

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
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: 12 MRS §§ 685-A(7-A), 689
Chapter number/title: Ch. 502, Direct Watersheds of Lakes Most at Risk from Development, Urban Impaired Streams
Filing number: 2018-064
Effective date: 5/23/2018
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Stormwater is water that accumulates on land as a result of rain and other precipitation events. Impervious and developed areas like parking lots, streets, and roofs prevent stormwater from naturally soaking into the ground, thereby creating faster and greater volumes of surface flows. This surface runoff also collects contaminants that are typical to developed areas, such as excess nutrients, sediments, pathogens, toxic contaminants, and chloride. In Maine, as in many other areas, unmanaged stormwater runoff has caused serious damage to property, lakes, streams and wetlands.

Stormwater is addressed through the *Site Location of Development Act* and Maine's *Stormwater Management Law* along with several implementing regulations. For example, projects disturbing one or more acres require approval from the Department, and must comply with stormwater quality and quantity standards established by the Department's Ch. 500 *Stormwater Management Regulations*, and the ancillary Ch. 501, *Stormwater Management Compensation Fees and Mitigation Credit*, and Ch. 502, *Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams* rules.

The Department's Ch. 502, *Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams*, rule was initially promulgated in 1997, and describes the criteria used to identify the direct watersheds of lakes most at risk from new development and urban impaired streams, and lists those waterbodies¹. In 2015, the Department amended its Ch. 500 and Ch. 501 rules to provide greater flexibility while encouraging the use of innovative stormwater designs that accommodate measures for addressing climate change, resiliency, and adaptation in our infrastructure. The Department is now updating Ch. 502 to reflect current water quality, and identify those lakes that are now most at risk from development activities and urban impaired streams.

Basis statement:

The Department's Ch. 502, *Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams* rule was initially promulgated in 1997. It describes the criteria used to identify the direct watersheds of lakes most at risk from new development and urban impaired streams, and lists those waterbodies². The Department is now updating Ch. 502 to reflect current water quality conditions in the waterbodies, and identify those lakes that are now most at risk from development activities and urban impaired streams.

The Department of Environmental Protection held a public hearing on the proposed amendments on June 15, 2017, and the comment period closed on June 26, 2017. The

¹ Ch. 500 establishes specific stormwater control standards for the watersheds of lakes most at risk and urban impaired streams identified by Ch. 502.

² In 2015, the Department amended its Chapter 500 and Chapter 501 rules to provide greater flexibility while encouraging the use of innovative stormwater designs that accommodate measures for addressing climate change, resiliency, and adaptation in our infrastructure.

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Department received one comment on the proposed amendments at the June 15, 2017 public hearing, and no changes were made to the proposed amendments in response to this comment. No written comments were received. The Board of Environmental Protection provisionally adopted the Department's proposal on September 7, 2017.

As a major substantive rule, Ch. 502 is subject to legislative review pursuant to 5 MRS §8072. The final adoption of the proposed amendments to this major substantive rule was authorized by Resolve 2018, Chapter 30, which authorized adoption of the provisionally adopted Ch. 502 that was submitted to the Legislature for review.

Fiscal impact of rule:

All projects requiring a Stormwater or Site permit must meet the Basic Standards which require good erosion and sedimentation control and good housekeeping practices during construction. Most projects with 1.0 or more acres of impervious area are required to meet the General or Phosphorus Standards which require post construction management and treatment of the stormwater. However, if the project is in the direct watershed of a "lake most at risk from new development" or an "urban impaired stream" the threshold requiring post construction management and treatment is 20,000 sq. ft. Stormwater projects in lake watersheds have the option of meeting either the General Standard or the Phosphorus Standard. Site projects in the direct watershed of a lake most at risk from development must meet the Phosphorus Standard, as must any projects in the direct watershed of a "severely blooming" lake. Site projects in the watershed of an urban impaired stream, in addition to meeting the General Standards, must also meet the Urban Impaired Stream Standard. The additional requirements for lakes most at risk from development and urban impaired streams will increase the costs of development projects affecting these resources. Since these costs are site-specific, the Department is unable to provide an average or estimated fiscal impact for this proposal.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: PL 2007 ch. 661 §E-2
Chapter number/title: Ch. 382 (New), Wind Energy Act Standards
Filing number: 2018-069
Effective date: 4/30/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal purpose of the rulemaking is to provide clarity to the review process for wind energy projects under the **Wind Energy Act** (WEA).

Basis statement:

The principal purpose of the rulemaking is to provide clarity in the review process for permit applications for wind energy projects under the *Wind Energy Act* (WEA). This rule provides further guidance by explaining the current review process and elaborating on the licensing standards for wind energy projects under the WEA.

Since the implementation of the WEA in 2008 the Department has gained valuable experience in the processing of applications under the law. The rule seeks to capture some of the lessons learned from that experience and provide formal guidance to participants in the Department's decision making process.

The rule is based on the statutory language of the WEA and Department experience in applying the WEA. The Department released two pre-rulemaking drafts of this rule, in July 2016 and January 2017. The Department also held two public workshops on the draft rule: in Bangor on September 21, 2016; and in Farmington on January 27, 2017. Many stakeholders commented on the drafts and/or attended the workshops. The Department did not attempt to reach consensus; however, the Department did revise the draft rule based on the comments received.

Fiscal impact of rule:

Ch. 382 largely incorporates existing department practice in the review of wind energy projects and so is not anticipated to have a substantial fiscal impact to small businesses or others. The rule may have an indeterminate, but potentially negative fiscal impact on a developer of wind energy projects as they will no longer be able to credit the potential future salvage value of project components against the costs of decommissioning. However, the WEA requires developers to provide a "demonstration of current and future financial capacity that would be unaffected by the applicant's future financial condition." The speculative nature of salvage values twenty years in the future makes it problematic to account for these in the financial assurance equation. The potential fiscal impact would also be partially offset by the fact that the applicant or their assignee would still ultimately be the recipient of any future salvage value realized. The rule would also increase the required minimum safety setback for wind turbines. This may require a developer to reconfigure a project, reduce the size, or to acquire title or easements over additional land.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 5 MRS §8051; 38 MRS §341-H
Chapter number/title: Ch. 2, Rules Concerning the Processing of Applications and Other Administrative Matters
Filing number: 2018-092
Effective date: 6/9/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The proposed amendments to Ch. 2 incorporate the statutory changes to the Department's right of inspection and entry enacted in PL 2017 ch. 137 §A-5, which repealed and replaced the corresponding language in Title 38 §347-C, to amend the process for revocation or suspension of a license in accordance with PL 2017 ch. 137 §A-4, which modified the corresponding language in Title 38 §342 sub-§11-B, and make other minor changes as identified by staff.

Basis statement:

Ch. 2 is being amended to incorporate two statutory changes and to make other minor changes to clarify and improve various procedural matters. The two statutory changes are to the Department's right of inspection and entry and to the process for revocation or suspension of a license. The Department's right of inspection and entry was amended by PL 2017 ch. 137 §A-5, which repealed and replaced the corresponding language in Title 38 §347-C. The process for revocation or suspension of a license was amended by PL 2017 ch. 137 §A-4, which modified the corresponding language in Title 38 §342 sub-§11-B.

Fiscal impact of rule:

None anticipated. The amendments do not impose new regulatory requirements and in some instances, simplify procedures.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 1301 *et seq.*, 1319-O, 1319-R
Chapter number/title: **Ch. 850**, Identification of Hazardous Waste
Ch. 851, Standards for Generators of Hazardous Waste
Ch. 852, Land Disposal Restrictions
Ch. 858, Universal Waste Rules
Filing number: 2018-098 *thru* 101
Effective date: 6/11/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for this rulemaking is to update the rules through incorporation of revised and new regulations promulgated by U.S. EPA under *The Solid Waste Disposal Act*, as amended by the *Resource Conservation and Recovery Act of 1976* (RCRA), as amended, 42 USCA 6901, *et seq.* These regulations include 40 CFR 172, 40 CFR 173, 40 CFR 178, 40 CFR 179, 40 CFR 260 to 273, 40 CFR 279, and 40 CFR 761.

Basis statement:

After consultation with U.S. EPA, these amendments were determined to be necessary in order for the State of Maine to receive additional authorization and to maintain current authorization to administer the *Resource Conservation and Recovery Act of 1976* (RCRA). Federal authorization allows the Maine Department of Environmental Protection (“Department”) to retain its delegated authority to administer the RCRA hazardous waste program in Maine, including the issuance of licenses for hazardous waste facilities.

The changes include additional exclusions from materials identified as hazardous waste, including a new Maine-specific exclusion related to the handling of used cutting oils; updates to the criteria for identifying hazardous waste by characteristics; aligning listed wastes with federal hazardous waste and hazardous constituents listings; updating testing methodologies; updating standards related to land disposal restrictions; and, minor changes to facilitate alignments between the two sets of regulations. These changes also necessitate minor corrections, such as updated cross-citations, throughout the rules.

In addition to aligning state regulations with current federal RCRA regulations, the Department is also undertaking to update formatting, reflect changes in the Maine Hazardous Waste Statutes and 2011 PL 304, Part F, and improve the general organization of the rules.

Fiscal impact of rule:

Federal rules that are being incorporated into Maine’s hazardous waste rules are already in effect. For this reason, no additional fiscal impact is anticipated.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 341-D(1-B), 1304 (1,1-B & 13)
Chapter number/title: Ch. 418, Solid Waste Management Rules: Beneficial Use of Solid Wastes
Filing number: 2018-102
Effective date: 7/8/2018
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

Amendments to Ch. 418 update, clarify and correct certain provisions of the rule. The Department's experience in administering Section 6 (Fuel Substitution) of this rule over past years has highlighted the need to make particular substantive changes to improve its operation, and to reorganize and make language changes for clarity and readability. The Department is updating citations and references throughout Ch. 418.

Basis statement:

The revisions to the *Maine Solid Waste Management Rules: Beneficial Use of Solid Wastes*, 06-096 CMR ch. 418, update, clarify and correct certain provisions of the rule. The Department's experience in administering this rule over past years has highlighted the need to make particular substantive changes to improve its operation, and to reorganize and make language changes for clarity and readability. The Department is updating citations and references throughout Ch. 418.

Fiscal impact of rule:

A minor cost increase which would affect processors and users of boiler fuel derived from construction and demolition debris wood may result from proposed increases in the number of samples required to characterize that fuel substitute. On the other hand, a change in the rule allowing the use of data gathered by a construction and demolition debris (CDD) wood processor to demonstrate a licensee's compliance with fuel quality standards, represents a potential savings.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 341-H, 1304(1, 1-B)
Chapter number/title: Ch. 410, Maine Solid Waste Management Rules:
Composting Facilities
Filing number: 2018-113
Effective date: 6/30/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking proposes no new language or substantive changes to Ch. 410, with the exception of a minor change to section 1(B)(1) to clarify that section so that it more accurately reflects the Department's existing interpretation and practice. All of the highlighted language in this version, with the exception of changes to section 1(B)(1) and other minor formatting changes, was already the subject of prior Department notice and comment, and was properly adopted by the Department in those prior rulemaking proceedings. However, a footnote in a recent Maine Supreme Court decision, *State of Maine v. Dubois, Inc.*, 2017 ME 223, ¶3 n.1, 174 A.3d 308, raises questions regarding the Department's notice with respect to those prior adoptions, including whether all of the highlighted language was included on a single draft at the time of the Department's prior public notice and comment. Accordingly, in an abundance of caution, and to alleviate any possible concerns regarding the adequacy of the Department's notice, the Department is undertaking these current proceedings to allow for additional notice and public comment on the highlighted language, as set forth in a single draft version of Ch. 410.

Basis statement:

In addition to the above, the Department made several other minor changes. Those changes include:

- correcting citations to other Solid Waste and Hazardous Waste Rules to reflect amendments made in other rulemakings;
- correcting formatting and citation form for consistency throughout the Department's rules;
- removing repetitive or reallocated language; and
- clarification of existing requirements.

Fiscal impact of rule:

No significant fiscal impact is anticipated.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 341-D(1-C), 1610(5)(D)(1)
Chapter number/title: **Ch. 415**, Reasonable Costs for Handling, Transportation, and Recycling of Electronic Wastes
Filing number: **2018-149**
Effective date: 8/20/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The changes to Ch. 415 are in response to changes in statute resulting from the enactment of LD 1847 as PL 2018 ch. 391.

Basis statement:

The purpose of the amendments is to:

- Make the regulations consistent with recent legislation, PL 2018 ch. 39;
- Update the regulations to reflect current practices and certifications in the electronic waste management system; and
- Correct minor grammatical errors and clarify the rule's conformance with statute.

Fiscal impact of rule:

None.

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Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §585-A
Chapter number/title: Ch. 166 (New), Industrial Cleaning Solvents
Filing number: 2018-150
Effective date: 8/22/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Section 184 of the *Clean Air Act* requires states to implement or update reasonably available control technology “RACT” controls on all major VOC and NOx emission sources and on source categories covered by a Control Technique Guideline “CTG” document. EPA defines RACT as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. In 2006 EPA published a CTG recommending VOC controls for industrial cleaning solvents; the Department is proposing to incorporate this CTG into a new rule.

Basis statement:

This rule limits the emissions of volatile organic compounds (VOC) from industrial solvent cleaning activities and is being adopted pursuant to Section 184 of the *Clean Air Act*, which requires states to implement or update reasonably available control technology (RACT) controls on all major VOC and NOx emission sources and on source categories covered by a Control Techniques Guideline (CTG) document. The U.S. Environmental Protection Agency (EPA) defines RACT as the lowest emission limit a source is capable of meeting through the application of control technology that is reasonably available considering technological and economic feasibility. In 2006, EPA published a CTG recommending VOC control options for this source category. Maine’s rule is based on these recommendations and reduces VOC emissions from industrial solvent cleaning activities with 6,000 pounds (3 tons) or greater per year emissions by using low vapor pressure solvent, low VOC solvents, and/or add-on controls. Sources subject to this rule are also required to implement basic work practices to reduce and limit VOC emissions.

Fiscal impact of rule:

There may be minor costs for facilities to convert to low VOC coatings or install add-on control technology and to comply with the required record keeping.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 561 - 570-M
Chapter number/title: Ch. 691, Rules for Underground Oil Storage Facilities
Filing number: 2018-205
Effective date: 9/26/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is updating its Ch. 691 and 693 underground oil storage rules to include requirements under federal regulations that were passed in 2015. This will allow the Department to seek reauthorization for Maine's underground oil storage tank program. The proposal also removes outdated aspects of the rule and other minor language improvements.

Most of the changes to Ch. 691 are in accordance with the EPA's regulatory changes in 2015. States with delegated authority such as Maine are required to achieve regulatory consistency by October 13, 2018. The major changes within this rule, which are needed to gain consistency with federal regulations, include:

- Sump testing every 3 years, unless the sump is double walled, to ensure sumps are liquid tight;
- Changing the annual statistical inventory analysis leak detection method to monthly statistical inventory reconciliation. Currently 7 facilities would need to make this change and DEP staff has met with each facility (the last of these tanks are scheduled to be removed by August 1, 2019);
- Facilities may remain temporarily out of service for up to 12 months, a reduction from the current 24 months; however, approval to remain out of service for longer periods of time may be obtained from the Commissioner;
- Discharge investigation, response and corrective action is required for aboveground tanks associated with field constructed tanks or airport hydrant systems and wastewater treatment tank systems not regulated by the federal NPDES or pretreatment programs;
- Aligning discharge investigation and corrective actions to federal rules for protection of surface waters and consistency between the state and federal rules; and
- Installation of double walled spill buckets for new or replacement construction, eliminating the need for the 3-year sump testing.

Basis statement:

The principal purpose of this rulemaking is to incorporate the Environmental Protection Agency's (EPA) 2015 Federal Underground Storage Tank rule amendments under 40 U.S.C. part 280 into the Maine rules, align Maine's rules to achieve consistency with federal provisions, update outdated sections, and make other clarifications and minor language improvements. During the second session for the 128th Maine Legislature, the Department introduced LD 1784 to align the state and federal statutes and allow for this rulemaking. By adopting changes to this rule, the EPA can allow the Department to remain federally authorized for the administration of the Underground Oil Storage Tank Program. In developing this rule, the Department consulted the federal rules and associated guidance, industry standards as outlined in Appendix R of the rule, national and state studies of sources of releases and results from sump testing, and agency professional judgement.

The rule was initially developed in 1986. It has been revised 13 previous times, the last in 2016. The 2018 rule was developed over the course of several years. The Federal EPA has reviewed the rule as have members of the business community with an interest in this

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rulemaking. The Department conducted outreach to interested parties through numerous phone calls and emails as well as meetings. The Department also provided an overview of the proposed changes at the annual training for Maine's Certified Tank Installers and Inspectors in 2017. A draft version of the rule was sent to members of the industry for their comments. These commenters represented a range of interests. Some changes were made in response to these comments and incorporated into the rule posted for formal public comments.

Fiscal impact of rule:

None.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §§ 561 - 570-M
Chapter number/title: Ch. 693,
Filing number: 2018-206
Effective date: 9/26/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is updating its Ch. 691 and 693 underground oil storage rules to include requirements under federal regulations that were passed in 2015. This will allow the Department to seek reauthorization for Maine's underground oil storage tank program. The proposal also removes outdated aspects of the rule and other minor language improvements.

Most of the changes to Ch. 691 are in accordance with the EPA's regulatory changes in 2015. States with delegated authority such as Maine are required to achieve regulatory consistency by October 13, 2018. The major changes within this rule, which are needed to gain consistency with federal regulations, include:

- Sump testing every 3 years, unless the sump is double walled, to ensure sumps are liquid tight;
- Changing the annual statistical inventory analysis leak detection method to monthly statistical inventory reconciliation. Currently 7 facilities would need to make this change and DEP staff has met with each facility (the last of these tanks are scheduled to be removed by August 1, 2019);
- Facilities may remain temporarily out of service for up to 12 months, a reduction from the current 24 months; however, approval to remain out of service for longer periods of time may be obtained from the Commissioner;
- Discharge investigation, response and corrective action is required for aboveground tanks associated with field constructed tanks or airport hydrant systems and wastewater treatment tank systems not regulated by the federal NPDES or pretreatment programs;
- Aligning discharge investigation and corrective actions to federal rules for protection of surface waters and consistency between the state and federal rules; and
- Installation of double walled spill buckets for new or replacement construction, eliminating the need for the 3-year sump testing.

Basis statement:

The principal purpose of this rulemaking is to incorporate the Environmental Protection Agency's (EPA) 2015 Federal Underground Storage Tank rule amendments under 40 U.S.C. part 280 into the Maine rules and make other minor language improvements. By adopting changes to this rule, the EPA can allow the Department to remain federally authorized for the Underground Oil Storage Tank Program. In developing this rule, the Department consulted the federal EPA rules and associated guidance, Federal DOT pipeline standards, Federal EPA online Airport Hydrant System training, and agency professional judgement. The changes made to Ch. 693 are consistent with the federal requirements. Therefore, no sections are identified as more stringent than federal requirements.

The rule was revised once before in 2012. Before the current proposed rule was posted for public comment, outreach to the two interested parties affected by this rulemaking was conducted. Changes were made in response to comments received during the outreach and were incorporated into the proposed rule posted for formal public comments. Minor citation and grammatical corrections also were made to the rule.

Fiscal impact of rule:

None.

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Agency name: Department of Environmental Protection (DEP)
Umbrella-Unit: 06-096
Statutory authority: 38 MRS §341-H
Chapter number/title: Ch. 310, Wetlands and Waterbodies Protection
Filing number: 2018-235
Effective date: 11/11/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking was initiated in response to a petition from the Maine Association of Wetland Scientists (MAWS) requesting changes to clarify the definition of “Wetland of Special Significance” (WOSS). The petition attempted to address the issue of extending WOSS protections to all wetlands connected to the protected resource that created the WOSS. In some cases, this resulted in WOSS protections being applied to low value wetlands a great distance from the protected resource that created the WOSS designation. The Department denied the petition due to the lack of discretion the proposed language afforded the Department to protect potentially significant wetlands. However, the Department recognized the issue the petition was attempting to address and agreed to work with MAWS on developing new language for rulemaking.

The Department hosted a stakeholder discussion in November to review the MAWS’s proposal and develop alternative language. The changes will give the regulated community more defined, consistent parameters in delineating a WOSS while allowing the Department to maintain discretion over special cases. The Ch. 310 proposal does the following:

1. Clarifies the definitions of “Emergent Marsh Vegetation” and “Peatland”
2. Defines the WOSS to include connected wetlands within a 250-foot radius unless the Department determines that the activity may unreasonably adversely affect the protected resource that created the WOSS designation.
3. Allows for shoreline stabilization as an activity that can be done in, on or over WOSS with an alternatives analysis, aligning with current practice.

Basis statement:

The Department proposed amending Ch. 310 to accomplish three objectives: clarify the definitions of "Emergent Marsh Vegetation" and "Peatland" in Section 3; amend the definition of a Wetland of Special Significance ("WOSS") to include only connected wetlands within a 250-foot radius of the feature that triggered the WOSS designation unless the Department determines that the activity may unreasonably adversely affect the feature of the protected resource that triggered the WOSS designation in Section 4; and, allow for shoreline stabilization as an activity that can be done in, on or over WOSS with an alternatives analysis in Section 5. Based on the comments received, the Department has withdrawn the second proposal for further study and is adopting the other two proposals.

Fiscal impact of rule:

The changes may reduce the expenses of application preparation for some applicants. No other fiscal impacts are anticipated.

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Agency name: Department of Environmental Protection
Umbrella-Unit: 06-096
Statutory authority: 22 MRS §567
Chapter number/title: Ch. 263, Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule
Filing number: 2018-266
Effective date: 12/19/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The *Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule* repeals and replaces the current lab certification rule. This rule establishes revised standards for the accreditation of the operations, performance and administration of laboratories, including industrial, commercial, academic and governmental, that analyze samples under specific DHHS and/or DEP programs. This rule is necessary in order to administer the most recent updates to the 40 CFR Parts 136, 141 and 261 related to methods test categories. The rule adds "provisional" as a status for laboratory accreditation, establishes an adjusted fee schedule, amends terms and definitions, and establishes an all-encompassing quality system to provide a straightforward reference for laboratory personnel.

Basis statement:

Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule repeals and replaces the existing laboratory certification rules, Ch. 263. The purpose of this rule is to establish quality guidelines for laboratory data received by the Department of Health and Human Services (DHHS or Department) and the Department of Environmental Protection (DEP). The rule establishes procedures for accrediting laboratories for drinking water, non-potable water, air, and solid and chemical materials, including tissues and septage, to ensure that laboratories analyzing samples for the following regulations: *Safe Drinking Water Act*; *Clean Water Act*; *Resource Conservation and Recovery Act*; and Leaking Underground Storage Tanks (LUST) Program, produce legally defensible data by meeting quality control and quality assurance objectives.

This rule is necessary in order to administer the updates to the 40 CFR Parts 136, 141 and 261 and to allow laboratories to use updated methods contained in the 22nd Edition of *Standard Methods*. This rule describes an all-encompassing quality systems section for easy reference; provides for "provisional status" as an additional accreditation option; and specifies reporting requirements for laboratories when samples, including private well samples, are not analyzed according to accredited methods. This rule uses the term "accreditation" in place of "certification," keeping with national and international standards and nomenclature. Additionally, this rule establishes a fee structure that is consistent with adjusted charges that were implemented by program policy change in 2012.

Fiscal impact of rule:

Under the rule, laboratories will be required to pay charges that are consistent with the programs' interim adjusted fee schedule implemented by the program in 2012. The proposed fee schedule will result in the Department collecting an estimated 60% of the total operating costs and will require funding from other sources, including General Funds, to support the program. The program anticipates an increase in costs due to recent legislation that requires the Department to expand lab certification rules to include the certification and monitoring of an additional testing laboratory service. The program, currently at 1.25 FTEs, is projected to

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continue as underfunded by an estimated 40% based on the adjusted fee schedule, notwithstanding any increase in the number of businesses or in testing methods. The modified fee collection proposed in rule is anticipated to create a shortfall that is estimated to be \$57,000 and projected to increase annually.