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STATE OF MAINE INFRASTRUCTURE DEMONSTRATION FOR THE 2008 LEAD NATIONAL AMBIENT AIR QUALITY STANDARD

1. BACKGROUND

On October 15, 2008, the United States Environmental Protection Agency (EPA) revised the federal lead standard. The revised standard of 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), averaged over a three-month period, is 90 percent more stringent than the former 1.5 $\mu\text{g}/\text{m}^3$ standard and carries several new requirements with it. When the EPA promulgates a new standard, or as in the case of lead, revises an existing standard, Clean Air Act (CAA) Section 110 (a)(1) requires each state to revise their State Implementation Plan (SIP) to show that they have the authority and programs needed to implement, maintain and enforce the standard, regardless of designation status. CAA Section 110 (a)(2) establishes the specific elements that these SIP submissions must contain.

This SIP revision is being submitted to provide an update of the section 110(a)(2)(A) infrastructure requirements for the 2008 lead NAAQS, and outlines sections 110(a)(2)(A) through (M) with various Maine provisions supporting the requirements:

- Enforceable Emission Limitations and Other Control Measures (§110(a)(2)(A))
- Ambient Air Quality Monitoring, Compilation, Analysis and Reporting (§110(a)(2)(B))
- Enforcement and Stationary Source Permitting (§110(a)(2)(C))
- Interstate Transport (§110(a)(2)(D))
- Assurance of Adequate Resources (§110(a)(2)(E))
- Stationary Source Monitoring System and Reporting (§110(a)(2)(F))
- Emergency Powers and Contingency Plans (§110(a)(2)(G))
- Authority for SIP Revisions for the Revised NAAQS (§110(a)(2)(H))
- Authority for SIP Revisions for New Nonattainment Areas (§110(a)(2)(I))
- Consultation, Public Notification and Prevention of Significant Deterioration ((PSD/Visibility) (§110(a)(2)(J))
- Air Quality Monitoring and Reporting (§110(a)(2)(k))
- Permitting Fees (§110(a)(2)(L))
- Consultation/Participation with Affected Local Entities (§110(a)(2)(M))

2.0 DISCUSSION

Each of the requirements of section 110(a)(2) of the CAA (Subparagraphs A–M) and Maine’s satisfaction of these requirements¹ is presented below.

¹ The federally-enforceable SIP for Maine is found at 40 Code of Federal Regulations Part 52, Subpart S.

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2.1 CAA Section 110(a)(2)(A)

Federal Requirement

Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act. Maine may make changes to its laws and regulations that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

Discussion

When EPA first adopted a lead standard in 1978, it was estimated that over 90 percent of ambient lead concentrations were attributable to the use of lead in gasoline. The phase-out of lead in gasoline began in the 1970's, and the CAA Amendments of 1990 mandated the elimination of lead from all U.S. motor fuel by January 1, 1996, specifying a 0.05 grams of lead per gallon limit. As a result of these regulations, maximum ambient lead concentrations in most areas are far lower than the levels of the 1970's. On October 13, 2009, Maine submitted its designation recommendations for the revised lead NAAQS to EPA. Maine recommended that the entire state of Maine be designated as "unclassifiable" for the revised lead NAAQS until sufficient data is available to designate areas as attainment or nonattainment.²

Maine has established laws and regulations that include enforceable emissions limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA.³ At present, Maine's statutory authority is set out in 38 MRSA, Chapter 4 "Protection and Improvement of Air". Legislative authority giving the Maine Board of Environmental Protection the authority to promulgate Regulations is codified at 38 MRSA Chapter 2, Subchapter 1: Organization and Powers." Statutory authority to establish emission standards and regulations implementing ambient air quality standards is contained in 38 MRSA Chapter 4, Sections 585 and 585-A. In addition to statutory authority, the Maine SIP contains a number of rules relevant for this federal requirement. Table 1 provides a listing of those rules that specifically address lead, as well as those rules that are primarily targeted toward the control of particulate matter, which sometimes contains lead.

² Maine discontinued lead monitoring in the early 1990's primarily because monitored levels were significantly lower than the 1978 lead NAAQS. The Department is working to establish a lead monitoring site in Portland that will be used to track compliance with the 2008 lead NAAQS. The "unclassifiable" designation will be revised once sufficient data is available

³ In 2011, the Maine Legislature enacted 38 MRSA 584-A, which states in relevant part: "For purposes of statutory interpretation, rules, licensing determinations, policy guidance and all other actions by the department or the board, any reference to an ambient air quality standard is interpreted to refer to the national ambient air quality standard established pursuant to Section 109 of the federal Clean Air Act, 42 United States Code, Section 7409, as amended." The Department is amending its Chapter 110 Ambient Air Quality Regulations rule to reflect this change. A review of The Department's rules revealed that no further regulatory changes are necessary.

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Table 1

Maine Rules Specifically Addressing Lead	Maine Rules Targeted at Particulate Matter
Chapter 100 Definitions Regulation	Chapter 101 Visible Emissions Regulation
Chapter 110 Ambient Air Quality Standards	Chapter 102 Open Burning Regulation
Chapter 115 Major and Minor Source Air Emission License Regulations	Chapter 103 Fuel Burning Equipment Particulate Emission Standard
Chapter 121 Emission Testing of Resource Recovery Facilities	Chapter 104 Incinerator Particulate Emission Standard
Chapter 137 Emission Statements	Chapter 105 General Process Source Particulate Emission Standard
Chapter 140 Part 70 Air Emission License Regulations	Chapter 109 Emergency Episode Regulation
Chapter 143 New Source Performance Standards (NSPS)	Chapter 114 Classification of Air Quality Control Regions
Chapter 144 National Emission Standards for Hazardous Air Pollutants (NESHAPS)	Chapter 116 Prohibited Dispersion Techniques
	Chapter 117 Source Surveillance
	Chapter 126 Capture Efficiency Test Procedures
	Chapter 141 Conformity of General Federal Actions

2.2 CAA Section 110(a)(2)(B)

Federal Requirement

Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

Discussion

In 2008, EPA issued minimum lead monitoring requirements concurrently with the revised lead NAAQS. At that time, the only requirement applicable to Maine would have meant one monitor in the Portland CBSA (Core-based statistical area). EPA subsequently reconsidered the monitoring requirements. The final monitoring requirements⁴ call for

⁴ <http://cfr.vlex.com/vid/51-320-annual-air-quality-data-report-19785104>

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lead monitoring at urban NCORE sites only (Maine has no urban NCORE sites), so there is no requirement for lead monitoring in Maine. However, Maine has prepared and submitted an annual air monitoring network plan⁵ that calls for Maine to analyze selected filters collected over the last eight years from all of the PM10 sites in the state for lead levels as a preliminary assessment of the need for future lead monitoring. Maine is committed to work with EPA through the monitoring network planning process to determine the need, and scope of any future lead monitoring network.

2.3 CAA Section 110(a)(2)(C)

Federal Requirement

Include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.

Discussion

Maine has established and currently operates a program to provide for the enforcement of the enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA and to regulate the modification and construction of any stationary source within areas covered by its SIP as necessary to assure the NAAQS are achieved, including permit programs required in parts C and D. Since Maine is designated as “unclassifiable” for lead, with no nonattainment areas, only prevention of significant deterioration (PSD) requirements are applicable.

Maine’s authority for enforcing SIP measures is established in 38 MRSA Sections 347-A through 349, and includes processes for both civil and criminal enforcement actions. Construction of new or modified stationary sources in Maine is regulated by the 06-096 CMR Chapter 115 Major and Minor Source Air Emission License Regulations and the 06-096 CMR Chapter 140 Part 70 Air Emission License Regulations which require best available control technology (BACT) controls for PSD sources, including lead.

2.4 CAA Section 110(a)(2)(D)

Federal Requirement

Contain adequate provisions – (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will – (I) contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance

⁵ The 2012 Air Monitoring Network Plan was submitted on May 25, 2011.

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with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).

Discussion

Lead is a primary pollutant that does not undergo atmospheric transformation. Furthermore, because lead particles are relatively heavy, they tend to settle out quickly. As a result, lead impacts are extremely localized, with the highest concentrations occurring in the immediate vicinity of the emissions source. Given the characteristics of lead, only states with sources having significant emissions located very near a state or international boundary have the potential to contribute to nonattainment or interfere with maintenance of the federal lead standard in another area via transport. In recent guidance, EPA proffered a two-pronged test for determining significant contributions. Under this protocol, only sources located within 2 miles of another state or international boundary having lead emissions of 0.5 tons per year of greater would have the potential to contribute significantly to nonattainment or interfere with maintenance of the lead NAAQS in another state. A review of Maine's point source emissions inventory, indicated that no Maine source had lead emission of more than 0.125 tons per year.⁶ Based on this, Maine sources do not contribute significantly to nonattainment or interfere with maintenance of the lead NAAQS.

Maine's Prevention of Significant Deterioration (PSD) permitting programs under the 06-096 CMR Chapter 115 Major and Minor Source Air Emission License Regulations also ensure that new and modified major sources of lead emissions do not contribute significantly to nonattainment or interfere with maintenance of the lead NAAQS.

With respect to visibility, EPA has determined although lead can be a component of particulates, it comprises only a small fraction of coarse and fine particles with only an insignificant impact on visibility. As a result, EPA is not requiring this infrastructure SIP to protect visibility.

Finally, nothing in Maine's statutory or regulatory authority prohibits or otherwise interferes with Maine's ability to exercise sections 126 and 115 of the CAA.

2.5 CAA Section 110(a)(2)(E)

Federal Requirement

Provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan

⁶ Incidentally, this source is located more than 100 miles from the nearest state or international border.

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provision, the state has responsibility for ensuring adequate implementation of such plan provision.

Discussion

With respect to the obligations under this section, Maine assures EPA that it has adequate authority under state law pursuant to 38 MRSA, Chapter 4 “Protection and Improvement of Air” to carry out its SIP obligations pursuant to the lead NAAQS. Maine DEP does not believe that there is any prohibition in any federal or state law that would prevent it from carrying out its SIP or any portion thereof. Maine DEP assures EPA that through the State of Maine General Fund, the Maine Environmental Protection Fund, and through the Title V fee program, it has, and will continue to have, funding to carry out its SIP obligations. Further, the Maine DEP believes its funding sources are sufficient to provide adequate personnel for those purposes; however, Maine may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present Maine fulfills this obligation by virtue of having adequate personnel and funding through the CAA §105 grant process (federal grant funds), the State of Maine general fund (state tax revenues), and appropriated special funds collected by the State of Maine from application fees, permit fees, renewal fees, and civil or administrative penalties or fines. Maine does not anticipate the need for additional resources beyond those to be appropriated in the above manner to carry out its SIP requirements.

2.6 CAA Section 110(a)(2)(F)

Federal Requirement

Require, as may be prescribed by the Administrator – (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection.

Discussion

Maine DEP maintains an emissions inventory with information on lead emissions from nearly 200 stationary sources in Maine. The Federal Air Emissions Reporting Requirements Rule requires states to collect and report lead emissions data for facilities emitting more than 5 tons of lead per year. Maine’s Chapter 06-096 CMR 137 Emissions Statements rule requires all stationary sources emitting more than 200 pounds of lead per year to report their emissions, with sources subject to hazardous air pollutant reporting requirements obligated to report if their emissions are more than 100 pounds per year.⁷

⁷ Almost all stationary sources are obligated to report lead emissions, even though their emissions are well below the 100/200 pounds reporting thresholds. This results because a stationary source that is licensed to emit any one pollutant at, or above, the minimum required reporting level must collect and report the data for all pollutants.

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Maine requires that owners or operators of stationary sources monitor and submit periodic reports on the nature and amounts of emissions and emissions-related data from the sources (38 MRSA §590; 06-096 CMR Chapter 115; 06-096 CMR 117; 06-096 CMR Chapter 137; and 06-096 CMR Chapter 140). This may include the installation, maintenance and replacement of equipment, where appropriate. The information submitted to the MEDEP is available to the public at reasonable times for public inspection pursuant to Maine law. Maine will continue to require reporting of emissions but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. Except as specifically exempted by the Maine statute (1 MRSA Chapter 13 Public Records and Proceedings), Maine makes all records, reports or information obtained by the MEDEP or referred to at public hearings available to the public.

2.7 CAA Section 110(a)(2)(G)

Federal Requirement

Provide for authority comparable to that in section 303⁸ and adequate contingency plans to implement such authority;

Discussion

For lead, Maine has authority comparable to that in section 303 in statute. 38 MRSA §347-A provides the Commissioner of the Maine Department of Environmental Protection to issue an emergency order that halts pollutant emissions that could cause a public emergency or harm. In addition, the Department also maintains air pollution information in a form that is readily available to the public on its website <http://www.maine.gov/dep/air/ozone/index.html>. Given that Maine does not have any relatively large sources of lead emissions, the Department does not believe that a more specific contingency plan is necessary.

⁸ Section 303- Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States District court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

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2.8 CAA Section 110(a)(2)(H)

Federal Requirement

Provide for revision of such plan - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act.

Discussion

Maine statute (38 MRSA §581; 38 MRSA 341-D) provides authority to control the emission of air contaminants and to promulgate rules and plans to control air emissions. Maine will review and revise its SIP from time to time as may be necessary to take account of revisions of such primary or secondary NAAQS or the availability of improved or more expeditious methods of attaining such standard and whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements established under the CAA.

2.9 CAA Section 110(a)(2)(I)

Federal Requirement

In the case of a plan or plan revision for an area designated as a non-attainment area, meet the applicable requirements of part D (relating to non-attainment areas).

Discussion

As noted in the introduction text to the draft EPA lead infrastructure SIP guidance, EPA does not expect infrastructure SIP submissions to address CAA subsection 110(a)(2)(I).

2.10 CAA Section 110(a)(2)(J)

Federal Requirement

Meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection).

Discussion

CAA Section 121 requires states to provide a satisfactory process for consulting with general purpose local governments, designated organizations of elected local government officials, and any affected federal land manager in carrying out CAA requirements. Maine will meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection); but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

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The Maine Administrative Procedures Act (Maine Revised Statutes Title 5, Chapter 375, subchapter 2) requires notification and provision of comment opportunities to all parties affected by proposed regulations. All SIP revisions undergo public notice and opportunity for hearing, which have allowed for comment by the public which includes local political subdivisions. Maine believes the public notice and hearing processes also fulfill the section 121 consultation process. The submitted attainment plans and regulations in the approved Maine SIP specify organizations responsible for implementing and enforcing the plans.

The MEDEP makes real-time and historical air quality information available on its Web site. All relevant SIPs and plans to achieve the NAAQS contain public notification provisions related to air monitoring levels such as Air Quality Forecasts (AQI) and the MEDEP's website. The MEDEP provides extended range air quality forecasts, which give the public advanced notice of air quality events. This advance notice allows the public to limit their exposure to unhealthy air and enact a plan to reduce pollution at home and at work. The MEDEP forecasts daily ozone and particle levels and issues these forecasts to the media and to the public via its website, telephone hotline and email. In the event that a lead monitor is established in Maine at some point in the future, the Department will also put the data collected from this monitor on its website.

With respect to PSD requirements, Maine has a SIP-approved PSD program that complies with the requirements for lead. Finally, regarding visibility programs, EPA guidance concludes that since the visibility protection and regional haze program requirements do not change with the establishment of a new federal primary standard, there are no new applicable visibility protection obligations under CAA Section 110 (a)(2)(J) for the 2008 federal lead standard.

2.11 CAA Section 110(a)(2)(K)

Federal Requirement

Provide for - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

Discussion

EPA anticipates that the predominant type of air quality modeling conducted for implementing the federal lead standard will be source-oriented dispersion modeling, using models such as AERMOD. Maine has extensive experience related to modeling for compliance with the federal standards, and will continue to perform modeling as required under the CAA and State laws and regulations (06-096 CCMR Chapter 115, 06-096 CMR Chapter 116 and 06-096 CMR Chapter 140) to demonstrate attainment or for other planning purposes, and will continue to submit the Air Quality modeling data as part of Maine's relevant SIP submissions and through federal grant commitments or in

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other ways that EPA may request. In addition to modeling performed as part of the licensing process, Maine also actively participates in regional attainment modeling efforts.

2.12 CAA Section 110(a)(2)(L)

Federal Requirement

Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover - (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under Title V.

Discussion

In a manner consistent with Maine law (38 MRSA §353-A), Maine will continue to require the owner or operator of each major stationary source to pay to the permitting authority (MEDEP), as a condition of any permit required under this Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V pursuant to Maine law. Maine has a fully approved Title V operating permit program (effective December 17, 2001). Maine may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

2.13 CAA Section 110(a)(2)(M)

Federal Requirement

Provide for consultation and participation by local political subdivisions affected by the plan.

Discussion

Maine will continue to provide for consultation and participation by local political subdivisions affected by the SIP pursuant to the public notice laws found in the Maine Administrative Procedures Act (MRSA, Part 18, Chapter 375), as applicable. Furthermore, all SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. We believe the public notice and hearing processes fulfill the requirements for consultation with local political subdivisions affected by the SIP.

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**State of Maine
 Certification of State Implementation Plan Adequacy
 Required Section 110(a)(1) and (2) SIP Elements
 For the 2008 lead NAAQS**

CAA Section	Requirement	Maine Program
<p>110(a)(2)(A)-Emission limits and other control measures</p>	<p>Enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related measures</p>	<p>38 MRSA §581. Declaration of findings and intent</p> <p>38 MRSA §581 states in relevant part:</p> <p><i>The Legislature finds and declares that air pollution exists with varying degrees of severity within this State; that such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is aesthetically unappealing.</i></p> <p><i>The Legislature by this chapter intends to exercise the police power of the State in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that reasonably insures the continued health, safety and general welfare of all of the citizens of the State; protects property values and protects plant and animal life.</i></p> <p>38 MRSA §585. Establishment of emission standards</p> <p>38 MRSA §585 states, in relevant part:</p> <p><i>The board may establish and may amend standards, herein called "emission standards", limiting and regulating in a just and equitable manner the amount and type of air contaminants which may be emitted to the ambient air within a region. Such emission standards shall be designed to prevent air pollution and to achieve and maintain the ambient air quality standards within the region in which applicable.</i></p> <p>38 MRSA §585-A. Establishment of standards</p> <p>38 MRSA §585-A states, in relevant part:</p>

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		<p><i>The board may establish and amend regulations to implement ambient air quality standards and emission standards. These regulations shall be designed to achieve and maintain ambient air quality standards and emission standards within any region and prevent air pollution.</i></p> <p>38 MRSA §590. Licensing</p> <p>38 MRSA §590 states, in relevant part:</p> <p><i>1. License required. After ambient air quality standards and emission standards have been established within a region, the board may by rule provide that a person may not operate, maintain or modify in that region any air contamination source or emit any air contaminants in that region without an air emission license from the department.</i></p> <p>06-096 CMR Chapters 100 through 158 include a number of rules addressing the control of particulate emissions. These rules include:</p> <ul style="list-style-type: none">06-096 CMR Chapter 100 Definitions Regulation06-096 CMR Chapter 101 Visible Emissions Regulation06-0-96 CMR Chapter 102 Open Burning Regulation06-096 CMR Chapter 103 Fuel Burning Equipment Particulate Emission Standard06-096 CMR Chapter 104 Incinerator Particulate Emission Standard06-096 CMR Chapter 105 General Process Source Particulate Emission Standard06-096 CMR Chapter 109 Emergency Episode Regulation06-096 CMR Chapter 110 Ambient Air Quality Standards06-096 CMR Chapter 114 Classification of Air Quality Control Regions06-096 CMR Chapter 115 Major and Minor Source Air Emission License Regulations06-096 CMR Chapter 116 Prohibited Dispersion Techniques06-096 CMR Chapter 117 Source Surveillance06-096 CMR Chapter 121 Emission Testing of Resource Recovery Facilities06-096 CMR Chapter 126 Capture Efficiency Test Procedures06-096 CMR Chapter 137 Emission Statements06-096 CMR Chapter 139 Transportation Conformity06-096 CMR Chapter 140 Part 70 Air Emission License Regulations06-096 CMR Chapter 141 Conformity of General Federal Actions06-096 CMR Chapter 143 New Source Performance Standards (NSPS)06-096 CMR Chapter 146 Diesel-Powered Motor Vehicle Emission Standards
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<p>110(a)(2)(B)- Ambient air quality monitoring/data system</p>	<p>Provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request</p>	<p>In 2008, EPA issued minimum lead monitoring requirements concurrently with the revised lead NAAQS. At that time, the only requirement applicable to Maine would have meant one monitor in the Portland CBSA (Core-based statistical area). EPA subsequently reconsidered the monitoring requirements. The final monitoring requirements⁹ call for lead monitoring at urban NCORE sites only (Maine has no urban NCORE sites), so there is no requirement for lead monitoring in Maine. However, with a much lower standard, Maine will be analyzing selected filters collected over the last eight years from all of the PM10 sites in the state for lead levels, and based on those results will decide whether a monitoring network for lead will be needed in the future.</p>
<p>110(a)(2)(C)-Program for enforcement of control measures</p>	<p>Program for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet PSD and NSR requirements</p>	<p>38 MRS § 347-A. Violations.</p> <p>38 MRS § 347-A states, in relevant part:</p> <p><i>1. General procedures. This subsection sets forth procedures for enforcement actions.</i></p> <p><i>A. Whenever it appears to the commissioner, after investigation, that there is or has been a violation of this Title, of rules adopted under this Title or of the terms or conditions of a license, permit or order issued by the board or the commissioner, the commissioner may initiate an enforcement action by taking one or more of the following steps:</i></p> <p style="padding-left: 40px;"><i>(1) Resolving the violation through an administrative consent agreement pursuant to subsection 4, signed by the violator and approved by the board and the Attorney General;</i></p> <p style="padding-left: 40px;"><i>(2) Referring the violation to the Attorney General for civil or criminal prosecution;</i></p> <p style="padding-left: 40px;"><i>(3) Scheduling and holding an enforcement hearing on the alleged violation pursuant to subsection 2; or</i></p> <p style="padding-left: 40px;"><i>(4) With the prior approval of the Attorney General, commencing a civil action pursuant to section 342, subsection 7 and the Maine Rules of Civil Procedure, Rule 3.</i></p> <p><i>B. Before initiating a civil enforcement action pursuant to paragraph A, the commissioner shall issue a notice of violation to the person or persons the commissioner considers likely to be responsible for the alleged violation or violations. The notice of violation must describe the alleged violation or violations, to the extent then known by the commissioner; cite the applicable law, rule and term or condition of the license, permit or order alleged to have been violated; and provide time periods for the alleged violator to</i></p>

⁹ <http://cfr.vlex.com/vid/51-320-annual-air-quality-data-report-19785104>

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		<p><i>take necessary corrective action and to respond to the notice. For violations the commissioner finds to be minor, the notice may state that further enforcement action will not be pursued if compliance is achieved within the time period specified in the notice or under other appropriate circumstances. The commissioner is not required to issue a notice of violation before issuing an emergency order pursuant to subsection 3 or other applicable provision of this Title; nor is the commissioner required to issue a notice of violation before referring an alleged violation to the Attorney General for criminal prosecution or in a matter requiring immediate enforcement action.</i></p> <p><i>2. Hearings. The commissioner shall give at least 30 days' written notice to the alleged violator of the date, time and place of any hearing held pursuant to subsection 1, paragraph A, subparagraph (3). The notice must specify the act or omission which is claimed to be in violation of law or regulation.</i></p> <p><i>Any hearing conducted under the authority of this subsection must be in accordance with the provisions of Title 5, chapter 375, subchapter IV. At the hearing, the alleged violator may appear in person or by attorney and answer the allegations of violation and file a statement of the facts, including the methods, practices and procedures, if any, adopted or used by that person to comply with this chapter and present such evidence as may be pertinent and relevant to the alleged violation.</i></p> <p><i>After hearing, or in the event of a failure of the alleged violator to appear on the date set for a hearing, the commissioner shall, as soon as practicable, make findings of fact based on the record and, if the commissioner finds that a violation exists, shall issue an order aimed at ending the violation. The person to whom an order is directed shall immediately comply with the terms of that order.</i></p> <p><i>3. Emergency orders. Whenever it appears to the commissioner, after investigation, that there is a violation of the laws or regulations the department administers or of the terms or conditions of any of the department's orders that is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the commissioner may order the person or persons causing or contributing to the hazard to immediately take such actions as are necessary to reduce or alleviate the danger. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. In the event that the persons are so numerous that the specified method of service is a practical impossibility or the commissioner is unable to identify the person or persons causing or contributing to the hazard, the commissioner shall make the order known through prominent publication or announcement in news media serving the affected area.</i></p> <p><i>The person to whom the order is directed shall comply with the order immediately. The order may not be appealed to the Superior Court in the manner provided in section 346, but within 48 hours after receipt of the order the person may apply to the board for a hearing on the order. Within 7 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote.</i></p>
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		<p><i>The nature of the hearing is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order was directed. The decision of the board may be appealed to the Superior Court in the manner provided by section 346.</i></p> <p><i>4. Administrative consent agreements. Following issuance of a notice of violation pursuant to subsection 1 and after receipt of the alleged violator's response to that notice or expiration of the time period specified in the notice for a response, in situations determined by the commissioner appropriate for further enforcement action, the commissioner may send a proposed administrative consent agreement to the alleged violator or violators.</i></p> <p><i>A. Except as otherwise expressly agreed to by the Attorney General, all proposed administrative consent agreements must be reviewed and approved by the Department of the Attorney General before being sent to the alleged violator.</i></p> <p><i>B. All proposed administrative consent agreements sent to the alleged violator must be accompanied by written correspondence from the department, in language reasonably understandable to a citizen, explaining the alleged violator's rights and responsibilities with respect to the proposed administrative consent agreement. The correspondence must include an explanation of the factors considered by the commissioner in determining the proposed civil penalty, a statement indicating that the administrative consent agreement process is a voluntary mechanism for resolving enforcement matters without the need for litigation and an explanation of the department's procedures for handling administrative consent agreements. The correspondence must also specify a reasonable time period for the alleged violator to respond to the proposed administrative consent agreement and offer the opportunity for a meeting with department staff to discuss the proposed agreement. Consent agreements shall, to the greatest extent possible, clearly set forth all the specific requirements or conditions with which the alleged violator must comply.</i></p> <p><i>C. After a proposed administrative consent agreement has been sent to the alleged violator, the commissioner may revise and resubmit the agreement if further circumstances become known to the commissioner, including information provided by the alleged violator, that justify a revision.</i></p> <p><i>D. The public may make written comments to the board at the board's discretion on an administrative consent agreement entered into by the commissioner and approved by the board.</i></p> <p><i>E. When the department and the alleged violator can not agree to the terms of a consent agreement and the department elects to bring an enforcement action in District Court pursuant to section 342, subsection 7, the District Court shall refer the parties to mediation if either party requests mediation at or before the time the alleged violator appears to answer the department's complaint. The parties must meet with a mediator appointed by the Court Alternative Dispute Resolution Service created in Title 4, section 18-B at least once and try in good faith to reach an agreement. After the first meeting, mediation must end at the request of either party. If the parties have been referred to mediation, the action may not be removed to Superior Court until after mediation has occurred.</i></p>
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	<p><i>5. Enforcement. All orders of the department may be enforced by the Attorney General and the department. If any order of the department is not complied with, the commissioner shall immediately notify the Attorney General.</i></p> <p>38 MRSA § 347-C. Right of inspection and entry</p> <p><i>38 MRSA § 347-C states: Employees and agents of the Department of Environmental Protection may enter any property at reasonable hours and enter any building with the consent of the property owner, occupant or agent, or pursuant to an administrative search warrant, in order to inspect the property or structure, including the premises of an industrial user of a publicly owned treatment works, and to take samples, inspect records relevant to any regulated activity or conduct tests as appropriate to determine compliance with any laws administered by the department or the terms and conditions of any order, regulation, license, permit, approval or decision of the commissioner or of the board.</i></p> <p>38 MRSA §348. Judicial Enforcement</p> <p>38 MRSA §348 states, in relevant part:</p> <p><i>1. General. In the event of a violation of any provision of the laws administered by the department or of any order, regulation, license, permit, approval or decision of the board or commissioner or decree of the court, as the case may be, the Attorney General or the department may institute injunction proceedings to enjoin any further violation thereof, a civil or criminal action or any appropriate combination thereof without recourse to any other provision of law administered by the department.</i></p> <p><i>2. Restoration. The court may order restoration of any area affected by any action or inaction found to be in violation of any provision of law administered by the department or of any order, rule, regulation, license, permit, approval or decision of the board or commissioner or decree of the court, as the case may be, to its condition prior to the violation or as near thereto as may be possible. Where the court finds that the violation was willful, the court shall order restoration under this subsection unless the restoration will:</i></p> <ul style="list-style-type: none"><i>A. Result in a threat or hazard to public health or safety;</i><i>B. Result in substantial environmental damage; or</i><i>C. Result in a substantial injustice.</i> <p><i>3. Injunction proceedings. If the department finds that the discharge, emission or deposit of any materials into any waters, air or land of this State constitutes a substantial and immediate danger to the health, safety or general welfare of any person, persons or property, the department shall forthwith request the Attorney General to initiate immediate injunction proceedings to prevent such discharge or the commissioner may authorize</i></p>
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	<p><i>pursuit of such an action in District Court. The injunction proceedings may be instituted without recourse to the issuance of an order, as provided for in section 347-B.</i></p> <p><i>4. Settlement. A person who has resolved that person's liability to the State in an administrative or judicially approved settlement and is implementing or has fully implemented that settlement pursuant to its terms is not liable for claims by other potentially liable persons regarding response actions, response costs or damages, including without limitation natural resource damages, addressed in the settlement. The settlement does not discharge any other potentially liable persons unless its terms so provide. The protection afforded by this subsection includes protection against contribution claims and all other types of claims under state law that may be asserted against the settling party for recovery of response costs or damages incurred or paid by another potentially liable person, if those actions, costs or damages are addressed in the settlement, but does not include protection against claims based on contractual indemnification or other express contractual agreements to pay the costs or damages. A potentially liable person who commences an action against a person who is protected from suits under this subsection is liable to the person against whom the claim is brought for all reasonable costs of defending against the claim, including all reasonable attorney's and expert witness fees. This section is not intended to create a right to contribution or other cause of action or to make a person liable to pay a portion of another person's response costs, damages or civil penalties.</i></p> <p>38 MRSA §349. Penalties.</p> <p>38 MRSA §349 establishes criteria governing civil and criminal penalties for violations of environmental laws and regulations.</p> <p>38 MRSA §349 states, in part:</p> <p><i>1. Criminal penalties. Except as otherwise specifically provided, a person who intentionally, knowingly, recklessly or with criminal negligence violates a law administered by the department, including, without limitation, a violation of the terms or conditions of an order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264-A, commits a Class E crime. Notwithstanding Title 17-A, section 1301, the fine for a violation of this subsection may not be less than \$2,500 and not more than \$25,000 for each day of the violation, except that the minimum amount for knowing violations is \$5,000 for each day of violation. This subsection does not apply to actions subject to the criminal penalties set forth in section 1319-T.</i></p> <p><i>2. Civil penalties. Except as otherwise specifically provided, a person who violates a law administered by the department, including, without limitation, a violation of the terms or conditions of an order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2265-A, is subject to a civil penalty, payable to the State, of not less than \$100 and not more than \$10,000 for each day of that violation or, if the violation relates to hazardous waste, of not more than \$25,000 for each day of the violation. This penalty is</i></p>
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		<p><i>recoverable in a civil action.</i></p> <p><i>6. Maximum penalties. The maximum civil penalty may exceed \$10,000 for each day of that violation, but may not exceed \$25,000 for each day of the violation, when it can be shown that there has been a previous violation of the same law by the same party within the 5 preceding years, and the maximum criminal penalty may exceed \$25,000 for each day of violation, but may not exceed twice the amounts in subsection 1, when it can be shown that there has been a previous violation of the same law by the same party.</i></p> <p>06-096 CMR Chapter 115 Major and Minor Source Air Emission License Regulations</p> <p>This regulation specifies who must obtain an air emission license, what standards and criteria must be complied with and what information an applicant must submit. The rule implements New Source Review (NSR) requirements of the CAA and Section 590 of 38 MRSA for those minor sources and those major sources that are undergoing changes subject to NSR under the CAA. For minor sources this rule serves both as an operating licensing program as well as the pre-construction New Source Review Program. For major sources the rule serves as a pre-construction NSR program while Chapter 140 implements the operating licensing requirements of 40 CFR Part 70.</p>
<p>110(a)(2)(D)- Interstate Transport</p>	<p>Provisions prohibiting any source or other type of emissions activity in one State from contributing significantly to nonattainment or interfering with maintenance, of the NAAQS in another State</p>	<p>In recent draft guidance, EPA proposed a two-pronged test for determining significant contributions. Under this protocol, only sources located within 2 miles of another state or international boundary having lead emissions of 0.5 tons per year of greater would have the potential to contribute significantly to nonattainment or interfere with maintenance of the lead NAAQS in another state. A review of Maine’s point source emissions inventory, indicated that no Maine source had lead emission of more than 0.125 tons per year. Based on the draft EPA guidance, Maine sources do not contribute significantly to nonattainment or interfere with maintenance of the lead NAAQS.</p> <p>Maine’s Prevention of Significant Deterioration (PSD) permitting programs under the 06-096 CMR Chapter 115 Major and Minor Source Air Emission License Regulations also ensure that new and modified major sources of lead emissions do not contribute significantly to nonattainment or interfere with maintenance of the lead NAAQS.</p> <p>With respect to visibility, EPA has determined although lead can be a component of particulates, it comprises only a small fraction of coarse and fine particles with only an insignificant impact on visibility. As a result, EPA is not requiring this infrastructure SIP to protect visibility.</p>

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		<p>Finally, nothing in Maine’s statutory or regulatory authority prohibits or otherwise interferes with Maine’s ability to exercise sections 126 and 115 of the CAA.</p>
<p>110(a)(2)(E)-Adequate Resources</p>	<p>Provisions for adequate personnel, funding, and legal authority under State Law to carry out SIP and related issues</p>	<p>38 MRSA §341-A. Department of Environmental Protection.</p> <p>38 MRSA §341-A states, in relevant part:</p> <p><i>There is established a Department of Environmental Protection, in this Title called the "department."</i></p> <p><i>1. Purpose. The department shall prevent, abate and control the pollution of the air, water and land and preserve, improve and prevent diminution of the natural environment of the State. The department shall protect and enhance the public's right to use and enjoy the State's natural resources and may educate the public on natural resource use, requirements and issues.</i></p> <p><i>2. Composition. The department shall consist of the Board of Environmental Protection, in the laws administered by the department called "board," and of a Commissioner of Environmental Protection, in the laws administered by the department called "commissioner."</i></p> <p><i>3. Commissioner. The commissioner is appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resource matters and to confirmation by the Legislature.</i></p> <p><i>A. The commissioner serves at the pleasure of the Governor.</i></p> <p><i>B. When the State receives authority to issue permits under the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251 et seq., as amended, a person may not serve as commissioner who receives, or during the 2 years prior to appointment has received, a significant portion of income directly or indirectly from license or permit holders or applicants for a license or permit under the Federal Water Pollution Control Act. For the purposes of this section, "a significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more if the recipient is over 60 years of age and is receiving that portion under retirement, pension or similar arrangement.</i></p> <p><i>C. The commissioner may delegate duties assigned to the commissioner under this Title to staff of the department.</i></p> <p><i>4. Licenses and permits. For purposes of this Title, licenses or permits issued by the department may be issued by either the commissioner or the board subject to the provisions of section 341-D, subsection 2."</i></p>

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		<p>38 MRSA §341-D. Board responsibilities and duties.</p> <p>38 MRSA §341-D. states, in relevant part:</p> <p><i>The board is charged with the following duties and responsibilities.</i></p> <p><i>1-B. Rulemaking. Subject to the Maine Administrative Procedure Act, the board shall adopt, amend or repeal reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering. The board shall also adopt, amend and repeal rules as necessary for the conduct of its business.</i></p> <p><i>The department shall identify in its regulatory agenda, when feasible, a proposed rule or provision of a proposed rule that is anticipated to be more stringent than the federal standard, if an applicable federal standard exists. During the consideration of any proposed rule by the board, when feasible, and using information available to it, the department shall identify provisions of the proposed rule that the department believes would impose a regulatory burden more stringent than the burden imposed by the federal standard, if such a federal standard exists, and shall explain in a separate section of the basis statement the justification for the difference between the agency rule and the federal standard.</i></p> <p><i>Notwithstanding Title 5, chapter 375, subchapter II, the board shall accept and consider additional public comment on a proposed rule following the close of the formal rule-making comment period at a meeting that is not a public hearing only if the additional public comment is directly related to comments received during the formal rule-making comment period or is in response to changes to the proposed rule. Public notice of the meeting must comply with Title 1, section 406 and state that the board will accept additional public comment on the proposed rule at that meeting. This subsection takes effect January 1, 1998.</i></p> <p>38 MRSA §342. Commissioner, duties</p> <p>38 MRSA §342 states, in relevant part:</p> <p><i>The Commissioner of Environmental Protection shall have the following duties:</i></p> <p><i>1-A. Administration of department. The commissioner is the chief administrative officer of the department and responsible for all administrative matters of the department, except as otherwise specified. The commissioner shall assure that all determinations made by the staff of the department are promptly rendered. The</i></p>
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		<p><i>commissioner shall resolve disputes between department staff and applicants with respect to any questions regarding requirements, interpretation or application of the laws, rules or department policy. In resolving disputes, the commissioner shall attempt to reach a fair and appropriate result given all of the circumstances of the issue and may utilize the services of such consultants or experts as the commissioner determines would be helpful to resolve any disputed issue. For purposes of this subsection and section 341-A, subsection 3, paragraph C, staff of the department does not include staff of the board.</i></p> <p>38 MRSA §581. Declaration of findings and intent</p> <p><i>38 MRSA §581 states in relevant part: The Legislature finds and declares that air pollution exists with varying degrees of severity within this State; that such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is aesthetically unappealing.</i></p> <p><i>The Legislature by this chapter intends to exercise the police power of the State in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that reasonably insures the continued health, safety and general welfare of all of the citizens of the State; protects property values and protects plant and animal life.</i></p> <p><i>Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge or otherwise affect, substantively or procedurally, the right of any person to damage or other relief on account of injury to persons or property due to violation of air quality standards or emission standards and to maintain any action or other appropriate procedure therefore; nor to so affect the powers of the State to initiate, prosecute and maintain actions to abate public nuisances.</i></p> <p>Chapter 8 of Maine's initial SIP, documenting the existence of adequate resources October 28, 1972. For FY 2007, the Bureau of Air Quality had a staff of 59, and a budget of \$5.5.</p>
<p>110(a)(2)(F)- Stationary source Monitoring System</p>	<p>Programs to establish a system to monitor emissions from stationary sources and to submit periodic emission reports</p>	<p>38 MRSA §590 Licensing.</p> <p>06-096 CMR Chapter 115 Major and Minor Source Air Emission License Regulations</p> <p>This regulation contains compliance assurance requirements for licensed sources and stipulates that licenses shall include the following compliance assurance elements:</p> <p>(a) A description of all required monitoring and analysis procedures or test methods required under the</p>

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		<p>requirements applicable to the source.</p> <p>(b) A description of all recordkeeping requirements.</p> <p>(c) A description of all reporting requirements.</p> <p>06-096 CMR Chapter 117 Source Surveillance</p> <p>This regulation specifies which air emission sources are required to operate continuous emission monitoring systems (CEMS), and details the performance specifications, quality assurance requirements and procedures for such systems, and subsequent record keeping and reporting requirements.</p> <p>06-096 CMR Chapter 137 Emissions Statements</p> <p>This regulation requires all stationary sources emitting more than 200 pounds of lead per year to report their emissions, with sources subject to hazardous air pollutant reporting requirements obligated to report if their emissions are more than 100 pounds per year.</p> <p>06-096 CMR Chapter 140 Part 70 Air Emission License Regulations</p> <p>This regulation identifies the sources of air emissions that require a Part 70 air emission license and incorporates the requirements of Title IV and Title V of the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.; and 38 MRSA, Section 344 and Section 590. This regulation contains compliance assurance requirements for licensed sources requiring a Part 70 air emission license.</p>
<p>110(a)(2)(G)- Emergency Power</p>	<p>Authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs</p>	<p>38 MRSA §347-A(3) Emergency Orders.</p> <p>38 MRSA § 347-A states:</p> <p><i>3. Emergency orders. Whenever it appears to the commissioner, after investigation, that there is a violation of the laws or regulations the department administers or of the terms or conditions of any of the department's orders that is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the commissioner may order the person or persons causing or contributing to the hazard to immediately take such actions as are necessary to reduce or alleviate the danger. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. In the event that the persons are so numerous that the specified method of service is a practical impossibility or the</i></p>

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		<p><i>commissioner is unable to identify the person or persons causing or contributing to the hazard, the commissioner shall make the order known through prominent publication or announcement in news media serving the affected area.</i></p> <p><i>The person to whom the order is directed shall comply with the order immediately. The order may not be appealed to the Superior Court in the manner provided in section 346, but within 48 hours after receipt of the order the person may apply to the board for a hearing on the order. Within 7 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order was directed. The decision of the board may be appealed to the Superior Court in the manner provided by section 346.</i></p>
<p>110(a)(2)(H)- Future SIP Revisions</p>	<p>Authority to revise SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate</p>	<p>38 MRS §581. Declaration of findings and intent.</p> <p>38 MRS §581 states:</p> <p><i>The Legislature finds and declares that air pollution exists with varying degrees of severity within this State; that such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is aesthetically unappealing.</i></p> <p><i>The Legislature by this chapter intends to exercise the police power of the State in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that reasonably insures the continued health, safety and general welfare of all of the citizens of the State; protects property values and protects plant and animal life.</i></p> <p><i>Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge or otherwise affect, substantively or procedurally, the right of any person to damage or other relief on account of injury to persons or property due to violation of air quality standards or emission standards and to maintain any action or other appropriate procedure therefore; nor to so affect the powers of the State to initiate, prosecute and maintain actions to abate public nuisances.</i></p> <p>38 MRS §341-D. Board responsibilities and duties.</p> <p>38 MRS §341-D states, in relevant part:</p>

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		<p><i>1-B. Rulemaking. Subject to the Maine Administrative Procedure Act, the board shall adopt, amend or repeal reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering. The board shall also adopt, amend and repeal rules as necessary for the conduct of its business.</i></p> <p><i>The department shall identify in its regulatory agenda, when feasible, a proposed rule or provision of a proposed rule that is anticipated to be more stringent than the federal standard, if an applicable federal standard exists. During the consideration of any proposed rule by the board, when feasible, and using information available to it, the department shall identify provisions of the proposed rule that the department believes would impose a regulatory burden more stringent than the burden imposed by the federal standard, if such a federal standard exists, and shall explain in a separate section of the basis statement the justification for the difference between the agency rule and the federal standard.</i></p> <p><i>Notwithstanding Title 5, chapter 375, subchapter II, the board shall accept and consider additional public comment on a proposed rule following the close of the formal rule-making comment period at a meeting that is not a public hearing only if the additional public comment is directly related to comments received during the formal rule-making comment period or is in response to changes to the proposed rule. Public notice of the meeting must comply with Title 1, section 406 and state that the board will accept additional public comment on the proposed rule at that meeting.</i></p>
<p>110(a)(2)(I)- Nonattainment Areas, Part D</p>	<p>In the case of a plan or plan revision for an area designated as a non-attainment area, meet the applicable requirements of part D (relating to non-attainment areas).</p>	<p>As noted in the introduction text to the draft EPA lead infrastructure SIP guidance, EPA does not expect infrastructure SIP submissions to address CAA subsection 110(a)(2)(I).</p>
<p>110(a)(2)(J)- Public Notification</p>	<p>States must meet the requirements of section 121 regarding consultation with government officials, and must notify the public pursuant section 127 if NAAQS are exceeded in</p>	<p>Consultation with Government Officials</p> <p>38 MRSA §342. Commissioner, Duties. 38 MRSA §342 (1-A). Administration of Department 38 MRSA §342 (3-A). Negotiating Agreements</p> <p>06-096 Chapter 114 Classification of Air Quality Control Regions</p>

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	<p>an area and to enhance public awareness of measures that can be taken to prevent exceedences</p>	<p>Section 1(E) of this rule states, in relevant part:</p> <p><i>Prior to the proposal of any redesignation the Board shall hold a public hearing which shall be conducted in the area proposed to be redesignated. Prior to the public hearing a report shall be made available with a description and analysis of health, environmental, economic, social and energy impacts of the proposed redesignation. Should the area proposed for redesignation include or be deemed to affect federally owned lands, the Board shall consult with the appropriate federal land manager prior to such redesignation. For the purpose of redesignating any areas other than those recognized mandatory Class I areas identified in Section 1(C), the procedural requirements or 40 CFR 51.24 (g) shall be followed</i></p> <p>06-096 CMR Chapter 115 Major and Minor Source Air Emission License Regulations.</p> <p>06-096 CMR Chapter 115 Section 4A(d) establishes consultation requirements with Federal Land Managers for NSR and PSD:</p> <p><i>4(d)The applicant and/or the Department shall notify and provide a copy of the application to all Federal Land Managers listed in Chapter 100 of the Department’s regulations, and the Indian governing body of any reservation located within 50 km of any Major Modification or new Major source on or before the date the applicant provides Notice of Intent to File to the public, and provide at least a thirty (30) days public comment period.</i></p> <p>06-096 CMR Chapter 139 Transportation Conformity.</p> <p>06-096 CMR Chapter 139 establishes a consultation process between federal state and local entities for the purpose of implementing section 176(c)(4)(E) of the CAA with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by Metropolitan Planning Organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (Title 49 U.S.C. Chapter 53).</p> <p>Public Notification</p> <p>38 MRSA §584-F. Ozone health warnings.</p>
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		<p>38 MRSA states:</p> <p><i>§584-F. Ozone health warnings</i></p> <p><i>1. Dissemination of warnings to media. Whenever monitored data demonstrates or the department predicts that ground-level ozone concentrations have exceeded or will exceed .08 parts per million averaged over an 8-hour period, the department shall disseminate a health warning to the mass media, including television, radio and print media, and shall urge the media to issue the warning to the general public. The department shall use best efforts to educate the media as to the need to broadly disseminate health warnings to the public.</i></p> <p><i>2. Telephone hot line. The department shall provide information to the public on daily ground-level ozone concentrations by a toll-free ozone information telephone hot line.</i></p> <p>Maine continues to issue daily air quality forecasts and advisories pursuant to its Performance Partnership Agreement</p> <p>Chapter 4 of Maine’s initial SIP, approved on October 18, 1972, contains for public notification in the event an NAAQS exceedence. Chapter 9 of this SIP contains provisions for intergovernmental cooperation with federal and state government entities.</p>
<p>100(a)(2)(J)- PSD and Visibility Protection</p>	<p>States must meet applicable requirements of part C related to prevention of significant deterioration and visibility protection</p>	<p>38 MRSA §584-B. Establishment of ambient increments -- Class I regions</p> <p>06-096 CMR Chapter 114. Classification of Air Quality Control Regions</p> <p>This regulation determines those areas that have been officially found to be exceeding the ambient air quality standards, and are therefore nonattainment areas. It also designates which class of increment that will apply in each area.</p> <p>06-096 CMR Chapter 115 Major and Minor Source Air Emission License Regulations</p> <p>Maine’s PSD regulations require the owner of any proposed new major source or major modification to demonstrate that any increased emissions from a proposed facility or expansion would not significantly deteriorate air quality, regardless of where these emissions may travel. Proposed facilities subject to Maine’s PSD licensing requirements must therefore assess PSD increment</p>

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		<p>consumption in Maine as well as adjacent or downwind states.</p> <p>The NSR program in Maine is implemented through the Chapter 100 Definitions Regulation which was approved into the SIP on October 15, 1996¹⁰, the Chapter 113 Growth Offset Regulation which was approved into the SIP on February 14, 1996¹¹, and the Chapter 115 Major and Minor Source Air Emission License Regulations which were approved into the SIP by EPA on February 14, 1996¹² (See Attachments). Although these rules have been amended several times since being incorporated into the SIP, these revisions did not change any of the major source permitting requirements, and the current state regulations are consistent with the SIP-approved versions for the purposes of implementing the New Source Review program.</p> <p>Pursuant to draft EPA guidance, since the visibility protection and regional haze program requirements do not change with the establishment of a new federal primary standard, there are no new applicable protection obligations under CAA Section 110(a)(2)(J) for the 2008 federal lead standard</p>
<p>110(a)(2)(K)- Air Quality Modeling/Data</p>	<p>SIPs must provide for performing air quality modeling for predicted effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request</p>	<p>06-096 CMR Chapter 115 Major and Minor Source Air Emission License Regulations</p> <p>Section 7 of Chapter 115 states:</p> <p>7. <i>Ambient Air Quality Analysis</i></p> <p>A. <i>General. It shall be the burden of any applicant to provide an affirmative demonstration that its emissions, in conjunction with all other sources, will not violate ambient air quality standards, established pursuant to Chapter 110 of the Department's Regulations, except that sources in nonattainment areas or which significantly impact a nonattainment area shall be required to demonstrate that the source's emissions are consistent with Reasonable Further Progress provisions of the State Implementation Plan. An applicant may use ambient air monitoring, modeling, or other assessment techniques as approved by the Department. New Source Review modeling required pursuant to Subsection 7(C and D) of this Chapter shall be consistent with EPA regulations and guidelines or other requirements under the CAA. The analyses shall include relevant emissions units at the source, meteorological and topographical data necessary to estimate</i></p>

¹⁰ 61 FR 53639

¹¹ 61 FR 5694

¹² 61 FR 5694

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		<p><i>such impacts, and shall consider the impact of fugitive emissions, to the extent quantifiable, secondary emissions, and emissions from other existing sources including increases in mobile and area source emissions impacting the same area.</i></p> <p><i>The level of analysis shall depend upon the size of the source, the regulated air pollutants emitted, existing air quality, proximity to Class I or nonattainment areas, or areas where increment has been substantially consumed. (For the purposes of this Subsection, the Class I area shall include any conservation easements under the jurisdiction of an appropriate Federal Land Manager as of August 7, 1977.) The air quality impact analysis, in general, will not be required of the applicant for those regulated pollutants that are not listed under "significant emissions increase" in Chapter 100 of the Department's regulations. The analysis shall be conducted in accordance with the provisions of Subsection 7(E) of this Chapter, Chapter 116 of the Department's regulations and Appendix W to 40 CFR Part 51 – Guideline on Air Quality Models.</i></p> <p><i>Air quality modeling conducted as part of the licensing of a new source or modification in the United States is substantially governed by the Appendix W to 40 CFR Part 51 – Guideline on Air Quality Models. That modeling guidance was first promulgated in 1978 and by law, must be routinely updated by EPA. Thus, federal regulatory guidance on modeling and the list of acceptable models do change. The Department recognizes that air dispersion modeling guidance will be periodically updated, to reflect the latest federal guidance. To maintain an orderly licensing process in the State, applicants will be required to conform with those procedures and guidelines in effect at the time of Department approval of a written modeling protocol that meets all applicable requirements, and to complete modeling, as approved, and submit results within six (6) months of the date of approval of the protocol. If the protocol calls for collection of on-site meteorological data, then the starting date for the on-site data collection must be no later than 6 months after approval of the protocol and modeling results must be submitted within six (6) months of obtaining acceptable on-site meteorological monitoring data. Requests by the applicant to modify the modeling protocol will require conformance with current applicable air dispersion modeling guidance.</i></p> <p>06-096 Chapter 116 Prohibited Dispersion Techniques</p> <p>This Chapter adopts regulations consistent with federal requirement concerning stack height and other dispersion techniques, such as merging of plumes. These regulations also define the area surrounding the source where ambient air quality standards do not have to be met.</p> <p>06-096 CMR Chapter 140 Part 70 Air Emission License Regulations</p> <p>This regulation contains air quality modeling requirements for Part 70 sources that are analogous to those contained within Chapter 115.</p>
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<p>110(a)(2)(L)- Permitting Fees</p>	<p>Each major stationary source shall pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit</p>	<p>38 MRSAs §353-A. Annual air emissions license fees.</p> <p>38 MRSAs §§ 353-A(1) states: <i>Fees assessed. After the effective date of this section, a licensee must pay an annual fee assessed on the sum of all licensed allowable air pollutants, except for carbon monoxide, as follows:</i></p> <table style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;"><i>Annual licensed emissions in tons</i></th> <th style="text-align: center;"><i>Per ton fee</i></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><i>1 - 1,000</i></td> <td style="text-align: center;"><i>\$5</i></td> </tr> <tr> <td style="text-align: center;"><i>1,001 - 4,000</i></td> <td style="text-align: center;"><i>\$10</i></td> </tr> <tr> <td style="text-align: center;"><i>over 4,001</i></td> <td style="text-align: center;"><i>\$15</i></td> </tr> </tbody> </table> <p>38 MRSAs §§ 353-A(1-A) states: <i>Beginning November 1, 2008, a licensee shall pay an annual fee surcharge of \$2 per every 1,000 air quality units as defined in section 582, subsection 11-E. The minimum revenue threshold for the annual fee surcharge is established at \$1,250,000 per year. The commissioner may increase the annual fee surcharge to up to \$4 per every 1,000 air quality units if the annual revenue derived from this annual fee surcharge is less than \$1,250,000 per year. The commissioner shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 15, 2010 and every 2 years thereafter on any fee adjustment and the justification for the fee adjustment and the adequacy of the minimum revenue threshold and its ability to support the long-term sustainability of state air quality protection and improvement activities.</i></p> <p>38 MRSAs §§ 353-A(2) states : <i>Fee adjustment. The commissioner may adjust the per ton fees, the annual fee surcharge set forth in subsection 1-A and the maximum and minimum fees set forth in subsection 4 on an annual basis according to the United States Consumer Price Index established by the federal Department of Labor, Bureau of Labor Statistics.</i></p>	<i>Annual licensed emissions in tons</i>	<i>Per ton fee</i>	<i>1 - 1,000</i>	<i>\$5</i>	<i>1,001 - 4,000</i>	<i>\$10</i>	<i>over 4,001</i>	<i>\$15</i>
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<p>110(a)(2)(M)- Consultation/Participation By Affected Local Entities</p>	<p>States shall provide for consultation and participation in SIP development by local political subdivisions affected by the SIP</p>	<p>5 MRSAs Chapter 375, Subchapter 2 establishes rulemaking requirements for state agencies, including public notification procedures.</p> <p>38 MRSAs §597 Municipal air pollution control.</p> <p>38 MRSAs §597 states:</p> <p><i>Nothing in this chapter shall be construed as a preemption of the field of air pollution study and control on the part of the State. Municipalities may study air pollution and adopt and enforce air pollution control and</i></p>								

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		<p><i>abatement ordinances, to the extent that these ordinances are not less stringent than this chapter or than any standard, order or other action promulgated pursuant to this chapter. Local ordinance provisions which touch on matters not dealt with by this chapter or which are more stringent than this chapter shall bind persons residing in the municipality.</i></p> <p>Chapter 9 of Maine's initial SIP, which was approved on October 28, 1972, contains intergovernmental cooperation provisions.</p>
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