



Testimony in Opposition to Maine DEP Proposed Revisions to the State Implementation Plan – Ozone Transport Region

Pete Didisheim
Advocacy Director
Natural Resources Council of Maine

September 10, 2013

Good afternoon. My name is Pete Didisheim. I am the Advocacy Director for the Natural Resources Council of Maine and I appreciate the opportunity to testify in opposition to DEP's proposal that Maine be exempted from certain air pollution control requirements established by the 1990 Clean Air Act amendments for the 13 states that comprise the Ozone Transport Region (OTR).

Along with others who will testify today, NRCM appreciates that DEP is holding this public hearing on proposals that raise significant questions about Maine's involvement in regional air pollution control strategies that have benefited the people of Maine.

DEP is making two requests to the U.S. Environmental Protection Agency. The first involves nitrogen oxide (NO_x) pollution—a major ozone precursor; the second involves volatile organic compounds (VOCs)—which also are ozone precursors, but which also can be toxic pollutants that pose a range of direct risks to public health.

NRCM has both process concerns and substance concerns with these proposals. With regard to process, we are concerned that neither the NO_x waiver nor VOC opt-out proposals were revealed in a transparent way to the public. DEP submitted the NO_x waiver request to EPA on October 13, 2012 without any notification to the public. Public notice for the VOC proposal was not much better; it was very difficult for anyone to learn about it. As documented further in Attachment A, we believe that the public notice process for major changes like these is broken and should be revised so that interested parties have more of an opportunity to participate.

Moving on to the substance, NRCM opposes the proposed VOC revision and the statewide NO_x waiver because we believe Maine has more to lose than to gain through these proposed rollbacks.

Existing Ozone Standard Not Protecting Maine People

NRCM believes it is a mistake for Maine to seek relief from the OTR's regulations on ozone precursors at a time when we know that the existing federal ozone standard is not sufficiently protective of public health.

DEP is requesting opt-outs from the OTR ozone requirements based on the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS), which is set at 75 ppb. However, EPA has concluded that the standard should be revised to a lower level. Based on extensive review of the science, EPA's Clean Air Act Advisory Council unanimously recommended a new 8-hour average ozone standard within the range of 60 and 70 ppb. And the recommendation was not made just once. Rather, this important EPA science advisory board has communicated its unanimous position for a stronger ozone standard to the EPA Administrator four times over the past decade, in 2006, 2007, 2008, and 2010.¹

The body of science shows that the current ozone standard is not protecting children, senior citizens, and people with respiratory ailments such as asthma. This is particularly relevant for Maine, which has both some of the highest asthma rates in the country² and the highest average age of residents of any state.³ These two factors—Maine's high asthma rates and aging population—should make the Maine DEP extra cautious about proposing a weakening of air pollution control requirements on facilities based on an ozone standard that isn't currently protecting these population subgroups.

By every indication, EPA is moving forward with a rulemaking to change the 8-hour ozone standard to 70 ppb. According to 2010 to 2012 data, two monitoring sites in Maine would exceed a level of 70 ppb⁴, which would put many York County, Hancock County, and possibly other Maine counties back into non-attainment.

With this in mind, NRCM believes that it is not sound policy to opt out of NO_x and VOC controls that could be important elements of Maine's strategy to regulate ozone precursors under a stronger federal ozone standard. Any permits granted during a period of waivers would result in increased in-state emissions without the benefit of offsets, making it more difficult to secure emission reductions in the future.

Maine Has More to Lose than Gain

The Clean Air Act Amendments of 1990 created the multi-state Ozone Transport Region, with specific requirements for regional controls on air pollution that crosses state borders. For major new pollution sources in the OTR states, emissions of VOCs and NO_x are subject to a 1.15 emission offset requirement. Through this mechanism, the OTR states have reduced emissions as their economies have expanded. This has been particularly important for Maine, because so much of our pollution blows into the state from upwind.

Since 1990, Maine has adopted a "clean hands" strategy when it comes to OTR. We have abided by the OTR requirements while also insisting that upwind states reduce pollution that ends up jeopardizing the health of Maine people. Because Maine is at the

¹ See Letters from CASAC Chair Rogene Henderson, EPA-CASAC-07-001 (October 24, 2006), EPA-CASAC-07-002 (March 26, 2007) and EPA-CASAC-08-000 (April 7, 2008) respectively, and Chair Jonathan Samet, EPA-CSAC-10-7 (February 19, 2010).

² Approximately 10% of Maine adults currently have asthma compared to the 7.8% nationally, and 10.7% of children have asthma compared to 8.9% nationally. <http://www.maine.gov/dhhs/mecdc/population-health/mat/asthma-information/asthma-in-maine.htm>

³ http://www.statemaster.com/graph/peo_med_age-people-median-age

⁴ Cadillac Mt-72; Cape Elizabeth-71, Kennebunkport -74; and Port Clyde-73.

end of the tailpipe, we have the most to gain (and we have gained a lot) through this multi-state approach. We also have the most to lose if it were to fall apart.

Over the past 20 years, air quality has improved throughout the OTR states, including in Maine. We still experience too many high ozone days,⁵ and, as mentioned earlier, some Maine counties would not be in attainment of a new, more protective ozone standard. However, Maine's air quality has improved in no small part due to the OTR. More importantly, other states have done much more to reduce their emissions over the past 20 years than has Maine.

As the attached figures show (see figures 1 and 2 below), nearly every state in the 13-state OTR has reduced its NOx and VOCs by a higher rate relative to its 1990 baseline than has Maine. These data, covering the period 1990 to 2008, show that upwind states have shouldered a more significant burden to reduce air pollution than Maine has, and this is all to the good for Maine's air quality—because we depend on those states reducing the pollution that comes to Maine.

If the ozone standard is changed to 70 ppb, we will depend on the actions of upwind states even more than we do today. If a warming climate increases the formation of ozone, creating more high ozone days, then we will depend on the actions of upwind states more than we do today. Maine has received very significant benefits through the OTR without much burden, but now we seem to be saying through DEP's proposals that we don't care about regional air pollution strategies any longer. We want out. This is a mistake that could come back to bite us if it leads to an unraveling of the OTR.

The argument has been made that these exemptions are necessary so that Maine's paper mills do not have to purchase offsets if they convert to natural gas for energy.⁶ However, this claim is not convincing. Verso's Bucksport Mill was not required to purchase offsets during its conversion to natural gas, nor should any other such conversion since natural gas releases fewer emissions than oil. Others have made vague and unsubstantiated claims that Maine's OTR obligations have cost Maine jobs. Any such assertion needs to be documented and weighed against the huge economic benefits of cleaner air, including through reduced emergency room visits for those with asthma and reduced premature deaths for those with respiratory difficulties.

One final point: DEP is asking EPA to "temporarily remove the regulatory provisions"⁷ for VOCs, but fails to explain what is meant by "temporarily." As a result, it is totally unclear what DEP is asking for. Is this offset intended to be basically permanent, but DEP felt ambivalent about making that point clear? Is it just for a period of time to squeak a few permits through? What does DEP envision would be the mechanism for reverting back to the OTR requirements? And how would this offset, if granted, be superseded by a new EPA ozone standard, if and/or when, that standard is imposed?

⁵ See DEP ozone alerts for 8/21/13 and 8/22/13 <http://www.maine.gov/dep/news/news.html?id=585440>

⁶ http://www.pressherald.com/news/easing-of-smog-rules-backed-by-paper-mills_2013-08-01.html

⁷ DEP OTR "Restructure" Request Technical Analysis, February 11, 2013, P.4.

Conclusion

Maine has long held the appropriate position that we need “clean hands” when it comes to calling on upwind states to reduce air pollution that can cause public health threats for Maine people. It is in this context that DEP’s request to terminate application of the new source review requirements for any major new or modified stationary sources of ozone precursors anywhere in Maine is troubling and could set a precedent that undermines regional air pollution control strategies.

This DEP proposal violates the concept of a level playing field that has been a cornerstone of clean air policy throughout the region. Because Maine has a large population of elderly residents and very high incidences of asthma, particularly in our children, Maine policy makers have a strong interest in continuing to reduce ozone pollution. The ozone standard used in DEP’s technical analysis is not sufficiently protective of public health, so now is not the time to relax our approach to in-state VOC and NOx controls. We urge the DEP to withdraw this request to relax air pollution control requirements on major new facilities and plant modifications in Maine.

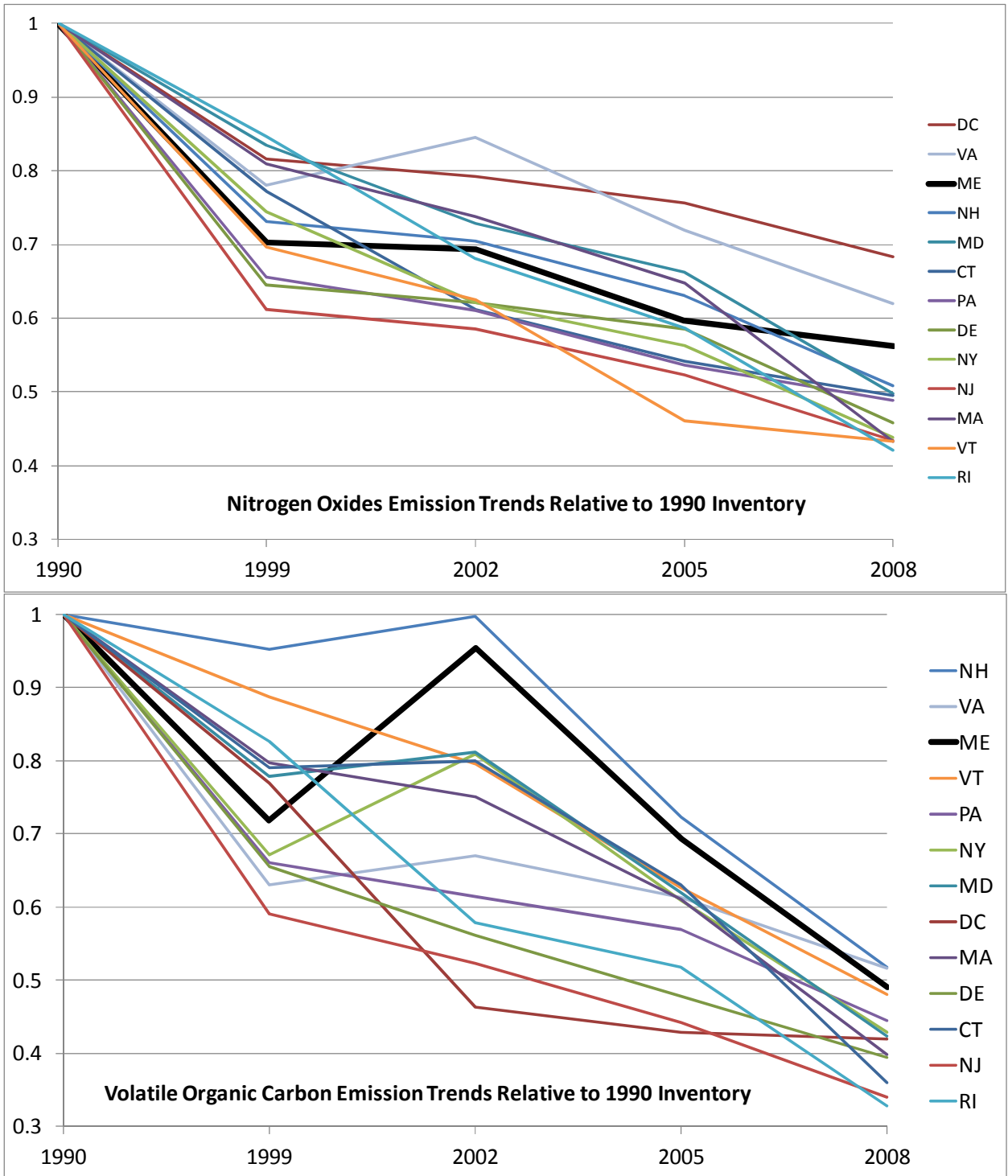


Figure 1 (above) and **Figure 2** (below) show that relative to most other states, Maine did not reduce its emissions of VOCs and NO_x as significantly, as a percent of their 1990 baseline inventory. Virginia emissions are for the entire state, which may not be completely within the OTR.

Table 1 Anthropogenic and Biogenic Emissions for 2008 from the National Emissions Inventory

2008 Volatile Organic Carbon			Area	2008 Nitrogen Dioxides		
Anthropogenic	Biogenic	% Biogenic		Anthropogenic	Biogenic	% Biogenic
86,238	48,728	36.1%	CT	93,103	463	0.5%
10,467	1,348	11.4%	DC	13,189	16	0.1%
28,740	27,056	48.5%	DE	42,806	813	1.9%
166,301	76,410	31.5%	MA	168,618	955	0.6%
153,467	146,428	48.8%	MD	205,543	2,880	1.4%
77,276	329,436	81.0%	ME	71,668	1,961	2.7%
55,468	90,918	62.1%	NH	50,275	460	0.9%
227,681	125,144	35.5%	NJ	245,158	1,566	0.6%
520,954	333,832	39.1%	NY	442,209	7,613	1.7%
437,455	420,164	49.0%	PA	616,697	8,305	1.3%
23,770	12,466	34.4%	RI	18,963	148	0.8%
29,330	74,543	71.8%	VT	20,917	1,001	4.6%
341,000	731,088	68.2%	VA	376,293	8,049	2.1%
2,158,146	2,417,561	52.8%	OTR	2,365,439	34,230	1.4%

Table 2 Emission Reduction from 1990 to 2008 with comparison of baseline percent contribution to 1990 emissions in the region and percent contribution to regional reductions.

Volatile Organic Carbon			Area	Nitrogen Dioxides		
Reduction (TPY)	% Reduction 1990 - 2008	% contribution to OTR in 1990		Reduction (TPY)	% Reduction 1990 - 2008	% contribution to OTR in 1990
153,591	5.33%	4.76%	CT	95,033	3.80%	3.87%
14,462	0.50%	0.49%	DC	6,103	0.24%	0.40%
44,167	1.53%	1.45%	DE	50,760	2.03%	1.92%
251,295	8.71%	8.28%	MA	220,534	8.83%	8.00%
208,468	7.23%	7.18%	MD	207,607	8.31%	8.49%
80,255	2.78%	3.12%	ME	55,674	2.23%	2.62%
51,588	1.79%	2.12%	NH	48,569	1.94%	2.03%
440,945	15.29%	13.26%	NJ	318,880	12.76%	11.60%
693,405	24.05%	24.09%	NY	566,214	22.66%	20.73%
545,403	18.91%	19.49%	PA	645,188	25.82%	25.94%
48,750	1.69%	1.44%	RI	26,148	1.05%	0.93%
31,781	1.10%	1.21%	VT	27,467	1.10%	0.99%
319,578	11.08%	13.10%	VA	230,715	9.23%	12.48%

Note that Maine has the highest percentage of Biogenic VOC emissions to its inventory. Since, generally speaking, biogenic hydrocarbons are much more reactive than anthropogenic ones, the actual impact of changes in VOC emissions is relatively less important when compared to changes in NOx. Table 2 shows which states made larger reductions relative to their baseline contribution (highlighted in yellow)

Attachment A – Inadequate Public Notice of NOx and VOC Changes

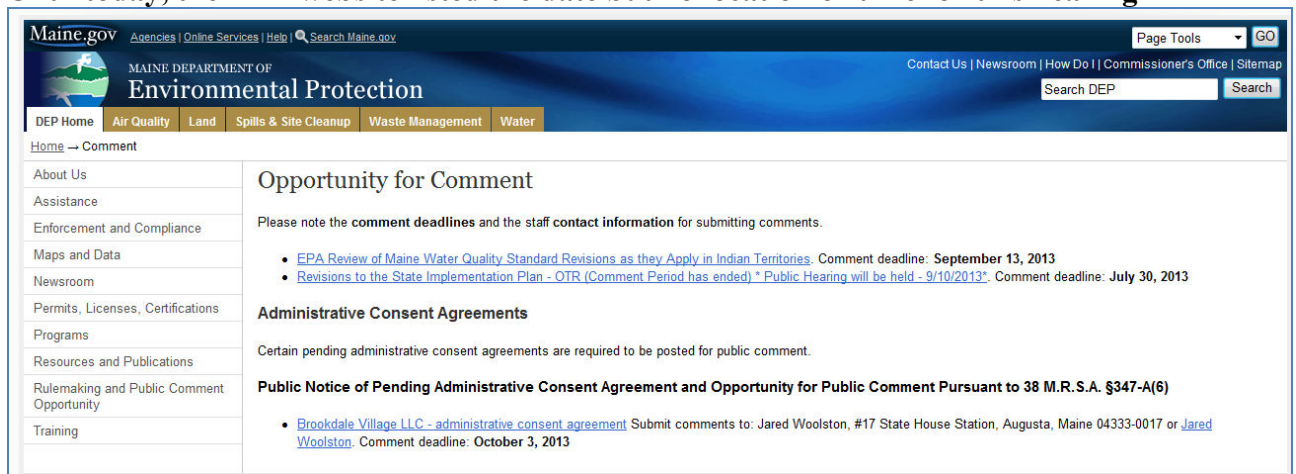
It is difficult not to conclude that DEP has tried to hide these proposed changes from the public. Either that or the system for public notification is broken and needs to be repaired so that more interested parties and members of the public can learn about and participate in changes such as these. Below is a description of DEP's notification.

With regard to nitrogen oxides, the DEP on October 13, 2012, submitted to EPA a request for a statewide waiver from the OTR NOx requirements for new major stationary sources and major plant modifications. DEP provided no notice to the public about this request—not through a newspaper notice, link on the DEP website, or communication to interested parties. There was neither an opportunity to submit comments nor an opportunity to request a public hearing. Because the NOx waiver request is not, technically, an amendment to the State Implementation Plan (SIP), public notice was not required by EPA. As a result, today's public hearing is the only real opportunity Maine people have to comment in person on the statewide NOx waiver.

With regard to the proposed VOC revision to Maine's Clean Air Act State Implementation Plan, public notice was not much better. DEP placed a single ad in the classified section of the Saturday June 30, 2013, edition of the *Kennebec Journal*. The *Kennebec Journal* has the 21st lowest circulation of any Maine newspaper, and Saturday is one of the lowest circulation days of the week. (See next page). It also was difficult to find mention of the VOC opt-out request on the DEP website. Even when a decision was made to hold a public hearing, the time and location for the public hearing were not included on the DEP website until today.

Before passage of the regulatory reform bill (LD 1) in 2011, proposals such as these two likely would have been brought to the Board of Environmental Protection at least for notification of the BEP, if not for their approval.⁸ That process would have provided more transparency and notice to interested parties and the public.

Until today, the DEP website listed the date but no location or time for this hearing



The screenshot shows the Maine Department of Environmental Protection website. The header includes the Maine.gov logo, navigation links for Agencies, Online Services, and Help, and a search bar. The main navigation menu lists DEP Home, Air Quality, Land, Spills & Site Cleanup, Waste Management, and Water. The page content is titled "Opportunity for Comment" and includes the following information:

- Please note the **comment deadlines** and the **staff contact information** for submitting comments.
- [EPA Review of Maine Water Quality Standard Revisions as they Apply in Indian Territories](#): Comment deadline: **September 13, 2013**
- [Revisions to the State Implementation Plan - OTR \(Comment Period has ended\) * Public Hearing will be held - 9/10/2013!](#): Comment deadline: **July 30, 2013**

Administrative Consent Agreements

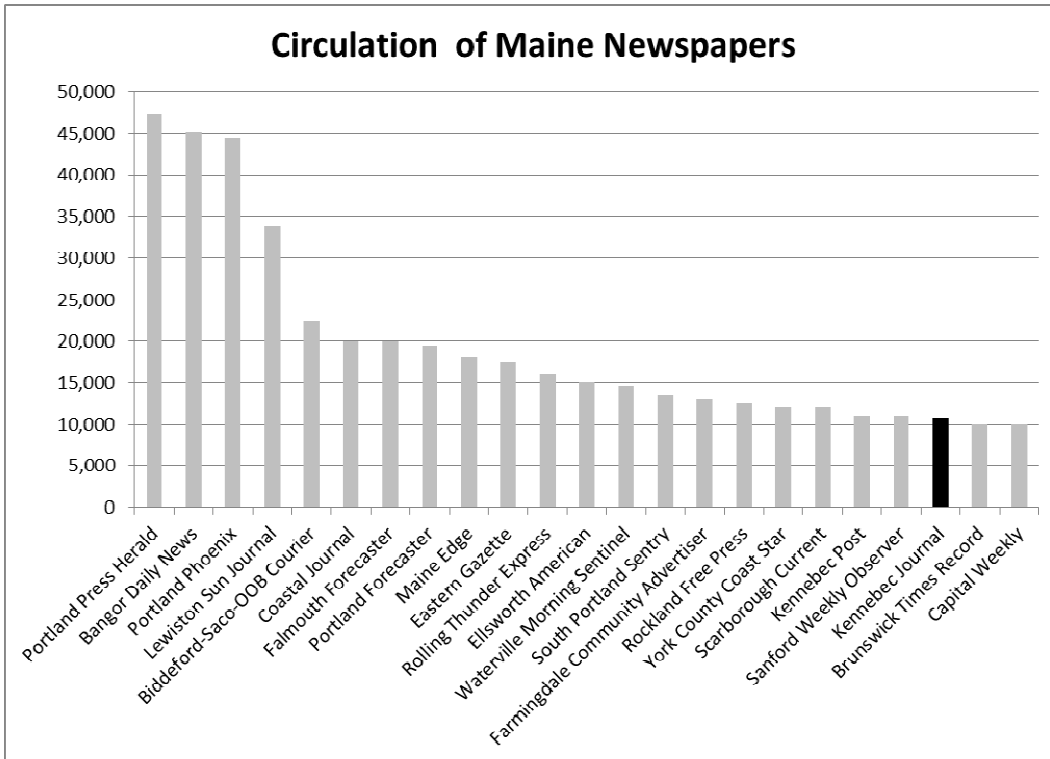
Certain pending administrative consent agreements are required to be posted for public comment.

Public Notice of Pending Administrative Consent Agreement and Opportunity for Public Comment Pursuant to 38 M.R.S.A. §347-A(6)

- [Brookdale Village LLC - administrative consent agreement](#) Submit comments to: Jared Woolston, #17 State House Station, Augusta, Maine 04333-0017 or [Jared Woolston](#). Comment deadline: **October 3, 2013**

⁸ LD 1 removed review by the BEP of "routine technical rules," leaving those entirely to the DEP to amend and adopt. These two proposals to the EPA are analogous to proposed changes in routine technical rules.

DEP Public Notice Placed in Maine Newspaper with 21st Lowest Circulation



Newspaper	Circulation Number
Portland Press Herald	47,326
Bangor Daily News	45,180
Portland Phoenix	44,500
Lewiston Sun Journal	33,900
Biddeford-Saco-OOB Courier	22,500
Coastal Journal	20,000
Falmouth Forecaster	20,000
Portland Forecaster	19,500
Maine Edge	18,000
Eastern Gazette	17,500
Rolling Thunder Express	16,000
Ellsworth American	15,000
Waterville Morning Sentinel	14,532
South Portland Sentry	13,500
Farmingdale Community Advertiser	13,000
Rockland Free Press	12,500
York County Coast Star	12,000
Scarborough Current	12,000
Kennebec Post	11,000
Sanford Weekly Observer	11,000
Kennebec Journal	10,792
Brunswick Times Record	10,000

CLASSIFIED D3

100 Legals	100 Legals	100 Legals	100 Legals	100 Legals	100 Legals
<p>Conversion of Boiler Burners to Dual Fuel Units at the University of Maine at Augusta addressed to:</p> <p>University of Maine at Augusta, c/o Peter St. Michel, Director of Facilities & Project Manager, 46 University Drive, Farmhouse Conference Room, Augusta, Maine 04330</p> <p>Bids will be received until 3:30pm Thursday, July 18th, 2013, at which time they will be opened and read aloud. Sealed bids may also be hand delivered to University of Maine at Augusta, Administration Office, 46 University Drive, Farmhouse Conference Room, Augusta, Maine 04330 on the University of Maine at Augusta campus. Proposals received after the stated time will not be considered and will be returned unopened.</p> <p>Proposals must be accompanied by a satisfactory Bid Bond, as prescribed in Section 00 43 13, for 5% of the Proposal (checks will not be accepted). The University System reserves the right to waive all formalities and reject any and all proposals or to accept any proposal.</p> <p>The successful bidder will be required to furnish a 100% Performance Bond and 100% Payment Bond to cover the execution of the contract which shall be in conformity with the form of Bonds contained in Sections 00 61 13.13 and 00 61 13.16 of the Specifications and for the contract amount.</p> <p>Project Summary: The University is currently</p>	<p>working with the University of Maine System in the installation of a gas main on the UMA - Augusta campus. It is the intention of the University to switch to a dual fuel burner system of #2 Fuel Oil & Natural Gas and Propane & Natural Gas. This project involves the conversion of eight (8) burners, with a total output of 19.5 million btuh.</p> <p>A non-mandatory pre-bid meeting and site walkthrough will be held at 10:00am on Tuesday, July 9th, 2013, meeting at the Farmhouse Building, Augusta, Maine. Bidding contractors and subcontractors are strongly encouraged to attend.</p> <p>Paper or electronic copies of the Plans and Specifications may be obtained by prospective bidders on Monday, July 1st, 2013, from Northeast Reprographics, 80 Central St, Bangor, ME, (207) 947-8049, blueprint@nerepro.com</p> <p>The documents may be examined at the following places:</p> <ul style="list-style-type: none"> AGC of Maine, 108 Whitten Road, Augusta, ME 04332-5519, (207) 622-4741; smeitano@agcmaine.org McGraw-Hill Construction/Dodge, 224 Gorham Road, Scarborough, ME 04074, (207)883-4856; DODGE DOCUMENT NA@mcgraw-hill.com Construction Summary of NH, Maine & VT: info@constructionsummary.com; (800) 321-8856 	<ul style="list-style-type: none"> University of Maine at Augusta, Farmhouse Building Rm. 20, 46 University Drive, Augusta, ME 04330 (207) 621-3111 University of Maine System, Office of Facilities, 16 Central Street, Bangor, ME 04401, (207) 973-3341 <p>The University of Maine System, in all its activities, subscribes and adheres to the provisions of the Civil Rights Act of 1964 as amended to date. General contractors, subcontractors, and product suppliers bidding on this project must subscribe and adhere to same. There shall be no discrimination in employment because of race, national origin, religion, immigration status, handicapped status, or sex.</p> <p>UNIVERSITY OF MAINE AT AUGUSTA, Sheri R. Stevens for The University of Maine System Board of Trustees</p>	<p>ozone transport region (OTR). If the SIP revision is approved by the U.S. Environmental Protection Agency (EPA), the nonattainment new source review requirements would not apply to major new and modified stationary sources of ozone precursors in any area of Maine (at this time) because all areas are designated attainment/unclassifiable for the national ambient air quality standards (NAAQS) for ozone. Without such SIP revision, the nonattainment new source review requirements in question would still apply by virtue of the fact that Maine is located in the OTR. If the SIP revision is approved, the Maine SIP's prevention of significant deterioration (PSD) permitting requirements would apply to the major new and modified stationary sources in question. The specific portions of the SIP affected by the SIP revision would be Maine's Chapter 113 Growth Offset regulation and Chapter 115 Major and Minor Source Air Emission License regulations. If EPA approves the SIP revision, major new and modified stationary sources of ozone precursors in Maine would no longer be subject to the requirement to obtain emissions offsets and meet lowest achievable emission rate (LAER) control requirements. Maine's request is based on technical demonstrations that evaluated the impacts of Maine's NOx and VOC emissions to the 2008 8-hour ozone standards,</p>	<p>using (1) trajectory analyses; (2) emission trends; (3) CALGRID modeling; (4) EPA modeling and (5) PAMS monitoring data analysis. These demonstrations were submitted to EPA separately on October 13, 2012 and February 11, 2013. Maine will submit to EPA its request for a SIP revision after the public participation process has been concluded. Copies of this proposal are available upon request by contacting the Agency contact person or on the DEP website at www.maine.gov/dep/rules/. Pursuant to Maine law, interested parties are publicly notified of the proposed rulemaking and are provided an opportunity for comment. Written comments may be submitted by mail, e-mail or fax to the contact person before the end of the comment period. To ensure the comments are considered, they must include your name and the organization you represent, if any. Although the Department has not scheduled a public hearing on this proposal, a public hearing will be scheduled if any requests are received prior to the close of the public comment period.</p> <p>STATUTORY AUTHORITY: 38 M.R.S.A. § 585-A</p> <p>PUBLIC HEARING: No public hearing is scheduled. There is a 30-day written comment period to request a public hearing.</p> <p>DEADLINE FOR COMMENTS: July 30, 2013 5:00 P.M.</p> <p>AGENCY CONTACT</p>	<p>PERSON: Jeffrey S. Crawford AGENCY NAME: Department of Environmental Protection ADDRESS: State House Station 17, Augusta, ME 04333 TELEPHONE: 207-287-7647 (fax) 207-287-7826 (email) jeff.s.crawford@maine.gov</p> <p>Legal Advertisement NOTICE OF PUBLIC SALE OF REAL ESTATE By virtue of and in execution of a Judgment of Foreclosure and Sale entered in the Kennebec County Superior Court, on March 8, 2013, in Civil Action, Docket No. RE-12-61 brought by Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP against Amber L. Davis and Christopher Davis for the foreclosure of a mortgage recorded in the Kennebec County Registry of Deeds in Book 10268, Page 19, the statutory ninety (90) day period of redemption having expired without redemption, notice is hereby given that there will be a public sale on July 15, 2013 at 1:00 PM at the Law Office of Doug Jennings, located at 226 Water St., Hallowell, ME 04347, all and singular the premises described in said mortgage and being a certain lot of land with the buildings thereon, situated in the town of Belgrade, County of Kennebec, and State of Maine, described in said mortgage as being located at 41 Rock Garden</p>

SEE HOW MAZDA'S NEW SKYACTIV TECHNOLOGY CAN SAVE YOU THOUSANDS AT THE GAS PUMP



Up To 40 MPG

PLUS UP TO \$1000 OWNER LOYALTY CASH

2013 MAZDA CX-9 SPORT WAGON

MSRP \$32,170

SALE PRICE \$29,481

\$427/mo PER MONTHLY PAYMENTS

PLUS \$500 OWNER LOYALTY CASH



Up To 22 MPG

*In the segment, the CX-9 is the only vehicle with a 6-cylinder, 250-hp engine. November 2012.