

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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-A
Chapter number/title: Ch. 169 (New), Stationary Generators
Filing number: 2022-205
Effective date: 10/9/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this regulation is to ensure that the operation of new stationary generators does not negatively impact air quality or public health. The standards and requirements proposed are based on standards and requirements in Federal and State regulations applicable to similar equipment when used in other applications.

Basis statement:

The purpose of this regulation is to ensure that the operation of new stationary generators does not negatively impact air quality or public health. The standards and requirements proposed are based on standards and requirements in Federal and State regulations applicable to similar equipment when used in other applications.

In accordance with 38 MRS §§ 585 and 585-A, the formal rulemaking process began on August 5, 2021, when the Department of Environmental Protection (Department) presented its proposal to the Board of Environmental Protection (Board) and requested that a public hearing be held on September 16, 2021. No member of the public or regulated community elected to testify at the hearing, however, comments were received during the written comment period, which closed on September 27, 2021. Based on the comments received, the Department made changes to the rule and reposted the proposed rule for additional comments on December 16, 2021. The Department again made changes to the rule to incorporate suggestions provided during the written comment period and reposted the rule on May 5, 2022, with the final comment period closing on June 20, 2022.

During the course of the proceedings, the Department received comments on this proposal from nine interested parties during the public comment periods. Only one interested party commented on the final proposed rule during the pendency of the final comment period. The final proposed rule incorporates a number of suggested changes raised during earlier comment periods, including:

- Clarification that generators previously included in an air emission license prior to the effective date of the proposed rule are exempt;
- Clarification that generators powered by engines firing digester gas are exempt;
- Changing the threshold for more stringent emission standards and stack height requirements from 1,000 kilowatts to 1,000 brake horsepower for clarity and consistency with federal regulations;
- Addition of three new options for achieving compliance with this rule for large emergency generators including limiting the engine's total use to less than 500 hours per year or submission of either an ambient air quality dispersion modeling analysis or a qualitative ambient impact screening analysis which demonstrates to the Department's satisfaction that the engine will not cause or contribute to violations of ambient air quality standards;
- Clarification of the process for calculation of 60% Good Engineering Practice (GEP) stack height used to exhaust some generator engines regulated by the rule; and

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- Addition of the option of submitting a qualitative ambient impact screening analysis to demonstrate compliance with stack height requirements established by the rule.

Fiscal impact of rule:

Applicants intending to install generators powered by engines with a rated output equal to or greater than 1,000 brake horsepower may be required to use engines subject to more stringent emission standards than previously allowed or conduct additional analyses. These applicants may be required to install taller stacks or perform additional analyses to demonstrate compliance with Ambient Air Quality Standards. These are all activities which may add cost to the applicant's project. However, these applicants would be subject to similar requirements based on recent case-by-case determinations of BACT. The added certainty and clarity from this rule will facilitate a more efficient permitting process while yielding the same or similar outcomes, so there is little to no expected negative fiscal impact in comparison to the regulations already in place.

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Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 585, 585-A
Chapter number/title: Ch. 170 (New), Degassing of Petroleum Storage Tanks, Marine Vessels, and Transport Vessels
Filing number: 2022-121
Effective date: 6/27/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Tanks and vessels that contain petroleum products must be emptied of product, and the vapors in the tank or vessel evacuated (degassed), before performing internal cleaning, inspections, maintenance, or repair work. The purpose of this regulation is to minimize emissions from the degassing of certain petroleum storage tanks, marine vessels, and transport vessels, and to ensure that these operations do not negatively impact air quality or public health. The standards and requirements proposed are based on, and consistent with, control requirements in other jurisdictions.

Basis statement:

The purpose of this regulation is to minimize emissions from the degassing of certain petroleum storage tanks, marine vessels, and transport vessels and to ensure that these operations do not negatively impact air quality or public health. The standards and requirements proposed are based on, and consistent with, control requirements in other jurisdictions.

In accordance with 38 MRS §§ 585 and 585-A, the formal rulemaking process began in mid-December, 2021, when the Department presented its proposal to the Board of Environmental Protection (Board) and requested that a public hearing be held on February 3, 2022. During the February 3rd public hearing, the Board heard testimony from the regulated community, interested parties, and the public. Additional comments were received during the written comment period, which closed on February 18, 2022.

The Department received comments on this proposal from 30 interested people and parties during the public comment period. The final proposed rule incorporates a number of suggested changes, including:

- Clarification that the determination of whether an emergency exists is at the sole discretion of the Department;
- Clarification that all VOC measurements are “as methane;”
- Changing the basis for discontinuing control from the concentration of VOC inside the tank after one hour with no forced ventilation to the concentration of VOC leaving the tank during forced ventilation;
- Clarification that requirements for the control of emissions from sludge do not apply when the sludge is immediately transferred to another in-service floating roof tank; and
- Allowing up to two hours to repair a leak in the control system before requiring forced ventilation to be stopped.

Fiscal impact of rule:

The cost to operate controls is estimated to be approximately \$10,000 per degassing event or potentially more depending upon the type of control selected by the facility. Since the applicable tanks and vessels are only degassed infrequently (approximately once every five to ten years), this rule is anticipated to have minimal fiscal impact on the regulated community

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and no expected negative fiscal impact to the Department in comparison to the regulations already in place.

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Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: PL 2021 ch. 433; 38 MRS §576-A
Chapter number/title: Ch. 180 (New), Appliance Efficiency Standards
Filing number: 2022-206
Effective date: 11/3/2022
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

On July 8, 2021, the governor signed into law L.D. 940, *An Act To Establish Appliance Energy and Water Standards*. This legislation authorizes the Department to initiate rulemaking to restrict the sale of certain appliances and plumbing fixtures listed in Public Law 2021, Chapter 433. The proposed regulation implements the restrictions outlined by the legislature.

Basis statement:

Public Law 2021 ch. 433 (LD 940), *An Act To Establish Appliance Energy and Water Standards*, authorizes the Department to adopt rules to restrict the sale of certain appliances and plumbing fixtures. The rule will require certain new products to meet minimum efficiency standards, reducing resource consumption and emissions of greenhouse gases and other pollutants.

Product categories affected by this rule include computers and computer monitors; general service lamps; commercial hot food holding cabinets; plumbing fittings that are showerheads, lavatory faucets, kitchen faucets, public lavatory faucets, metering faucets, kitchen replacement aerators, or lavatory replacement aerators; plumbing fixtures that are water closets or urinals; portable electric spas; spray sprinkler bodies; and water dispensers. Federal and state efficiency standards and guidelines have long been in place for most of the appliances and fixtures addressed by this rule; however, they have not been enforceable. Relevant standards include EPA's Energy Star and WaterSense programs, as well as standards issued by the American National Standards Institute, and California efficiency standards.

This rule has been developed to parallel rules and legislation in several other states with greenhouse gas reduction and energy conservation goals similar to Maine's. In the event that federal regulations pre-empt state regulations for any product regulated under this rule, the federal regulation is given precedence for as long as it is in effect. The rule allows sell-through of products manufactured before the effective date as well as re-sale of used products.

Fiscal impact of rule:

Compliant versions of the products affected by this rule are already available. The rule allows sell-through of products manufactured before the effective date as well as re-sale of used products. No fiscal impact is expected from implementation of this rule.

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Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 344(7)
Chapter number/title: Ch. 305, Natural Resource Protection Act -Permit by Rule
Filing number: 2022-256
Effective date: 12/27/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this revision is to bring the Department's rules into alignment with statutory changes concerning minor expansions in coastal sand dunes and to allow some beach nourishment projects to qualify for Natural Resource Protection Act (NRPA) permit by rule. The proposed revision also allows for planting native dune vegetation by hand with a NRPA permit by rule.

Basis statement:

This regulation allows certain activities to obtain Natural Resources Protection Act (NRPA) permits through a permit by rule (PBR) process. The purpose of this rulemaking is to bring the Department of Environmental Protection's (Department) rules into alignment with statutory changes concerning minor expansions in coastal sand dunes, to allow some beach nourishment projects to qualify for NRPA PBR, and to allow for planting native dune vegetation by hand with a NRPA PBR.

Minor Expansions (Section 16):

Prior to 2021, certain minor expansions of structures in coastal sand dunes were exempted from NRPA permitting requirements, and no review or approval was required. In 2021, P.L. Ch. 186 removed that exemption and replaced it with a provision allowing these same minor expansions through a NRPA PBR process (38 MRS §480-E(14)). This rulemaking updates Ch. 305, Section 16 "Activities in coastal sand dunes" to conform with this statutory change.

The statute includes the following limitations on minor expansions in coastal sand dunes, which are reflected in the rule revision:

- Each structure is limited to a one-time minor expansion.
- The footprint of the expansion is contained within an impervious area that existed on January 1, 2021
- The footprint of the expansion is no further seaward than the existing structure
- The height of the expansion conforms to any applicable law or ordinance
- The expansion conforms to the municipal shoreland zoning ordinance

To conform to the statutory change, submission requirements were updated. A definition of minor revision was added to the rule and updates to the definitions of "permanent structure" and "footprint" were made to better conform to the statutory definitions of these terms in NRPA. Minor changes were made to the rule for clarity and to be more consistent with Chapter 355 Coastal Sand Dune Rules.

Changes were made to exempt minor expansions from lot coverage restrictions. This is in keeping with the intention of the law not to restrict minor expansions on small lots, but to simply require notice and a permit by rule for these activities.

Finally, the standards section was updated to bring the height requirements for buildings in line with the goals of PL ch. 504 (2022). This law changed the way building heights are measured in cases where a building is raised to accommodate sea level rise or increased flood hazard due to climate change.

These revisions to Section 16 of Chapter 305 are major substantive rulemaking because they relate to development in coastal sand dunes (38 MRS §480-AA).

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Non-Development Related Activities (Section 16-A):

Section 16-A is a new section within Chapter 305 specifically for non-development related activities in coastal sand dunes, namely: dune restoration and dune construction, beach nourishment, and hand planting of native dune vegetation. Dune restoration and dune construction activities were eligible for NRPA PBR prior to this rulemaking and have been moved from Section 16 to Section 16-A. Beach nourishment and the hand planting of native dune vegetation are new activities now covered by Chapter 305. Non-development activities are grouped together in their own section because the submission requirements and relevant standards depend heavily on whether development is proposed.

Many property owners, municipalities, and engaged citizens want to increase coastal resilience to storm erosion and rising sea levels and limit the economic and recreational impact from degrading beach conditions. In some cases, spreading additional sand on a beach (termed beach nourishment) can counter the effects of erosion, creating a healthier and more appealing beach and dune environment. This rule revision allows certain beach nourishment projects to receive NRPA PBRs, lowering the regulatory barriers for this type of restoration activity. To be eligible, the sand must come from an upland source; projects using dredged sources of sand must apply for an individual NRPA permit. In addition, only projects below a certain volume of sand can qualify for the permit by rule. This volume is limited both by the square footage of beach to be nourished and by an overall upper limit. For dune restoration, dune construction, and beach nourishment activities, the applicant must submit written confirmation from the Maine Geological Survey that they find the plan acceptable and the proposed sediment suitable for the natural system.

This rule revision also adds hand planting of native dune vegetation to the list of activities allowed through NRPA PBR. Loss of dune vegetation is a significant concern because healthy dune vegetation prevents erosion and provides habitat for birds to nest. Allowing municipalities, homeowners, or homeowner associations to use a PBR to plant dune grass or other native dune vegetation by hand makes it easier for them to accomplish this type of restoration activity.

All of the activities included in this section are subject to timing restrictions in order to protect threatened and endangered bird species during their nesting season. If an applicant proposes to undertake any of these activities outside of the specified time windows, written approval from the Maine Department of Inland Fisheries and Wildlife (MDIFW) is required. The creation of this new section is routine technical rulemaking.

CHANGES MADE BASED ON BOARD DELIBERATIONS

At the September 1, 2022 public hearing a Board member pointed out an inconsistency in the draft rule concerning lot coverage restrictions and minor expansions. Consistent with the draft rule Section 16(C)(1), Lot coverage restrictions are not intended to apply to minor expansions. The following changes were made to the draft rule as a result (underline indicates additions):

Section 16(C)(2):

Where development that is existing or did exist within one year of application exceeds 40% of the total lot area, the percentage of developed area may not be increased. This lot coverage restriction does not apply to minor expansions.

Section 16(C)(3):

Where the footprint of buildings that are existing or did exist within one year of application exceeds 20% of the total lot area, the percentage of area covered by buildings may not be increased. **This lot coverage restriction does not apply to minor expansions.**

Fiscal impact of rule:

None.

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Agency name: Department of Environmental Protection (DEP), **Board of Underground Storage Tank Installers**
Umbrella-Unit: **06-481**
Statutory authority: 32 MRS §10004
Chapter number/titles: **Ch. 3**, Certification of Underground Oil Storage Tank Installers
Ch. 6, Certification of Underground Oil Storage Tank Inspectors
Filing numbers: **2022-208, 209**
Effective date: 10/18/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rules:

LD 1336 (PL 2021 c. 348) "An Act To Discontinue the Use of the Terms "Handicap," "Handicapped" and "Hearing Impaired" in State Laws, Rules and Official Documents", in the portions relevant to the Board of Underground Storage Tank Installers (BUSTI), required Departments, agencies and offices of the legislative, executive and judicial branches of State Government to discontinue the use of the terms "handicap," "handicapped" and "hearing impaired" to describe a person or set of persons in all laws, rules and official documents.

Basis statement:

The principal reason for this rulemaking is to update the rules to discontinue the use of the terms "handicap," "handicapped" and "hearing impaired" in accordance with PL 2021 c. 348, "An Act to Discontinue the Use of the Terms "Handicap," "Handicapped" and "Hearing Impaired" in State Laws, Rules and Official Documents". The amendments replace the use of the word "handicap" with the word "disability". The amendments also update citations by replacing M.R.S.A. with M.R.S.

Fiscal impact of rules:

None.