.hinkel@maine.gov.