

**Annual List of Rule-Making Activity**  
**Rules Adopted January 1, 2016 to December 31, 2016**  
*Prepared by the Secretary of State, pursuant to 5 MRS, §8053-A, sub-§5*

**Agency name:** Department of Environmental Protection  
**Umbrella-Unit:** 06-096  
**Statutory authority:** 38 MRS §§ 585, 585-A  
**Chapter number/title:** Ch. 106, Low Sulfur Fuel Regulation  
**Filing number:** 2016-002  
**Effective date:** 1/12/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The Department implements P.L. 2015 c. 66.

**Basis statement:**

The amendments to the Department's 06-096 CMR 106 rule reflect statutory changes enacted by the 127<sup>th</sup> session of the Maine Legislature. P.L. 2015 c. 66 revised 38 MRS §603-A to prohibit the importation, distribution and offering for sale of noncompliant fuels. In addition, the timeline for the Maine's transition to lower sulfur fuels was also amended pursuant to statute.

**Fiscal impact of rule:**

The Department does not expect these amendments to result in any fiscal impacts.

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**Agency name:** Department of Environmental Protection  
**Umbrella-Unit:** 06-096  
**Statutory authority:** 5 MRS §§ 8001-11008; 38 MRS §§ 1610(10), 341-H  
**Chapter number/title:** Ch. 415, Reasonable Costs for Handling and Recycling of Electronic Wastes  
**Filing number:** 2016-030  
**Effective date:** 3/7/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**  
*(See Basis Statement)*

**Basis statement:**

The Department is proposing to amend Ch. 415 to:

1. Make the Department's rule consistent with Maine's *Electronic Waste Law*, 38 MRS §1610, which has been amended since the last time the Department undertook rule-making (e.g., the term "covered entity" is defined and integrated into the rule);
2. Update and clarify certain definitions, clarify various terms and expectations (codifying the Department's implementation of the chapter), and remove unnecessary language;
3. Reorganize and clarify various sections of the rule;
4. Ensure the Department may request records and reports from consolidators — anytime not only when there is a "significant change" — to determine compliance with Maine's *Electronic Waste Law* and Ch. 415; and
5. Clarify that the Department may request records identifying all downstream handlers of electronics, electronic components, and hazardous waste and also to request shipping records of those materials.

**Fiscal impact of rule:**

No significant fiscal impact is anticipated.

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**Agency name:** Department of Environmental Protection  
**Umbrella-Unit:** 06-096  
**Statutory authority:** 38 MRS §§ 561 *et seq.*, 341-H, 568-A(3), 341-D(1-B), 546(4)  
**Chapter number/title:** **Ch. 600**, Oil Discharge Prevention and Pollution Control Rules for Marine Oil Terminals, Transportation Pipelines and Vessels  
**Ch. 685**, Payment and Reimbursement of Oil Transfer Fees  
**Ch. 686**, Standards for Assessing Ability to Pay Deductibles under the State Insurance Program for Oil Storage Tanks  
**Ch. 691**, Rules for Underground Oil Storage Facilities  
**Filing number:** 2016-053 *thru* 056  
**Effective date:** 4/3/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The purpose of these amendments is to align the Department's rules with changes in the underlying statutes made by the Legislature in PL 2015 c. 319.

**Basis statement:**

The amendments to these chapters were made to align the Department's rules with changes in the underlying statutes made by the 127<sup>th</sup> Legislature in PL 2015 c. 319. As a result of this legislation these amendments reflect:

- The combination of the Maine Coastal and Inland Surface Oil Clean-up Fund and the Ground Water Oil Clean-up Fund to create the Maine Ground and Surface Waters Clean-up and Response Fund;
- The combination of the Fund Insurance Review Board and the Oil Spill Advisory Committee to create the Clean-up and Response Fund Review Board;
- Clarification of certain definitions;
- Changes in statutory citation;
- A change in the fund threshold from \$5 million to \$6 million when the Clean-up and Response Fund Review Board may increase oil transfer fees;
- Clarification of when fees are refunded for exported oil products; and
- Various minor stylistic and formatting revisions.

**Fiscal impact of rule:**

No fiscal impact anticipated.

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**Agency name:** Department of Environmental Protection  
**Umbrella-Unit:** 06-096  
**Statutory authority:** 38 MRS §§ 341-D(1-B), 343, 485-A(1-C)  
**Chapter number/title:** **Ch. 373**, Financial and Technical Capacity Standards for the *Site Location of Development Act*  
**Filing number:** 2016-076  
**Effective date:** 6/2/2016  
**Type of rule:** Major Substantive  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The Department adopts a suite of three rule-makings to update and incorporate new provisions in its *Site Location of Development Law* (Site Law) permitting program. The Site Law (38 MRS §481 *et seq.*) requires review of developments that may have a substantial effect upon the environment. These types of development have been identified by the Legislature, and include developments such as projects occupying more than 20 acres, large structures and subdivisions, and oil terminal facilities. A permit is issued if the project meets applicable standards addressing areas such as stormwater management, groundwater protection, infrastructure, wildlife and fisheries, noise, and unusual natural areas.

The Department is proposing the following rulemakings:

**Chapter 373.** Ch. 373 establishes “financial capacity” and “technical ability” standards for projects under the *Site Location of Development Law*. The Department is updating the requirements for financial capacity and technical ability to reflect changes in nomenclature and Department practices since the rule was adopted in 1979, remove surplus language, provide greater clarity as to how an applicant may satisfy the requirements of this chapter, and provide examples of common terms and conditions applied to Site Location Law permits issued by the Department. The Department is also reallocating sections currently in Ch. 373 addressing environmental matters (e.g., adequate provision for solid waste disposal) from the existing Ch. 373 to Ch. 375, which deals with environmental standards under *Site Location Law*.

**Chapter 375.** Ch. 375 establishes the Department’s scope of review in determining an applicant’s compliance with the “no adverse effect on the natural environment” standard of the Site Law (38 MRS §484(3)); the information an applicant must submit (when appropriate), and the terms and conditions the Department may impose on the approval of an application to ensure compliance with the standard. As part of its Site Law rule-making effort, the Department is amending its Ch. 375 rules to incorporate updated requirements that are currently contained within Ch. 373. These standards, which address solid waste, the control of odors and the procurement and maintenance of sufficient and healthful water supplies are more appropriately contained within Ch. 375, since they address environmental impacts.

**Chapter 380.** Ch. 380 would repeal and replace the existing Ch. 380, *Planning Permit* rule, with a new rule describing requirements associated with long-term construction projects permitted under the *Site Location of Development Law*. The adoption also provides a process for a development issued a planning permit under the

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original Ch. 380 *Planning Permit* rule to receive approval under the new Ch. 380, *Long-Term Construction Projects under the Site Location of Development Act*.

**Basis statement:**

The Department is amending Ch. 373 to update the requirements for financial capacity and technical ability to reflect changes in nomenclature and Department practices since the rule was adopted in 1979. The amendments remove surplus language, provide greater clarity as to how an applicant may satisfy the requirements of the *Site Location of Development Act* (“Site Law”), and provide examples of common terms and conditions applied to Site Law permits issued by the Department.

The final adoption of the amendments to this major substantive rule was authorized by Resolve 2015 ch. 62.

**Fiscal impact of rule:**

The amendments to the Ch. 373 (*Financial Capacity...*) rules may have an indeterminate, but potentially minor negative fiscal impact on the regulated community as they must demonstrate they have the financial capacity to design, construct, operate, and maintain the development in a manner consistent with state environmental standards and the provisions of the Site Law. While this will not increase the cost of the project, the requirement of the demonstration of that fiscal capacity may be perceived as an increased burden.

The amendments to Ch. 375 (*No Adverse Environmental Effect...*) are not expected to have a fiscal impact.

The Ch. 380 (*Long-Term Construction Projects...*) rules are expected to provide a significant cost-savings for some applicants, as owners and operators of phased-in projects may avoid the need for frequent permit amendments and project delays.

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**Umbrella-Unit:** 06-096  
**Statutory authority:** 38 MRS §§ 341-D(1-B), 343, 485-A(1-C)  
**Chapter number/title:** **Ch. 375**, No Adverse Environmental Effects Standards of the *Site Location of Development Act*  
**Filing number:** **2016-077**  
**Effective date:** 6/2/2016  
**Type of rule:** Major Substantive  
**Emergency rule:** No

**Principal reason or purpose for rule:**  
*(See 2016-076 (Ch. 373) above)*

**Basis statement:**

The Department is amending Ch. 375 to incorporate updated requirements that are currently contained within Ch. 373. These standards, which address solid waste, the control of odors and the procurement and maintenance of sufficient and healthful water supplies are more appropriately contained within Ch. 375, since they address environmental impacts. In addition to the relocation of the three provisions, some clarifications and minor updates are adopted.

The final adoption of the amendments to this major substantive rule was authorized by Resolve 2015 ch. 63.

**Fiscal impact of rule:**  
*(See 2016-076 (Ch. 373) above)*

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**Agency name:** Department of Environmental Protection  
**Umbrella-Unit:** 06-096  
**Statutory authority:** 38 MRS §§ 341-D(1-B), 343, 485-A(1-C)  
**Chapter number/title:** **Ch. 380**, Long-Term Construction Projects under the *Site Location of Development Act*  
**Filing number:** **2016-078**  
**Effective date:** 6/2/2016  
**Type of rule:** Major Substantive  
**Emergency rule:** No

**Principal reason or purpose for rule:**

*(See 2016-076 (Ch. 373) above)*

**Basis statement:**

The Department is repealing and replacing the existing Ch. 380, *Planning Permit* rule, with a new rule describing the requirements associated with long-term construction projects permitted under the *Site Location of Development Act* ("Site Law").

The new rule also provides a process for a development issued a planning permit under the original Ch. 380, *Planning Permit* rule, to receive approval under the new Ch. 380, *Long-Term Construction Projects* rule.

The Department made other non-substantive changes after consultation with the Maine Office of Attorney General.

The final adoption of the amendments to this major substantive rule was authorized by Resolve 2015 ch. 64.

**Fiscal impact of rule:**

*(See 2016-076 (Ch. 373) above)*

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**Agency name:** Department of Environmental Protection  
**Umbrella-Unit:** 06-096  
**Statutory authority:** 38 MRS §585-A  
**Chapter number/title:** Ch. 100, Definitions Regulation  
**Filing number:** 2016-093  
**Effective date:** 5/22/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

On February 14, 2013, the Department submitted amendments to the Ch. 100 Definitions rule into Maine's State Implementation Plan (SIP) as part of its efforts to implement federal new source review (NSR) requirements for the PM 2.5 National Ambient Air Quality Standards and greenhouse gas emissions. The amendments to Ch. 100 included revisions and/or additions to a number of definitions.

During their review, the U.S. Environmental Protection Agency identified two additional changes that will be necessary for approval of this SIP submittal. The Department is now amending Ch. 100 to incorporate these changes.

**Basis statement:**

Ch. 100 is being amended to correct definitions required for implementation of the federal new source review (NSR) requirements for the PM 2.5 and ozone National Ambient Air Quality Standards.

**Fiscal impact of rule:**

No fiscal impact is anticipated.



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**Agency name:** Department of Environmental Protection  
**Umbrella-Unit:** 06-096  
**Statutory authority:** 38 MRS §420-D(11)  
**Chapter number/title:** Ch. 501, Stormwater Management Compensation Fees and Mitigation Credit  
**Filing number:** 2016-094  
**Effective date:** 5/22/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The Department is amending Ch. 501 to better allocate mitigation credits among the various classes of mitigation activities, based on the type of development and stormwater control. Table 2 of Ch. 501 indicates the on-site or off-site mitigation credit earned by a mitigation project in the direct watershed of an urban impaired stream for a variety mitigation activities.

The Department is revising Table 2 to more accurately reflect the effectiveness of different mitigation activities on each of the following sites: 1) Road or high use parking lots; 2) Medium use parking lots; 3) Other parking lots; 4) Roof or impervious areas; and 5) Landscaped areas.

**Basis statement:**

The amendments to the Department's Ch. 501, *Stormwater Management Compensation Fees and Mitigation Credit* rule, revise the on-site or off-site mitigation credit earned by a mitigation project in the direct watershed of an urban impaired stream to more accurately reflect the effectiveness of different mitigation activities on each of the following sites: 1) Road or high use parking lots; 2) Medium use parking lots; 3) Other parking lots; 4) Roof or impervious areas; and 5) Landscaped areas.

**Fiscal impact of rule:**

No fiscal impact is anticipated.

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**Agency name:** Department of Environmental Protection  
**Umbrella-Unit:** 06-096  
**Statutory authority:** 38 MRS §§ 1291 *et seq.*  
**Chapter number/title:** Ch. 424, Lead Management Regulations  
**Filing number:** 2016-160  
**Effective date:** 10/3/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The Department is adopting minor revisions to Ch. 424, *Lead Management Regulations*, to harmonize this rule with EPA/HUD requirements for lead abatement professionals and update and clarify practices for lead professionals providing lead-related services to Maine citizens. For example, the definition of “sampling technician” required revision to be consistent with the recently enacted federal rules relating to lead-based paint activities in residential and child-occupied facilities requiring that “sampling technicians” have 8 hours of training rather than 6 hours, while the definition of “paint condition” has been updated to incorporate the most recent HUD nomenclature. There are also additional changes proposed to further simplify and clarify the rule. An Appendix pertaining to the Lead Inspection protocol has been added to the regulation, thereby removing the incorporation by reference of the “HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing”, 1997 Revision. Potential cost saving measures have been added to the proposed revisions, such as revising the Training Provider licensure requirements to allow for on-line “Train the Trainer” programs for entities seeking licensure as new Training Providers. Similarly, an option to allow for the use of “EPA recognized test kits” during lead determination inspections and optional water sampling had been added to the proposal. Other revisions include updating and reorganizing abatement work practices and inspection protocol.

**Basis statement:**

Routine and technical revisions to 06-096 CMR Ch. 424, *Lead Management Regulations*, were made to update and clarify practices for lead professionals providing lead-related services to Maine citizens; the rule has not been revised since 2004. These include:

- Updating definitions for harmonization with EPA/HUD requirements;
- Reorganizing application requirements for lead professionals into initial and renewal application requirements;
- Updating and reorganizing abatement work practices;
- Revising and updating Inspection and Risk Assessment protocols including optional paint characterization during lead inspections;
- Updating Training Provider licensure requirements to allow for on-line “Train the Trainer” programs for entities seeking licensure as new Training Providers;
- Adding a new Appendix on Inspection protocol and removing incorporation by reference of HUD’s Chapter 7 Inspection;
- Revisions to simplify and clarify the rule; and
- Various minor stylistic and formatting revisions.

**Fiscal impact of rule:**

Overall it is not expected that the proposal will increase the cost of lead-based paint activities. The revisions may reduce the cost of lead determinations (i.e., limited lead inspections) by providing lead inspectors with the option of using EPA recognized lead check kits rather than having to use the more costly XRF device and will reduce costs for entities seeking licensure as Training Providers by allowing for the use of on-line “Train the Trainer” programs, rather than requiring attendance in a traditional classroom environment.

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**Agency name:** Department of Environmental Protection  
**Umbrella-Unit:** 06-096  
**Statutory authority:** 38 MRS §585-A  
**Chapter number/title:** Ch. 100, Definitions Regulation  
**Filing number:** 2016-201  
**Effective date:** 11/27/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The Department is updating Ch. 100, *Definitions Regulation*, to add a number of compounds that were previously exempted from the definition of “volatile organic compound” by EPA. Instead of listing all exempt compounds, the Department incorporates the federal exemptions by reference. As part of this rule-making, we are also deleting the definition for “negligibly photochemically reactive”, since it is no longer needed.

**Basis statement:**

The amendments to 06-096 CMR ch. 100, *Definitions Regulation*, were adopted to make the Department’s list of compounds excluded from the definition of volatile organic compounds due to a determination of negligible photochemical reactivity consistent with the U.S. EPA’s list by incorporating the relevant portions of the *Code of Federal Regulations* (CFR) and repealing an unnecessary definition.

The Department also made minor non-substantive changes to the rule.

**Fiscal impact of rule:**

No fiscal impact anticipated.

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**Agency name:** Department of Environmental Protection, **Board of Underground Storage Tank Installers**  
**Umbrella-Unit:** **06-481**  
**Statutory authority:** 38 MRS §10004  
**Chapter number/title:** **Ch. 1**, Administrative Rules  
**Filing number:** **2016-025**  
**Effective date:** 2/21/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The amendments reflect a change to the name of the fund that fees are paid into, and changes the statutory citation to the fund; both changes are as a result of PL 2015 c. 319.

**Basis statement:**

The amendments to the Board's Ch. 1 rule reflect statutory changes enacted by the 127<sup>th</sup> session of the Maine Legislature. PL 2015 ch. 319, changed the name of the fund that fees are paid into, and changed the statutory citation to the fund.

**Fiscal impact of rule:**

The rule-making conforms the rules with statutory changes already in effect; therefore no financial impact is expected as a result of the rule-making.