Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name:	**Department of Environmental Protection (DEP)**
Umbrella-Unit:	**06-096**
Statutory authority:	38 M.R.S. §§ 585 and 585-A
Chapter number/title:	**Ch 101**, Visible Emissions Regulation
Filing number:	**2023-230**
Effective date:	1/1/2024
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
The proposed revisions to the rule were originally posted to public comment on May 4, 2023. A public hearing was held on June 15, 2023, at the Marquardt Building in Augusta. The comment period closed on June 26, 2023. In response to comments received, changes were made to the draft rule. The comment period is being reopened to receive additional written comment on the revised draft.

Basis statement:
Visible Emissions Regulation, Chapter 101, establishes visible emission standards, also known as opacity limits, for facilities, both licensed and unlicensed, throughout the state. Chapter 101 is part of Maine's State Implementation Plan (SIP).
Court decisions involving EPA[1] have held that blanket exemptions for periods of Startup, Shutdown, and Malfunction (SSM) are not allowed in SIPs. In response to a petition by the Sierra Club, EPA took final action in May 2015 to ensure states have rules that are fully consistent with the Clean Air Act. EPA issued a "SIP Call" requiring states to revise their rules to remove such exemptions. In response, the Department completed rulemaking on revisions to Chapter 101 in February 2019, and the updated Chapter 101 was submitted to EPA for inclusion in Maine's SIP in May 2019.
In October 2022, EPA notified the Department that the new version of Chapter 101 had several deficiencies that would prevent its approval into the SIP. Deficiencies noted included blanket exemptions for emission units subject to certain federal rules, the use of work practice standards that may be practically unenforceable, and the lack of technical demonstration justifying the need and appropriateness of alternative emission standards. This rulemaking rectifies language and requirements to bring Chapter 101 into compliance with the SIP Call and CAA requirements.

In accordance with 38 M.R.S. §§ 585 and 585-A, the formal rulemaking process began on May 4, 2023, when the Department presented its proposal to the Board of Environmental Protection (Board), and requested that a public hearing be held on June 15, 2023. During the June 15th public hearing, the Board heard testimony from the regulated community, interested parties, and the public. Comments were also received during the written comment period, which closed on June 30, 2023. Based on the comments received, the Department made changes to the rule and reposted the proposed rule for additional comments on August 17, 2023. The final comment period closed on September 29, 2023.

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

[1] The United States Court of Appeals for the D.C. Circuit, in *Sierra Club et. al. v. EPA*, overturned the U.S. Environmental Protection Agency's (EPA) long-standing startup, shutdown, and malfunction (SSM) exemption from the hazardous air emission maximum achievable control technology (MACT) standards. *Case No. 02-1135, Dec. 19, 2008.*

- Clarification of the exemption for certain emission units regulated by 40 C.F.R. Part 63, Subpart DDDDD;
- Inclusions of definitions of Continuous Opacity Monitoring System and Recovery Furnace;
- Making a separate category for multi-fuel boilers and process heaters and clarifying what standards apply when a single fuel is fired in these units;
- Creating a new category for recovery furnaces and addressing applicable requirements for these units; and
- Changing the allowed frequency of RTO/RCO bake-out events from no more than once every three months to no more than six times per calendar year.

Fiscal impact of rule:
The proposed rule is not expected to have a fiscal impact on facilities other than the cost to reprogram existing data collection systems. These costs only affect facilities that operate Continuous Opacity Monitoring Systems (COMS), which are typically only employed on larger emission units. The cost to reprogram such units is expected to be minimal.

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Agency name: **Department of Environmental Protection (DEP)**
Umbrella-Unit: **06-096**
Statutory authority: 38 M.R.S. §§ 585, 585-A, and 585-C
Chapter number/title: **Ch 119**, Motor Vehicle Fuel Volatility Requirements
Filing number: **2023-130**
Effective date: 9/14/2023
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:
The Department is proposing an administrative amendment to Chapter 119 to be consistent with Public Law 2019, Chapter 55, which repealed the required sale of reformulated gasoline in the Southern Maine Area.

https://legislature.maine.gov/bills/getPDF.asp?paper=SP0086&item=3&snum=129

The 129th Maine Legislature repealed the requirement to sell only reformulated gasoline (RFG) in the Southern Maine area of York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox and Lincoln Counties as of November 1, 2020. In order to opt-out of the federal RFG program, Maine was required to petition U.S. EPA and submit a State Implementation Plan (SIP) revision. Maine DEP's technical analysis demonstrated that emissions in these counties will continue to decline after the requirement is lifted. EPA approved Maine's petition and determined that the removal of the federal RFG program for the Southern Maine Area is consistent with the applicable provisions of the Clean Air Act (CAA) and EPA's regulations. As a result, RFG was no longer required in the Southern Maine Area as of September 30, 2021.

Basis statement:
Public Law 2019 ch. 55 (LD 274), An Act To Allow the Sale of Ethanol-free Gasoline Statewide, repealed the requirement for retailers to sell only reformulated gasoline (RFG) in certain counties in Maine. The proposed amendment brings the rule in line with this statutory change.

The 129th Maine Legislature repealed the requirement to sell only RFG in certain counties in Southern Maine as of November 1, 2020. After the Legislature's action, DEP petitioned the U.S. Environmental Protection Agency (EPA) and submitted a State Implementation Plan revision. After review, EPA approved Maine's petition and determined that the removal of the federal RFG program for the Southern Maine Area is consistent with the applicable provisions of the Clean Air Act and EPA's regulations. This amendment will remove the RFG requirement, which is no longer required in the Southern Maine Area as of September 30, 2021 due to EPA's approval.

Fiscal impact of rule:
N/A

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Agency name:	**Department of Environmental Protection (DEP)**
Umbrella-Unit:	**06-096**
Statutory authority:	38 MRS § 585-A; 38 MRS § 585-B; and 38 MRS § 590
Chapter number/title:	**Ch 143**, New Source Performance Standards (NSPS); **Ch. 144,** National Emission Standards for Hazardous Air Pollutants (NESHAP)
Filing number:	**2023-042, 2023-043**
Effective date:	3/13/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
The Clean Air Act offers states the option of accepting delegation of enforcement authority for NSPS and NESHAP to streamline the air emission licensing process, and Maine's State Implementation Plan (SIP) allows for such delegation. This rulemaking will incorporate by reference the new and amended NSPS and NESHAP that have been added between July 1, 2013 and July 1, 2022, for which the Department has chosen to take delegation.

Basis statement:
The purpose of these rules is to accept Federal delegation of authority to enforce specific Clean Air Act standards at the state level, thereby reducing the time and effort required for regulated entities to comply with licensing application requirements and decreasing response times for oversight and potential remediation. The Clean Air Act offers states the option of accepting delegation of enforcement authority for NSPS and NESHAP to streamline the air emission licensing process, and Maine's State Implementation Plan allows for such delegation. These rules enumerate the sections of Parts 60, 61, and 63 of the federal Clean Air Act for which enforcement authority has been delegated to the state of Maine. The amendments update the versions of the Federal standards for which delegation has been accepted, and add new standards as deemed appropriate by the Department. Affected entities are obligated to comply with the standards regardless of which agency has enforcement authority.

Public notice of this rulemaking was initially posted on the Department's rulemaking page on November 9, 2022, to comply with Clean Air Act notice requirements, and published in the Secretary of State's rulemaking notices on November 23, 2022, to comply with the Maine APA notice requirements. The Board held a public hearing on the proposed rulemaking on December 15, 2022, and the period for submitting public comments closed on December 27, 2022. The Department received no comments from interested persons or organizations prior to the close of the comment period. The Department made no changes to the draft rule.

Fiscal impact of rule:
None.

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Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)

Agency name:	**Department of Environmental Protection (DEP)**
Umbrella-Unit:	**06-096**
Statutory authority:	38 M.R.S. §§ 585, 585-A, and 590(1)
Chapter number/title:	**Ch 171**, Control of Petroleum Storage Facilities
Filing number:	**2023-103**
Effective date:	8/4/2023
Type of rule:	Major Substantive
Emergency rule:	No

Principal reason or purpose for rule:
On June 21, 2021, the governor signed into law L.D. 163, *An Act Concerning the Regulation of Air Emissions at Petroleum Storage Facilities*. This legislation requires the Department to initiate rulemaking to amend its rules to align with the new requirements contained in 38 M.R.S. § 590, subsection 1. The proposed regulation implements the requirements outlined by the legislature.

Basis statement:
This rule is proposed for final adoption to implement Public Law 2021, Chapter 294, *An Act Concerning the Regulation of Air Emissions at Petroleum Storage Facilities*. Section 2 of that law directed the Department to initiate rulemaking to align Department rules with the new requirements contained in 38 M.R.S. § 590(1), which establishes new control, operating, inspection, testing, monitoring, recordkeeping, and reporting requirements for petroleum storage facilities throughout the state including:

- Requiring new distillate tanks to be constructed with an internal floating roof;
- Requiring heated storage tanks be fully insulated to reduce breathing emissions;
- Prohibiting switchloading, which is the uncontrolled loading of distillate into trucks which previously carried gasoline;
- Implementing a quarterly inspection program using optical gas imaging equipment to look for leaks;
- Requiring additional visual and instrumental inspections of tanks with internal floating roofs;
- Testing of emissions from heated tanks twice per year; and
- Implementation of a fenceline monitoring program which requires each facility to deploy passive monitors around their facility that are collected and analyzed every two weeks.

The formal rulemaking process for these major substantive rules 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. Because this rulemaking was designated major substantive by the Legislature, the Board provisionally adopted the rule on May 5, 2022. Additionally, the Board sent a letter dated July 7, 2022, to the ENRC encouraging them to consider concerns regarding the rule's fenceline monitoring provisions when conducting its legislative review of the provisionally adopted rule.

The Department submitted the rule to the Legislature for review and approval on July 21, 2022, and the Legislature accepted the Department's submission on August 5, 2022. Because the 130th Legislature had already adjourned, the provisionally adopted rule was scheduled for Legislative review in the 131st Session, in 2023.

The ENRC considered the Board's comments during its deliberations; however, they ultimately decided not to recommend any changes to the rule as doing so would first require changes to the underlying statute. The provisionally adopted rule was subsequently approved by the Legislature without changes in Resolves 2023, Chapter 10, and signed by Governor Mills as Emergency Legislation on May 8, 2023. The Department is now bringing the rule back to the Board for final adoption.

The Department received comments on this proposal from 43 interested people and parties during the public comment period. The final proposed rule incorporates a number of suggested changes, including:

- Revising the definition of "leak" to remove an unnecessary option;
- Adding a definition of the term "petroleum storage tank;"
- Shortening the time to commence optical gas imaging (OGI) survey to the first full quarter after Department approval of the OGI leak detection and repair plan;
- Providing for the identification of emission components for which OGI may not be appropriate due to nearby interference or safety concerns;
- Regarding inspections of internal floating roof tanks, removing the requirement to calibrate the monitors with the sample line attached; revising the maximum wind speed allowed to take into account the average wind speed for the local area, and shortening the minimum sample time required; and
- Regarding fenceline monitoring, requiring facilities to measure ethylbenzene, toluene and xylenes in addition to benzene and providing for the ability to use a shorter sampling period with Department approval.

Fiscal impact of rule:
The proposed regulation will have a fiscal impact on all petroleum storage facilities, with the degree of impact depending on the type(s) of petroleum product(s) stored. All petroleum storage facilities will be required to conduct quarterly inspections using optical gas imaging equipment. The cameras required to be used typically cost in excess of $100,000 per unit, and specialized training is required to operate them. Facilities may be able to contract this work to a third party; however, limited availability of contractors and the time sensitivity and weather dependency of the work may make this impractical.

Facilities which operate heated storage tanks (e.g., asphalt or #6 fuel oil) will be required to conduct emissions testing twice per year. These tests are expected to cost $5,000 - $10,000 for each event.

Facilities which store petroleum products in internal or external floating roof tanks (e.g., gasoline, crude oil) will be required to contract with a third-party vendor to implement a fenceline monitoring program. The cost of the individual monitors is small. However, the cost to design the integrated monitoring system and install the monitoring stations as well as the required meteorological station is expected to be $20,000 - $50,000 per facility, though it is possible that multiple facilities may share a meteorological station and the associated costs if they are located reasonably close together. The annual recurring costs for sampling, laboratory analysis, and reporting is expected to be $75,000 - $130,000 per facility.

The Department estimates that two full-time equivalent (FTE) positions will be required to determine facility compliance and administer the requirements of this rule.

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Agency name:	**Department of Environmental Protection (DEP)**
Umbrella-Unit:	**06-096**
Statutory authority:	22 MRS § 567 and 38 MRS § 341-H
Chapter number/title:	**Ch 263**, Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule
Filing number:	**2023-041**
Effective date:	3/15/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
The principal reason for the proposed rule changes is to update federal references and update the laboratory accreditation fee schedule. The proposed changes will permit the use of laboratory methods most recently approved federally by the U.S. Environmental Protection Agency (EPA), which includes the recently EPA-approved LC/MS/MS method for analysis of the regulated contaminants carbofuran and oxamyl in drinking water. Additionally, DHHS and DEP may allow certain methods approved by the EPA after this rule is promulgated as an alternate method, as described in this rule. The benefits of using the newest method(s) for laboratories include the following: reduced analysis time, higher sensitivity and less hazardous waste, translating into reduced cost for analysis and disposal. Other proposed changes include adding a reference to Table IA, omitted from the current rule under the methods for the Wastewater Program test category as provided in 40 CFR Part 136. In order to align with the statute, a change is proposed to add 'enterococcus' to the list of pollutants for which laboratories operated by wastewater discharge facilities licensed pursuant to 38 MRS § 413 may analyze wastewater discharges and not require accreditation. Pursuant to 22 MRS §567(4), proposed changes to the current fee schedule are based on the cost of certifying or accrediting laboratories and reflect fees set for bordering states. The fees collected under this rule are deposited into the Health and Environmental Testing Laboratory Special Revenue Account to fund staffing and program operations. Additionally, changes are proposed to specify that the written management review and management team meeting will be completed within the first quarter of the following year; define 'duplicate' and 'field duplicate;' add actual mass/volume of sample analyzed to the components of test reports; clarify that, for the required analytical method SOP, the topic references must include method revision number or letter and publication date; and add a requirement for labs that fail a second PT to notify the appropriate department (DHHS or DEP). Proposed rule changes also include minor grammatical and technical changes to improve the rule.

Basis statement:
This rule is adopted jointly by the Department of Health and Human Services – Maine Center for Disease Control and Prevention (Maine CDC) and Maine's Department of Environmental Protection (DEP). Maine Comprehensive And Limited Environmental Laboratory Accreditation Rule governs the accreditation of laboratories producing compliance data for programs administered by Maine CDC and DEP, as authorized by 22 MRS § 567 and 38 MRS § 341-H. Adopted amendments update requirements and revise fees for laboratory accreditation.

This rule adoption permits laboratories to use methods most recently approved federally by the U.S. Environmental Protection Agency (EPA), which includes the EPA-approved LC/MS/MS method for analysis of the regulated contaminants carbofuran and oxamyl in drinking water, as well as future alternative methods approved by EPA after the rule has been promulgated that the Department may allow. The benefits of new method(s) for laboratories

include the following: reduced analysis time, higher sensitivity and less hazardous waste, translating into reduced cost for analysis and disposal. The reference to Table IA corrects the omission of the Wastewater Program test category as provided in 40 CFR Part 136. The changes to the list of pollutants that wastewater discharge facility labs licensed under 38 MRS § 413 may analyze align with statute. The amended fee schedule is based on the cost of certifying or accrediting laboratories, and these updates are in line with costs set for bordering states (22 MRS §567(4)).

As laboratory owner/operators, approximately 11 utility districts will be impacted by the fee increase adopted for this rule. The Department does not consider the increase in fee(s) to be prohibitive. The biennial accreditation fee for laboratories with limited accreditation will increase from $650 to $850. The laboratories will experience a fee increase ranging from 5-50%, depending on the number of methods analyzed.

After consideration of comments about the potential administrative burden and anticipated cost for labs to implement the proposed change that would add actual mass/volume to components required for test reports, this proposed change is not included as a requirement in the final adopted rule. Additionally, in response to comments, non-substantive changes are adopted to further clarify in Section 7 that a lab may have some methods that are fully accredited, have others that are provisional, and then lose accreditation for others – all while being an "accredited lab". In order to receive initial accreditation, the laboratory must have applied for and passed the assessment for at least one method and, for the purpose of this rule, be accredited for the specific method(s) run by the lab.

Fiscal impact of rule:
The Department of Health and Human Services determined that Maine Laboratory Accreditation Program operations are not sustainable with the current modest fee collection. The Department estimates that more than 40% of the cost of operating will continue to be unmet by the proposed fee collection increase and will require funding through other revenue account(s), including general funds. The revenue anticipated from the proposed fee structure will reduce, but not eliminate, the need for other funding to cover approximately 30% of program costs. The biennial accreditation fee for laboratories with limited accreditation will increase from $650 to $850. The laboratories will experience a fee increase ranging from 5-50%, depending on the number of methods analyzed. The average DHHS fee increase for labs is estimated to be 26%.

TEST METHOD CATEGORIES	**CURRENT RULE** (2018-Present)	**PROPOSED RULE** (Proposed Fees)
Bacteriology	$50	$75
Inorganic Chemistry	$50	$75
Metals	$125	$150
Organic Compounds	$150	$175
Radiochemistry	$200	$250

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Agency name: **Department of Environmental Protection (DEP)**
Umbrella-Unit: **06-096**
Statutory authority: 38 M.R.S. §344(7)
Chapter number/title: **Ch 305**, Natural Resource Protection Act – Permit by Rule
Filing number: **2023-231**
Effective date: 12/9/2023
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:
The purpose of this proposed 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 M.R.S. 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 P.L. 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 M.R.S. 480-AA).

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.

Fiscal impact of rule:
None

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Agency name:	**Department of Environmental Protection (DEP)**
Umbrella-Unit:	**06-096**
Statutory authority:	32 M.R.S. § 4179
Chapter number/title:	**Ch 531**, Wastewater Treatment Plant Operator Certification
Filing number:	**2023-109**
Effective date:	7/24/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
The Department is proposing to repeal and replace the existing 06-096 C.M.R. Chapter 531: Regulations for Wastewater Operator Certification. This rule establishes standards for certification of wastewater treatment plant operators and for the classification of treatment plants. The purpose of the rulemaking proposal is to include changes to the authorizing statute enacted by the legislature in 2021. The rulemaking proposal also includes changes requested by stakeholders.

Basis statement:
The purpose of this rule is to establish criteria for the classification of wastewater treatment plants and the requirements for certification as an operator of a wastewater treatment plant under the authority of 32 M.R.S. § 4179.

Chapter 531 was first adopted in 1975 and has been amended 5 times since adoption. This repeal and replace rulemaking process was undertaken to implement recent statutory changes required by Public Law 2021, ch. 173, *An Act to Amend the Laws Governing Wastewater Treatment Plant Operator Certification*, to implement recommendations from Department staff and stakeholders in the wastewater treatment community and to update the structure and language of the Chapter.

Changes to the Chapter include: chapter title; definition section; criteria for classifying treatment plants; numeric classification levels, eliminating Roman numerals; requirement for an owner to designate an operator in responsible charge; revised language for contract operations; removed requirement to display certificate; added categories of operator status; a new procedure for provisional certification; revised education and work experience requirements; removed option for Advanced Treatment Examination; expanded description of reciprocity; updated language to recognize online testing and registration; new procedures for revocation, suspension and reinstatement; and added professional standards for operators.

Public notice of this rulemaking was initially posted on the Department's rulemaking page on February 1, 2023, and published in the Secretary of State's rulemaking notices on February 8, 2023, to comply with the Maine APA notice requirements. The period for submitting public comments closed on March 16, 2023. The Department received one public comment prior to the close of the comment period.

Fiscal impact of rule:
None. Replacing the existing rule with the proposed rule will have no fiscal impact.

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Agency name:	**Department of Environmental Protection (DEP)**
Umbrella-Unit:	**06-096**
Statutory authority:	38 M.R.S. § 546(4)
Chapter number/title:	**Ch 600**, Oil Discharge Prevention and Pollution Control Rules for Marine Oil Terminal, Transportation Pipelines and Vessels
Filing number:	**2023-079**
Effective date:	6/6/2023
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:
The purpose of this rulemaking is to update the existing rules to more current standards, improve the protectiveness of the rule, make administrative changes, incorporate statutory changes, and include climate change in the design, operation and planning of marine oil terminals. The fiscal cost of the rule is expected to be less than $1,000,000 per marine oil terminal facility.

Basis statement:
Purpose: The purpose of this rulemaking is to update the existing rules to current standards, improve the protectiveness of the rule, make administrative changes, incorporate statutory changes, include climate change in the design, operation and planning of marine oil terminals, and make other clarifications and minor language improvements. The amendments will update cited references to modern standards while addressing legislative changes to closure, financial assurance and liability insurance provisions and incorporate climate change into the design, operation and planning at marine oil terminals.

In 2020 the Maine Legislature amended sections of statute relating to marine terminal closures, financial assurance, and liability insurance. This rule incorporates those changes. Also in accordance with the goal of incorporating climate change into Department rules, these changes incorporate siting, design, operation and planning for climate change into the rule.

The authority for this rulemaking is found in 38 M.R.S. § 546(4) for marine terminal rules which provides broad authority for the rule. In particular, 38 M.R.S. § 546(4)(E-1) - (E-2), § 542 (4-B), as well as § 552-B provides more specific requirements for closure, financial assurance, and liability insurance.

The Scientific and Technical Subcommittee of the Maine Climate Council, established through 2019 Public Law, Chapter 476, prepared the *Scientific Assessment of Climate Change and Its Effects in Maine*. The assessment included science-based sea level rise projections that were subsequently adopted by the Council in Maine's 2020 Climate Action Plan "Maine Won't Wait". Based on these reports, as requested by the legislature in 2021 Public Resolve, Chapter 67, several state agencies identified in the Resolve analyzed how to incorporate sea level rise into Maine laws and rules.

The interagency report to the legislature, *Result of Analysis Required by 2021 Public Resolve, Chapter 67, Resolve, To Analyze the Impact of Sea Level Rise* was submitted to the Joint Standing Committee on Environment and Natural Resources in January 2022. Chapter 600 was listed in this report (page 21) as one rule where the Department was planning to propose revisions to include sea level rise in siting provisions and spill containment requirements.

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2021 Public Law, Chapter 590 has implemented agency recommendations from the 2021 Resolve, Chapter 67 by amending site location of development laws and solid waste facility laws to authorize the Department to consider the effect of 1.5 feet of relative sea level rise by 2050 and 4 feet of relative sea level rise by 2100 in determining whether this infrastructure fits harmoniously into the existing natural environment. These sea level rise elevations are consistent with the intermediate and high scenarios from the reports by the Maine Climate Council in response to 2019 legislation. These are the same scenarios used in the proposed revisions to Chapter 600.

Background: The rule was initially developed in 1971. It has been revised 10 previous times, the last in 2016. These amendments were developed over the course of several years.

There are 13 climate-related definitions added to the Chapter 600 revisions primarily pertaining to flooding, natural hazards, adaptation, and resilience. Four of the definitions exist in other Department rules (floodplain, highest astronomical tide, seal level rise, and 24-hour storm), nine of the definitions exist in guidance in use by other state agencies (adaptation, critical infrastructure, flooding, natural hazards, resilience, storm surge, and storm tide). The Department chose to first be consistent with other Department rules, followed by other State agencies, and then federal agencies.

Fiscal impact of rule:

The estimated fiscal impact is expected to be less than $1,000,000 per marine facility.

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS: The potential economic impact is expected to be $170,000 to $10,000,000. These costs would be offset through reduced risk to local communities and nearby residential properties.

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: Marine oil terminal facilities would need to comply with additional and more modern standards and would need to plan for and in select features incorporate a 4-foot elevation change and a 100 year storm event into their operations. The four municipalities where these facilities are located as well as nearby residential properties would be able to plan for storm events better and with time would reduce the negative impacts from climate change through adaptive measures.

BENEFITS OF THE RULE: The more modern standards, improved protectiveness of the rule, more thorough planning for closure and climate change would all enhance the benefits of the marine oil terminal facilities at the same time as it would reduce the risk to nearby residential properties and negative impacts on the host communities.