

April 1, 2013

Patricia W. Aho, Commissioner
Department of Environmental Protection
c/o Lynn Boutilier
17 State House Station
Augusta, ME 04333-0017

Re: Application to Amend Solid Waste License No. S-20700-WD-BC-A
Third Procedural Letter Regarding Struck Testimony
Notice of Appeal of Decision To Strike

Dear Commissioner Aho,

Please be aware that we (the Sanborn's) are appealing to you as outlined in Chapter 3 "Rules Governing the Conduct of Licensing Hearings, Department of Environment Protection, Section 4, Item D, Ruling Appeals. (Attached in entirety)

The Hearing Officer suggests that "the Sanborns do not suggest any change in traffic at or near the facility, but focus on the length of the trip from southern Maine to Old Town". We submit that the conclusion is faulty and completely incorrect.

1. The Hearing Officer in the Third Procedural Order states in Section IV, The Lincolns Testimony About Existing Conditions, Number 15, - The Second Procedural Order, at paragraph 21 further states, "Certain issues are relevant only to the extent that they pertain to the proposed amendment. For example, general traffic concerns in connection with the overall landfill operation are not relevant but issues related to an anticipated increase or decrease in traffic related to the proposed amendment may be an appropriate issue to present at the hearing."
2. We submit that our testimony related to truck traffic is indeed relevant. The owner/operator has proven since the closure of MERC that the present market can and has absorbed the volume of MSW created by MERC. The following table is comprised of report data taken directly from Casella-submitted reports to State of Maine, the JRL Citizens Advisory Committee and others. The reports clearly demonstrate that not only has the MERC MSW been absorbed by the current market, the result of that absorption has decreased the number of truckloads into JRL by 601 in only two months of 2013. The information and data contained in our struck testimony shows the positive results to the neighborhood of a reduction in truck traffic. We absolutely do suggest in our testimony on page six (6) of the Executive Summary that the reduction of truck traffic is anticipated to be a minus 1,818 trucks per year. The Hearing Officer when focusing on the forensic information alone, does not take into account that a specific number in the reduction of truck traffic was the result of that forensic interpretation.

We believe that we have in fact supported by statistical data shown in the submitted testimony that a reduction of truck traffic in the immediate neighborhood to levels reported by the owner/operator does prove to be a remedy of the concerns of not only the Sanborns but also the Lincolns and others.

Total Truck Loads Delivered To JRL Three Years Including Pre And Post Closure of MERC- Year To Year / Month To Month						
Pre Closure				Post Closure		
PERIOD	LOADS	PERIOD	LOADS	PERIOD	LOADS	2013/2012
Jan 2011	1,901	Jan 2012	1,992	Jan 2013	1,875	-117
Feb 2011	1,759	Feb 2012	2,049	Feb 2013	1,565	-484
Mar 2011	2,276	Mar 2012	2,112	Mar 2013	-	
Apr 2011	2,244	Apr 2012	1,916			
May 2011	2,396	May 2012	2,231			
Jun 2011	2,656	Jun 2012	2,174			
Jul 2011	2,447	Jul 2012	2,236			
Aug 2011	2,842	Aug 2012	2,470			
Sep 2011	2,534	Sep 2012	2,060			
Oct 2011	2,683	Oct 2012	2,359			
Nov 2011	2,459	Nov 2012	2,104			
Dec 2011	2,361	Dec 2012	1,891			
2011 Total Jan/Feb	3,660	2013 Total Jan/Feb	4,041	2013 Total Jan/Feb	3,440	-601

3. The Hearing Officer in the Third Procedural Order by striking all truck related testimony also struck a key document entitled “Maine Greenhouse Gas Reduction 2011”. This GHG document penned by the Maine Department of Environmental Protection not only supports our (the Sanborns) position of the value of a reduction in truck traffic because the report states that nearly half of GHG’s produced in Maine are caused by the transportation sector. But further states several times that “waste” is a recognized producer of GHG’s. Reducing the volume of waste, especially MSW helps reduce GHG’s from landfills. Ironically, the report includes in its text, tables and charts that not only is there a category for transportation related GHG’s but also categories for both waste and municipal solid waste.

We hereby request that the striking of trucking testimony be overturned, hopefully quickly, so that it can be included at the public hearing. The first two months since the closure of MERC demonstrates that there is a market solution that reduces truck traffic within the neighborhood closest to JRL.

Sincerely Yours,



For:
 Harry & Laura Sanborn
 2845 Bennoch Road
 Alton, ME 04468

Enclosures

Cc: Mr. Michael Parker



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

IN THE MATTER OF

STATE OF MAINE BUREAU OF GENERAL SERVICES) SOLID WASTE LICENSE
JUNIPER RIDGE LANDFILL)
OLD TOWN, PENOBSCOT COUNTY, MAINE) PUBLIC HEARING
ADD NEW SOURCES OF UNPROCESSED MSW)
#S-020700-WD-BC-A) **THIRD PROCEDURAL ORDER**

The Hearing Officer issued a Second Procedural Order which required the parties to submit pre-filed testimony and exhibits by February 28, 2013 and to submit any objections to other parties' testimony and exhibits by March 11, 2013. The Citizen Intervenors by letter dated March 10, 2013 submitted responses to objections. The Second Procedural Order did not allow for such responses; therefore, this document is stricken.

1. The applicant submitted objections to the pre-filed testimony of Harry and Laura Sanborn ("the Sanborns"), Edward Spencer, Wanda and David Lincoln ("the Lincolns"), and Old Town Fuel and Fiber ("OTFF"). This motion was supported by PERC Holdings, Inc. The Hearing Officer will address each objection in turn.

I. Sanborns' Failure to Provide Exhibits

2. The applicant objects to the Sanborns' failure to provide exhibits. The Sanborns, who are appearing as intervenors *pro se*, included in their pre-filed testimony "Appendix A Links to referenced footnoted documents." Appendix A contains 37 footnotes, which the applicant claims are exhibits that should have been submitted by the February 28 deadline.
3. Thirty-three of the thirty-seven links (1-26, 28 -34) are hyperlinks to various websites, most of which are hosted by State of Maine website or Casella's website. Apparently, the Sanborns did not produce paper copies in an attempt to save the printing and copying of hundreds of pages of documents. It appears that the Sanborns did not intend to submit the documents in the hyperlinks as exhibits themselves, but have cited information contained in those documents in their pre-filed testimony, and then set forth footnotes with hyperlinks as support for the statements made in the pre-filed testimony. This approach is functional, and it allows the other parties and the Department to proceed to

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

the hyperlink to review the entire document for purposes of context, and possible cross-examination.

4. It is important to ensure that the parties and the Department have certainty as to the exact document that is being referenced, as hyperlinks can change. For this reason and in view of other practical considerations, the Hearing Officer hereby orders the Sanborns to produce all the hyperlinks in a pdf form, either electronically or on a CD, to Michael Parker at the Department. The Sanborns should contact Michael Parker by March 25, 2013 in order to discuss the logistics of this requirement. The Department will then post the documents on the Juniper Ridge Landfill page of the website, in pdf form. In the meantime, the parties are able to access the hyperlinks if they wish to submit rebuttal testimony based upon the information contained in the hyperlinks.
5. If any party wishes to utilize a particular page of such a hyperlink at the hearing in direct, cross-examination, or rebuttal testimony, the page(s) of the document should be submitted and served as an exhibit in accordance with paragraphs 11-13 and 16 of the Second Procedural Order. The entire document need not be submitted or served as an exhibit.
6. Footnotes 27, 36, and 37, namely, the Amendment Application and cover letters, are already part of the Hearing Record. These documents are allowed as evidence and need not be duplicated as exhibits, pursuant to paragraph 17 of the Second Procedural Order.
7. Exhibit B, as described in footnote 35, appears to be a summary of Annual Waste to Energy Facility Annual Reports. Such reports are publicly available. The Sanborns may utilize as evidence a brief summary of voluminous reports. To the extent the applicant believes this summary is incomplete or inaccurate, it may address this through cross-examination or in a post-hearing submission. The Hearing Officer allows Exhibit B.

II. Sanborns' Discussion of Trucking

8. The applicant objects to the Sanborns' discussion of the air emissions from trucking of waste. The Sanborns discuss the length of the trip from the Biddeford area to Old Town, and set forth their concerns about unnecessary emissions of greenhouse gases connected with the length of the trip. The applicant contends that the Sanborns' testimony about such emissions is not within the regulatory requirements for the amendment application.
9. *Maine Solid Waste Rules: General Provisions set forth Provisions for Traffic Movement* for all solid waste facilities. Chapter 400(4)(D). Those Rules require "adequate

provisions for safe and uncongested traffic movement of all types into, out of, and within the proposed solid waste facility.” 400(4)(D)(1). The Rules further require “evidence that roads and intersections in the vicinity of the proposed solid waste facility will safely and conveniently handle the traffic attributable to the facility.” 400(4)(D)(2). These criteria were addressed in detail in the Base License, Section 15, pages 42 to 45. The Sanborns do not suggest any change in traffic at or near the facility, but focus on the length of the trip from southern Maine to Old Town. The statutes and the rules governing solid waste facilities do not set forth any criteria with respect to emissions of greenhouse gases along the truck route to the facility, or any criteria with respect to the length of the truck route to the facility.

10. Given the lack of any regulatory requirement or any regulatory standard regarding the length of the truck route from southern Maine to Old Town or greenhouse emissions along such truck route, this testimony is stricken.

III. Technical reports submitted by Edward Spencer

11. The applicant objects to Edward Spencer’s presentation of technical reports without presenting the authors of such reports as witnesses who may be subject to cross-examination.
12. The Hearing Officer notes that the Maine Administrative Procedures Act states that, in conducting adjudicatory hearings, “agencies need not observe the rules of evidence observed by courts.” 5 M.R.S. § 9057(1). Instead, “[e]vidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.” 5 M.R.S. § 9057(2).
13. Edward Spencer submitted a report by the Sierra Club, a report by Environmental Science and Technology (published by the American Chemical Society), comments by an academic writer to the California Air Resources Board on Landfills’ Responsibility for Anthropogenic Greenhouse Gases, and a chapter from a book on Waste Management published by Cambridge University Press. Although the applicant has raised an issue as to the practical difficulty in “cross-examining a report,” the applicant will have expert witnesses present at the hearing who can address any such issues in their own direct or rebuttal testimony. The Commissioner will ultimately determine the weight to be given to such technical evidence submitted by way of reports that are unaccompanied by expert testimony linking their core issues directly to the facts at hand. The pre-filed testimony and exhibits of Edward Spencer are allowed.


IV. The Lincolns' Testimony about Existing Conditions

14. The applicant objects to the Lincolns' testimony about existing conditions at the landfill (traffic, odor, view, and inclusion in Casella's voluntary neighborhood benefits program), as not relevant to the amendment application.
15. The Second Procedural Order, at paragraph 19, sets forth that, "The hearing is not a public forum on all issues related to JRL, but is limited to licensing criteria which are relevant to this amendment application." The Second Procedural Order, at paragraph 21 further states, "Certain issues are relevant only to the extent that they pertain to the proposed amendment. For example, general traffic concerns in connection with the overall landfill operation are not relevant but issues related to an anticipated increase or decrease in traffic related to the proposed amendment may be an appropriate issue to present at the hearing."
16. The topics in the Lincoln's pre-filed testimony were addressed in the Base License. Section 15, pages 42 to 45 of the Base License includes a detailed analysis of Traffic Movement at the landfill. Section 16 includes detailed discussion and analyses of visual impacts (pages 45 to 46) and noise (pages 47 to 48). Neither the amendment application nor the Lincolns' pre-filed testimony suggests any change in noise, traffic volume or visual impacts as a result of the proposed amendment. These topics are not relevant and were addressed in detail in the previous license amendment. Similarly, the geographic limit on neighborhood benefits is not related to this amendment application. The Lincolns' testimony on "Truck Nuisance," "Visual Nuisance," and "Quality of Life" is stricken.
17. The Lincolns' pre-filed testimony also covers the topic of "Odor Nuisance – fumes from landfill, fumes from trucks." The amendment application states that NEWSME recognizes that the relative increase in MSW has the potential to generate more odors. Accordingly, the Lincolns' pre-filed testimony with respect to odor from the landfill is allowed.
18. The Lincolns' pre-filed testimony with respect to fumes from trucks is not connected to any regulatory criterion. Chapter 400(4)(G), No Unreasonable Adverse Effect on Air Quality, addresses air quality at the facility itself. No regulatory standard addresses air quality related to truck traffic. Therefore, the Lincolns' pre-filed testimony with respect to fumes from trucks is stricken.

IV. OTFF

19. The applicant objects to OTFF's pre-filed testimony, asserting that capacity, leachate management and fuel supply, which are set forth in the leachate agreement between Casella and OTFF, are not related to applicable permitting criteria.
20. Chapter 401(4)(C)(10) requires the facility to maintain service contracts for leachate disposal throughout the operation of the landfill, although the regulation does not provide for Department review or approval of such contracts. Given that the existence of the contract between Casella and OTFF itself is a regulatory requirement, OTFF's pre-filed testimony is allowed in its entirety. Furthermore, OTFF submitted the leachate agreement on March 11, 2013. This exhibit is allowed, as it is well within the time permitted for rebuttal exhibits.
21. The Second Procedural Order stated, at paragraph 18, that Rules of the Department of Environmental Protection, Chapter 20 apply to this hearing, except that the Hearing Officer may permit deviation from Chapter 20 when compliance thereof is found to be impractical or unnecessary. Since the date of the Second Procedural Order, the Department has adopted Chapter 3 and repealed Chapter 20. Henceforth, Chapter 3 will apply to this proceeding, except when compliance thereof is found to be impractical or unnecessary. One such deviation is that the Public Notice of the hearing shall be made in accordance with Chapter 20. Any party or member of the public who objects to this procedure shall set forth their reasons in writing, and any prejudice suffered as a result, within five days of this Procedural Order, and submit such objection to Michael Parker, Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333; by e-mail to michael.t.parker@maine.gov; or by hand delivery to 28 Tyson Drive, Augusta, Maine.

Dated: 3/15/13



Heather Parent, Hearing Officer

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CHAPTER 3: RULES GOVERNING THE CONDUCT OF LICENSING HEARINGS

SUMMARY. This chapter sets forth the procedures that will be followed by the Commissioner or Board when conducting a hearing in a licensing proceeding.

- 1. Applicability.** The following provisions govern those Department licensing proceedings where a decision has been made to hold a hearing on a license application or on an appeal to the Board of a Commissioner license decision. This rule governs the conduct of the hearing and related pre- and post-hearing procedures.
- 2. Definitions.** For the purposes of this chapter, the following words and phrases have the following meanings:
 - A. Appellant.** “Appellant” means a person who appeals a Commissioner license decision to the Board.
 - B. Applicant.** “Applicant” means a person who has submitted an application to the Department for a license.
 - C. Board.** “Board” means the Board of Environmental Protection, an independent citizen board that is part of the Department and that, among its duties, decides selected applications and considers appeals of Commissioner license decisions.
 - D. Board Chair.** “Board Chair” means the chair of the Board, or his or her designee.
 - E. Commissioner.** “Commissioner” means the commissioner of the Department of Environmental Protection or his or her designee.
 - F. Conference.** “Conference” means a pre-hearing, mid-hearing, or post-hearing meeting scheduled by the Presiding Officer at which the Presiding Officer and the parties discuss matters pertaining to the licensing proceeding.
 - G. Department.** “Department” means the Department of Environmental Protection, which includes the Commissioner and the Board.
 - H. Hearing.** “Hearing” means an adjudicatory hearing conducted in accordance with the procedural requirements of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV at which the Department receives oral testimony and evidence for the purpose of gathering facts upon which a decision in a licensing proceeding will be based.
 - I. Interested Person.** “Interested person” means a person who submits written comments on an application or who requests, in writing, receipt of notices related to a particular licensing proceeding. The Department shall maintain a list of interested persons for each licensing proceeding.
 - J. Intervenor.** “Intervenor” means a person who, in accordance with the Maine Administrative Procedure Act, 5 M.R.S.A. § 9054(1) or (2), and section 11(A) of this rule, has been granted leave to participate as a party in a licensing proceeding where a decision has been made to hold a hearing.

- K. License.** “License” means the whole or any part of a new license, amended license, minor revision, renewal license, transfer, surrender, variance, certification or similar form of permission issued by the Department that is required by law, and represents the State’s exercise of regulatory or police powers. The term “permit” is used interchangeably with “license” in some Department statutes. Examples of licenses include: Site Location of Development licenses pursuant to 38 M.R.S.A. § 481 et seq., waste discharge licenses pursuant to 38 M.R.S.A. § 413, water level orders pursuant to 38 M.R.S.A. § 840, and water quality certifications pursuant to Section 401 of the federal Clean Water Act.
- L. Licensee.** “Licensee” means the person to whom a license has been issued.
- M. Licensing Proceeding.** “Licensing proceeding” means a proceeding on a license application or an appeal of a license decision.
- N. Party.** “Party” means:
- (1) the specific person whose legal rights, duties or privileges are being determined in a licensing proceeding; or
 - (2) an intervenor.
- O. Person.** "Person" means an individual, partnership, corporation, governmental entity, association or public or private organization of any character, other than the Department.
- P. Presiding Officer.** “Presiding Officer” means the individual authorized pursuant to the Maine Administrative Procedure Act and section 4 of this rule to preside over a licensing proceeding where a decision has been made to hold a hearing.
- Q. Written Testimony.** “Written testimony” means the sworn written testimony of a party submitted for inclusion in the record of a licensing proceeding.

3. Form, Service, and Filing of Documents

- A. Form of Papers.** A party must print all petitions, motions, proposed findings, briefs, responses, pre-filed written testimony, and proposed orders on 8.5 inch by 11 inch paper. The upper left side of the first page must have a caption in capital letters identifying:
- (1) the name of the applicant or licensee;
 - (2) the type of application or license;
 - (3) the application or license number issued by the Department; and
 - (4) the location of the activity subject to the application or license including the county and town.

The upper right side of the first page must identify the party filing the document and the title of the document. The final page must be dated and signed by, or on behalf of, the party filing the document and include under the signature line that person’s printed name, capacity, mailing address, electronic mail address, and telephone number.

- B. Service List.** The Presiding Officer will maintain a service list with the contact information of the individual designated by each party to receive service of papers and communications on its behalf. Unless otherwise indicated in the first document filed by any party in a proceeding, the name and mailing address of the individual filing the first document shall be used by the Department and all parties for the purposes of document service. Any subsequent change of the designated representative must be served on all parties by the party making the change.
- C. Service on Parties.** Unless the Presiding Officer provides otherwise, every document or communication filed with the Department by a party or a state, federal, municipal or other governmental agency participating in accordance with section 11(C) shall be served upon all parties. Service is deemed complete when a filing is delivered:
- (1) by U.S. mail, First Class or electronic mail to the party's designated representative, as identified pursuant to section 3(B);
 - (2) by delivery in-hand to the party's designated representative or to the office of the party's designated representative; or,
 - (3) by telefax when approved by the Presiding Officer.
- D. Filing with the Department.** If the hearing is before the Commissioner, the original of all documents, materials and other submissions must be filed with the Department by delivery to the Maine Department of Environmental Protection, Office of the Commissioner, 17 State House Station, Augusta, Maine 04333, unless otherwise specified by the Presiding Officer. If the hearing is before the Board, the original of all documents, materials and other submissions must be filed with the Board by delivery to the Board Chair, Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333, unless otherwise specified by the Presiding Officer.

Filing with the Department is complete when the Department receives the submission by the close of business on the date due (5:00 p.m., as determined by the received time stamp on the document, telefax, or electronic mail), unless otherwise specified by the Presiding Officer, by:

- (1) U.S. mail, First Class;
- (2) in-hand delivery;
- (3) telefax, only if followed by receipt of an identical original document within five (5) working days; or,
- (4) electronic mail to the address specified by the Department for receipt of filings in the licensing proceeding, with attachments supplied in an unalterable format showing a handwritten or electronic signature acceptable to the Department, only if followed by receipt of an identical original document within five (5) working days.

Persons filing materials with the Department are encouraged to confirm receipt by the Department in order to avoid inadvertently missing a deadline. Submissions not received by the Department by a prescribed deadline will be deemed untimely, absent a showing of good cause. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

- E. Availability of Application Materials.** At the time an application is filed with the Department, a copy of the application, its supporting documents, and all amendments to an application must be filed by the applicant with the appropriate town or city clerk or, if the project is in an unorganized territory, with the county commissioners. Once the Department determines that a hearing will occur, copies of the complete application must be made reasonably available to the parties and the public. Availability may be in the form of paper or electronic versions as determined by the Presiding Officer. Any subsequent amendments, modifications, response to comments, or other supplemental filings must be served on all parties. If the Presiding Officer determines that such new or additional information is significant or substantially modifies the activity proposed in the application, the applicant shall provide written notice of the filing to interested persons and shall make a copy of the filing reasonably available to interested persons who request a copy in writing.
- F. Computation of Time.** For the purpose of this rule, “days” are calendar days unless otherwise specified by the Presiding Officer. “Working days” excludes Saturdays, Sundays, state holidays and any other day state offices are closed for business. In computing any period of time prescribed or allowed by this rule, the day of the act or event that starts the period is not included. The last day of the period so computed is included unless it is not a working day or the state office location at which the filing must be made is partially or fully closed for business, in which event the period runs until the close of business (5:00 p.m.) the next full working day. Whenever a party has the right or is required to take some action within a prescribed period of time after the service of notice or other paper upon the party and the notice or paper is provided by U.S. mail First Class, three (3) days shall be added to the prescribed period. This “3-day rule” does not affect any date-certain deadline established by the Presiding Officer.
- G. Documents Issued by the Department.** The Presiding Officer shall ensure that all orders, decisions and notices of hearings and Board meetings issued by the Department are provided to parties and interested persons. Service of a subpoena is the responsibility of the requesting party.

4. Presiding Officer

- A. Designation.** The Commissioner or Board Chair shall designate a Presiding Officer for the hearing.
- (1) For hearings conducted by the Commissioner, the Presiding Officer must be:
- (a) the Commissioner; or
 - (b) an employee or agent of the Department who is designated by the Commissioner.
- (2) For hearings conducted by the Board, the Presiding Officer must be:
- (a) the Board Chair; or
 - (b) a Board member who is designated by the Board Chair.
- B. Substitute Presiding Officer.** Whenever a Presiding Officer is disqualified or it becomes impractical for him or her to continue in that capacity, another Presiding Officer may be designated pursuant to section 4(A) to continue with the hearing; provided that, if it is shown

substantial prejudice to any party will thereby result, the substitute officer shall commence the hearing anew.

C. Authority. The Presiding Officer has the authority to:

- (1) identify statutes and rules that are applicable to the proceeding;
- (2) act upon requests for subpoenas;
- (3) rule upon the admissibility of evidence;
- (4) limit the issues to be heard if the parties and the Presiding Officer agree to such limitation, or if no prejudice to any party will result;
- (5) grant or deny petitions for intervention which have not previously been ruled upon by the Commissioner or the Board;
- (6) administer oaths and affirmations;
- (7) conduct conferences;
- (8) regulate the course of the proceeding, set the time and place for hearings, and fix the time for filing of pre-filed written testimony, exhibits, evidence, briefs, and other written submissions;
- (9) rule upon issues of procedure;
- (10) for hearings conducted by the Board, certify questions to the Board for its determination;
- (11) vary from any procedure prescribed by this rule or the Maine Administrative Procedure Act, chapter 375, subchapter IV, if the parties and the Presiding Officer agree to such variation, or if the variance will achieve greater fairness or economy and no prejudice to any party will result; and
- (12) take such other action that is necessary for the efficient and orderly conduct of the hearing.

D. Ruling Appeals. Pre-hearing rulings made pursuant to section 4(C)(1) through 4(C)(5) are appealable to the full Board in Board licensing proceedings and to the Commissioner in Commissioner licensing proceedings. Unless determined necessary by the Presiding Officer, the course of a licensing proceeding is not stayed by an appeal of a Presiding Officer's ruling. An appeal of the Presiding Officer's ruling is not a necessary prerequisite to preserve a party's objection for the purpose of judicial appeal.

5. Department Staff. The role of Department staff in a licensing proceeding is to assist the Presiding Officer, Commissioner or Board in a non-advocate capacity by gathering facts, identifying issues for consideration, analyzing evidence submitted, and making recommendations regarding compliance with relevant license criteria. Department staff may communicate with the applicant regarding information sought on specific license criteria.

- A. Evaluation of Evidence.** The experience, technical expertise and specialized knowledge of Department staff may be utilized in the evaluation of all evidence in a licensing proceeding.
- B. Hired Consultants and Outside Agency Review Staff.** Department staff may hire consultants or request the aid of outside agency review staff to assist in the evaluation of evidence in a licensing proceeding. Where Department staff has asked outside agency review staff to assist in evaluation of the evidence, the agency review staff may submit written comments on the evidence submitted by the parties, supply information in that agency's possession, or respond in writing to questions from Department staff related to matters in the agency's area of expertise. Such materials should be submitted sufficiently in advance of the hearing that the parties have adequate opportunity to review the materials in preparation for the hearing. The Presiding Officer may direct Department staff to provide notice to the parties of the availability of materials received from hired consultants or outside agency review staff. This subsection does not preclude Department staff from using the experience, technical expertise and specialized knowledge of hired consultants and outside agency review staff in its analysis of the evidence during the hearing and after the hearing record has closed.
- C. Hearing and Recommendation.** Department staff and, if requested by the Presiding Officer, Department hired consultants and outside agency review staff will attend the hearing to answer questions of the Presiding Officer or Board members regarding the contents of the record, ask questions of witnesses, and otherwise assist in the gathering of facts. The Presiding Officer may request hired consultants or outside agency review staff to appear at the hearing to respond to questions regarding comments submitted to the record. If this occurs, at the discretion of the Presiding Officer, parties may be permitted to ask questions of the hired consultant or outside agency review staff person regarding their review comments. At the conclusion of the hearing and after the record is closed, Department staff will draft a recommendation for the Presiding Officer's, Commissioner's or the Board's consideration.
- D. Exceptions.** This section does not apply to state, federal, municipal or other governmental agencies that have not been asked by Department staff to assist in the evaluation of evidence, but rather are participating in the licensing proceeding pursuant to section 11 (A) or (C).

6. Ex-parte Communications

- A. Communication Prohibited.** For hearings conducted by the Commissioner, neither the Commissioner nor the Presiding Officer may communicate directly or indirectly in connection with any issue of fact, law, or procedure regarding the matter, with any party or other person legally interested in the outcome of the proceeding, except upon notice and opportunity for all parties to participate. For hearings conducted by the Board, no Board member participating in the proceeding may communicate directly or indirectly in connection with any issue of fact, law, or procedure, with any party or other persons legally interested in the outcome of the proceeding, except upon notice and opportunity for all parties to participate.
- B. Communication Permitted.** This section does not prohibit the Presiding Officer, Commissioner or Board members from communicating in any respect with or receiving the aid or advice of Department staff, counsel, or consultants retained by the Department who have not participated and will not participate in the licensing proceeding in an advocate capacity.

- 7. Impartiality.** Hearings must be conducted in an impartial manner. Upon a timely allegation, made in good faith, of bias or of personal financial interest, direct or indirect, of a Presiding Officer, Commissioner or Board member in the proceedings, requesting that person disqualify himself, that person shall determine the matter as part of the record. Should the person alleged to be biased request it, an allegation must be reduced to writing by the person making the allegation with an adequate time for response on the record. The Presiding Officer, Commissioner, or Board member to whom the charge of bias or of personal financial interest is directed may consult with the Office of the Attorney General or private counsel concerning the charge.
- 8. Rights of Parties.** The opportunity for a hearing shall be afforded without undue delay. Unless limited by stipulation of the parties or order of the Presiding Officer under this rule, every party has the right to present evidence and argument on all issues in contention, and at any hearing to call and examine witnesses and to make oral cross-examination of any person present and testifying.
- 9. Consolidation of Proceedings.** On motion and for good cause shown, or on his or her own initiative, the Presiding Officer may consolidate for hearing two or more related proceedings when such action will be conducive to the just and proper dispatch of business, the rights of any party are not prejudiced, and opportunities for public participation will not be compromised. A consolidation under this section may be for any purpose or issue of the proceedings.
- 10. Location of Hearing.** The Department shall strive to hold hearings in the area or areas of the State significantly affected by the license application or which are concerned about the issue, or as specified by state or federal law, taking into consideration the needs, costs and convenience of the parties, interested public and Department.
- 11. Public Participation.** Members of the public may attend hearings. This section governs participation at a hearing.

 - A. Intervention.** The Commissioner, the Board, or the Presiding Officer pursuant to section 4(C)(5) rule shall decide petitions for leave to intervene in a licensing proceeding where a decision has been made to hold a hearing.

 - (1) Except as provided in this subsection, any person who wants to participate in a hearing as an intervenor must file a petition for leave to intervene within ten (10) days of the Department's publication of notice of opportunity to intervene, or within such other time as may be specified in the notice. The petition must include: a description of the effect of the proposed activity on the petitioner; specific contentions regarding the subject matter of the hearing and the relevant statutory criteria; the name of the spokesperson for the petitioner; and a statement regarding the ability of the petitioner to participate in the proceeding. If the petitioner is a group or organization, the petition shall include a general description of the purpose and membership of the group or organization. A petition shall be granted if it demonstrates that the petitioner is or may be, or is a member of a class which is or may be, substantially and directly affected by the proceeding. The Department may, at its discretion, allow any other person to intervene and participate as a party to the proceeding. A petition for leave to intervene may be granted to allow participation as a full or limited party to the proceeding.
 - (2) Any state, federal, municipal or other governmental agency that wants to participate as a party shall be granted intervenor status if it files a petition for leave to intervene within ten (10) days of the Department's publication of notice of opportunity to intervene, or within such other time as may be specified in the notice.

- (3) An appellant shall be granted automatic intervenor status in an appeal where the Board has decided to hold a hearing and need not file a petition for leave to intervene.
- (4) A petition for leave to intervene which is not timely filed will be denied unless the petitioner shows good cause for failure to file on time, including but not limited to failure to receive reasonable notice.
- (5) An intervenor is a party to the proceeding and has the right to offer testimony and evidence, and conduct cross examination. An intervenor shall be permitted to participate in the hearing, subject, however, to such reasonable terms as the Presiding Officer may direct.
- (6) Intervenors may be required by the Presiding Officer to consolidate their presentations of evidence and argument in part or in whole if their interests or contentions are substantially similar and such consolidation would expedite or simplify the hearing without prejudice to the rights of any party. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding, or with respect to any one or more issues thereof.
- (7) A Presiding Officer shall allow an intervenor to withdraw from participation in a licensing proceeding. The Presiding Officer shall evaluate whether any testimony or evidence presented by the withdrawing party must be stricken from the record because a witness is no longer available for cross-examination or inclusion of evidence would cause undue prejudice to remaining parties. Any decision regarding such materials shall be made in writing by the Presiding Officer, except that any such decision that occurs during the hearing shall be stated on the record.

B. Participation by a Non-Intervenor. Any person who is not an intervenor may, at the discretion of the Presiding Officer, attend but not participate in a conference, and participate in a hearing by testifying and presenting evidence and submitting cross-examination questions through the Presiding Officer within such terms and conditions as the Presiding Officer specifies. Written comments submitted at a hearing on a license application, but not testified to, will be included in the application record. Nothing in this rule shall be construed to limit a person's right to submit written comments to the Department in the normal course of application processing.

C. State, Federal, Municipal or Other Governmental Agencies. An interested state, federal, municipal or other governmental agency that has not been asked by Department staff to provide assistance in the evaluation of the evidence under section 5 and that has not petitioned for leave to intervene under section 11(A)(2) shall be afforded a reasonable opportunity to participate in a hearing and to introduce evidence and question witnesses. The agency will be permitted such rights as are granted by this subsection only if the representative appearing on behalf of the agency represents the views and positions of the agency. If the agency representative testifies or introduces evidence, the representative shall be available for cross-examination by the parties.

12. Public Notices. When a hearing is required by law or when a decision has been made to hold a hearing, public notice shall be provided by the Department as follows.

A. Notice of Opportunity to Intervene

- (1) Notice of opportunity to intervene shall be provided by U.S. mail, First Class to:

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- (a) the person or persons whose legal rights, duties, or privileges are at issue;
 - (b) the municipality or municipalities affected by the licensing matter as determined by the Department to the best of its ability;
 - (c) the county, if the affected locality as determined by the Department to the best of its ability is an unorganized territory;
 - (d) the legislators of the geographic area or areas affected by the licensing matter; and
 - (e) persons who have made timely requests in writing to be notified of a licensing hearing on a specific matter.
- (2) Notice to the public of the opportunity to intervene must be published at least once in a newspaper of general circulation in areas affected by the licensing matter as determined by the Department.
- (a) The notice must be published in the legal notices section in a form readily noticeable to the general public.
 - (b) The date of the publication must be at least ten (10) days prior to the deadline for the filing of a petition to intervene.
- (3) Notice of the opportunity to intervene shall consist of:
- (a) a short statement in plain and clear English which can be readily understood by the general public of the nature and the purpose of the proceeding;
 - (b) a reference to the particular substantive statutory and rule provisions involved;
 - (c) a statement of the legal authority and jurisdiction under which the proceeding is being conducted;
 - (d) a reference to the statutory and regulatory requirements for a petition to intervene;
 - (e) the deadline for filing a petition to intervene;
 - (f) the name, address and telephone number of a person to contact for more information; and,
 - (g) the place and time where relevant material may be examined.

B. Notice of Hearing

- (1) Notice of the Hearing shall be provided at least thirty days prior to the date of the hearing by U.S. mail, First Class to:

- (a) the person or persons whose legal rights, duties, or privileges are at issue;
 - (b) the municipality or municipalities affected by the licensing matter as determined by the Department to the best of its ability;
 - (c) the county, if the affected locality as determined by the Department to the best of its ability is an unorganized territory;
 - (d) the legislators of the geographic area or areas affected by the licensing matter;
 - (e) intervenors;
 - (f) persons who have made timely requests in writing to be notified of a specific licensing hearing; and,
 - (g) persons who have filed a written request, within the calendar year, to be notified of licensing hearings.
- (2) Notice to the public of the hearing shall be given as follows.
- (a) Newspaper. Notice of the hearing must be published at least twice in a newspaper of general circulation in the area of the proposed activity and in areas affected by the licensing matter as determined by the Department to the best of its ability.
 - (i) The notice must be published in the legal notices section in a form readily noticeable to the general public.
 - (ii) The date of the first publication must be thirty days prior to the hearing.
 - (iii) The date of the second publication must be at least seven (7) days and no more than thirteen (13) days before the date of the hearing.
 - (b) Press Releases. The issuance of a press release describing the date, place, time, and nature of the hearing must occur once and be sent at least seven (7) days and no more than thirteen (13) days before the date of the scheduled hearing to the news desks of television stations and newspapers of general circulation in the area(s) of the proposed activity, as determined by the Department.
 - (c) Public Service Radio and Television Announcements. The issuance of radio and television announcements describing the date, place, time, and nature of the hearing must be provided to radio and television stations, in the area of the proposed activity, as determined by the Department. In the first instance, this must occur at least twenty-one (21) days prior to the first day of the hearing and in the second instance no less than seven (7) and no more than ten (10) days prior to the first day of the hearing.
- (3) Notice of the hearing shall consist of:

- (a) a short statement in plain and clear English which can be readily understood by the general public of the nature and the purpose of the proceeding;
 - (b) a statement of the legal authority and jurisdiction under which the proceeding is being conducted;
 - (c) a reference to the particular substantive statutory and rule provisions involved;
 - (d) a statement of the time and place of the hearing;
 - (e) a statement of the manner and time within which evidence and argument may be submitted to the agency for consideration;
 - (f) the name, address and telephone number of a person to contact for more information; and,
 - (g) the place and time where relevant material may be examined prior to the hearing.
- (4) Notice described in this subsection is not required if a hearing continues beyond the date(s) and times published pursuant to this subsection. Notice of a continued hearing is subject to section 18(F).

13. Subpoenas. Any party may request the issuance of a subpoena in the name of the Department to require the attendance and testimony of witnesses and the production of any evidence relating to any issue of fact in the licensing proceeding. Prior to requesting a subpoena, the party shall exhaust all other means of procuring attendance of the witness or the information sought. Such requests must be directed to the Presiding Officer for determination and action.

A. For Documents. The Department may issue subpoenas pursuant to 38 M.R.S.A. § 345-A(4) to compel the production of books, records and other data relevant to the matters in issue at a hearing. If any person served with a subpoena demonstrates to the satisfaction of the Department that the production of the information would, if made public, divulge methods or processes which are entitled to protection as trade secrets, or if the information is otherwise protected by law, the information shall be disclosed only at a nonpublic portion of the hearing and shall be confidential and not available for public inspection.

B. For Attendance of Witnesses. The Department may issue a subpoena compelling the attendance of a witness to provide testimony relevant to the matters in issue at a hearing if it first obtains the approval of the Attorney General or of any Deputy Attorney General pursuant to the Maine Administrative Procedure Act, 5 M.R.S.A. § 9060.

C. Department Staff, Outside Agency Review Staff, and Department Hired Consultants. Department staff, outside agency review staff, and Department hired consultants who assist the Presiding Officer, Commissioner or Board as described in section 5 are not subject to subpoena.

D. Public Records. Prior to requesting a subpoena for public records, the party shall exhaust all other means of procuring the documents including making a request for copies of public records pursuant to the Maine Freedom of Access Act.

- E. Form.** Subpoenas will be in the form used by the courts of the State. Every subpoena will bear the name of the Department, the name of the issuing officer, and the name and address of the party at whose request it was issued. Each subpoena will command the person to whom it is directed to attend and give testimony or produce specified documents or things at a designated time and place. The subpoena will also advise of the procedure to vacate or modify provided herein. Witnesses may only be subpoenaed within Maine's territorial limits and in the same manner as witnesses in civil cases before the courts, unless another territory or manner is provided by law.
- F. Service.** Service of a subpoena must be arranged by the requesting party and made by delivering a copy of the subpoena to the person named in it. Unless the witness will accept service by other means, a subpoena must be served by a person who is not a party to the proceeding and is not less than eighteen years of age. Fees for attendance and mileage must be served simultaneously with the subpoena and must be the same as those paid witnesses in the Superior Courts of this State and must be paid for by the party requesting the subpoena.
- G. Return.** The person serving the subpoena shall make proof of service by filing the subpoena and affidavit or acknowledgement of service with the Presiding Officer. Failure to make such proof of service shall not affect the validity of the subpoena and service.
- H. Vacating or Modifying Subpoena.** Any person subpoenaed to produce records or provide testimony may petition the Presiding Officer to vacate or modify a subpoena issued by the Department. The Department shall give prompt notice of such a petition to the party who requested issuance of the subpoena and all other parties. The Presiding Officer may vacate or modify the subpoena when, after such investigation as the Presiding Officer considers appropriate, he or she finds that:
- 1) the testimony or evidence whose production is required does not relate with reasonable directness to any matter in question in the licensing proceeding;
 - 2) a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive;
 - 3) the subpoena has not been issued sufficiently in advance of the time specified for the appearance of the witness or the production of evidence;
 - 4) the subpoena would require the disclosure of privileged or confidential material where no waiver or exception applies; or
 - 5) the subpoena would require production of an un-retained expert's opinion, including experts employed by government agencies.

The decision to grant or deny a petition to vacate or modify a subpoena must be in writing.

- I. Enforcement.** If any person fails or refuses to obey a subpoena, the Department may apply to any Justice of the Superior Court for an order compelling that person to comply with the subpoena. The Superior Court may issue an order and may punish failure to obey the order as civil contempt.

J. Costs. The Presiding Officer may condition issuance of the subpoena upon the advancement by the party on whose behalf the subpoena was issued of the reasonable cost of producing the books, papers, records, documents, data, electronic records, or tangible things.

14. Disposition without Full Hearing. Unless otherwise provided by law, the Department may make informal disposition of a licensing proceeding by stipulation, agreed settlement or consent order. Every agreement shall contain an express waiver of further procedural steps concerning the matter and waiver of each party's right to appeal.

15. Conferences. Conferences may be held at the discretion of the Presiding Officer at any time prior to, during, or after a hearing. Participation is limited to the parties to the proceeding and any agency participating pursuant to section 11(C).

A. Purpose. Conferences may be held for any purpose including the following:

- (1) review relevant statutory and regulatory criteria and clarify or narrow issues to be addressed at the hearing;
- (2) discuss consolidation of parties;
- (3) discuss the organization of the hearing;
- (4) establish specific procedural requirements;
- (5) impose limits, if necessary, on the number of witnesses and the time allocated to each party or issue at the hearing;
- (6) obtain stipulations of fact and stipulations as to the admissibility into evidence of documents and other exhibits;
- (7) establish schedules and deadlines; and
- (8) consider such other matters that may be necessary or advisable in order to expedite and facilitate the hearing process.

B. Notice. The Presiding Officer shall provide reasonable notice of all conferences to the parties and any other person whom the Presiding Officer deems appropriate.

C. Conference Procedure. A conference is an informal meeting of the parties and the Presiding Officer. The Presiding Officer may limit participation to one representative per party.

D. Procedural Orders. Any actions or agreements made at a conference, or any rulings of the Presiding Officer made at or following a conference, will be set forth in a procedural order or otherwise provided in writing to the parties, except that actions, agreements or rulings made at a conference that occurs during the hearing will be stated on the record.

E. Failure to Attend. All parties are required to attend conferences. Any party failing to attend a conference waives its right to object to matters discussed or decided at the conference unless the Presiding Officer determines that the party has demonstrated good cause for its absence.

16. Pre-hearing Submissions. The Presiding Officer may require that certain information be submitted by the parties prior to the hearing.

A. Additional Information from Applicant in a License Application Proceeding.

- (1) Department staff may at any time prior to the hearing submit questions to the applicant or request additional information from the applicant.
- (2) The Presiding Officer may at any time prior to the hearing request that the applicant submit to the Department additional information necessary to evaluate the license application. A party may ask the Presiding Officer to make such a request. A party asking the Presiding Officer to make such a request must explain why the additional information sought is relevant and necessary for an analysis of the materials submitted in support of the application and why the additional information is not otherwise readily available.
- (3) A request for additional information under this subsection must be made with a reasonable time for response prior to the scheduled hearing. While the applicant is not obligated to respond to a request for additional information, the burden of proof to demonstrate that all licensing standards are met remains with the applicant.
- (4) Copies of any requests for additional information made pursuant to this subsection, and any responses thereto, must be provided to all parties.

B. Witness Lists. The Presiding Officer may require the parties to provide a list of witnesses and a description of the issues to be addressed by each. Substitute or additional witnesses may be permitted by leave of the Presiding Officer when so doing will not prejudice the rights of any party.

C. Pre-filed Testimony. The Presiding Officer may require that written direct and rebuttal testimony of the parties' witnesses be pre-filed. Such written pre-filed testimony must be sworn. Written testimony is sworn if the witness declares by oath or affirmation that the testimony is true and correct to the best of the witness's knowledge and belief.

D. Pre-filed Exhibits. The Presiding Officer may require that exhibits be pre-filed.

E. Agency Review Comments. Prior to holding a hearing on an application, the Presiding Officer shall ensure that Department staff and any outside agency review staff assisting the Department in its review of the application have submitted to the applicant their review comments on the application and any additional information requests pertaining to the application and that the applicant has had an opportunity to respond to those comments and requests. If additional information needs arise during the hearing, the Presiding Officer shall afford the applicant a reasonable opportunity to respond to those information requests prior to the close of the hearing record.

17. Modification of a Pending Application. An applicant who modifies a pending license application within sixty days prior to a scheduled hearing shall notify the Presiding Officer at the time of filing of the modification with the Department. Depending upon the nature of the change to the proposed activity and the amount of time remaining before the hearing, the Presiding Officer may provide an opportunity to submit written testimony in response to the proposed modification, postpone the hearing, or take any other appropriate action to ensure that all parties have a full and fair opportunity

to address the modification and prepare for the hearing. Any Department costs associated with the need to reschedule a hearing as a result of a modification to a pending application will be paid by the applicant.

18. Withdrawal of an Application. An applicant may withdraw its application by right until ten (10) days before the due date for pre-filed direct testimony or, in a proceeding where pre-filed testimony is not required, until ten (10) days before the hearing. Written notice of such withdrawal by right must be filed and served in accordance with section 3. After the deadline for withdrawal by right, the applicant must obtain permission to withdraw by submitting a written request to the Presiding Officer. All parties to the proceeding will have an opportunity to comment in writing on a request for permissive withdrawal. Decisions on requests for permissive withdrawal will be based on all relevant information including but not limited to the following:

- A. the point in the proceeding at which the request is made;
- B. the reason for the request for withdrawal;
- C. the amount of resources expended up to that point by the parties, the public, and the Department;
- D. the comments of the parties and the basis for their objections, if any;
- E. the nature of the issues in dispute and the precedential value of a decision; and
- F. the interests of fairness and justice.

The decision to allow withdrawal is made by the Presiding Officer for matters pending before the Commissioner, or by the Board for matters pending before it. All application withdrawals are without prejudice.

19. General Conduct of Hearing

A. Opening Statement. The Presiding Officer will open the hearing by describing in general terms the purpose of the hearing and the general procedures governing its conduct. Immediately following the Presiding Officer's opening statement, Department staff will offer the existing record of the license application or appeal for acceptance into the record.

B. Witnesses. All witnesses must be sworn. Witnesses are required to state for the record their name, address, business or professional affiliation, and whether they represent another individual, firm, organization, government agency or other legal entity for the purpose of the hearing. All witnesses providing sworn testimony, including pre-filed written testimony, shall be present at the hearing and subject to cross-examination by the parties. The parties have a right to question all persons present and testifying.

(1) Hearing on a License Application. Direct testimony provided at a hearing on a license application will occur in the following order unless otherwise prescribed by the Presiding Officer:

- (a) applicant;
- (b) intervenors;

- (c) state, federal, municipal, and other governmental agencies; and
 - (d) members of the public.
- (2) Hearing on an Appeal. Direct testimony provided at a hearing on an appeal of a Commissioner license decision will occur in the following order unless otherwise prescribed by the Presiding Officer:
- (a) appellant;
 - (b) licensee, if different than the appellant;
 - (c) other intervenors;
 - (d) state, federal, municipal, and other governmental agencies; and
 - (e) members of the public.
- (3) The Presiding Officer, Board members, counsel to the Department, Department staff and, if permitted by the Presiding Officer, Department hired consultants and outside agency review staff, may ask questions at any time.
- (4) The Presiding Officer may require that cross-examination be conducted at the conclusion of the testimony of each category of witnesses rather than at the conclusion of the testimony of each individual witness.
- (5) All parties have the right to redirect and recross examination of witnesses. Re-examination questions are limited to matters brought out in the last round of questioning, except by leave of the Presiding Officer.
- (6) Rebuttal and sur-rebuttal testimony and exhibits are allowed only by leave of the Presiding Officer.
- (7) Prior to or during the course of a hearing, the Presiding Officer may set time limits for direct testimony, cross-examination, or rebuttal testimony. Time limits may be adjusted by the Presiding Officer during the course of the hearing.
- C. Testimony from the Public.** The Presiding Officer may designate a segment of the hearing solely for receiving testimony from members of the public. In instances where a member of the public is affiliated with a party to the proceeding, the member of the public shall speak on his or her own behalf and shall not provide evidence that should have been provided by the party as part of its case in chief.
- D. Questions from the Public.** If a member of the public in attendance at the hearing wishes to pose a question to a witness, that person is required to submit the proposed question in writing to the Presiding Officer. If the Presiding Officer determines that the question is relevant and not repetitive, the Presiding Officer may pose the question to the witness as time permits.

- E. Continuance.** A hearing conducted pursuant to this rule may be continued for reasonable cause and reconvened by the Presiding Officer. The Presiding Officer will notify the parties, interested persons, and the public in a manner appropriate to ensure that reasonable notice will be given of the time and place of the reconvened hearing.
- F. Regulation of Certain Devices.** The placement and use of cameras, recording devices, microphones or similar devices at a hearing may be regulated by the Presiding Officer so that the equipment does not interfere with the orderly conduct of the hearing.
- G. Disruptive Conduct.** In order to ensure an orderly, fair and productive hearing, actions such as applause, the placement of signs in support of or opposition to a proposal, or comment from persons who have not been recognized by the Presiding Officer will not be allowed. If requests to cease disruptive conduct are not complied with, the Presiding Officer may prohibit a person from attending or participating in the hearing, adjourn the hearing, or take other appropriate action.

20. Evidence

- A. Relevancy.** Evidence will be admitted if it is relevant and material to the subject matter of the hearing and is of a kind upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Evidence which is irrelevant, immaterial or unduly repetitious will be excluded. The Department's experience, technical expertise, and specialized knowledge may be utilized in the evaluation of all evidence.
- B. Privileges.** The rules of evidence observed by courts do not apply; however, the rules of privilege recognized by law will be observed.
- C. Official Notice.** Official notice may be taken of any facts of which judicial notice could be taken, of any general, technical, or scientific matters within the Department's specialized knowledge, and of statutes, regulations, and non-confidential agency records. Parties will be notified of material so noticed and will be afforded an opportunity to contest the substance or materiality of the matters noticed. Facts officially noticed will be included and indicated as such in the record.
- D. Documentary Evidence**
 - (1) All documents, materials, and objects offered into evidence as exhibits must be uniquely numbered or otherwise identified. Documentary evidence may be received in the form of copies and excerpts if the original is not readily available. Exhibits submitted in electronic format will typically be accompanied by a paper copy of the content unless the Presiding Officer determines that a paper copy is not needed or is impractical. The Presiding Officer will prescribe the number of copies of exhibits required. Where an exhibit is not easily reproduced due to its form, size or character, the Presiding Officer may allow copies to be provided in alternate formats.
 - (2) If allowed by the Presiding Officer, exhibits may be introduced by a member of the general public at a hearing. Prior to the introduction of such exhibits, parties have a right, upon request, to examine the exhibits, raise any objection at that time, and if requested, may be provided with an opportunity to respond regarding the content of an exhibit before the hearing record is closed.

- (3) At least one (1) copy of the record of the license application or appeal placed into evidence will be made available by the Department at the hearing location for the purposes of providing the opportunity for public examination at specified times during the course of the hearing. A copy of the Department's file on the matter will be available for members of the public to schedule an examination at the Department's office before and after the hearing, during normal business hours.
- E. Objections.** Objections to evidence submitted prior to or after the hearing must be made within ten (10) working days of service of the evidence on the objecting party, unless otherwise specified by the Presiding Officer. Objections during the course of the hearing must be made at the time a party believes an objectionable action has occurred. Presiding Officer rulings on objections during a hearing are final.
- F. Offer of Proof.** An offer of proof shall be allowed in connection with an objection to any testimony, evidence, or question of a witness. Such offer of proof must consist of a summary statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness. Comment or argument by any party shall be allowed on the offer of proof.
- 21. Closing Argument.** Oral closing arguments by each party may be allowed by the Presiding Officer after the presentation of evidence has concluded, at a time and place to be fixed by the Presiding Officer
- 22. Conclusion of Hearing.** At the conclusion of the hearing, no other evidence will be allowed into the record, except as specified by the Presiding Officer.
- 23. Post-hearing Brief and Proposed Findings.** All parties have the right to submit briefs and proposed findings of fact in writing after the close of the hearing and the record, within such time as specified by the Presiding Officer.
- 24. Reopening the Record.** Prior to issuing a final decision, the Presiding Officer may reopen the record for good cause shown. The Department shall give notice of a reopening of the record and any further proceeding to the parties and shall notify interested persons and the public in such manner as is appropriate to afford them the opportunity to participate.
- 25. Decision on the Record.** The decision in a licensing proceeding must be based upon the evidence in the record.
- 26. Board Deliberations.** Following a Board hearing and close of the record, the Board may hold as many deliberative sessions as members deem necessary to discuss the record and the relevant review criteria. Participation is limited to Board members, Board counsel, Department staff, and if requested by the Presiding Officer, outside agency review staff and Department hired consultants.
- 27. Draft License Decisions.**
- A. Draft Commissioner License Decision.** For license applications to be decided by the Commissioner following a hearing, the Commissioner will issue a draft license decision to all parties and interested persons to provide them with an opportunity to comment. The draft license decision must be made available for inspection at the Department's Augusta office and appropriate regional offices at least five (5) working days before the Commissioner takes final action.

B. Draft Board License Decision. For license applications to be decided by the Board following a hearing, the Board will issue a draft license decision to all parties and interested persons to provide them with the opportunity to comment. The draft license decision must be made available at the Department's Augusta office and appropriate regional offices at least fifteen (15) working days before the Board takes final action.

28. Decisions. Every decision made at the conclusion of a licensing proceeding must be in writing and must include findings of fact sufficient to apprise the parties and members of the public of the basis for the decision. A copy of the decision must be provided to each party to the proceeding and interested persons. Written notice of the right to appeal the decision within the Department, or to review of the decision by the courts, as the case may be, and of the action required and the time within which such action must be taken, must be given with the decision to each party and interested person. All correspondence notifying the parties of the license decision must be by certified mail, return receipt requested.

29. Record of Proceeding. A record must be kept of all licensing proceedings.

A. Hearings Recorded. All hearings will be recorded in a form susceptible to transcription. The Department shall transcribe the recording upon the filing of an appeal.

B. Contents of Record. The record must contain:

- (1) all applications, petitions, motions, briefs, procedural rulings, and orders;
- (2) evidence admitted;
- (3) a statement of facts officially noticed and stipulations made by the parties;
- (4) offers of proof, objections, and rulings thereon;
- (5) all outside agency review comments and memoranda submitted by Department staff and Department hired consultants in connection with the licensing proceeding;
- (6) all substantive correspondence;
- (7) proposed findings, if applicable;
- (8) recommended decisions, opinions, and reports, if any, by the Presiding Officer; and
- (9) the final decision of the Department.

C. Record Copies. The Department shall make the record of the licensing proceeding available at its office for inspection by any person during normal hours of operation.

30. Post Decision Notice Requirements. Any licensee receiving an approval following a hearing must provide notice to all parties of the filing of any documents with the Department indicating:

- A. actions to comply with conditions contained in the license that require Department review and approval; and,

- B. proposals to vary or amend development activities, timetables, emission or effluent levels or volumes of solid waste as approved by the Department when such a proposal was not part of the original decision and is submitted within one (1) year of the decision becoming final or project start date, whichever is later.

The licensee’s responsibility under this section is deemed fulfilled when the notice is mailed to a party to a proceeding.

AUTHORITY: 5 M.R.S.A. § 8051, 38 M.R.S.A. §§ 341-H and 345-A

EFFECTIVE DATE:

EFFECTIVE DATE (ELECTRONIC CONVERSION):

BASIS STATEMENT

Chapter 3 repeals and replaces Chapter 20 *Regulations for Hearings on Applications*, last amended on March 8, 1981, and Chapter 30 *Special Rules for Hearings on Applications of Significant Public Interest*, last amended February 8, 1978, consolidating them into a single rule. Chapters 20 and 30 no longer comply with the Maine Administrative Procedure Act or the Department’s statutes governing hearings on license applications or on appeals of license decisions. Chapter 3 incorporates statutory changes and ideas for improvement gained by the Department during the conduct of adjudicatory hearings in recent years. It provides for efficient and fair licensing hearings on applications before the Commissioner or the Board, and on hearings before the Board on appeals of Commissioner license decisions.

A grayscale photograph of the Maine State House building, featuring a prominent central dome and a portico with columns. The building is surrounded by trees and a lawn.

Fourth Biennial Report on Progress toward Greenhouse Gas Reduction Goals

Maine Department of Environmental Protection

17 State House Station
Augusta, Maine 04333-0017

January 2012

Contact: Heather Parent, Policy Director
Maine DEP (207-287-8662)
Melanie Loyzim, Director of the Bureau of Air Quality
Maine DEP (207-287-6104)

January 1, 2012

Senator Thomas B. Saviello, Chair
Representative James M. Hamper, Chair
Joint Standing Committee on Environment and Natural Resources
2 State House Station
Augusta, ME 04333

RE: Fourth Biennial Report on Progress toward Greenhouse Gas Reduction Goals

Dear Senator Saviello, Representative Hamper, and members of the Joint Standing Committee on Natural Resources,

In 2003, the Legislature established greenhouse gas (GHG) reduction goals for 2010, 2020, and beyond (38 M.R.S.A. §576). The Maine Department of Environmental Protection (the Department) is submitting this report to the Joint Standing Committee on Natural Resources pursuant to 38 M.R.S.A. §578, which requires the Department to evaluate the State's progress towards meeting those reduction goals, and submit a report every two years from 2006 and thereafter.

This report summarizes the findings of the Department's second quantitative evaluation of Maine's progress towards meeting statutory greenhouse gas goals since the development of the original Climate Action Plan in 2004. I am pleased to report that Maine met the goal of reducing greenhouse gas (GHG) emissions to 1990 levels by 2010. Maine's gross state product has continued to increase while energy consumption and emissions declined. Preliminary data for 2010 indicates GHG emissions may have increased slightly from 2009 to 2010, however.

The Department's analytical method is consistent with the U.S. Environmental Protection Agency's national inventory development and methods used by other New England States. The Department conducted an extensive analysis of energy consumption information from the Department of Energy, and utilized information from many of Maine's own reporting programs to estimate GHG emissions. The Department is continuing efforts to evaluate the impacts of land use and forestry on net GHG emissions, and to evaluate how many new federal emissions standards proposed and finalized in 2011 will affect future GHG emissions in Maine.

I would be happy to present the report to the Committee at your convenience.

Sincerely,

Melanie Loyzim
Director, Bureau of Air Quality

Report to the Joint Standing Committee on Natural Resources
2nd Session of the 125th Maine Legislature

**Fourth Biennial Report on Progress toward
Greenhouse Gas Reduction Goals**

Executive Summary

The Department of Environmental Protection's analysis of energy consumption, industrial processes, agriculture and waste management found that Maine met the goal of reducing greenhouse gas (GHG) emissions to 1990 levels by 2010. Gross statewide GHG emissions increased from 1990 until a peak in 2003, and have steadily declined since. However, preliminary data available to estimate 2010 emissions suggests a slight increase from 2009 to 2010.

The Department's analysis indicates:

- 89% of GHG emissions in Maine are the result of energy consumption, largely produced by combustion of petroleum products.
- From 1990 to 2009, total energy consumption in Maine declined 7% while total GHG emissions only declined 2.5%.
- The Transportation sector produces almost half of all CO₂ emissions in Maine.
- CO₂ emissions from petroleum combustion in the Industrial sector dropped 50% and in the Electric Power sector 85% since 1990.

Additional GHG emission reductions can be achieved by encouraging energy efficiency strategies and replacement of petroleum products with renewable energy sources. New federal standards for vehicle fuel efficiency, electric generating facilities, and boilers are expected to reduce GHG emissions in the coming years. The Department recommends that future GHG emission reduction programs in Maine should focus on reducing petroleum consumption in the residential, commercial and transportation sectors.

I. Statute

In 2003, Maine's Act to Provide Leadership in Addressing the Threat of Climate Change (2003 Public Law Chapter 237) established greenhouse gas (GHG) reduction goals for 2010, 2020, and beyond. The Act set a goal for reduction of greenhouse gas emissions within the State, in the short term, to 1990 levels by January 1, 2010. The Maine Department of Environmental Protection (the Department) is submitting this Report to the Joint Standing Committee on Natural Resources pursuant to 38 M.R.S.A. §578, which requires the Department to evaluate the State's progress toward meeting its reduction goals and submit a report of its evaluation by January 1, 2006 and by that date every two years thereafter.

II. Methodology

The Department utilized the U.S. Environmental Protection Agency's (EPA) State Inventory Tool (SIT), augmented with data from state programs, to estimate GHG emissions in Maine. The SIT was developed by EPA to provide states with a comprehensive, standardized approach to estimating GHG emissions. The SIT is an Excel-based tool that uses methods from the Intergovernmental Panel on Climate Change (IPCC) and the U.S. National Greenhouse Gas Inventory. It provides flexibility for states to input state specific data to estimate gross carbon dioxide equivalent (CO₂e) emissions for six greenhouse gases: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF₆). The tool estimates GHG emissions from the following categories:

- Energy
- Agriculture
- Industrial Processes
- Waste

The tool is pre-populated with data from several federal agencies. The majority of the inventory data comes from the Department of Energy's Energy Information Administration (EIA). For many of the categories, this information is apportioned to the states from national and regional inventories. For this Fourth Biennial Report, the Department performed a comprehensive analysis of the EIA and solid waste data provided in the tool, and updated it with information from Maine reporting programs.

The EIA released 2009 data for the state of Maine in July 2011. National level data for 2010 was released in October 2011. The Department extended estimates of Maine's GHG emissions to 2010 by using a linear regression analysis with a least squares method.

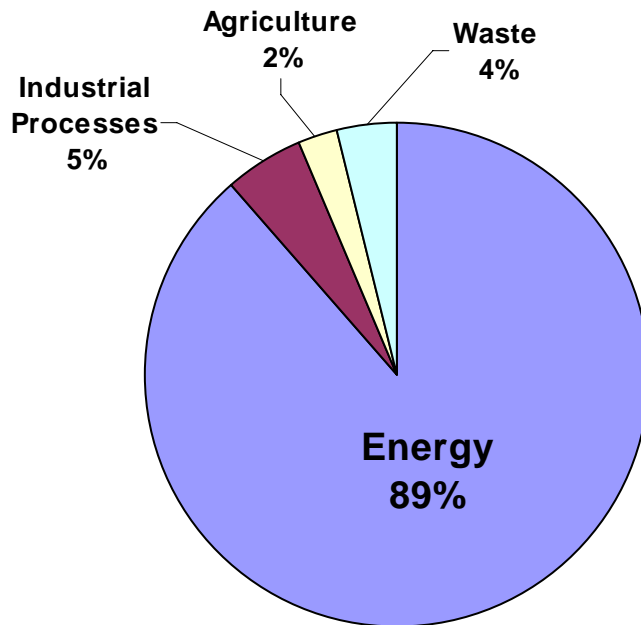
The Department did not estimate emissions or sequestration from Land Use, Land Use Change and Forestry (LULUCF) because EPA's State Inventory Tool does not provide an adequate estimation for the Forest in New England. This is consistent with the approach taken by other New England states for developing GHG inventories at this time. LULUCF will be addressed in future inventories as the methodologies for estimating impacts from these activities improve.

III. Gross GHG Emissions

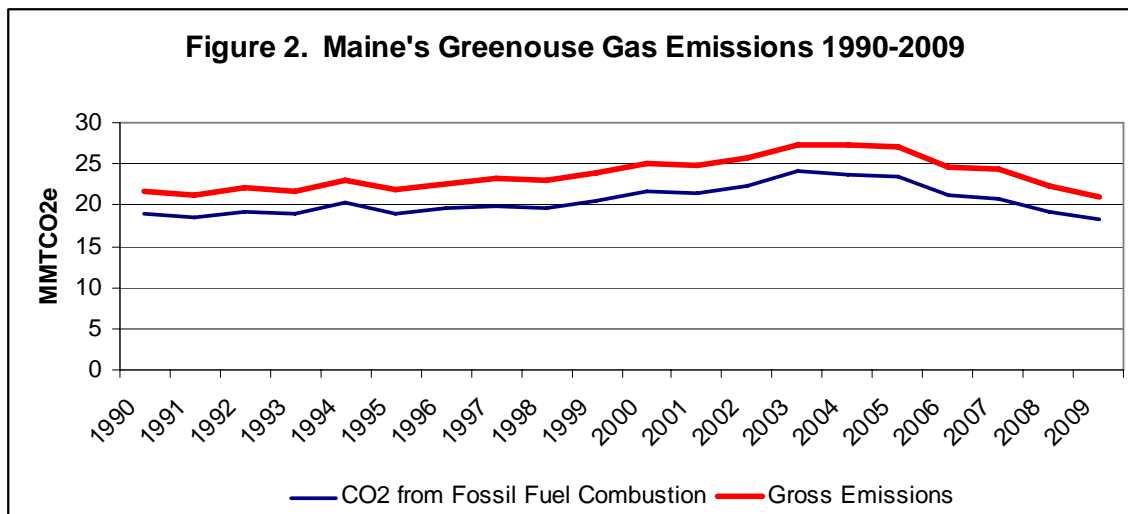
The Department's analysis indicates Maine met its goal of reducing emissions to 1990 levels by January 1, 2010. Total estimated greenhouse gas (GHG) emissions in Maine increased from 21.55 million metric tons of carbon dioxide equivalents (MMT CO_2e) in 1990 to a peak of 27.34 MMT CO_2e in 2003, then declined to 21.00 MMT CO_2e in 2009 (Appendix A).

Emissions due to Energy consumption account for 89% of Maine's gross GHG emissions.

Figure 1. 2009 Emissions by Source Category



Emissions from energy consumption include all of the CO_2 emissions from fossil fuel combustion, as well as CH_4 and N_2O . CO_2 emissions from the combustion of fossil fuels alone set the trend for the entire inventory.

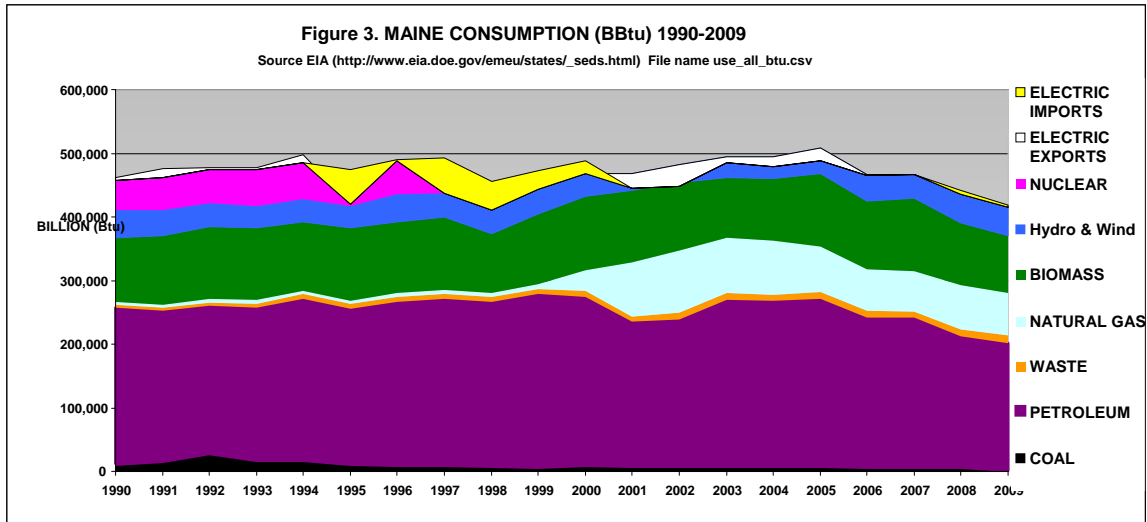


Although emissions of the other GHGs are small in comparison, they still serve as indicators of progress toward mitigation goals. Emissions from the Industrial Process, Agriculture and Waste categories in 2009 were 0.45 MMTCO₂e above 1990 levels. However, emissions from these categories have been declining since a peak in 2003. Approximately 2,000 acres of waste at 397 landfill sites are accounted for in this inventory. Using the calculation methodology in the tool, offset emissions from the flaring and burning of landfill gases were completely consumed by the emissions from capped landfills.

IV. Energy Consumption

The vast majority of Maine's GHG emissions are the result of our demand for, and consumption of, energy. Accounting for GHG emissions from energy consumption is the subject of debate, but for the purposes of this inventory the Department included emissions that occur in Maine and applied EPA and IPCC methods for carbon accounting. The Department accounted for CO₂ emissions from fossil fuel combustion and waste incineration at Maine's waste-to-energy facilities (Appendix B), and treated nuclear power and renewable resources as carbon neutral. Renewable resources include Biofuel (mainly ethanol added to motor gasoline), Biomass (wood, wood waste products including black liquor and sludge), Hydroelectric, Wind, Solar and Geothermal.

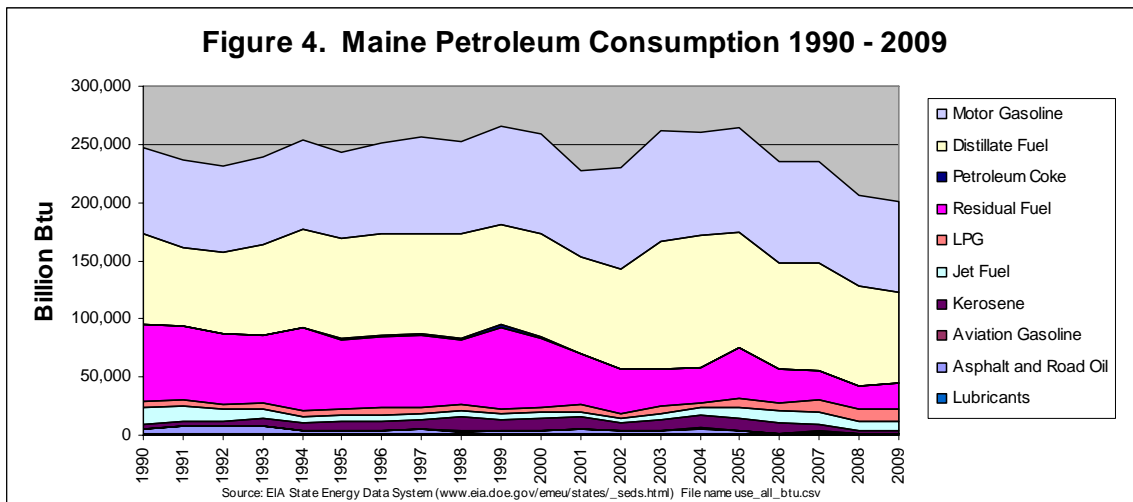
From 1990 to 2009, total energy consumption in Maine declined 7% (Appendix C). Figure 3 illustrates the energy sources used to meet Maine's energy demands, including imported electricity following the closure of Maine's nuclear power facility.



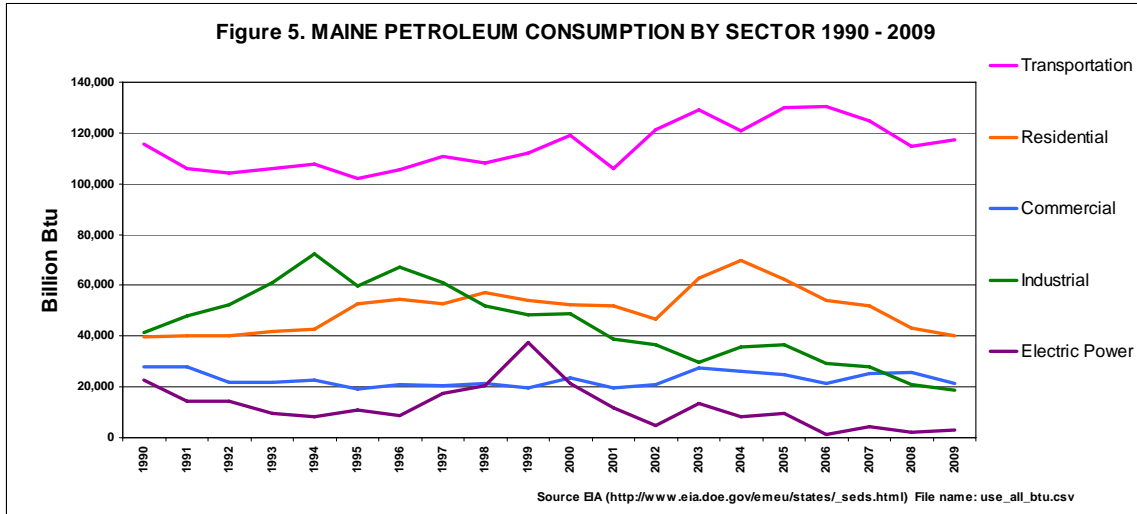
In 1990, 42% of Maine’s energy sources were carbon neutral. That decreased to 33% by 2009. Much of this decrease was due to the decommissioning of Maine’s Nuclear power plant. Although more energy consumed in Maine comes from carbon-emitting sources now than in 1990, CO₂ emissions have declined because higher carbon emitting petroleum combustion has been offset with lower carbon emitting natural gas.

Petroleum

In 2009, Petroleum Products provided 47% of all energy consumed and accounted for 77% of CO₂ emissions from carbon emitting energy sources. Petroleum Products include: motor gasoline, distillate fuel, petroleum coke, residual fuel, liquefied petroleum gas, jet fuel, kerosene, aviation gasoline, asphalt and road oil, lubricants, petrochemical feedstock’s (naphtha’s and other oils), pentanes plus, still gas, special naphtha’s, unfinished oils, and waxes. Motor gasoline, distillate fuel and residual fuel account for 89% of all Petroleum Products consumed.



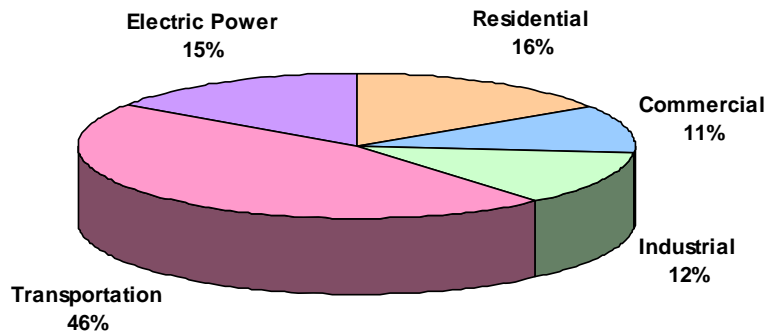
Total consumption of these three fuels has declined more than 200 million gallons since 1990. Since 2003, emissions from petroleum combustion in all sectors have declined by 3.84 MMTCO₂ (Appendix B).



Combustion Emissions by Sector

The Department evaluated energy consumption and associated GHG emissions in the five economic sectors defined by the Energy Information Administration – electrical generators, industrial, commercial, residential, and transportation (Appendix D) – because policies and programs for GHG emission reductions often target these sectors separately. Future efforts to reduce GHG emissions should recognize the relative contribution of each sector and how activities within those sectors impact their emissions. Figure 6 illustrates the contribution of each sector to CO₂ emissions in 2009. The Transportation sector produces almost half of all CO₂ emissions in Maine.

Figure 6. Emissions from Combustion Sources by Sector 2009



Electrical Generators

Maine's electric generating facilities consume energy to produce energy for other consumers. Maine's electric utility generators emitted 2.88 MMTCO₂ in 2009 (Appendix B). CO₂ emissions from petroleum combustion at electric generating facilities declined 86% since 1990 while their energy consumption only declined 7%. Nuclear power and petroleum have been largely replaced with natural gas, biomass, and waste as energy sources (Appendix E.1). Natural gas combustion accounts for 78% of the CO₂ emissions from this sector. Renewable resources (biomass, hydropower and wind) provided 54% of the energy consumed by these facilities in 2009. Additional information regarding CO₂ emissions from these facilities, as it relates to the Regional Greenhouse Gas Initiative, will be provided by the Efficiency Maine Trust in their annual report for that program.

Industrial

Maine's Industrial Sector emitted 2.32 MMTCO₂ in 2009. Although its use has declined, petroleum continues to be the largest source of CO₂ combustion emissions from the Industrial sector because it has a higher carbon emission rate than natural gas. This sector obtained 63% of the energy it consumed from renewable resources, slightly less than in 1990 (Appendix E.2). This decline may be due to increased availability of natural gas, which has higher combustion efficiency and lower criteria pollutant emissions than biomass. Natural gas has also replaced some petroleum consumption by this sector.

Commercial

The Commercial Sector emitted 1.96 MMTCO₂ in 2009. Increased use of natural gas has contributed to a 15% reduction in CO₂ emissions from this sector since 1990. However, petroleum continues to account for 77% of its CO₂ emissions. Most of the energy consumed by Maine's Commercial sector is used for electricity and space heating, with petroleum serving as the largest energy source. In 2009, Maine's waste-to-energy facilities provided 11% of the energy used by this sector. (Appendices C and E.3)

Residential

The Residential Sector emitted 2.98 MMTCO₂ in 2009. This sector is highly dependent upon petroleum products, and significantly impacted by fuel price fluctuations. Petroleum accounts for 98% of all the CO₂ emissions from this sector. Emissions from residential petroleum use declined 37% from 2003 to 2009, returning to 1990 levels. The mix of energy sources for the Residential sector has changed little over the last two decades, however (Appendix E.4). It exceeds the Commercial sector in gallons of distillate consumed and is the least served by natural gas. The Department recommends that future programs to reduce GHG emissions include assistance for the Residential sector to decrease petroleum consumption.

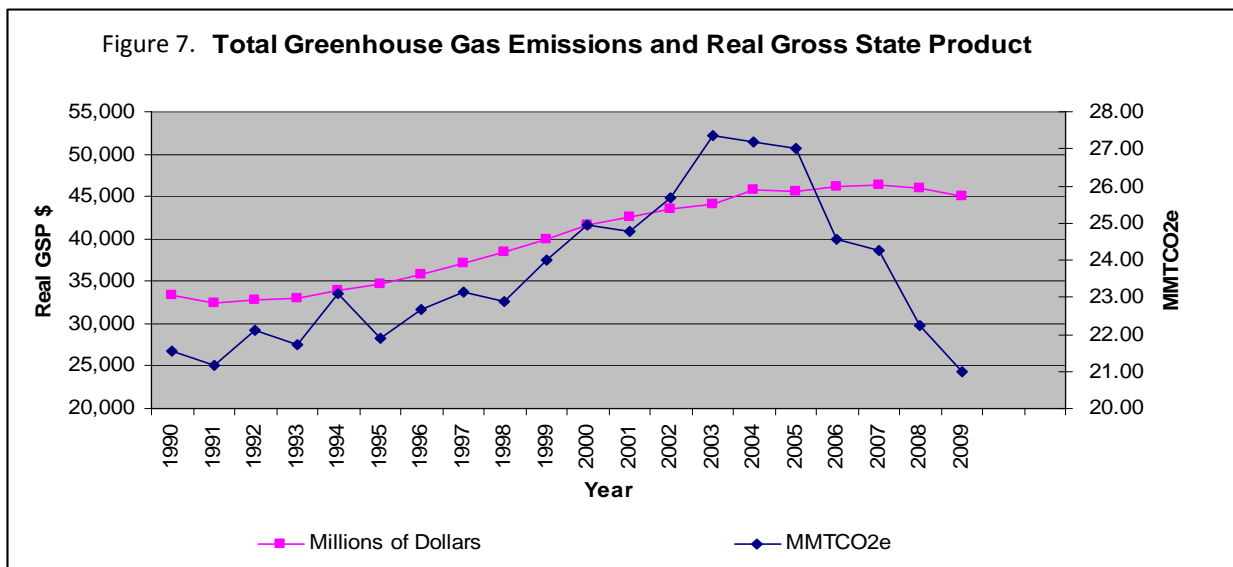
Transportation

The Transportation Sector emitted 8.51 MMTCO₂ in 2009, 46% of total CO₂ emissions (Appendix B). Petroleum accounts for 95% of the energy consumed by the transportation sector and 99% of the CO₂ emissions (Appendices C and E.5). The Transportation Sector consumed 7% more energy in 2009 than 1990, but total GHG emissions remained steady. CO₂ emissions increased slightly while CH₄ and N₂O declined. This is due to improved fuel efficiency of the vehicle fleet, and increased use of biofuel.

V. Economic Analysis

During development of the *Third Biennial Report* in 2009, the Department questioned how much of the decline in GHG emissions in recent years was caused by economic recession. For this *Fourth Biennial Report*, the Department used real Gross State Product to evaluate the impact of economic conditions on emissions. Real gross state product is a measure of the value of output (all final goods and services) for the state that has been adjusted for inflation (or deflation). According to the Bureau of Economic Analysis, Maine’s real gross state product increased through much of the period of 1990 to 2009, suggesting that emissions reductions were not primarily related to economic activity.

Since 1990, Maine’s real GSP grew from \$33.379 billion to \$45.002 billion in 2009¹. During the same period, energy consumption declined from 456,827 billion Btu to 424,103 billion Btu (Figure 7). From 1990 through 2000, greenhouse gas emissions continued to rise and track very closely with Real GSP. However, beginning in 2004, GHG emissions began to decrease at an accelerating rate.

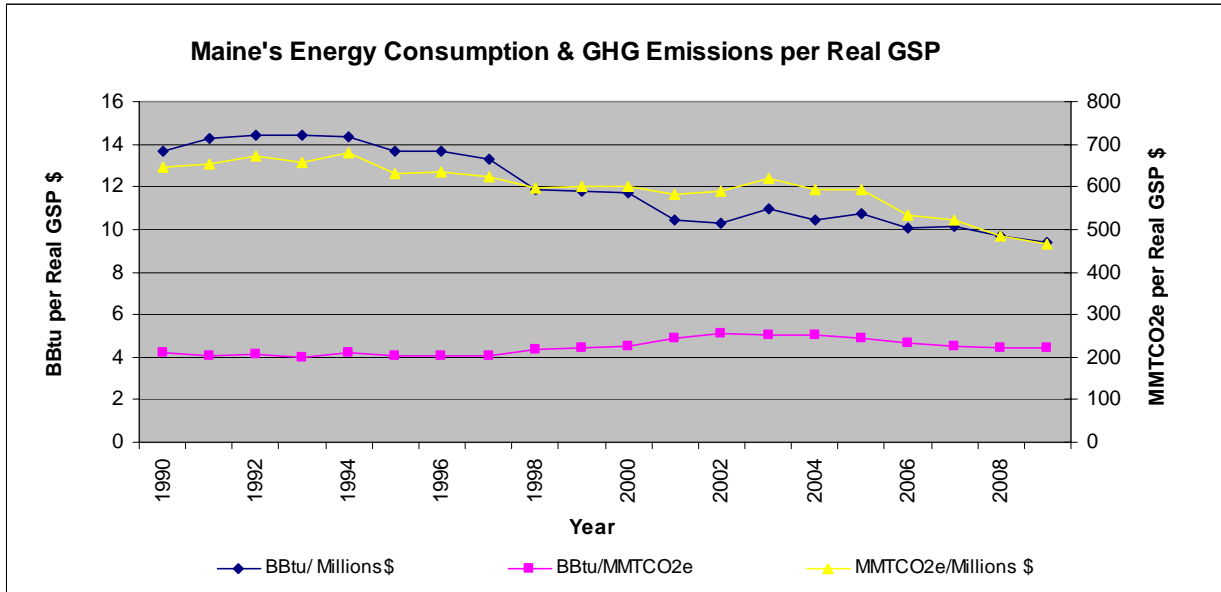


¹ U.S. Bureau of Economic Analysis. Regional Economic Accounts, Gross Domestic Product by State.

www.bea.gov/regional/gsp/

Figure 8 illustrates the relative stability of emissions per unit of heat input while the amount of energy consumed, and GHGs emitted, to generate each dollar in Maine declined over the last decade. This could indicate that Maine is moving toward a more service-oriented economy, and/or Maine's production of goods is becoming more energy efficient.

Figure 8.



VI. Conclusion

This *Fourth Biennial Report* on Maine's progress toward statutory GHG reduction targets provides an updated analysis of gross GHG emissions for the period of 1990-2010. The Department's analysis continues to indicate that Maine met the first statutory reduction target of reducing GHG emissions to 1990 levels by 2010. However, gross GHG emissions in 2009 were only 0.55 MMTCO₂e below the target and preliminary estimates for 2010 suggest the downward trend may not be continuing. Therefore, the Department provides the following recommendations:

- Maine should continue to encourage replacement of petroleum products with carbon-neutral renewable energy sources, which effectively reduce GHG emissions in Maine and support economic growth.
- Future policies and programs should focus on petroleum consumption in the residential, commercial and transportation sectors.

Appendix A
Maine's Greenhouse Gas - CO₂e Emissions

	MMTCO ₂ e									
	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Energy Total	19.59	19.14	19.99	19.58	20.94	19.64	20.33	20.61	20.25	21.33
CO ₂ from Fossil Fuel Combustion	18.92	18.44	19.26	18.85	20.20	18.90	19.59	19.87	19.54	20.60
Stationary Combustion (CH ₄ & N ₂ O)	0.26	0.28	0.29	0.29	0.28	0.29	0.29	0.28	0.24	0.27
Mobile Combustion (CH ₄ & N ₂ O)	0.41	0.42	0.44	0.45	0.46	0.46	0.46	0.47	0.46	0.46
Industrial Processes Total	0.86	0.85	0.91	1.01	0.99	1.12	1.12	1.23	1.29	1.30
Agriculture Total	0.44	0.44	0.44	0.45	0.45	0.43	0.46	0.51	0.54	0.54
Enteric Fermentation	0.20	0.20	0.19	0.20	0.20	0.19	0.19	0.19	0.18	0.18
Manure Management	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.08	0.10	0.10
Agriculture Soil Management	0.19	0.19	0.19	0.20	0.20	0.19	0.21	0.24	0.26	0.26
Burning of Agricultural Crop Waste	-	-	-	-	-	-	-	-	-	-
Waste Total	0.66	0.71	0.76	0.66	0.72	0.72	0.75	0.79	0.82	0.85
Municipal Solid Waste	0.54	0.60	0.64	0.54	0.60	0.60	0.63	0.67	0.70	0.73
Wastewater	0.12	0.12	0.12	0.12	0.12	0.12	0.12	0.12	0.12	0.12
Gross Emissions	21.55	21.14	22.10	21.71	23.09	21.91	22.66	23.14	22.90	24.02

Appendix A. Maine's Greenhouse Gas - CO₂e Emissions (continued)

	MMTCO₂e										ESTIMATED
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Energy Total	22.38	22.16	23.01	24.63	24.32	23.99	21.64	21.29	19.66	18.59	21.25
CO ₂ from Fossil Fuel Combustion	21.66	21.47	22.37	24.03	23.75	23.41	21.12	20.78	19.15	18.17	20.81
Stationary Combustion (CH ₄ & N ₂ O)	0.28	0.27	0.25	0.24	0.25	0.29	0.26	0.28	0.31	0.23	0.27
Mobile Combustion (CH ₄ & N ₂ O)	0.44	0.42	0.39	0.35	0.32	0.30	0.26	0.23	0.19	0.19	0.17
Industrial Processes Total	1.27	1.26	1.26	1.23	1.30	1.32	1.34	1.37	1.26	1.10	1.10
Agriculture Total	0.45	0.46	0.47	0.47	0.50	0.54	0.56	0.56	0.50	0.48	0.48
Enteric Fermentation	0.18	0.18	0.18	0.16	0.17	0.17	0.17	0.16	0.17	0.18	0.18
Manure Management	0.05	0.06	0.06	0.05	0.05	0.05	0.05	0.05	0.06	0.06	0.06
Agriculture Soil Management	0.21	0.22	0.24	0.25	0.28	0.32	0.34	0.34	0.27	0.24	0.24
Burning of Agricultural Crop Waste	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Waste Total	0.87	0.90	0.95	1.02	1.07	1.14	1.02	1.04	0.80	0.83	0.85
Municipal Solid Waste	0.75	0.78	0.82	0.89	0.94	1.01	0.90	0.92	0.68	0.71	0.73
Wastewater	0.12	0.12	0.12	0.13	0.13	0.13	0.13	0.13	0.13	0.12	0.12
Gross Emissions	24.97	24.78	25.69	27.34	27.18	27.00	24.57	24.26	22.23	21.00	23.68

Department of Environmental Protection
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Appendix B Carbon Dioxide Emissions from Fossil Fuels and Waste incineration

MMTCO ₂	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Residential Total	2.98	2.98	3.00	3.12	3.20	3.93	4.04	3.91	4.22	4.02
Coal	0.02	0.01	0.02	0.01	0.00	0.00	0.00	0.00	0.00	0.00
Petroleum	2.92	2.94	2.94	3.06	3.15	3.88	3.99	3.86	4.17	3.97
Natural Gas	0.03	0.04	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05
WASTE	-	-	-	-	-	-	-	-	-	-
Commercial Total	2.30	2.26	1.86	1.85	1.89	1.59	1.75	1.74	1.81	1.71
Coal	0.08	0.03	0.07	0.05	0.01	0.01	0.01	0.01	0.01	0.01
Petroleum	2.05	2.07	1.59	1.58	1.65	1.38	1.52	1.49	1.56	1.44
Natural Gas	0.09	0.10	0.12	0.12	0.13	0.13	0.14	0.15	0.13	0.14
WASTE	0.08	0.06	0.08	0.09	0.09	0.08	0.08	0.10	0.11	0.13
Industrial Total	3.37	3.99	5.35	5.05	6.28	4.91	5.24	4.65	3.96	3.76
Coal	0.52	0.84	1.91	0.98	1.06	0.65	0.53	0.44	0.32	0.27
Petroleum	2.74	3.04	3.33	3.98	5.13	4.16	4.59	4.08	3.52	3.27
Natural Gas	0.11	0.12	0.11	0.09	0.09	0.11	0.12	0.13	0.12	0.22
WASTE	-	-	-	-	-	-	-	-	-	-
Transportation Total	8.29	7.59	7.48	7.61	7.72	7.31	7.55	7.93	7.74	8.00
Coal	-	-	-	-	-	-	-	-	-	-
Petroleum	8.29	7.59	7.48	7.61	7.71	7.30	7.55	7.92	7.74	8.00
Natural Gas	0.00	0.00	0.00	0.00	0.00	0.01	0.00	0.01	0.00	0.00
WASTE	-	-	-	-	-	-	-	-	-	-
Electric Power Total	2.14	1.80	1.76	1.43	1.35	1.38	1.26	1.91	2.14	3.46
Coal	0.36	0.57	0.57	0.58	0.57	0.37	0.38	0.39	0.35	0.36
Petroleum	1.69	1.09	1.07	0.72	0.63	0.86	0.71	1.34	1.57	2.85
Natural Gas	0.01	0.01	0.01	0.01	0.01	0.01	0.00	0.00	0.00	0.03
WASTE	0.09	0.12	0.11	0.12	0.14	0.15	0.17	0.17	0.22	0.22
GROSS CO₂ Emissions	19.08	18.62	19.45	19.05	20.43	19.13	19.83	20.13	19.88	20.95
Coal	0.98	1.44	2.57	1.63	1.65	1.03	0.92	0.84	0.68	0.64
Petroleum	17.69	16.73	16.41	16.94	18.28	17.57	18.36	18.68	18.56	19.52
Natural Gas	0.24	0.26	0.28	0.27	0.28	0.30	0.31	0.34	0.31	0.44
Waste	0.16	0.18	0.19	0.21	0.23	0.23	0.24	0.27	0.33	0.35

Department of Environmental Protection
Fourth Biennial Report on Progress toward Greenhouse Gas Reduction Goals

Appendix B. (continued)

MMTCO ₂	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Residential Total	3.89	3.87	3.48	4.65	5.19	4.62	4.01	3.84	3.21	2.98
Coal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	-	-
Petroleum	3.83	3.81	3.42	4.59	5.12	4.56	3.96	3.77	3.14	2.91
Natural Gas	0.06	0.06	0.06	0.07	0.07	0.06	0.05	0.07	0.06	0.07
WASTE	-	-	-	-	-	-	-	-	-	-
Commercial Total	2.00	1.72	1.91	2.37	2.29	2.21	1.92	2.29	2.33	1.96
Coal	0.01	0.01	0.00	0.00	0.00	0.01	0.01	0.01	-	-
Petroleum	1.71	1.41	1.51	1.98	1.90	1.81	1.53	1.82	1.84	1.51
Natural Gas	0.17	0.16	0.29	0.27	0.27	0.27	0.26	0.34	0.33	0.31
WASTE	0.12	0.14	0.11	0.11	0.13	0.13	0.13	0.13	0.16	0.14
Industrial Total	4.07	3.74	3.77	3.26	3.45	3.67	3.33	2.96	2.66	2.32
Coal	0.53	0.30	0.21	0.29	0.28	0.30	0.26	0.27	0.24	0.07
Petroleum	3.25	2.57	2.47	1.95	2.27	2.51	2.10	1.88	1.54	1.36
Natural Gas	0.29	0.85	1.00	0.93	0.85	0.81	0.94	0.77	0.86	0.85
WASTE	-	0.02	0.09	0.10	0.06	0.04	0.04	0.04	0.02	0.04
Transportation Total	8.58	7.66	8.75	9.31	8.71	9.38	9.41	9.06	8.29	8.51
Coal	-	-	-	-	-	-	-	-	-	-
Petroleum	8.53	7.59	8.70	9.26	8.67	9.35	9.39	9.02	8.24	8.46
Natural Gas	0.05	0.07	0.05	0.05	0.04	0.03	0.03	0.04	0.05	0.05
WASTE	-	-	-	-	-	-	-	-	-	-
Electric Power Total	3.46	4.85	4.84	4.83	4.50	3.97	2.87	3.05	3.13	2.87
Coal	0.39	0.43	0.53	0.40	0.40	0.35	0.35	0.33	0.30	0.08
Petroleum	1.63	0.88	0.36	1.01	0.62	0.73	0.08	0.34	0.17	0.24
Natural Gas	1.21	3.33	3.77	3.25	3.26	2.62	2.17	2.12	2.36	2.26
WASTE	0.23	0.21	0.19	0.17	0.22	0.27	0.27	0.26	0.28	0.30
GROSS CO₂ Emissions	22.01	21.84	22.75	24.42	24.15	23.85	21.56	21.21	19.63	18.65
Coal	0.93	0.73	0.74	0.70	0.68	0.66	0.62	0.61	0.55	0.15
Petroleum	18.95	16.26	16.46	18.78	18.59	18.95	17.05	16.84	14.94	14.48
Natural Gas	1.78	4.47	5.16	4.55	4.48	3.80	3.45	3.33	3.67	3.53
Waste	0.35	0.37	0.38	0.38	0.40	0.44	0.44	0.42	0.47	0.48

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Appendix C. Maine Energy Consumption
Source: EIA State Energy Data System
(www.eia.doe.gov/emeu/states/_seds.html)

COAL

BILLION (Btu)	1990	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Residential	214	9	8	6	7	5	6	6	6	0	0
Commercial	858	69	67	44	44	45	70	65	57	0	0
Industrial	5533	5687	3203	2286	3115	2973	3219	2780	2937	2633	797
Electric Power	3808	4216	4597	5664	4315	4312	3764	3767	3583	3275	856
Transportation											
COAL	10,413	9,980	7,875	8,000	7,481	7,336	7,059	6,618	6,583	5,908	1,652

PETROLEUM

BILLION (Btu)	1990	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Residential	39895	52266	52116	46662	62688	69791	62349	54138	51810	43348	40167
Commercial	27878	23429	19501	20725	27313	25985	25030	21182	25436	25646	21402
Industrial	41635	48770	38605	36830	29716	35558	36836	29097	28112	20998	18584
Electric Power	22502	21414	11753	4757	13442	8307	9709	1093	4535	2330	3155
Transportation	115377	119076	105823	121224	129207	120921	130180	130280	124869	114512	117298
PETROLEUM	247,287	264,956	227,799	230,198	262,366	260,561	264,103	235,792	234,761	206,834	200,607

NATURAL GAS

BILLION (Btu)	1990	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Residential	651	1195	1122	1105	1266	1241	1202	1036	1288	1176	1341
Commercial	1686	3194	3109	5407	5000	5023	5011	4945	6326	6280	5778
Industrial	2034	5576	16491	19391	17950	16496	15804	18260	14942	16646	16530
Electric Power	196	22889	62795	71045	61280	61515	49514	40944	39982	44611	42618
Transportation	5	932	1370	918	898	687	611	520	828	1009	874
NATURAL GAS	4,572	33,785	84,886	97,865	86,394	84,963	72,142	65,705	63,366	69,722	67,141

BIOFUELS

BILLION (Btu)	1990	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Residential	0	0	0	0	0	0	0	0	0	0	0
Commercial	0	0	0	0	0	0	0	1	2	5	11
Industrial	0	0	0	0	0	0	0	0	0	0	0
Electric Power	0	0	0	0	0	0	0	0	0	0	0
Transportation	0	0	0	0	0	0	385	566	810	4165	5305
BIOFUELS	0	0	0	0	0	0	385	567	813	4,171	5,317

WASTE

BILLION (Btu)	1990	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Residential	0	0	0	0	0	0	0	0	0	0	0
Commercial	2177	2757	2811	3226	3310	3115	3169	3076	3113	3460	3521
Industrial	0	0	468	2579	2930	1374	1048	1032	928	544	905
Electric Power	2459	5321	4270	5695	5094	5473	6321	6346	6288	6215	7377
Transportation	0	0	0	0	0	0	0	0	0	0	0
WASTE	4,636	8,078	7,549	11,500	11,334	9,962	10,538	10,454	10,329	10,219	11,803

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BIOMASS

BILLION (Btu)	1990	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Residential	4292	3556	2872	2915	3068	3145	6037	5495	6059	6340	6059
Commercial	933	751	589	557	541	529	964	893	975	1016	1020
Industrial	76963	90083	80983	75554	62981	64198	67220	61128	68158	58408	55180
Electric Power	19040	21136	28761	28064	28532	29330	39829	38528	38660	31840	27647
Transportation	0	0	0	0	0	0	0	0	0	0	0
BIOMASS	101,227	115,526	113,205	107,090	95,122	97,202	114,050	106,044	113,852	97,604	89,906

Hydro & Wind

BILLION (Btu)	1990	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Residential	0	0	0	0	0	0	0	0	0	0	0
Commercial	0	0	0	0	0	0	0	0	0	0	0
Industrial	13982	13221	9660	9529	10471	5644	6250	7725	6863	7509	7400
Electric Power	28568	23409	17672	18628	22020	28734	34655	34710	31064	37711	36977
Transportation	0	0	0	0	0	0	0	0	0	0	0
Hydro & Wind	42,550	36,630	27,332	28,157	32,491	34,378	40,905	42,435	37,927	45,220	44,377

ALL SECTORS

BILLION (Btu)	1990	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
COAL	10,413	9,980	7,875	8,000	7,481	7,336	7,059	6,618	6,583	5,908	1,652
PETROLEUM	247,287	264,956	227,799	230,198	262,366	260,561	264,103	235,792	234,761	206,834	200,607
NATURAL GAS	4,572	33,785	84,886	97,865	86,394	84,963	72,142	65,705	63,366	69,722	67,141
BIOFUELS	0	0	0	0	0	0	385	567	813	4,171	5,317
WASTE	4,636	8,078	7,549	11,500	11,334	9,962	10,538	10,454	10,329	10,219	11,803
BIOMASS	101,227	115,526	113,205	107,090	95,122	97,202	114,050	106,044	113,852	97,604	89,906
NUCLEAR	51,436	0	0	0	0	0	0	0	0	0	0
Hydro & Wind	42,550	36,630	27,332	28,157	32,491	34,378	40,905	42,435	37,927	45,220	44,377
TOTAL	462,122	468,955	468,646	482,810	495,188	494,402	509,183	467,616	467,630	439,679	420,803
ELECTRICITY	-5,295	19,493	-23,537	-34,553	-10,642	-15,990	-20,709	-1,301	415	5,993	3,300
TOTAL net Electricity	456,828	488,448	445,109	448,257	484,545	478,412	488,475	466,315	468,045	445,672	424,103

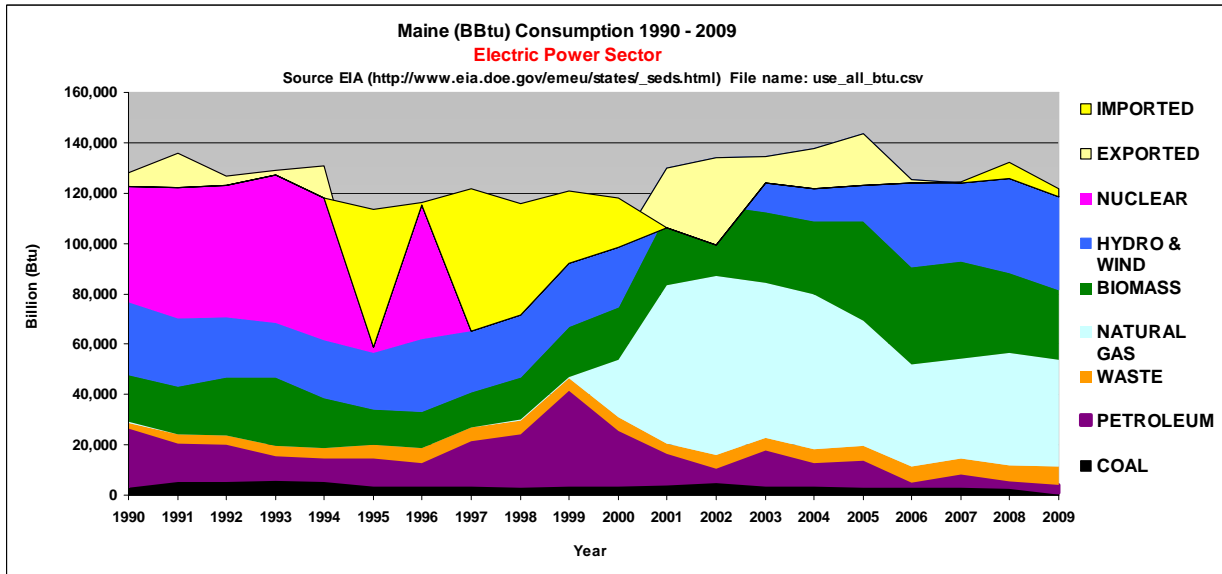
ELECTRICITY EXPORTS	-5,295	0	-23,537	-34,553	-10,642	-15,990	-20,709	-1,301	0	0	0
ELECTRICITY IMPORTS	0	19,493	0	0	0	0	0	0	415	5,993	3,300

Appendix D

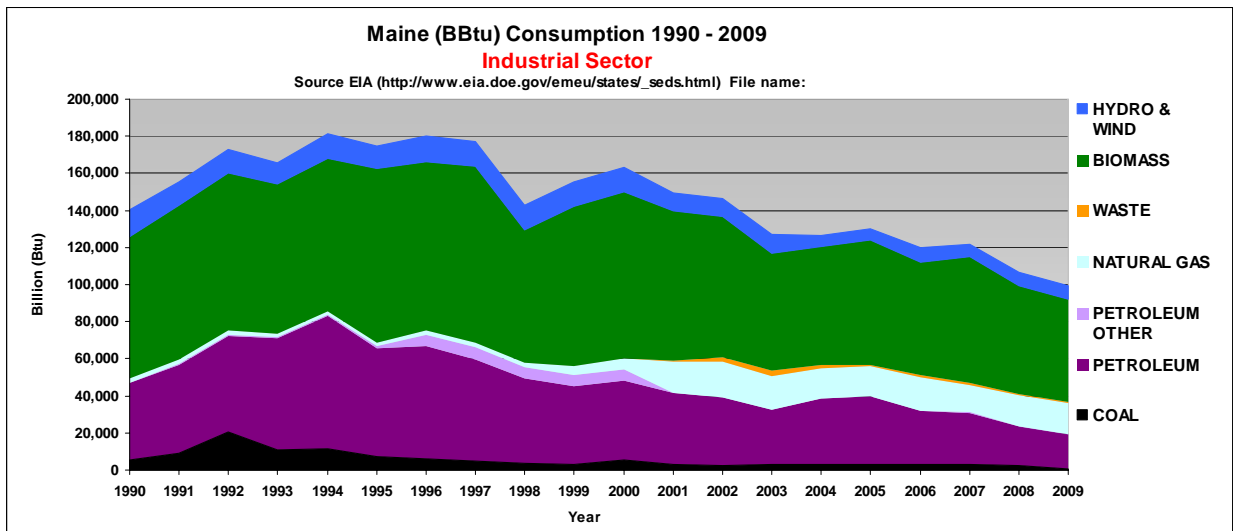
- **Electric Power Sector:** An energy-consuming sector that consists of electricity-only and combined-heat-and-power plants within the NAICS (North American Industry Classification System) 22 category whose primary business is to sell electricity, or electricity and heat, to the public. *Note: This sector includes electric utilities and independent power producers.*
- **Industrial Sector:** An energy-consuming sector that consists of all facilities and equipment used for producing, processing, or assembling goods. The industrial sector encompasses the following types of activity: manufacturing (NAICS codes 31–33); agriculture, forestry, fishing and hunting (NAICS code 11); mining, including oil and gas extraction (NAICS code 21); and construction (NAICS code 23). Overall energy use in this sector is largely for process heat and cooling and powering machinery, with lesser amounts used for facility heating, air conditioning, and lighting. Fossil fuels are also used as raw material inputs to manufactured products. *Note: This sector includes generators that produce electricity and/or useful thermal output primarily to support the above-mentioned industrial activities.*
- **Commercial Sector:** An energy-consuming sector that consists of service-providing facilities and equipment of: businesses; Federal, State, and local governments; and other private and public organizations, such as religious, social, or fraternal groups. The commercial sector includes institutional living quarters. It also includes sewage treatment facilities. Common uses of energy associated with this sector include space heating, water heating, air conditioning, lighting, refrigeration, cooking, and running a wide variety of other equipment. *Note: This sector includes generators that produce electricity and/or useful thermal output primarily to support the activities of the above-mentioned commercial establishments.*
- **Residential Sector:** An energy-consuming sector that consists of living quarters for private households. Common uses of energy associated with this sector include space heating, water heating, air conditioning, lighting, refrigeration, cooking, and running a variety of other appliances. The residential sector excludes institutional living quarters.
- **Transportation Sector:** An energy-consuming sector that consists of all vehicles whose primary purpose is transporting people and/or goods from one physical location to another. Included are automobiles; trucks; buses; motorcycles; trains, subways, and other rail vehicles; aircraft; and ships, barges, and other waterborne vehicles. Vehicles whose primary purpose is not transportation (e.g., construction cranes and bulldozers, farming vehicles, and warehouse tractors and forklifts) are classified in the sector of their primary use. In this report, natural gas used in the operation of natural gas pipelines is included in the transportation sector.

Appendix E

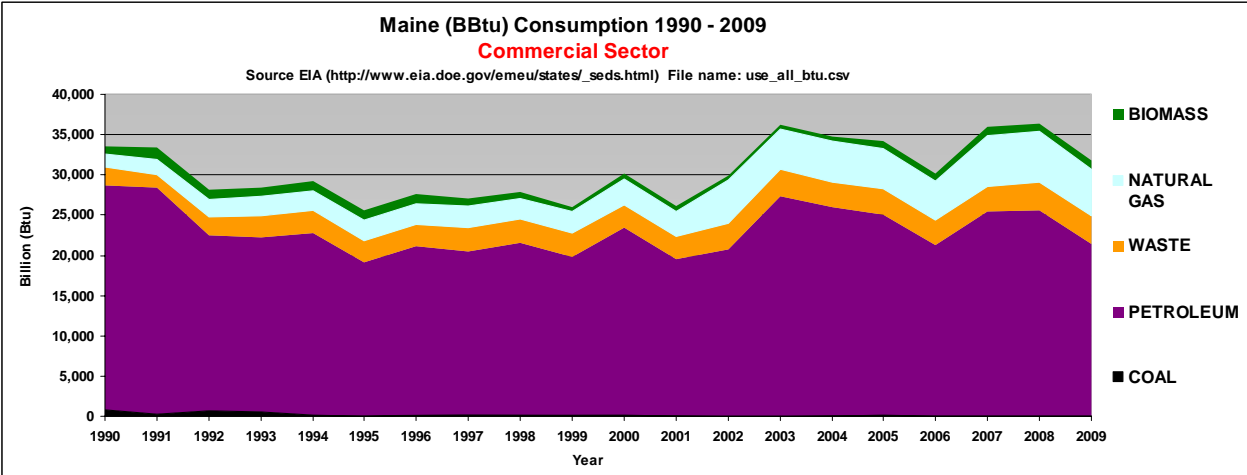
E.1. Electric Power



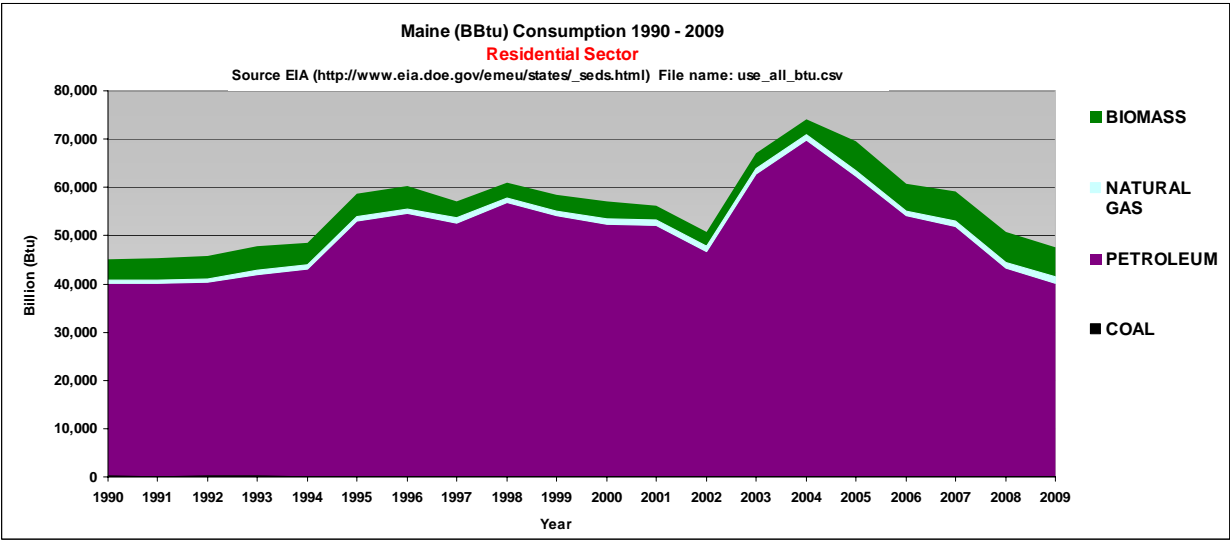
E.2. Industrial



E.3. Commercial



E.4. Residential



E.5. Transportation

