

## 38 §342. COMMISSIONER, DUTIES

### 38 §342. COMMISSIONER, DUTIES

The Commissioner of Environmental Protection shall have the following duties: [1971, c. 618, §8 (NEW).]

#### 1.

[ 1983, c. 483, §1 (RP) .]

**1-A. Administration of department.** The commissioner is the chief administrative officer of the department and responsible for all administrative matters of the department, except as otherwise specified. The commissioner shall assure that all determinations made by the staff of the department are promptly rendered. The commissioner shall resolve disputes between department staff and applicants with respect to any questions regarding requirements, interpretation or application of the laws, rules or department policy. In resolving disputes, the commissioner shall attempt to reach a fair and appropriate result given all of the circumstances of the issue and may utilize the services of such consultants or experts as the commissioner determines would be helpful to resolve any disputed issue. For purposes of this subsection and section 341-A, subsection 3, paragraph C, staff of the department does not include staff of the board.

[ 1989, c. 890, Pt. A, §14 (AMD); 1989, c. 890, Pt. A, §40 (AFF) .]

**2. Employment of personnel.** The commissioner may employ, subject to the Civil Service Law, personnel for the department and prescribe the duties of these employees, except persons occupying the positions defined in Title 5, section 938, subsection 1-A, as the commissioner determines necessary to fulfill the duties of the department. For purposes of this subsection, personnel for the department does not include staff of the board.

[ 1995, c. 560, Pt. E, §3 (AMD) .]

#### 3.

[ 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. A, §16 (RP) .]

**3-A. Negotiating agreements.** The commissioner may negotiate and enter into agreements with federal, state and municipal agencies.

[ 1989, c. 890, Pt. A, §17 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

**4. Organization of department.** The commissioner, after consultation with the Board of Environmental Protection, shall organize the department into the bureaus, divisions, regional offices and other administrative units necessary to fulfill the duties of the department. After consultation with the board, the commissioner shall prescribe the functions of the bureaus and other administrative units to insure that the powers and duties of the department are administered efficiently so that all license applications and other business of the department may be expeditiously completed in the public interest.

A. In coordination with the Health and Environmental Testing Laboratory in the Department of Health and Human Services, the commissioner shall ensure that sampling, data handling and analytical procedures are carried out in accordance with the highest professional standards so that data generated for departmental programs are of known and predictable precision and accuracy. [1991, c. 499, §26 (AFF); 1991, c. 499, §9 (RPR); 2003, c. 689, Pt. B, §6 (REV).]

B. The Office of Pollution Prevention is established within the department to review department programs and make recommendations to the commissioner on means of integrating pollution prevention into department programs. The Office of Pollution Prevention has the following functions:

- (1) To establish pollution prevention priorities within the department;
- (2) To coordinate department pollution prevention activities with those of other agencies and entities;
- (3) To ensure that rules, programs and activities of the department are consistent with pollution prevention goals and do not hinder pollution prevention initiatives;
- (4) To provide technical assistance, training and educational activities to assist the general public, governmental entities and the regulated community with development and implementation of pollution prevention programs as funds allow;
- (5) To establish an award program to recognize businesses, local governments, department staff and others that have implemented outstanding or innovative pollution prevention programs, activities or methods;
- (6) To identify opportunities to use the state procurement system to encourage pollution prevention;
- (7) To develop procedures to determine the effectiveness of the department's pollution prevention programs and activities;
- (8) To assume responsibility for the administration and implementation of chapter 26; and
- (9) To administer and evaluate the Technical and Environmental Assistance Program established in section 343-B.

The commissioner shall designate an employee of the department to manage the functions of the Office of Pollution Prevention. That person may provide independent testimony to the Legislature, may make periodic reports to the administrator of the federal Environmental Protection Agency for transmittal to the United States Congress and may address problems or concerns related to the functions of the office, including the investigation of complaints concerning the Technical and Environmental Assistance Program.

The commissioner shall identify a staff person or persons in each bureau of the department whose primary responsibility is to provide guidance to any party through the permit review process. [1991, c. 804, Pt. C, §2 (AMD).]

[ 1991, c. 804, Pt. C, §2 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

#### **5. Designation of deputy commissioner.**

[ 1985, c. 746, §5 (RP) .]

**5-A. Designation of deputy commissioner and directors.** The commissioner may employ, to serve at his pleasure, the following:

A. A deputy commissioner; [1985, c. 746, §6 (NEW).]

B. [1987, c. 419, §3 (RP).]

C. Directors as defined in Title 5, section 938, subsection 1-A. [1995, c. 560, Pt. E, §4 (AMD).]

[ 1995, c. 560, Pt. E, §4 (AMD) .]

#### **6. Technical services.**

[ 1991, c. 66, Pt. A, §1 (RP) .]

**7. Representation in court.** The commissioner may authorize licensed Maine attorneys with active bar status who are employees of the department and certified employees of the department to serve civil process and represent the department in District Court in the prosecution of violations of those laws enforced by the

department and set forth in Title 4, section 152, subsection 6-A. The commissioner may authorize licensed Maine attorneys with active bar status who are employees of the department and certified employees of the department to represent a municipality in an action to obtain an administrative search warrant to allow entry of a local plumbing inspector onto property without the consent of the property owner in order to inspect a subsurface waste water disposal system in an area designated by the department as provided in section 424-A, subsection 3, paragraph A. Licensed Maine attorneys do not need to file the certification referred to in the Maine Rules of Civil Procedure, Rule 80K(h). Certification of nonattorney employees must be provided as under Title 30-A, section 4453.

[ 2007, c. 568, §7 (AMD) .]

**8. Data base.** The commissioner shall develop by January 1, 1991, and maintain a data base of license applications received and decisions made by the department. The data base must include information on all applications pending or received after January 1, 1990. For each application the data base must include:

- A. The type of license sought; [1991, c. 66, Pt. A, §2 (RPR) .]
- B. The name and address of the applicant and the name of a natural person who is the representative of the applicant; [1991, c. 66, Pt. A, §2 (RPR) .]
- C. The location of the project; [1991, c. 66, Pt. A, §2 (RPR) .]
- D. The date of acceptance of the application for processing; [1991, c. 66, Pt. A, §2 (RPR) .]
- E. The current processing status of the application; [1991, c. 66, Pt. A, §2 (RPR) .]
- F. An indication of whether the commissioner or the board will decide the application; [1991, c. 66, Pt. A, §2 (RPR) .]
- G. A brief description of the project, including any substantial issues raised during the licensing process; and [1991, c. 66, Pt. A, §2 (RPR) .]
- H. A brief description of the final action taken by the department, either by the commissioner or the board, on the application. [1991, c. 66, Pt. A, §2 (RPR) .]

The commissioner shall maintain a central archive of all applications received and licenses issued by the department.

[ 1991, c. 66, Pt. A, §2 (RPR) .]

**9. Rules.** The commissioner may submit to the board new or amended rules for its adoption.

[ 1989, c. 890, Pt. A, §18 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

**10. Consultants.** The commissioner may contract with or otherwise employ consultants for services necessary to carry out duties under this Title.

[ 1989, c. 890, Pt. A, §18 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

**11. Administrative duties for the board.** The commissioner shall meet the administrative requirements of the board including bookkeeping, expense reimbursement and payroll matters.

[ 1989, c. 890, Pt. A, §18 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

**11-A. Recommendations and assistance to board.** The commissioner shall make recommendations to the board regarding proposed rules; permit and license applications; modification, revocation or suspension of licenses; appeals of license and permit decisions; and other matters considered by the board. The commissioner shall also provide the board with the technical services of the department.

[ 1999, c. 784, §8 (NEW) .]

**12. Coordination and assistance procedures.** The commissioner shall establish procedures to assist the public and applicants and coordinate processing for all environmental permits issued by the department. These procedures must, to the extent practicable, ensure:

- A. Availability to the public of necessary information concerning these environmental permits; [1989, c. 890, Pt. A, §18 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]
- B. Assistance to applicants in obtaining environmental permits from the department; and [1989, c. 890, Pt. A, §18 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]
- C. That the public understands the permitting process and all the procedures of the department including those of the board. Any written material must be in clear, concise language. [1989, c. 890, Pt. A, §18 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

[ 1989, c. 890, Pt. A, §18 (NEW); 1989, c. 890, Pt. A, §40 (AFF) .]

**13. Agricultural impacts.** The commissioner shall notify and regularly inform the Commissioner of Agriculture, Food and Rural Resources on proposed legislation or rules that may affect agricultural activity.

[ 1991, c. 66, Pt. A, §3 (NEW) .]

**14. Environmental priorities report.**

[ 2003, c. 245, §4 (RP) .]

**15. Technical services.** The commissioner shall establish a technical services unit within the department to assist any person involved in a real estate transaction in determining whether real property that is the subject of the transaction has been the site of a discharge, release or threatened release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products.

The commissioner may also assist in or supervise the development and implementation of reasonable and necessary response actions. Assistance may include review of agency records and files, review and approval of a requester's investigation plans, site assessments and reports, voluntary response action plans and implementation of those plans.

The person requesting assistance under this subsection shall pay the department an initial nonrefundable fee of up to \$500 to be determined by the Commissioner. The person shall also pay the department for its actual direct and indirect costs of providing assistance, which must be determined by the commissioner but which must not on an hourly basis exceed \$50 per hour per person. Money received by the department for assistance under this subsection must be deposited in the Uncontrolled Sites Fund.

[ 1993, c. 355, §3 (NEW) .]

**16. Receipt of funds.** Through the Department of Administrative and Financial Services, the commissioner may establish accounts as necessary for the administration of funds held temporarily by the department and restricted to specific purposes by court order or otherwise, such as escrow funds, funds

from court decrees and intervenor fees. The State Budget Officer may provide for allotment of the funds as requested. Funds received must be deposited with the Treasurer of State to the credit of the appropriate account and be invested, as provided by law, with interest credited to the account.

[ 1993, c. 735, §1 (NEW) .]

**17. Serve as a director of Clean Government Initiative.** The commissioner shall serve as a director, along with the Commissioner of Administrative and Financial Services, of the Clean Government Initiative established in section 343-H.

[ 2001, c. 333, §4 (NEW) .]

#### SECTION HISTORY

1971, c. 618, §8 (NEW). 1977, c. 564, §134 (AMD). 1977, c. 596, §1 (AMD). 1981, c. 526, §1 (AMD). 1983, c. 483, §§1-3 (AMD). 1983, c. 536, (AMD). 1983, c. 566, §2 (AMD). 1983, c. 743, §2 (AMD). 1983, c. 796, §15 (AMD). 1985, c. 746, §§4-6 (AMD). 1985, c. 785, §B177 (AMD). 1985, c. 819, §§B6,7 (AMD). 1987, c. 205, (AMD). 1987, c. 419, §3 (AMD). 1987, c. 787, §4 (AMD). 1987, c. 816, §Z4 (AMD). 1989, c. 836, §3 (AMD). 1989, c. 869, §A2 (AMD). 1989, c. 890, §§A14-18,40 (AMD). 1989, c. 890, §§B1,B2 (AMD). 1991, c. 66, §§A1-3 (AMD). 1991, c. 499, §9 (AMD). 1991, c. 520, §1 (AMD). 1991, c. 804, §§A2,C2 (AMD). 1991, c. 499, §26 (AFF). 1993, c. 355, §3 (AMD). 1993, c. 735, §1 (AMD). RR 1993, c. 2, §37 (COR). 1995, c. 560, §§E3,4 (AMD). 1997, c. 296, §10 (AMD). 1999, c. 127, §A53 (AMD). 1999, c. 784, §8 (AMD). 2001, c. 333, §4 (AMD). 2003, c. 245, §§3,4 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 568, §7 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Special Session of the 124th Legislature, and is current through December 31, 2009, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.