Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: 5 MRS §8055(3); 38 MRS §§ 341-H, 1694
Chapter number/title: **Ch. 889**, Designation of Two Flame Retardants as Priority Chemicals
Filing number: **2017-029**
Effective date: 3/4/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule designates two chemicals of high concern as priority chemicals and requires reporting for certain product categories that contain one or both of these regulated chemicals. The rule applies to manufacturers of specified product categories that contain intentionally added amounts of decabromodiphenyl ether (deca BDE) or hexabromocyclododecane (HBCD), which are used in the non-polymeric, additive form as a flame retardant. The rule seeks to gather information which would clarify the prevalence of such uses of the listed flame retardants.

Basis statement:

The Department proposed this new rule chapter to establish the Department's authority to compel manufacturers to report the use of two flame retardant chemicals in specified categories of children's products. The rule applies to manufacturers or distributors of specified product categories that contain intentionally added amounts of decabromodiphenyl ether (deca BDE) or hexabromocyclododecane (HBCD), which are used in the non-polymeric, additive form as flame retardants.

As provided by Maine law at 38 MRS §1694, the Department has the authority to promote chemicals on Maine's chemicals of high concern list to priority status through routine technical rulemaking. If a chemical meets certain statutory criteria it may be designated as a priority chemical by the Commissioner, with concurrence by the Department of Health and Human Service, Maine Center for Disease Control ("Maine CDC"). Once classified as a priority chemical, the Department has the authority to require manufactures of specified product categories to report their use of a priority chemical above *de minimis* levels.

Fiscal impact of rule:

Because the rule applies to manufacturers or distributors of certain products, the fiscal impacts will fall mainly on manufacturers of consumer products which contain intentionally added amounts of the two priority chemicals. Filing the required report information with the Department is expected to cost a complying entity nominal time and effort. Regulated entities are also expected to pay a one-time reporting fee to the Department to cover the costs associated with information management; at this time that amount is yet to be determined. The impact of this reporting fee will be dependent on the regulated entity's ability to absorb such a cost, which had not been planned for in annual preparation for the budgetary impacts of government compliance.

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Agency name:	**Department of Environmental Protection**
Umbrella-Unit:	**06-096**
Statutory authority:	38 MRS §1301 *et seq.*
Chapter number/title:	**Ch. 850**, Identification of Hazardous Wastes (Solvent-contaminated Wipes Exemption)
Filing number:	**2017-063**
Effective date:	4/26/2017
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The Department amends Ch. 850, *Identification of Hazardous Wastes*, to include an exemption for solvent contaminated wipes which is found in federal regulations of hazardous waste.

Basis statement:

The Department is amending Ch. 850 to include an exemption for "solvent-contaminated wipes" consistent with federal regulations. 40 CFR Part 261.4(b)(18) conditionally exempts solvent-contaminated wipes that are being sent for cleaning or disposal from regulation as a hazardous waste, provided they are handled and managed in accordance with applicable regulatory provisions. Ch. 850 defines "solvent-contaminated wipes" as: "woven or non-woven shop towels, rags, pads, or swabs made of wood pulp, fabric, cotton, polyester blends, or other material, that after use or after cleaning up a spill . . ." are contaminated with certain solvents, that would otherwise render the wipes a hazardous waste.

Fiscal impact of rule:

The amendments will allow certain solvent contaminated wipes to no longer be treated as hazardous waste; this should result in reduced costs associated with the disposal of hazardous waste.

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Agency name:	**Department of Environmental Protection**
Umbrella-Unit:	**06-096**
Statutory authority:	38 MRS §§ 3101 - 3117
Chapter number/title:	**Ch. 426**, Responsibilities under the Returnable Beverage Container Law
Filing number:	**2017-071**
Effective date:	5/8/2017
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of this rule is to transition the rule regarding the *Returnable Beverage Container Law* from the Department of Agriculture, Conservation, and Forestry to the Department of Environmental Protection as per 2015 PL 166.

Basis statement:

The Department of Environmental Protection's 06-096 CMR ch. 426 rule was proposed to replace the Department of Agriculture, Conservation and Forestry's (DACF) Ch. 360: *Responsibilities of Manufacturers, Distributors, Dealers, Initiators of Deposit, Contracted Agents, and Redemption Centers under the Returnable Beverage Container Law*, per 2015 PL 166.

The Department utilized DACF's Ch. 360 as the basis for developing this rule. In accordance with 2015 PL 166, citations have been updated consistent with the transfer of the program from DACF. Additional changes to Ch. 360 include:

- clarification of responsibilities related to initiation of deposit and label registrations;
- addition of provisions that currently exist only in statute but that are integral to understanding and comprehensively implementing responsibilities under the *Returnable Beverage Container Law*; and
- general "clean-up" of the rule, e.g., removal of duplicative provisions, consistent use of terminology, integration of standards incorporated in Ch. 360 by reference, and reorganization to place closely-related provisions adjacent to each other.

Fiscal impact of rule:

None.

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Agency name:	**Department of Environmental Protection**
Umbrella-Unit:	**06-096**
Statutory authority:	5 MRS §§ 8001-10008; 12 MRS §§ 401-409, 681-689; 38 MRS §§ 341-H, 630-638
Chapter number/title:	**Ch. 450**, Administrative Regulations for Hydropower Projects *(jointly with 01-672, Maine Use Planning Commission, Ch. 11, filing 2017-124)*
Filing number:	**2017-125**
Effective date:	11/2/2017
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of the rule amendment is to revise Ch. 450 and Ch. 11 so they are:

1. consistent with the authorizing statutes and the Department's Rules Concerning the Processing of Applications and Other Administrative Matters, 06-096 CMR ch. 2;
2. re-organized to reference the jurisdiction of the Department, including removing any reference to the Board of Environmental Protection;
3. updated to replace references to the Land Use Regulation Commission with the Land Use Planning Commission of the Maine Department of Agriculture, Conservation, and Forestry,
4. updated to include language associated with tidal or wave action; and
5. clarify the jurisdiction between the Department and Commission.

The rule amendment is also intended to correct outdated and obsolete references, remove ambiguities and redundancies, and generally make the rule more understandable for the lay reader.

Basis statement:

(See Principal reason or purpose for rule"

Fiscal impact of rule:

None.

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Agency name:	**Department of Environmental Protection**
Umbrella-Unit:	**06-096**
Statutory authority:	PL 2011 ch. 653; 38 MRS §490-NN(1)(B); PL 2017 ch. 142
Chapter number/title:	**Ch. 200**, Metallic Mineral Exploration, Advanced Exploration and Mining
Filing number:	**2017-188**
Effective date:	12/28/2017
Type of rule:	Major Substantive
Emergency rule:	No

Principal reason or purpose for rule:

This new rule is being adopted to implement the *Maine Metallic Mineral Mining Act*, 38 MRS §490-LL *et seq.*, and will repeal and replace the existing Ch. 200, *Metallic Mineral Exploration, Advanced Exploration and Mining* rule. It updates Maine's mining regulations to provide a comprehensive application and permitting process for several types of mining activities, including exploration, advanced exploration and mining.

Basis statement:

The Mining Act

This rule implements the *Maine Metallic Mineral Mining Act* ("2012 Mining Act"), 38 MRS §§ 490-LL *et seq*. and will repeal and replace the existing Ch. 200, *Metallic Mineral Exploration, Advanced Exploration and Mining* rule. The 2012 Mining Act was enacted in 2012 by PL 2011 ch. 653, *An Act to Improve Environmental Oversight and Streamline Permitting for Metallic Mineral Mining in Maine*. Section 30 of that law directed the Department to provisionally adopt and submit to the Legislature for review major substantive rules related to the 2012 Mining Act. The 2012 Mining Act provides the statutory framework governing metallic mineral mining activities in Maine, including:

- Administration and enforcement, rules and local jurisdiction requirements;
- Mining permit application procedures;
- Mining permit duration, termination, revocation transfer and amendment procedures;
- Performance, operation and reclamation standards;
- Financial assurance requirements;
- Mining and reclamation reporting requirements; and
- Enforcement and violation provisions.

Initial Rulemaking

The Department initiated rulemaking activities to update and amend the exploration and advanced exploration permitting requirements in its existing mining rules in 2012. This routine technical rulemaking provided specific application, permitting and performance requirements for individuals seeking to conduct exploration or advanced exploration activities. The Department completed this rulemaking in March of 2013.

The formal rulemaking process for the major substantive mining rules began in mid-September, 2013, when the Department presented its proposal to the Board of Environmental Protection (Board), and requested that a public hearing be held on October 17, 2013. During the October 17th public hearing, the Board heard testimony from a number of consultants, interested parties and the general public. Additional comments were received during the written comment period, which closed on October 28, 2013.

Beginning in early November, the Board held four deliberative sessions on the proposal to discuss key issues raised by commenters with Department staff. At the conclusion of these

sessions, the Board identified a number of suggested changes, and posted these changes to an additional written comment period ending on December 23, 2013.

On January 10, 2014, the Board reviewed a number of changes that were made to the proposal in response to public comments, and after receiving additional oral comments on the proposal pursuant to Title 38 §341-H(3)(c), deliberated, and voted to provisionally adopt the Department's proposal with several additional changes as identified by Board members. The Legislature passed a resolve in April 2014 disapproving the provisionally adopted rule, the Governor vetoed the resolve, and the Legislature sustained the veto. The sections of the 2012 Mining Act amending Title 38 (38 MRS §§ 490-LL *et seq.*), went into effect on June 1, 2014.

2016-2017 Rulemaking

In January 2015, the Department re-submitted the provisionally adopted rule to the Legislature. The Environment and Natural Resources (ENR) Committee of the Legislature, in the majority report for LD 750, recommended specific revisions to the provisionally adopted rule, but the bill did not pass.

On August 18, 2016, the Department requested that the Board post further revisions to Ch. 200 for public hearing. The Department developed the proposed rule from the version provisionally adopted by the Board in 2014, and included revisions requested by the Legislature in 2015 in LD 750 along with other revisions to address testimony and public comments received by the Board and the ENR Committee. The proposal addressed many significant concerns raised by commenters during rulemaking and legislative sessions, while still adhering to the provisions of the 2012 Mining Act and the jurisdictional limits of the Department.

The rule that was posted for public comment in 2016 updates Maine's mining regulations to provide a comprehensive application and permitting process for several types of activities related to mining, including exploration, advanced exploration and mining. Under the rule, exploration activities, which limit excavations to a maximum surface opening of no more than 300 square feet, would not require a permit, but must instead submit a work plan and meet a number of performance standards designed to protect natural resources and properly restore the exploration site. Advanced exploration activities, which involve more extensive sampling (along with the potential for more significant environmental impacts) fall within into two general categories: Tier One advanced exploration activities involve the excavation and removal of up to 2,000 tons of material, while Tier Two advanced exploration activities may involve up to 10,000 tons of excavated material. Under an advanced exploration mining permit, the on-site processing of samples is limited to mechanical size alteration (crushing) and sorting. All testing and characterization must take place in enclosed facilities, and all waste generated from on-site testing and characterization must be transported off-site for disposal. Tier Two advanced exploration activities are subject to comprehensive permitting requirements. Mining activities that involve the excavation of 10,000 tons or more of material are subject to a wide-ranging suite of requirements and more importantly, since these mining activities can include on-site beneficiation of ore and disposal of reactive mine wastes, applicants must demonstrate that mine waste units meet performance requirements designed to prevent the contamination of surface water and groundwater.

The Department received comments on its proposal from nearly 500 interested parties during two public comment periods. The final proposal before the Board in January 2017 incorporated a number of suggested changes, including: 1) prohibiting the wet storage of tailings (tailings ponds); 2) prohibiting the use of wet mine waste units after closure of a mine; 3) requirements for all mining operations to be inspected and monitored by a qualified independent inspector through the construction, operation and closure of the mine; 4) financial assurance requirements that address a worst-case scenario including the cost to investigate and remediate any and all possible releases of contaminants at the site, and

conduct treatment activities for all expected fluids and wastes generated at the facility for a minimum of one hundred (100) years; and 5) standards for the protection of historic sites, unusual natural areas, scenic character, wildlife and fisheries. The public comments and the Department's responses and changes to the proposed rule are discussed a Supplemental Basis Statement dated January 5, 2017. The Department also made a number of formatting and other minor changes to the final proposal. On January 5, 2017, the Board provisionally adopted the Department's proposal after addressing several errata and revising the Department's response to Comment #41 to acknowledge that mining under water bodies has been successfully done in other jurisdictions, and that the lack of a prohibition does not constitute approval. The Department subsequently submitted the provisionally-adopted Ch. 200 to the Legislative Council on January 12, 2017.

Legislative Review of the Provisionally Adopted Rule

On June 7, 2017, the Maine Legislature enacted PL 2017 ch. 142, *An Act to Protect Maine's Clean Water and Taxpayers from Mining Pollution*. Ch. 142 amended the *Maine Metallic Mineral Mining Act* and other laws while also authorizing the final adoption of this major substantive rule, subject to the incorporation of specified amendments that provide consistency with these laws. The required amendments to the Department's rule include:

(1) Prohibiting the issuance of a mining permit if any part of the proposed mining operation will be located wholly or partially located in, on or under any designated lands, state historic sites, state parks, public reserved lands, submerged lands, the Allagash Wilderness Waterway or certain state-owned wildlife management areas;
(2) Adding or revising definitions for the terms "dry stack tailings management," "mine shaft," "mine waste," "mine waste unit," "open-pit mining" and "wet mine waste unit," and amending the existing definition for the term "tailings impoundment;"
(3) Amending the mining permit approval conditions to allow only limited contamination of groundwater within a mining area, provided that this contamination does not result in: contamination of groundwater beyond the mining area; contamination of groundwater within the mining area that exceeds certain water quality criteria for pollutants; contamination of groundwater within the mining area due to pH or metals that exceeds limits set forth in the mining permit based on site-specific geologic and hydrologic characteristics; any violation of surface water quality standards; or, if groundwater or surface water quality within the mining area prior to the commencement of mining activity exceeds applicable water quality standards, further degradation of such groundwater or surface water quality. This amendment also provides a narrow definition of the term "mining area" applicable only to this provision on discharges causing groundwater contamination;
(4) Prohibiting the placement of mining operations involving the removal of metallic minerals, the storage of metallic minerals or mine waste, the processing of metallic minerals or the treatment of mine waste in or on a flood plain or a flood hazard area;
(5) Prohibiting the removal of metallic minerals in, on or from a river, stream or brook, a great pond, a freshwater wetland or a coastal wetland;
(6) Prohibiting the placement of a mine shaft in, on or under a significant or outstanding river segment, an outstanding river, a high or moderate value waterfowl and wading bird habitat, a great pond or a coastal wetland;
(7) Requiring the use of dry stack tailings management and prohibiting the use of wet mine waste units or tailings impoundments for the management of mine waste and tailings;
(8) Prohibiting open-pit mining; and
(9) Clarifying the financial assurance provisions to require the use of a trust fund secured with negotiable assets, provide for a mandatory third-party review of financial

assurance obligations, and require an applicant for a permit or a permittee under the Mining Act to provide special financial assurance coverage for a worst-case catastrophic mining event or failure.

The mining rule that was provisionally adopted by the Board on January 5, 2017 was required to incorporate these legislatively-directed changes, along with additional changes necessary to ensure conformity with PL 2017 ch. 142 and other state laws. In addition, the Department also made grammatical, formatting and other non-substantive amendments prior to final adoption.

Fiscal impact of rule:

This rule will have varying fiscal impacts on the regulated community (potentially including, small businesses), depending on the type of mining activity being undertaken. For example, persons engaged in exploration activities will see only minimal costs associated with the preparation of an exploration workplan and follow-up report. At the other end of the spectrum, persons filing an application for a mining permit will be subject to a $500,000 application fee, the need to reimburse intervenors for up to $150,000 of costs, and annual license fees ranging from $20,000 to $50,000. The Department's rule requires applicants to meet financial assurance requirements for the reclamation of mined lands and surrounding areas affected by advanced exploration and mining activities so that the public will not bear the costs of reclaiming an abandoned mine site. In the event of such an abandonment or financial incapability by the operator, the financial assurance funds will be used by the Department to reclaim both the mined lands and any affected surrounding areas.

The rule should also minimize the fiscal impact on municipalities, as applicants are required to make adequate provisions for utilities, including electrical power, heating fuel supplies, water supplies, wastewater treatment facilities and solid waste disposal, and demonstrate that the mining operation will not have an unreasonable adverse effect on the existing or proposed utilities in a municipality or area served by those services. In addition, local municipalities (or the county commissioners in an unorganized area) are provided intervenor status upon request, and will be reimbursed by the applicant for up to $50,000 (each) for their direct costs of intervention.

In addition, the Department believes that the application and other fees associated with filing for an advanced exploration or mining permit should be sufficient to cover the Department's expected review costs (including third-party expert analysis) of all application materials. In addition, there should be only minimal fiscal impacts on other state agencies, since the Department of Inland Fisheries and Wildlife, Department of Agriculture, Conservation and Forestry, and the Department of Marine Resources will be reimbursed for all expenses attributable to the application, including appeals.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name:	**Clean-Up and Response Fund Review Board**
Umbrella-Unit:	**90-564**
Statutory authority:	38 MRS §§ 568-A(3-A), 568-B(1), 568-A(1)(H), 551(4)
Chapter number/title:	**Ch. 3**, Appeals Procedure **Ch. 4**, Oil Import Fees **Ch. 5**, Documentation Requirements for Application to the State Fire Marshal for Coverage by the Maine Ground and Surface Waters Clean-up and Response Fund at Above Ground Oil Storage Facilities
Filing number:	**2017-074, 075, 076**
Effective date:	5/20/2017
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This is put forward to implement changes to statute made by the Legislature during the 127th session in LD 1303 (PL 2015 c. 319).

Basis statement / summary:

The amendments to the Clean-up and Response Review Board's Ch. 3, 4, and 5 rules reflect statutory changes enacted by the 127th session of the Maine Legislature. PL 2015 ch. 319 combined the Maine Coastal and Inland Surface Oil Clean Up Fund and the Ground Water Oil Clean Up Fund, where fees received by the Board are deposited, to create the Maine Ground and Surface Waters Clean-up and Response Fund; combined the Fund Insurance Review Board and the Oil Spill Advisory Committee to create the Review Board; and changed the level that fees may be increased from 5 million dollars to 6 million dollars.

No comments were received during the public comment period.

Fiscal impact of rule:

This rulemaking conforms the rules with statutory changes already in effect; therefore no financial impact is expected as a result.