



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

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ACTING COMMISSIONER

MEMORANDUM

**TO:** Board of Environmental Protection  
**FROM:** Michael Karagiannes, Bureau of Air Quality  
**DATE:** January 6, 2011  
**RE:** Adoption: Proposed Amendments: Chapter 100 Definitions Regulation (Tailoring Rule Amendments)

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**Statutory and Regulatory Reference:**

A. Statutory authority.

38 MRSA Section 585-A provides that the Board of Environmental Protection “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.”

B. Specific legal mandates requiring adoption.

The Clean Air Act requires states to develop the U.S. Environmental Protection Agency (EPA)-approved implementation plans that include requirements for issuing air permits. When federal permitting requirements change, as they did after EPA finalized the greenhouse gases (GHGs) Tailoring Rule, states may need to modify these plans.

**Location/Applicability:**

The proposed amendments will apply in all areas of the state.

**Description:**

The Clean Air Act requires states to develop an EPA-approved state implementation plan (SIP) that includes requirements for issuing air permits. When federal permitting requirements change, as they did after EPA finalized the GHG Tailoring Rule, states may need to modify these plans.

On May 13, 2010, the EPA issued a final rule that addresses greenhouse gas emissions from stationary sources under the Clean Air Act permitting programs. This final rule sets thresholds for GHG emissions that define when permits under the New Source Review, Prevention of Significant Deterioration (PSD) and Title V Operating Permit programs are

required for new and existing industrial facilities. The Department is proposing to amend its Chapter 100 Definitions Regulations by adding definitions of greenhouse gases and CO2 equivalent emissions, thereby allowing Maine to implement its major source licensing program for greenhouse gases. These proposed amendments include updating the Department's definitions to include greenhouse gases (GHGs). The following gases, both individually and collectively: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are defined as greenhouse gases. These gases have been similarly listed in federal regulation at 40 CFR Part 51. In addition, the Department is clarifying several other definitions. Where appropriate, the definitions in Chapter 100 mirror those in federal law and regulations.

**Discussion:**

On November 18, 2010 the Board held a public hearing on the proposed changes to Chapter 100. During the public comment period, the Department received comments from several parties, including EPA, members of the regulated community, and environmental groups. Among the more significant comments included:

- 1) **The need for a phased-in approach.** Several commenters voiced concerns that unlike EPA, the Department's proposal lacked a phased-in approach to addressing GHGs.<sup>1</sup> In contrast to EPA's approach, the Department's initial proposal regulated both existing and new sources of GHGs upon the effective date of the proposed amendments. In an effort to promote consistency with the federal program requirements, the Department has aligned its requirements with the federal program.
- 2) **The view that GHG emissions from the combustion of biomass should, in most cases, be considered carbon neutral.** The Department believes that GHG emissions from the combustion of biomass should, in most cases, be considered carbon neutral. Presently, EPA's Tailoring Rule did not exclude biomass emissions from the rule; and as such, we believe that an explicit exclusion for GHGs from the combustion of biomass would jeopardize the approval of the proposed amendments. Even if future federal rules exclude GHG emissions from the combustion of biomass, the Department would almost certainly need to amend any such exclusion to fully comport with these federal rules at a later date.

In lieu of a regulatory exemption, the Department's preferred approach is to continue working with EPA to ensure the credible neutrality of biomass emissions, and to explicitly note that greenhouse gas emissions from the combustion of biomass are only included in the definition of GHG to the extent required by the CAA and federal rules. The Department will consider biomass a renewable resource, whose use is consistent with state and federal policies to reduce dependence on fossil fuels, when determining BACT.

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<sup>1</sup> The federal program initially regulates only those sources otherwise subject to PSD for another regulated NSR pollutant whose emissions are equal to or greater than 75,000 TPY (CO2e); beginning July 1, 2011, new sources with whose GHG emissions are equal to or greater than 100,000 TPY (CO2e) shall be subject to the rule.

- 3) **Suspension of federal program in the event of litigation or legislative action.** Commenters expressed concern that litigation in the courts or new federal legislation could result in a number of unintended consequences to the regulated community as they struggled to keep up with the latest permitting requirements. These commenters suggested the inclusion of language that would stay the applicability of the Maine rules in the event of such litigation. While cognizant of these concerns, it is not possible for the Department to include a provision that automatically amends or repeals provisions of the rule depending on various possible contingencies. Instead, the need for such changes will be handled through a timely, subsequent rulemaking process.
- 4) **The threshold for new sources.** It was noted by commenters that the applicability threshold for Phase 1 should be 75,000 tons not 100,000 tons as originally proposed, and that the Department's proposal inadvertently exempted certain sources with CO<sub>2</sub>e emissions between 75,000 and 100,000 tons. The Department has addressed this gap in coverage through its adoption of a phased-in approach as used by EPA (see above).

**Environmental Issues:**

There is scientific consensus that the increase in anthropogenic emissions of greenhouse gases is enhancing the natural greenhouse effect resulting in changes in the Earth's climate. Climate change poses serious potential risks to human health and terrestrial and aquatic ecosystems globally and in the state; more severe weather events; atmospheric warming resulting in increased concentrations of ground-level ozone and associated health effects; change in forest composition; increases in habitat for disease-carrying insect and other vectors; increase in algal blooms; sea level rise that threatens coastal communities and infrastructure and increased incidence of storm surges and flooding which could lead to soil and beach erosion.

**Departmental Recommendation:**

The Department recommends that the Board adopt the proposed amendments to Chapter 100.

**Estimated Time of Presentation:**

20 minutes.