

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

S.P. 449 - L.D. 1244

An Act To Amend Environmental Permitting Standards

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §344, sub-§2-A, ¶D, as enacted by PL 2013, c. 325, §4, is repealed and the following enacted in its place:

D. For an application for a permit for a grid-scale wind energy development, as defined in Title 35-A, section 3451, subsection 6, the following procedures apply.

(1) The commissioner shall accept public comment on an application during the course of processing the application. The commissioner shall set a deadline for receiving public comments.

(2) The commissioner may not issue the final decision until 10 business days after the close of the public comment period. The commissioner's final decision must include responses to the public comments.

Sec. 2. 38 MRSA §480-C, sub-§5 is enacted to read:

5. Small-scale wind energy development. A person may not construct or cause to be constructed a wind energy development requiring certification under Title 35-A, section 3456 without first obtaining a permit from the department under section 480-II.

Sec. 3. 38 MRSA §480-II is enacted to read:

§480-II. Small-scale wind energy development; permit requirements

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Decommissioning" means the physical removal of all components of a small-scale wind energy development, including, but not limited to, wind turbines and associated foundations to a depth of at least 24 inches; structures, roads, cabling, electrical components and any other associated facilities and foundations to a depth of at least 24 inches to the extent they are not otherwise in or proposed to be placed

into productive use; the grading and reseeded of all earth disturbed during construction and decommissioning; and restoration of any disturbed wetlands or critical wildlife habitat.

B. "Small-scale wind energy development" means any wind energy development that is not a grid-scale wind energy development as defined in Title 35-A, section 3451, subsection 6, and that has a total generating capacity of at least 100 kilowatts.

2. Permit requirements. An applicant for a permit to construct a small-scale wind energy development shall demonstrate that the proposed project:

A. Will be constructed with setbacks and other considerations adequate to protect public safety, including, but not limited to, a fire protection plan. In making a finding pursuant to this paragraph, the department shall consider the recommendation of a professional licensed civil engineer as well as any applicable setback recommended by a manufacturer of any equipment to be installed on or in support of the small-scale wind energy development;

B. Will be constructed using the best practical mitigation techniques for mitigating impacts to endangered and threatened species, essential wildlife habitat and other protected resources from all aspects of construction and operation, in accordance with rules adopted under Title 35-A, section 3459; and

C. Will not significantly compromise views from a scenic resource of state or national significance, as considered under the criteria and methodologies set forth in Title 35-A, section 3452.

A person proposing to construct a small-scale wind energy development must demonstrate adequate financial capacity to decommission the development at any time during construction or operation of the development, or upon termination of development operations for any reason. The obligation to decommission the development must be transferred to any future owner of the development in the event of a transfer of title. Decommissioning is required if the development's purpose or use is abandoned for a period of one year at any time after construction begins. Demonstration of financial capacity to decommission must include documentation of financial assurance that the decommissioning costs will be fully funded prior to the start of construction. Financial assurance may be demonstrated in the form of a performance bond, surety bond, letter of credit or other form of financial assurance acceptable to the department.

A public informational meeting must be held in accordance with department rules for permit application for a small-scale wind energy development.

Sec. 4. 38 MRSA §840, sub-§7 is enacted to read:

7. Applicability beginning October 1, 2015. Beginning October 1, 2015, the board or the commissioner may not conduct an adjudicatory hearing for the purpose of establishing a water level regime or minimum flow requirements and may not issue an order establishing a water level regime or minimum flow requirements, except that the commissioner may conduct an adjudicatory hearing and issue an order in accordance with this section on a request or petitions submitted prior to October 1, 2015 or may amend or rescind an order issued prior to October 1, 2015. All orders establishing a water level

regime or minimum flow requirements issued by the board or the commissioner prior to October 1, 2015, or after October 1, 2015 on a request or petitions submitted prior to October 1, 2015, remain in effect and enforceable until they expire or are rescinded or amended under this subarticle.

This subsection is repealed September 30, 2016.

Sec. 5. Authorization to report out a bill. The Joint Standing Committee on Environment and Natural Resources may report out a bill related to the establishment of water level regimes under the Maine Revised Statutes, Title 38, chapter 5, subchapter 1, article 3-A, subarticle 4 to the Second Regular Session of the 127th Legislature.