

activities described in the license have not been undertaken. The Commissioner shall require that a petition for surrender of a license and written approval of that surrender be recorded in the registry of deeds for any license previously recorded in the registry of deeds.

When the Commissioner approves the surrender, the license is deemed null and void as of the date of approval.

- 24. Appeal to the Board of Commissioner License Decisions.** Final license decisions of the Commissioner may be appealed to the Board by persons who have standing as aggrieved persons. Notwithstanding Section 2(B), license decisions that may be appealed to the Board include acceptances of permit by rule notifications, decisions on minor revisions, and public benefit determinations.
- A. **Appeal Period.** Within 30 days of the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The written appeal must specify whether the appellant desires the Board to hold a hearing on the appeal and whether the appellant requests that supplemental evidence be included in the record on appeal. An appellant who does not request a hearing or propose supplemental evidence in the written appeal is considered to have waived any opportunity for a hearing or inclusion in the record of supplemental evidence. The decision to hold a hearing is discretionary with the Board. An untimely appeal must be summarily dismissed by the Chair unless notice of the Commissioner's license decision was required to be given to the person filing an appeal and the notice was not given as required. The Chair's dismissal of an appeal for untimeliness is not subject to appeal to the full Board and is final agency action. In response to a motion by the licensee, the Chair may dismiss an appeal if the Chair decides an appellant is not an aggrieved person. The Chair's ruling to dismiss an appeal for lack of standing as an aggrieved person is appealable to the full Board. The filing of an appeal to the Board does not stay the license decision.
- B. **Content of Appeal**
- (1) The written appeal must include evidence demonstrating the appellant's standing as an aggrieved person; the findings, conclusions or conditions objected to or believed to be in error; the basis of the objections or challenge; and the remedy sought.
 - (2) Exhibits attached to an appeal must be clearly labeled indicating date and source, and indicating whether the exhibit is in the existing record or is proposed supplemental evidence. Unlabeled exhibits may be rejected by the Chair. Electronic links to documents will not be accepted. In the case of lengthy documents, the appellant must specify the relevant portions.
 - (3) If the appellant requests that supplemental evidence be included in the record and considered by the Board, such a request, with the proposed supplemental evidence, must be submitted with the appeal. A request to supplement the record must address the criteria for inclusion of supplemental evidence set forth in section 24(D).
 - (4) If a hearing is requested, the appellant must provide an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of

proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any expert or technical witnesses would testify.

- (5) An appeal must be addressed to:

Chair, Board of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

- (6) Appeals must be copied to the Commissioner, the licensee and, if a hearing was held on the application, any intervenor. The Board staff shall provide notice of the appeal to persons on the Department's interested persons list for the application or license at issue.

C. **Response to Appeal.** A written response to the merits of an appeal may be filed by a licensee (if the licensee is not the appellant) and any person who submitted written comment on the application (hereafter collectively referred to as the respondents). All proposed supplemental evidence is subject to the labeling and form requirements of section 24(B)(2) and the criteria for inclusion of supplemental evidence set forth in section 24(D).

- (1) If no supplemental evidence is offered by an appellant, the following provisions apply:
- (a) If no supplemental evidence is offered by an appellant, a respondent's complete response to the merits of the appeal must be filed within 30 days of the date of the Board's written acknowledgement of receipt of the appeal with a copy to the appellant.
 - (b) If no supplemental evidence is offered by an appellant, but a respondent offers supplemental evidence in response to the appeal, the appellant may file argument addressing only the admissibility of the proposed supplemental evidence within 45 days of the date of the Board's written acknowledgement of receipt of the appeal.
- (2) If supplemental evidence is offered by an appellant, the following provisions apply:
- (a) If supplemental evidence is offered by an appellant, a respondent may submit written comment on the admissibility of the proposed supplemental evidence and may offer proposed supplemental evidence in response to the appellant's proposed supplemental evidence and the issues raised on appeal. The respondent's submission is due within 15 days of the date of the Board's written determination as to which of the appellant's exhibits constitute proposed supplemental evidence unless the Board establishes an alternative schedule.
 - (b) If a respondent offers any supplemental evidence, the appellant may submit written comment on the admissibility of the proposed supplemental evidence within 15 days of the date of the Board's written

determination as to which of the respondent's exhibits constitute proposed supplemental evidence.

- (3) The Chair shall rule on the admissibility of all proposed supplemental evidence in accordance with section 24(D) within 10 days of receipt of all comments regarding admissibility of all of the proposed supplemental evidence.
- (4) Within 20 days after the Chair's decision on the admissibility of all of the proposed supplemental evidence, the respondent's complete response to the merits of the appeal must be filed.
- (5) Further evidence may not be provided directly to Board members or distributed at Board meetings or hearings without specific permission of the Chair.

D. **Record on Appeal, Supplemental Evidence.** The record for appeals decided by the Board is the administrative record prepared by Department staff in its review of the application, unless the Board admits supplemental evidence or decides to hold a hearing on the appeal.

- (1) If an appellant or respondent seeks to supplement the record, that person shall provide copies of all proposed supplemental evidence with the written appeal or in response to the appeal as provided in section 24(B)(2) and section 24(C).
- (2) The Board may allow the record to be supplemented on appeal when it finds that the evidence offered is relevant and material and that:
 - (a) the person seeking to supplement the record has shown due diligence in bringing the evidence to the attention of the Department at the earliest possible time; or
 - (b) the evidence is newly discovered and could not, by the exercise of reasonable diligence, have been discovered in time to be presented earlier in the licensing process.
- (3) The Chair may accept into the record additional evidence and analysis submitted by Department staff in response to issues raised on appeal or supplemental evidence offered by the appellant(s) or licensee(s).

E. **Alternative Dispute Resolution.** If the appellant(s) and licensee(s) agree to use mediation or another form of alternative dispute resolution to resolve the appeal and so notify the Board, the Board will not hear the matter until the conclusion of that effort, provided the effort at resolution does not extend beyond six months of filing of the appeal. The Board may accept, reject or modify any mediated settlement that does not include withdrawal of the appeal.

F. **Procedure.** The procedure for hearings on appeals is governed by section 7(C) of this rule. Appeals decided without a hearing will be considered based on the administrative record on appeal and oral argument at a regular meeting of the Board as follows:

- (1) the executive analyst for the Board briefly introduces the appeal, indicating the subject matter, the appellant's basis for appeal and the relevant statutes and rules;
- (2) the appellant makes a presentation discussing objections or challenges to the Commissioner's decision on the application;
- (3) when the appellant is a person other than the licensee, the licensee is then provided an opportunity to address the issues raised by the appellant;
- (4) at the Chair's discretion, other persons may comment on the appeal;
- (5) Department staff makes a presentation addressing the objections and challenges of the appellant and indicating the Commissioner's recommended disposition of the appeal;
- (6) at the Chair's discretion, the appellant and licensee may be provided with a final opportunity for rebuttal.

The Board, its staff and legal representative may at any time address questions to any person participating in the appeal.

- G. Decision on Appeal.** The Board shall, as expeditiously as possible, affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board's decision is based on the administrative record on appeal, including any supplemental evidence admitted into the record and any evidence admitted during the course of a hearing on the appeal. The Board is not bound by the Commissioner's findings of fact or conclusions of law. An evenly divided vote of the Board has the effect of affirming the Commissioner's decision unless a majority of Board members subsequently vote at that meeting for another action on the appeal or table the matter until another meeting. In the case of an evenly divided vote, the findings and reasoning of the Board members voting in favor of the Commissioner's decision constitute the Board's reasoning in the affirmation.

25. Revocation or Suspension of a License

- A. Authority.** Notwithstanding Title 5, section 10051, after written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the Commissioner may revoke or suspend a license whenever the Commissioner finds that any of the criteria set forth in section 27 has been met.
- B. Filing of Petition with the Commissioner.** Any person may petition the Commissioner to initiate proceedings to revoke or suspend a license. The petition must state which of the criteria listed in section 27 is being invoked, and must specifically describe the factual basis for the petition. The petitioner shall serve a copy of the petition on the licensee at the time the petition is filed with the Commissioner. The petition once filed may not be supplemented. The licensee's response to the petition must be filed within 30 days of the filing of the petition with the Commissioner unless the Commissioner, upon a request by the licensee and for good cause shown, extends that deadline. No later