



Regulatory Bulletin

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MFPC sends out this periodic Regulatory Bulletin to keep members informed of the latest changes in federal and state regulations. The information is provided courtesy of the law offices of Pierce Atwood.

State Rulemaking Proceedings

MFS Report on Statewide Standards for Timber Harvesting in Shoreland Areas

A new proposal for Statewide Timber Harvesting Standards in shoreland areas has been developed. The activities of timber harvesting, skidder crossings and road construction are addressed in the proposal. The Maine Forest Service, Department of Environmental Protection and LURC met with various stakeholders, including MFPC representatives, to produce this document.

The new proposal is, by far, the most reasonable attempt in 5 years of effort to bring together the timber harvesting standards currently existing within LURC, shoreland zoning and the DEP. The proposed standards do increase regulations but retain needed flexibility to carry out timber harvesting and stream crossing activities.

Both shoreland zoning and LURC standards retain much of their separate identities within the proposal. Within the proposal, P-SL1, P-SL2, P-GP, P-WL designations are retained for shoreland areas in the LURC jurisdiction. Similarly, in shoreland zoning, stream ordering was retained. Also, critical regulatory thresholds in each jurisdiction were retained. For instance in LURC, the 50 square mile drainage point on a stream continues as the transition from a 75' streamside buffer to a 250' buffer. In shoreland zoning, this transition would continue to take place at the 25 square mile drainage point. LURC also kept the 300-acre drainage threshold as the point where shade is no longer required. In shoreland zoning, the no-shade threshold has been modified slightly.

Numerous changes have been proposed in both LURC and shoreland zoning with the more significant changes occurring in LURC.

Changes in LURC Zoning:

Exemptions covering slash left in streams, stream crossings and soil disturbance in the 300-acre drainages have been modified. Stricter and more enforceable standards for these activities now are in place.

Set backs of roads from water bodies have been increased.

The requirement to leave "shade" on P-SL2 streams has been replaced with more prescriptive standards between the 50 and 25 square mile drainage points. The "shade" standard was retained on P-SL2 streams from the 25 square mile drainage point up to the 300 acre drainage point.

Changes in both Shoreland Zoning and LURC:

A minimum tree size of 4.5 inches DBH has been established as the standard wherever volume/basal area is computed.

Incidental slash may be left below the high water mark of any water body.

Slash may be left adjacent to major streams and lakes to protect exposed soil or prevent soil disturbance by equipment.

Alternate methods to provide shade and tree retention can be made to the MFS by landowners or their agents.

DEP Construction General Permit for Storm Water Discharges from Construction Activities

The DEP has posted for public comment a draft of a construction general permit to regulate discharges of storm water from construction activities that disturb one acre or more of ground. Previously, the permit applied to five acres or more. The construction general permit would operate like a permit-by-rule, requiring submission of a Notice of Intent with information

about the planned construction project and compliance with specific performance standards. The permit does not require coverage for tree harvesting that does not involve ground disturbance. It also appears to retain an exemption for silvicultural activities that do not result in point source discharges, but that point needs clarification. **The deadline for comments on the draft permit is February 7, 2003 and the Council will be filing comments.**

DEP Storm Water Rules - Chapters 500 and 502

Following the issuance of a final permit regulating storm water discharges from construction activities, DEP is expected to reconvene a stakeholder group and work on additional changes to its existing storm water rules. These changes are expected to review integrating the construction permitting requirements into existing state programs, adding protections for at-risk streams, controlling discharges into impaired waters, adding provisions to address maintenance of manufactured systems, and adding a requirement to renew permits every five years. The Council will be following this process and its expected rule revisions.

DEP Biocriteria Rule for Rivers and Streams Chapter 579

The DEP is proposing a new rule that will establish a method for using biological criteria to determine whether rivers and streams are meeting the standards of their classification under Maine law. The proposed rule provides numeric biocriteria that interpret the existing narrative "aquatic life" standard. The proposal describes the process that DEP intends to use, including protocols for biological sampling, laboratory analysis, statistical modeling of data, and selective use of expert judgment. This will provide the first opportunity for the regulated community to comment on how the DEP evaluates compliance of rivers and streams with state water quality standards that have been in effect for many years. **A public hearing is scheduled for January 16, and comments are due February 3, 2003.**

More information can be found at:
www.state.me.us/dep/blwq/579drafrule.pdf

LURC Zoning Maps - Aroostook County

Most of the revised zoning maps for Aroostook County were adopted by the Commission at its December 11 meeting except that 23 maps will be brought back to the Commission after further revision in February.

DEP Visible Emission Regulation Chapters 100 and 101

The DEP is proposing to repeal and replace the current Chapter 101 visible emissions regulation, which establishes opacity limits for emissions from fuel-burning sources, recovery boilers, general process sources, and fugitive emission sources. The amendments would change the averaging times to facilitate comparison with in-stack continuous emission monitors. The proposal would also reduce the allowed opacity from 40% to 30% for fuel-burning equipment of less than 1,000 MMBtu per hour of heat input when firing Nos. 4, 5, or 6 fuel oil. **The deadline for comments on the proposal is January 31, 2003. More information can be found at:**
www.state.me.us/dep/air/regulations/proposed.htm

DEP Portable Fuel Container Spillage Control Rules Chapter 155

The DEP has proposed a new rule designed to reduce VOC emissions from portable fuel containers. The proposal would regulate all such portable containers or spouts with a capacity of greater than 1 quart (with minor exceptions). **A public hearing has been scheduled for February 20, 2003 and the deadline for comments is March 8, 2003.**

Department of Conservation Certified Resource Manager Grant Program

The Department of Conservation, through MFS, has proposed a new rule to establish standards for the administration of and eligibility for a grant program to encourage Maine foresters to obtain initial, independent third-party certification as an exemplary forest resource manager. **Deadline for comments on this rule is January 28, 2003. More information can be found at:**

www.state.me.us/doc/mfs/fpm/rfp_rmgr.htm

Maine Pesticide Board Proposes Changes

The Maine Board of Pesticides Control has posted on its website several draft changes to rules regarding pesticide use. The comment period on these rules is open until Jan. 31.

For more information go to:

www.state.me.us/agriculture/pesticides/rules.htm

All rules for DEP Land and Water Rules are at:
www.state.me.us/dep/blwq/rule.htm

For comment opportunities for these and other rules,
go to:

<http://www.state.me.us/dep/blwq/comment.htm>

Federal Rulemaking Proceedings

EPA Paper Coating MACT Rule - 40 C.F.R. Part 63

EPA has issued a final rule establishing national emissions standards for hazardous air pollutants for facilities that coat paper and other web substrates and are major sources of HAPs. The rule provides three different compliance options: (1) limiting emissions, (2) limiting the mass of organic HAPs put into coatings relative to the total mass of coating solids, or (3) limiting the mass of organic HAPs put into coatings relative to the total mass of coating materials. Existing affected sources must comply with the rule no later than three years after its effective date. New or reconstructed sources must comply upon start-up or the effective date, whichever is later. Maine sources must also file additional information with DEP by May 4, 2003 if they do not yet have a Title V permit or if they have three or more years left on their Title V permit. **This rule took effect December 4, 2002.**

EPA New Source Review Rules 40 C.F.R. Parts 51 and 52

EPA has issued a final rule amending the New Source Review (NSR) applicability requirements for modifications that will allow air emission sources flexibility to respond to changing markets without undergoing NSR review. The new rule: (1) changes the method of calculating whether emissions increases trigger NSR review; (2) permits the use of a plantwide applicability limit (PAL) that will allow some changes in emissions without triggering NSR review, provided that the facility overall does not exceed the PAL; (3) expands the clean unit exemption from NSR review for units that underwent BACT or LAER review within the last 10 years; and (4) adopts in rule the EPA's current policy on pollution control projects, which exempts certain projects from NSR review. **The rule**

takes effect on March 3, 2003.

EPA New Source Review for Routine Maintenance 40 C.F.R. Parts 51 and 52

EPA has proposed changes to the "routine maintenance, repair and replacement" (RMRR) exclusion from New Source Review (NSR). Currently, the rules require a case-by-case review before RMRR can be excluded from NSR. The new rule would create two categories of activities that automatically qualify as RMRR: annual maintenance costs that fall below an industry-specific allowance; and replacement of equipment with functionally equivalent equipment, provided the cost of the replaced components is below a specified threshold. **Comments are due March 3, 2003.**

EPA Plywood NESHAP - 40 C.F.R. Part 63

EPA has proposed a national emission standard for hazardous air pollutants (NESHAP) for the plywood and composite wood products source category. The standards are intended to implement § 112 of the Clean Air Act by requiring major sources of HAPs to meet emissions limitations reflecting the maximum achievable control technology (MACT). The rule would allow facilities to choose among three different compliance options: (1) production-based limitations, (2) add-on controls, or (3) emissions averaging. **Comments are due March 10, 2003.**

Reciprocating Internal Combustion Engine Rule 40 C.F.R. Part 63

EPA has proposed a rule establishing national emissions standards for hazardous air pollutants (NESHAPs) for facilities that operate reciprocating internal combustion engines (RICE). The emission standards would apply to RICE units greater than 500 horsepower that are located at major sources of air EPA toxics emissions. The proposed rule offers an exception for certain emergency power/limited use RICE units. **Comments are due Feb. 18, 2003.**

EPA Air Toxics - 40 C.F.R. Part 63

EPA has published a proposed rule to implement deadlines for approximately 80,000 industrial facilities nationwide to submit permit applications for hazardous air pollutants (HAPs) over the next 2½ years. Under the Clean Air Act, EPA was required to put in place emissions limits based on maximum achievable control

technology (MACT) for listed HAPs by November 15, 2000. EPA failed to meet this deadline for some source categories, thereby invoking a May 15, 2002 deadline requiring facilities to submit detailed applications to states, which would then make case-by-case determinations on emissions limits. This potential requirement is known as the "MACT Hammer." After delaying the MACT Hammer by requiring only partial application material earlier this year, EPA sought to extend this deadline by first two years and then by one year. Now in response to a lawsuit by the Sierra Club, EPA has agreed to a timetable for promulgating all of the remaining rules, and thereby avoids the MACT Hammer deadline. **Comments are due January 20, 2003.**

EPA Oil Storage Facility Regulations on SPCC Plans, 40 C.F.R. Part 112

EPA recently amended its Part 112 regulations governing spill prevention control and countermeasure plans for facilities that store oil above threshold amounts. The revision required that existing facilities revise their SPCC plans by February 17, 2003 and fully implement those plans by August 18, 2003. Because of an anticipated flood of individual extension requests, EPA has announced that it is extending both of these compliance dates by 60 days and, at the same time, proposing a rule to extend the deadlines by a year. Therefore, as of this writing, facilities in existence on August 16, 2002 must amend their SPCC plans by April 17, 2003, and must fully implement those plans no later than October 18, 2003.

The rule applies to users of oil and equipment containing oil (such as electrical equipment), as well as oil that is stored in tanks and containers. Oil SPCC requirements cover (among other facilities) aboveground storage tanks and containers holding 1,320 gallons or more of oil, without regard to the capacity of a single container and without including any containers less than 55 gallons. In addition, the rule continues to apply to facilities with underground storage capacity of 42,000 gallons, but buried tanks regulated under EPA or State underground storage tank rules are exempt.

Comments on the proposal to further extend the dates for compliance are due by January 29, 2003.

EPA Withdrawal of TMDL Rules - 40 C.F.R. Parts 9, 122, 123, 124, and 130

EPA has proposed to withdraw the final rule published July 13, 2000 that revised the water quality planning and management regulations and revisions to the NPDES program. The July 2000 rule amended the regulations requiring states to identify impaired waters and to establish total maximum daily loads to restore water quality in those waters, which rule would otherwise have taken effect on April 30, 2003. EPA may make significant changes for implementation of the TMDL program. **Comments on the proposed withdrawal are due January 27, 2003.**

Federal Court Decision on Canada Lynx

The Federal District Court for the District Of Columbia has ruled that the U.S. Fish and Wildlife Service (FWS) decision listing Canada lynx as a threatened species in March of 2000 was arbitrary and capricious and not in accordance with the requirements of the Endangered Species Act. The court ruled that the determination by FWS that the Northeast (including Maine and New Hampshire), Great Lakes and Southern Rockies regions do not constitute a "significant portion" of the Canada lynx range was arbitrary and capricious and must be set aside for further consideration and explanation. The court also ruled that FWS's failure to designate critical habitat for lynx violated the Act. The result of the decision is that the Service will issue a further clarification on its listing decision and whether lynx should be listed as endangered or threatened. It will also undertake further rulemaking to determine critical habitat for lynx. Significantly, the decision will require formal Endangered Species Act consultation for any federally-permitted project in areas where lynx occur until FWS completes the rulemaking process to designate critical habitat for this species, a process that may take several years. This decision is expected to result in significant delays in federal permitting timelines.



**This Regulatory Bulletin
can also be found at
www.maineforest.org**