



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office for Coastal Management
Silver Spring Metro Center, Building 4
1305 East-West Highway
Silver Spring, Maryland 20910

AUG 2 - 2016

Kathleen Leyden
Maine Department of Agriculture, Conservation, and Forestry
93 State House Station William Pavilion
Augusta, ME 04333-0093

Dear Ms. Leyden:

Thank you for the Maine Department of Agriculture, Conservation, and Forestry's June 16, 2016, request that changes to the Maine Endangered Species Act and DEP rules for implementing the Site Law, and other rules be incorporated into the Maine Coastal Management Program. You requested that the changes described below be incorporated as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and the National Oceanic and Atmospheric Administration's (NOAA's) Office for Coastal Management's¹ *Program Change Guidance (July 1996)*.

The Office for Coastal Management received no comments on this RPC submission. Based on our review of your submission, we concur that the changes are RPCs and approve the incorporation of the changes as enforceable policies of the Maine Coastal Management Program. Federal Consistency will apply to the approved changes to enforceable policies only after you publish notice of this approval pursuant to 15 C.F.R. § 923.84(b)(4) and the Office for Coastal Management's *Addendum to the July 1996 Program Change Guidance (November 2013)*. Please include in the public notice the list of changes provided in this letter, and send a copy of the notice to the Office for Coastal Management.

CHANGES APPROVED

See enclosed list of the changes incorporated into the Maine CMP.

QUALIFICATION

The following standard qualification applies to all program changes approved by the Office for Coastal Management.


States may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another statute, regulation, policy, standard, guidance, or other such requirement or document (hereinafter "referenced policy"), the referenced policy itself must be submitted to and approved by the Office for Coastal Management as an enforceable policy in order to be applied

¹ NOAA's Office for Coastal Management was formerly the Office of Ocean and Coastal Resource Management and the Coastal Services Center; these two offices were integrated in September 2014 into the Office for Coastal Management.

under the federal consistency review provisions of the CZMA. Therefore, no referenced policy in these approved enforceable policies may be applied for federal consistency unless that referenced policy has been separately approved by the Office for Coastal Management.

Thank you for your cooperation in this review. Please contact Becca Newhall at (978) 281-9237, if you have any questions.

Sincerely,


for Joelle Gore, Chief
Stewardship Division

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

Enclosure to the Office for Coastal Management's 08-02-2016 Approval of the Incorporation of Changes to the
Maine State Coastal management Program

Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
ADDED:		mm/dd/yyyy	mm/dd/yyyy
Statute:			
Consolidates and replaces prior MESA provisions regarding education and research-related and incidental take authorization and adds a new section allows for development and approval of an incidental take plan that covers a "widespread activity", subject to conditions to safeguard listed species' prospects of recovery	12 M.R.S. §12808-A	4.1.16	4.1.16
Administrative:			
Adds an explanatory introduction section to DEP's ch. 373 rules which establish financial and technical capacity requirements for an applicant for a Site law permit; technical correction – renumbers sections	CMR 06-096, ch. 373, section 1	4.7.16	6.3.16
Adds standard, formerly addressed under DEP rules ch. 373, regarding assurance of adequate provision for solid waste disposal to the DEP's ch. 375, which implements the Site Law's "no unreasonable adverse effect on the environment" standard	CMR 06-096, ch. 375, section 16	4.7.16	6.3.16
Adds standard, formerly addressed under DEP rules ch. 373, regarding assurance of adequate provision for control of odors to the DEP's ch. 375, which implements the Site Law's "no unreasonable	CMR 06-096, ch. 375, section 17	4.7.16	6.3.16

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adverse effect on the environment" standard			
Adds standard, formerly addressed under DEP rules ch. 373, regarding assurance of adequate provision for securing and maintain sufficient and healthful water supplies to the DEP's ch. 375, which implements the Site Law's "no unreasonable adverse effect on the environment" standard	CMR 06-096, ch. 375, section 18	4.7.16	6.3.16
Establishes requirements for a Site Law permit for a "long-term construction project", defined as project authorized by an individual Site Law permit or amendment to a Site Law permit "for construction that either is not anticipated at the time of approval to be substantially completed, or is not substantially completed, within ten years from the date" the permit is approved; includes provisions to ensure periodic reporting, submission of updated information, and assurance that a "long-term construction project" is subject to Site Law requirements in place at the time the construction is undertaken; repeals and replaces former chapter 380, which established a little-used Site Law "planning permit"	CMR 06-096, ch. 380	4.7.16	6.3.16
MODIFIED:			
Statute:			
Updates cross-reference in Maine Endangered Species Act (MESA)	12 M.R.S. §12808, sub-§§1, 1-A	4.1.16	4.1.16
Administrative:			
Amends the definition of "ambient increment" in DEP's air quality rules to clarify that DEP shall	CMR 06-096, ch. 100,	5.3.16	5.22.16

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presume actual emissions from 2010 to be representative of normal operation as concerns 'PM2.5', a type of particulate pollution	section 11(C)		
Amends the definition of "regulated pollutant" in DEP's air quality rules to clarify that nitrous oxides as well as volatile organic compounds are precursors to ozone pollution	CMR 06-096, ch. 100, section 149(I)(3)	5.3.16	5.22.16
Amends the definition of "significant emissions" in DEP's air quality rules to clarify a reference to nitrous oxide (NOx)	CMR 06-096, ch. 100, section 156(A)	5.3.16	5.22.16
<p>Amends the financial capacity-related provisions in DEP rules ch, 373, which implement the financial and technical capacity standard of the Site Law (38 M.R.S. §484(1)), to clarify:</p> <ul style="list-style-type: none"> • the nature and scope of the standard (section 2(A)); • information that must be submitted to show financial capacity to design, construct, operate, and maintain a proposed Site Law project (section 2(B)); and • financial capacity-related terms and conditions which may be included in a Site Law permit, including provision for a performance bond (section 2(C)) 	CMR 06-096, ch. 373, section 2 (as renumbered)	4.7.16	6.3.16
Amends the technical capacity-related provisions in DEP rules ch., 373, which implement the financial and technical capacity standard of the Site Law (38 M.R.S. §484(1)), to clarify:	CMR 06-096, ch. 373, section 3 (as renumbered)	4.7.16	6.3.16

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Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
<ul style="list-style-type: none"> • the nature and scope of the standard (section 3(A)); • information that must be submitted to show financial capacity to design, construct, operate, and maintain a proposed Site Law project (section 3(B)); and • financial capacity-related terms and conditions which may be included in a Site Law permit, including provision for a performance bond (section 3(C)) 			
<p>Makes technical correction changing the term “board” to “department” in a variety of places in ch. 375 to accurately reflect the role of the commissioner of Department of Environment Protection and its staff, as opposed to the Board of Environmental Protection (this citizen board is a sub-unit of the department), in rulemaking and permitting under the Site Law</p>	<p>CMR 06-096, ch. 375, various section</p>	<p>4.7.16</p>	<p>6.3.16</p>
<p>Corrects typo</p>	<p>CMR 06-096, ch. 501, section 1</p>	<p>5.3.16</p>	<p>5.22.16</p>
<p>Corrects typo</p>	<p>CMR 06-096, ch. 501, section 2(H) and</p>	<p>5.3.16</p>	<p>5.22.16</p>
<p>Amends DEP's rules (ch. 501) regarding stormwater management compensation fees and mitigation credits) to clarify mitigation credits applicable to certain activities involving landscaped areas, parking lots and rooftops</p>	<p>CMR 06-096, ch. 501, section 3(A), Table 2</p>	<p>5.3.16</p>	<p>5.22.16</p>

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Technical correction	CMR 06-096, ch. 501, section 3(B) and (C)	5.3.16	5.22.16
Technical correction	CMR 06-096, ch. 691, section 1	3.14.16	4.3.16
Technical correction	CMR 06-096, ch. 691, section 3(K)	3.14.16	4.3.16
Technical, editorial corrections	CMR 06-096, ch. 691, section 3(FF),(YY),(ZZ), and (BBB)	3.14.16	4.3.16
Technical, editorial corrections	CMR 06-096, ch. 691, section 4(O)	3.14.16	4.3.16
Technical, editorial corrections	CMR 06-096, ch. 691, section 5((B)(3-4)	3.14.16	4.3.16
Technical, editorial corrections	CMR 06-096, ch. 691, section 5(C)(1)	3.14.16	4.3.16
Technical, editorial corrections, including reference to the Maine Ground and Surface Waters Cleanup and Response Fund	CMR 06-096, ch. 691, section 5(D)(12, 18, 20, and 21)	3.14.16	4.3.16
Technical, editorial correction	CMR 06-096, ch. 691, section 5(F)	3.14.16	4.3.16
Technical, editorial correction	CMR 06-096, ch. 691, section 6(B)(4),(6)	3.14.16	4.3.16
Technical, editorial correction	CMR 06-096, ch. 691, section 7(A)	3.14.16	4.3.16
Technical, editorial correction	CMR 06-096, ch. 691,	3.14.16	4.3.16

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	section 7(A)		
Technical, editorial correction	CMR 06-096, ch. 691, section 8(B)(4)	3.14.16	4.3.16
Technical, editorial correction	CMR 06-096, ch. 691, section 9(B)(4)	3.14.16	4.3.16
Technical, editorial correction	CMR 06-096, ch. 691, section 10(C)(2)	3.14.16	4.3.16
Technical, editorial correction	CMR 06-096, ch. 691, section 11(B)(1)	3.14.16	4.3.16
Technical, editorial correction	CMR 06-096, ch. 691, section 11(C)(3),(4)	3.14.16	4.3.16
Technical, editorial correction, including correction of cross-reference	CMR 06-096, ch. 691, section 12(C)(2)	3.14.16	4.3.16
Corrects reference to the Maine Ground and Surface Waters Cleanup and Response Fund	CMR 06-096, ch. 691, section 12(D)	3.14.16	4.3.16
Technical, editorial correction	CMR 06-096, ch. 691, section 12(H)	3.14.16	4.3.16
DELETED:			
Statute:			
Repeals education and research-related and incidental take authorization provisions in MESA, which are replaced by new 12 M.R.S. §12808-A. See above.	12 M.R.S. §12808, sub-§§2, 3	4.1.16	4.1.16
Administrative:			

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Repeals section addressing assurance of adequate provision for solid waste disposal in DEP's Site Law rules regarding applicant's financial and technical capacity; this provision, as amended, is re-enacted in DEP rules ch. 375 (see above)	CMR 06-096, ch. 373, section 3	4.7.16	6.3.16
Repeals section addressing assurance of adequate provision for control of odors in DEP's Site Law rules regarding applicant's financial and technical capacity; this provision, as amended, is re-enacted in DEP rules ch. 375 (see above)	CMR 06-096, ch. 373, section 4	4.7.16	6.3.16
Repeals section addressing assurance of adequate provision for securing and maintaining sufficient and healthful water supplies in DEP's Site Law rules regarding applicant's financial and technical capacity; this provision, as amended, is re-enacted in DEP rules ch. 375 (see above)	CMR 06-096, ch. 373, section 5	4.7.16	6.3.16
Repealed and replaced; see above	CMR 06-096, ch. 380	4.7.16	6.3.16