



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL OCEAN SERVICE  
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT  
Silver Spring, Maryland 20910

AUG 17 2012

Ms. Kathleen Leyden  
Coastal Program Manager  
Maine Coastal Program  
Department of Conservation  
22 State House Station  
Augusta, ME 04333-0022

Dear Ms. Leyden:

Thank you for the request by the Maine State Planning Office that changes to certain regulations administered by the Department of Public Safety and Department of Environmental Protection be approved for incorporation into the Maine Coastal Management Program (CMP) as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and Office of Ocean and Coastal Resource Management (OCRM) Program Change Guidance (July 1996).

OCRM received the request on July 10, 2012, and OCRM's decision deadline was extended until August 17, 2012.

Based on our review of the submission, we concur that the changes to the regulations described in the attached Table of Approved Changes are RPCs and we approve the incorporation of the changes into the Maine CMP. Changes approved as enforceable policies for CZMA Federal Consistency review purposes will apply only after the State publishes notice of their approval pursuant to 15 C.F.R. § 923.84(b)(4). Please include in the public notice the list of changes to enforceable policies provided in the Table of Approved Changes, and please send a copy of the notice to OCRM.

### CHANGES APPROVED

See the enclosed Table of Approved Changes.

### QUALIFICATIONS

The Chapter 691 Rules for Underground Oil Storage Facilities and Chapter 692 Rules for the Siting of Oil Facilities include definitions which include "the United States and any agency of the United States" in the definition of a "person" subject to the requirements of those rules. Federal agencies are not subject to State regulation and States may not require federal agencies to obtain State permits unless authorized by federal law. The CZMA does not authorize States to regulate federal agencies or federal lands. State policies only apply to areas of State jurisdiction and must be legally binding under State law. See 16 U.S.C. § 1453(6a). A State law that would regulate federal agencies or federal lands cannot be applied as an enforceable policy for the purposes of state reviews authorized under the CZMA.



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Unless federal law, other than the CZMA, requires a federal agency to comply with these rules, Maine cannot require a federal agency to obtain authorization from the State. Nonetheless, federal agencies must comply with the federal consistency requirements of CZMA section 307 and NOAA's regulations, 15 C.P.R. part 930. If a federal agency proposes an action that will have reasonably foreseeable effects on uses or resources of Maine's coastal zone, then the federal agency must be consistent to the maximum extent practicable with the substantive provisions of these regulations that apply to the reasonably foreseeable effects. See 15 C.P.R. § 930.32. However, the federal agency would not have to obtain a permit or other form of authorization from the State.

Unless there is specific federal statutory authority requiring federal agencies to obtain a State permit, as a general matter OCRM will not approve a State law or regulation that is specifically applicable to federal agencies or to federal lands or waters. In this instance, however, OCRM finds that the only reference to the federal government is in the definition and that the State did not seek to establish standards specific to the federal government. In addition, for the reasons discussed above, inclusion of the federal government in the definition of a person in these rules has no effect. OCRM finds that these rules are enforceable policies of the State. OCRM encourages the State to make a technical amendment to these rules to remove references to the United States and agencies thereof from the definition.


Please also note that states may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another regulation, policy, standard, guidance, or other such requirement or document (hereinafter "referenced policy"), the referenced policy itself must be submitted to and approved by OCRM as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. Therefore, no requirement or document referenced in these approved enforceable policies may be applied for CZMA Federal Consistency review purposes unless that requirement or document has separately been approved by OCRM.

#### PUBLIC AND FEDERAL AGENCY COMMENTS

OCRM received no comments on this RPC submission.

Thank you for your cooperation in this review. If you have any questions, please contact Becca Newhall at 978-281-9237.

Sincerely,

  
for Joelle Gore, Acting Chief  
Coastal Programs Division

Enclosure: Policies Approved and Incorporated into the Maine Coastal Management Program

**TABLE of APPROVED CHANGES to the MAINE COASTAL PROGRAM:  
Changes to Department of Environmental Protection Rules,  
Chapters 100, 117, 118, 305, 372, 375, 378, 500, 691, 692, 700, and 1000; and  
Department of Public Safety Rules, Chapter 34  
July 2012**

The program changes listed in this table are comprised of amendments to or additions to the rules administered by the Department of Environmental Protection (DEP) and Department of Public Safety (DPS). These rules implement provisions of core laws of Maine's coastal program. These changes are approved as enforceable policies for the purposes of state reviews for Federal Consistency conducted under the Coastal Zone Management Act. Rule provisions identified in the text as "notes" are not included since they are for explanatory purposes only and do not have force and effect as state law. Elements of these rules, if any, that concern state procedural or program administration matters only and thus do not meet the Coastal Zone Management Act's definition of an "enforceable policy" are not included as enforceable policies.

<b>Name/Description of State or Local Law/ Regulation/Policy/ Program Authority or Change</b>	<b>State Legal Citation</b>	<b>Enforcement Mechanism(s)</b>	<b>Date Effective in State</b>
<b>ADDED:</b>			
Sets minimum standards for safe storage, possession, handling, dispensing and transportation of flammable and combustible liquids Referenced in DEP wellhead protection rules (ch. 692)	DPS rules, ch. 34	DEP or DPS permit	3.17.09, as amended
Requires registration of all new and existing underground petroleum tanks; establishes standards for the siting and installation of new facilities, and the operation and closure of all types of underground oil storage facilities; and sets requirements for reporting and clean-up of leaks or other oil pollution at underground storage facilities. Referenced in DEP wellhead protection rules (ch. 692)	DEP rules ch. 691	DEP permit	3.13.12, as amended
Protects drinking water resources from oil contamination by controlling the location of oil storage facilities in accordance with legislative policy under Maine's wellhead protection laws (38 MRSA ch. 13-D) which provide enforceable policies of Maine's coastal program	DEP rules ch. 692	DEP permit	4.24.10
Protects drinking water resources from contamination by controlling the location of certain facilities that, by their nature, pose a risk of groundwater contamination, in accordance legislative policy under Maine's wellhead protection laws (38 MRSA ch. 13-D) which provide enforceable policies of Maine's coastal program	DEP rules ch. 700	DEP permit	4.24.10

<b>AMENDED:</b>			
Addresses changes in federal permitting requirements resulting from EPA's "tailoring rule" regarding greenhouse gases; updates the State's air quality rules to include definitions of greenhouse gases and CO2 equivalent emissions to allow the State to implement its major source licensing program to address greenhouse gas emissions.	DEP rules ch. 100 (various sections)	DEP permit	4.3.11
Repeals and replaces chapter 117 of DEP's rules to clarify, update and standardize requirements for air emission sources that are required to continuously monitor their emissions and to clarify the procedural protocol for continuous emissions monitoring	DEP rules ch. 117	DEP permit	5.13.11
Implements the statutory provision (38 MRSA section 585-E, as amended) that repeals the State II vapor recovery requirements effective January 1, 2012; and adds references to the Stage I requirements of the NESHAPS to help clarify for sources that they must meet both the NESHAPS and chapter 118 requirements	DEP rules ch. 118	DEP permit	4.3.11
Amends DEP rules chapter 305, section 16, which deals with development in sand dune areas to clarify and add to the list of activities that may be conducted with permit by rule approval. Added activities include: installation of underground propane tanks; construction of a driveway or walkway in an existing developed area; and construction of open fences on frontal dune areas.	DEP rules ch. 305(16)(A)(1-2)	DEP permit by rule	6.30.11
Clarifies the standard for determining compliance with the rules' existing height limitation	DEP rules ch. 305(16)(A)(1-2)	DEP permit by rule	7.30.11
Amends definitions section as follows: new definitions for "cobble", 'cobble-trapping fence", "open fence", and "posts"; deletion of definition of "C-zone"; and renumber subparagraphs accordingly.	DEP rules ch. 305(16)(D)(6, 8, 9, 18 and 20)	DEP permit by rule	7.30.11
Amends DEP rules chapter 305, section 20, which deals with development in, on or over avian habitat to clarify that activities in, on or over high or moderate value waterfowl and wading bird habitat that may be eligible for approval under DEP's permit by rule program; subparagraphs renumbered accordingly	DEP rules ch. 305(20)(A)(4)	DEP permit by rule	6.8.12
Clarifies submission requirements regarding cutting in shorebird roosting buffer to require notice of approval of the	DEP rules ch. 305(20)(B)(4)	DEP permit by rule	6.8.12

timing of the activity from the Department of Inland Fisheries and Wildlife			
Amends submission requirements regarding new activities in a moderate value inland waterfowl and wading bird habitat that take place between April 15 and July 31 of any year to include notice of approval of the timing of the activity from the Department of Inland Fisheries and Wildlife	DEP rules ch. 305(20)(B)(6)	DEP permit by rule	6.8.12
Adds reference to specific standards for qualified new activities in previously undeveloped moderate value inland waterfowl or wading bird habitat	DEP rules ch. 305(20)(C)(4)	DEP permit by rule	6.8.12
Establishes specific standards for qualified new activities in previously undeveloped moderate value inland waterfowl or wading bird habitat	DEP rules ch. 305(20)(C)(6-7)	DEP permit by rule	6.8.12
Changes definition of "existing development area" to "development area" in keeping with changes noted above	DEP rules ch. 305(20)(D)(1)	DEP permit by rule	6.8.12
Defines "structure"	DEP rules ch. 305(20)(D)(6)	DEP permit by rule	6.8.12
Extends as follows the periods within which construction authorized by a Site Law permit must initiated and completed: from two to four years (initiation) and five to seven years (completion)	DEP rules, ch. 372(12)	DEP Site Law permit	12.27.11
Amends existing noise control rule under the Site Law to add provisions that establish sound level limits for routine operation of wind energy development	DEP rules, ch. 375(10)(I)	DEP permit	6.10.12
Changes types of petroleum-based constituents that are measured through quarterly groundwater testing when excavation is proposed below the water table	DEP rules ch. 378(3)(B)(4)	DEP permit	6.8.12
Deletes reference to a "liner" as a design option for secondary containment	DEP rules ch. 378(5)(A)(1)	DEP permit	6.8.12
Specifies that equipment in a designated refueling area must be placed on concrete or asphalt pavement	DEP rules ch. 378(5)(A)(2)	DEP permit	6.8.12
Requires use of best engineering practices to protect pipes or hoses containing petroleum products	DEP rules ch. 378(5)(A)(5)	DEP permit	6.8.12
Adds requirement that stormwater in a containment area within 300 feet of surface water be treated to remove any visible sheen or other sign of contamination prior to discharge	DEP rules ch. 378(5)(A)(5)	DEP permit	6.8.12
Changes types of petroleum-based constituents that are measured if monitoring wells are required in vicinity of on-site petroleum storage	DEP rules ch. 378(5)(A)(8)	DEP permit	6.8.12
Adds requirement regarding setback of an on-	DEP rules ch.	DEP permit	6.8.12

site fuel storage facility from a drinking water supply well	378(5)(A)(9)		
Changes design requirements for enclosures on top of concrete dikes	DEP rules ch. 378(5)(B)(4)	DEP permit	6.8.12
Changes design standards for double-walled tanks to include an accessible liquid level gauge	DEP rules ch. 378(5)(D)(2)	DEP permit	6.8.12
Removes design standards for lined fuel storage areas; see above	DEP rules ch. 378(5)(E)	DEP permit	6.8.12
Adds provisions to ensure protection of high yield sand and gravel aquifers	DEP rules ch. 378(5)(J)	DEP permit	6.8.12
Extends as follows the periods within which construction authorized by a stormwater law permit must initiated and completed: from two to four years (initiation) and five to seven years (completion)	DEP rules ch. 500(10)(A)(5-6)	DEP stormwater law permit	12.27.11
Amends definition of "Resource Protection District" and renumbers subsections accordingly	DEP rules ch. 1000(13)(A)	Local shoreland zoning permit	5.5.12
<b>DELETED:</b>			
Repealed and replaced	DEP rules ch. 117	n/a	