
Testimony in Support of LD 2210, An Act to Clarify Board of Environmental Protection Procedures Regarding Appeals of Licensing or Permitting Decisions of the Commissioner of Environmental Protection

Before the Committee on Environment and Natural Resources

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Senator Tepler, Representative Doudera, and members of the Environment and Natural Resources Committee, my name is Luke Frankel, and I am the Staff Scientist at the Natural Resources Council of Maine (NRCM). NRCM is a nonprofit, nonpartisan membership organization dedicated to protecting, restoring, and conserving Maine's environment, now and for future generations. I am here to testify neither for nor against LD 2210, An Act to Clarify Board of Environmental Protection Procedures Regarding Appeals of Licensing or Permitting Decisions of the Commissioner of Environmental Protection.

As an environmental advocacy organization with nearly 20,000 members and supporters statewide and beyond, public involvement in legal, legislative, and regulatory processes is critical to our work. We recognize, however, that the infrastructure to support this public involvement is not free and does come with a cost. In this case, when it comes to issues like rulemaking, appeals, or other proceedings before the Board of Environmental Protection (BEP), this cost comes in the form of Department of Environmental Protection (DEP) staff time.

We greatly appreciate all the work that DEP staff do to ensure that there is a transparent public process for proceedings before the BEP and believe that the current process sets a high standard that other governmental bodies should look to. We do agree that there are likely ways that this process could be streamlined to save staff time without sacrificing public input.

One example of this, which is included within this bill, is prohibiting "interested persons" from submitting supplemental evidence into the record as part of the BEP appeal process, which we do not oppose. DEP staff have stated that sifting through vast amounts of supplemental evidence submitted by people who are not direct parties to an appeal has cost them significant staff time through the years. These entities would still be entitled to submit information into the record during any public comment periods prior to a final license or permit decision.

We would, however, like to propose a few amendments to the bill that would clarify current practices around "interested persons" during appeals to the BEP under DEP's Chapter 2 rules. These include the following additions highlighted in gray:

Lines 21-23: For the purposes of this paragraph, "interested person" means any person that submitted written comments on the application that is the subject of the appeal or who requests, in writing, receipt of materials related to a particular application that is the subject of the appeal.

Lines 39-41: The licensee or permittee, if the licensee or permittee is not the appellant, and any interested persons may submit to the board a written response to the merits of the appeal.

It is our understanding that these two practices, (1) establishing an entity's role as an "interested person" by requesting materials related to a particular application in writing and (2) allowing interested persons to submit written responses to the merits of an appeal, are currently allowed under DEP's Chapter 2 rules. We believe that these practices should continue to allow "interested persons" to remain engaged in a license or permit proceeding before the BEP.

We encourage the Committee to clarify this by adding the language recommended above or something similar. Thank you for your time and consideration.