



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR

MELANIE LOYZIM
COMMISSIONER

February 24, 2025

State and Local Government Committee
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

RE: L.D. 490, *An Act to Provide for a 5-year Automatic Repeal of Agency Rules*

Senate Chair Baldacci, House Chair Salisbury, and Members of the Committee on State and Local Government,

The Maine Department of Environmental Protection (DEP) opposes L.D. 490, *An Act to Provide for a 5-year Automatic Repeal of Agency Rules*. If passed, this bill would jeopardize Maine's authority to issue air emission, wastewater discharge, and hazardous waste management licenses, and would impose a significant fiscal impact on DEP.

The DEP has 184 rule chapters currently in effect, of which at least 22 are major substantive, plus 54 rule chapters authorizing municipal shoreland zoning ordinances.

Many of DEP's rules are required to maintain authority delegated by the U.S. Environmental Protection Agency (EPA) to implement federal environmental standards and to issue licenses for air emissions, wastewater discharges, and waste management. Without such delegated authority, Maine facilities would be subject to federal environmental rules, would need to obtain licenses from the EPA and would be subject to regular inspection and enforcement by federal officials.

Title 38 of the Maine Revised Statutes, among others, directs the DEP to adopt environmental standards and to issue licenses to ensure compliance with those standards. The DEP adopts standards by rule that also meet federal requirements in order to streamline environmental requirements for regulated entities in Maine. Without federally delegated authority, regulated facilities would be subject to dual licensing requirements with potentially differing requirements.

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The Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act authorize EPA to delegate authority to a state that has fully enforceable standards and procedures that ensure the state will meet federal standards. In order to obtain federal delegation, the State must submit all applicable laws and regulations to the EPA for review through the federal Administrative Procedure Act process. For example, the Code of Federal Regulations, Title 40, Part 52, Subpart U contains EPA's approval of Maine's State Implementation Plan under the Clean Air Act, which incorporates 46 DEP rule chapters.

Any change to a statute or rule that is connected to DEP's delegated authority, including readopting a previously repealed rule, must be submitted to EPA for review. EPA's review process typically takes at least six months, from publication of a proposed approval in the Federal Register to publication of a final approval.

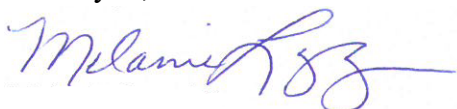
The DEP regularly reviews each of its rules, and does repeal those that are no longer necessary to meet the DEP's statutory obligations. In contrast, the Legislature regularly passes laws that cause the DEP to adopt new rule chapters. The DEP does not anticipate that L.D. 490 would result in a reduction in the number of rules that govern DEP's programs.

If L.D. 490 became law and DEP were to simply readopt each legislatively repealed rule without any changes, the proposed rule could be posted for public comment prior to the repeal but final adoption of the rule could not occur until after the repeal. An adopted rule must be certified by an assistant attorney general, then filed with the Secretary of State, and can become effective no less than 5 days after filing (5 M.R.S. §8052(6) and §8056(1)). For major substantive rules, even more time would lapse between repeal of a rule and final adoption following legislative approval. This lapse in the effectiveness of a rule between its repeal and the effective date of its readoption would necessitate resubmitting each readopted rule for federal approval, leaving Maine facilities subject to federal licensing procedures until federal approval is renewed. This would create a confusing regulatory landscape for licensees and for project developers.

The DEP estimates that L.D. 490 will require the DEP to conduct more than 35 rulemakings, and at least a dozen requests for federal approval, every year. This will likely require multiple new full-time equivalent positions and an appropriation for All Other costs, including transcription services when a public hearing is required by federal procedural rules, printing, meeting room rentals, and Board member per diems.

Thank you for your consideration of this information. Please feel free to contact me if you would like further information.

Thank you,

A handwritten signature in blue ink, appearing to read "Melanie", followed by a stylized flourish.

Melanie Loyzim
Commissioner