

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §585-A
Chapter number/title: Ch. 100, Definitions Regulation
Filing number: 2019-006
Effective date: 1/14/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See 2019-007 below)

Basis statement:
(See 2019-007 below)

Fiscal impact of rule:
(See 2019-007 below)

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §585-A
Chapter number/title: Ch. 113, Growth Offset Regulation
Filing number: 2019-007
Effective date: 1/14/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Section 173 of the *Clean Air Act* requires new facilities or modifications that will 1) emit a significant level of pollutant in an area that is not in attainment for that pollutant, or 2) emit a significant level of VOC or NO_x in the Ozone Transport Region, to offset those new emissions by obtaining reductions (called "offset credits") of that pollutant in an amount greater than the new emissions. The Department's Ch. 113, *Growth Offsets Regulations*, implements the federal requirement that new emissions of the criteria pollutants (VOC and NO_x, SO₂, PM₁₀, PM_{2.5}, NO₂, CO, and Lead) be offset with reductions of the pollutants made elsewhere when air quality does not meet health-based standards.

Basis statement:

Ch. 113 was originally promulgated in 1979 and was most recently updated in 1999. Since that time, the Department and U.S. Environmental Protection Agency (EPA) have identified several revisions that will provide greater clarity and flexibility to the emission offsets generation and use processes for Maine businesses and those businesses which may locate in Maine. The Department's proposed revisions to Ch. 113 include:

- New provisions that authorize the Department to allow the use of offset reductions, originating from formerly licensed sources which have surrendered or terminated their licenses, to offset emissions from new major sources or major modifications;
- Identification of the disposition of offset credits used in a licensing action for a project that is never constructed. If a facility fails to construct and/or begin operation of a project that required the use of offset credits, and the facility's license is subsequently surrendered or otherwise terminated, the offset credits will revert to the Department if those offset credits initially originated within Maine and were not purchased by the surrendering licensee. The Department may use those offset credits to offset emissions from major new sources or major modifications;
- Clarification that offsets must be surplus, permanent, quantifiable, and federally enforceable reductions in emissions as certified by the Department;
- Establishment of a process for a third party (i.e., a party other than the licensed source of emission reductions) to certify in-state emission reductions that have not been previously certified by the Department; and
- Reduction of the offset ratio for emission reduction credits obtained outside of New England from 2.0-to-1 to 1.15-to-1, thereby aligning Maine's rule with federal requirements.

To help facilitate this rulemaking, the Department also revised several definitions in its Ch. 100 *Definitions Regulation*.

Fiscal impact of rule:

New or expanded major sources of air emissions in the state will benefit from these changes, thereby reducing some regulatory barriers to business investments and ultimately providing fiscal benefits to the businesses, their employees, and the surrounding communities. The amendments are not anticipated to have an impact on state government.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §585-A
Chapter number/title: Ch. 101, Visible Emissions Regulation
Filing number: 2019-044
Effective date: 3/10/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Emissions into the ambient air from facilities, both licensed and unlicensed, are subject to visible emissions standards. These standards may be located in the Department's Ch. 101, *Visible Emissions Regulation*, in State-determined Best Available Control Technology (BACT) and Best Practical Treatment (BPT) determinations, and in federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) and/or New Source Performance Standards (NSPS). Emissions sources identified in this chapter include sources which may not otherwise be subject to visible emissions requirements.

Currently, Ch.101 includes up to two six-minute exemptions from visible emissions standards per three-hour period for certain regulated emissions units. As the result of legal action against the U.S. Environmental Protection Agency (EPA), the court had deemed such exemptions as "unregulated periods" and thus in conflict with *Clean Air Act* (CAA) requirements. Per direction from the court, the EPA issued a State Implementation Plans (SIP) Call, identifying each state and state rule deemed in conflict with such CAA requirements. This proposed rulemaking rectifies language and requirements to bring the chapter in compliance with the SIP Call and CAA requirements.

Basis statement:

In 2015, the U.S. Environmental Protection Agency issued a final rule (or "SIP Call") to ensure states have plans in place that require industrial facilities to follow air pollution rules during times when the facility is starting up or shutting down, or when a malfunction occurs (or "SSM"). The Department is amending its Ch. 101 *Visible Emissions Regulation* to eliminate periods of unregulated emissions in accordance with the SIP Call and 1990 *Clean Air Act* Amendments. Revisions to the rule include: removal of the "unregulated" exemption periods and inclusion of new, alternate provisions for periods of startup, shutdown, malfunction, or approved equipment maintenance, allowing the option of compliance with work practice standards to minimize emissions during such times instead of a numerical opacity limit; clarification of exemptions from the chapter; clarification of the applicability of the annual capacity factor visible emission standard; and removal of specific visible emissions standards for sources already subject to visible emission standards in applicable federal rules.

Fiscal impact of rule:

This is not expected to have a fiscal impact on affected facilities

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §584
Chapter number/title: Ch. 110, Ambient Air Quality Standards
Filing number: 2019-055
Effective date: 3/27/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department amends its Ch. 110 *Ambient Air Quality Standards* to incorporate the current national ambient air quality standards (NAAQS) for particulate matter (PM) and ozone. Maine statute at 38 MRS §584-A states:

For purposes of statutory interpretation, rules, licensing determinations, policy guidance and all other actions by the department or the board, any reference to an ambient air quality standard is interpreted to refer to the national ambient air quality standard established pursuant to Section 109 of the federal *Clean Air Act, 42 United States Code, Section 7409*, as amended. The department shall implement ambient air quality standards as required by the federal *Clean Air Act, 42 United States Code, Section 7409* and regulations promulgated under that section by the United States Environmental Protection Agency. Nothing in this section may be construed to limit the authority of the department to adopt emission standards designed to achieve and maintain ambient air quality standards.

The amendments update and align the rules governing the Maine ambient air quality standards to provide consistency with the federal NAAQS. The amendments to Ch. 110 are required to satisfy CAA Section 110(a)(1) and (2) infrastructure requirements and Prevention of Significant Deterioration (PSD) requirements under CAA Section 160 *et seq.*. The Department has been implementing these requirements since they are already required under federal laws/regulations; the amendments are intended to update Maine regulations and match these federal requirements.

Basis statement:

These amendments update Ch. 110 to incorporate the current National Ambient Air Quality Standards (NAAQS) for particulate matter (PM_{2.5}) and ozone, and provide consistency with the federal NAAQS pursuant to Maine statute at 38 MRS §584-A. The proposed amendments were posted to a 30-day written public comment period beginning November 14, 2018, with a comment deadline of December 17, 2018. No comments nor any requests for a public hearing were received. No changes were made to the proposed amendments

Fiscal impact of rule:

This adoption will not have a fiscal impact on small business, the regulated community or municipalities that is above and beyond existing federal requirements.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP), jointly with
94-376, Maine Municipal Bond Bank
Umbrella-Unit: 06-096
Statutory authority: 30-A MRS §5959
Chapter number/title: Ch. 595, State Revolving Fund
Filing number: 2019-059
Effective date: 3/27/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Ch. 595 contains eligibility requirements for the funding of planning, design, and/or construction of municipal wastewater treatment works and other water pollution control facilities or practices under the State Revolving Fund. The amendments will allow for awarding construction contracts based on three additional delivery methods: Construction Management At-Risk (CMAR), Progressive Design-Build (PDB), & Fixed-Price Design-Build (FPDB). When the rules were first written, most municipal projects were designed to 100% by an engineering firm, bid, then awarded to the construction contractor for building, known as Design-Bid-Build (DBB). Since then, municipalities have seen the advantage of awarding construction contracts based on other delivery methods that allow for contractor input into the design or to compress the design/construction schedule. These changes allow eligible applicants of Maine's SRF program to use these additional construction delivery methods that have become common practice in the construction industry and are utilized by other state SRF's nationally. The amendments also update the rule in accordance with current procedures at the Maine Municipal Bond Bank, and bring the rule into consistency with current Federal requirements.

Basis statement:

Ch. 595 contains eligibility requirements for the funding of planning, design, and/or construction of municipal wastewater treatment works and other water pollution control facilities or practices under the State Revolving Fund (SRF). Ch. 595 is being amended to allow eligible applicants of Maine's SRF program to use construction delivery methods that have become common practice in the construction industry and are utilized by other state SRF's nationally. The amendments also update the rule in accordance with current procedures at the Maine Municipal Bond Bank, and bring the rule into consistency with current Federal requirements contained in the *Water Resources Reform and Development Act* (June 10, 2014) (WRRDA), amending Titles I, II, V, and VI of the *Federal Water Pollution Control Act* (FWPCA), and the *Federal Funding Accountability and Transparency Act of 2010*.

Fiscal impact of rule:

The amendments are largely procedural and are not expected to have any significant fiscal impact. Greater flexibility in construction delivery methods may provide cost savings in some cases.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 1391, 341-H, 1400
Chapter number/title: Ch. 692, Siting of Oil Storage Facilities
Filing number: 2019-116
Effective date: 8/7/2019
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

These amendments provide flexibility to municipalities and businesses siting oil storage facilities, as long as certain criteria and design standards are met. This rulemaking adds variance language to allow for more areas to be developed without negatively impacting groundwater or drinking water.

Basis statement:

The revisions to *Siting of Oil Storage Facilities*, 06-096 CMR ch. 692, update and clarify certain provisions of the rule. The Department's experience administering this rule over the past several years has highlighted the need to propose these amendments. The amendments provide flexibility to municipalities and facility owners while still protecting public and private drinking water supplies and significant sand and gravel aquifers.

Fiscal impact of rule:

None.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 585, 585-B, 590
Chapter number/title: Ch. 121, Emission Limitations and Emission Testing of Resource Recovery Facilities
Filing number: 2019-162
Effective date: 9/14/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Section 111(d) of the *Clean Air Act Amendments (CAAA) of 1990* requires each state with municipal waste combustion facilities to adopt a Municipal Waste Combustor (MWC) 111(d)/129 Plan that demonstrates implementation of federal emission guidelines for reductions in emissions of air pollutants¹ from solid waste combustion, such guidelines established as directed by Section 129 of the CAAA. Federal requirements applicable to Maine MWC facilities were promulgated in federal subparts.

Maine regulation 06-096 CMR ch. 121, *Emission Limitations and Emission Testing of Resource Recovery Facilities*, first promulgated in 1989, was updated in 2007. Maine submitted the required MWC 111(d)/129 Plan which incorporated requirements and emission limitations of applicable subparts. The State Plan submitted in 2007 did not obtain EPA final approval. Ch. 121 and the corresponding State Plan have been revised and updated based on recent EPA comments on the 2007 submittal and input from the three facilities in the State subject to this rule.

Basis statement:

Section 111 (d) of the *Clean Air Act Amendments (CAAA) of 1990* requires each state with municipal waste combustion facilities to adopt a Municipal Waste Combustor (MWC) 111(d)/129 Plan that demonstrates implementation of federal emission guidelines for reductions in emissions of air pollutants¹ from solid waste combustion, such guidelines established as directed by Section 129 of the CAAA. Federal requirements applicable to Maine MWC facilities were promulgated in federal subparts.

Maine regulation 06-096 CMR ch. 121, *Emission Limitations and Emission Testing of Resource Recovery Facilities*, first promulgated in 1989, was last updated in 2007. Maine submitted the required MWC 111(d)/129 Plan which incorporated requirements and emission limitations of applicable subparts. The State Plan submitted in 2007 did not obtain BPA final approval. Ch. 121 and the corresponding State Plan have been revised and updated based on recent EPA comments on the 2007 submittal and input from the three facilities in the State subject to this chapter.

This chapter establishes emission standards and requirements of specific operating practices, compliance and performance testing, and reporting and recordkeeping for resource recovery facilities. The changes in this rulemaking result in more consistency between the state and federal regulation. In addition, the changes reduce redundancy, update emission testing and continuous emission monitoring requirements, and update approval designations.

Fiscal impact of rule:

None. Facilities are already complying with both state and federal regulations. This action brings consistency to the specified requirements at both levels.