

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1024

S. P. 314

In Senate, February 26, 1969

Referred to Committee on Natural Resources. Sent down for concurrence and 1,000 ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Berry of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Creating the Surficial Materials Conservation Act.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 10, c. 401, sub-c. III, additional. Chapter 401 of Title 10 of the Revised Statutes is amended by adding a new subchapter III, to read as follows:

SUBCHAPTER III

SURFICIAL MATERIALS CONSERVATION ACT

§ 2141. Short title

This subchapter may be cited as the "Surficial Materials Conservation Act."

§ Findings and purposes

1. Findings. The Legislature finds and declares:

A. Proper conservation of surficial construction materials is in the best interest of the State;

B. The relatively high cost of transportation of these materials requires that small, local sources of such materials be maintained throughout the State;

C. The restoration and screening or other higher use of the pits, quarries and openings of surficial construction materials is important to the preservation of the natural beauty of the State;

D. Because of the widespread nature of these operations, the regulation and control of such restoration work must be a local responsibility, with assistance and advice from appropriate state agencies.

2. Purposes. The purpose of this Act is to maintain a productive and compatible surface mining industry, having due consideration for the rights and interests of land owners, adjacent residents and all the people of the State.

§ 2143. Definitions

For the purposes of this subchapter the following terms have the following meanings:

1. Active land. "Active land" means that part of the operating area which is currently used in or effected by production of surficial material.
2. Borrow pit. "Borrow pit" means an excavation of surficial materials for use in general commerce.
3. Bureau. "Bureau" means the Maine Mining Bureau.
4. Operating area. "Operating area" means the land area involved in the extraction of surficial construction materials.
5. Operator. "Operator" means an individual or corporation, public agency or municipality who extracts, prepares or sells surficial construction materials in general commerce.
6. Regulations. "Regulations" means a code of rules and orders which will be uniform for each municipality.
7. Surficial construction materials. "Surficial construction materials" means naturally occurring unconsolidated mineral material which overlies the bedrock surface of the land; including, but not limited to, sand, gravel, cobbles, clay and loam.

§ 2144. Authority, duties and powers of the bureau

In order to accomplish the purposes of this subchapter, the bureau is empowered:

1. Rules and regulations. To adopt, amend, repeal and assist in administering rules and regulations for the reclamation of borrow pit areas and for other purposes of this subchapter.
2. Officials. To assist in the choice of town or county officials who will be responsible for enforcement of this subchapter.
3. Conduct. To assist and advise the town or county officials in the conduct of their duties to enforce this subchapter.
4. Review. To make an annual review of the methods of reclamation of borrow pit areas and make recommendations for the improvement of such methods.
5. Cooperation. To cooperate with the Federal, State and Local Governments, with natural resources and conservation organizations, and with any

public or private entities having interests in any subject within the purview of this subchapter.

Without limiting the generality of subsections 1 to 5, the bureau is designated the public agency of the State of Maine for the purpose of cooperating with appropriate departments and agencies of the Federal Government concerning reclamation of lands in connection with development and mining of surficial minerals in the State, and for the purpose of cooperating and consulting with federal agencies in carrying out this subchapter. For these purposes the bureau may accept federal funds which may be made available by federal law, and to accept such technical and financial assistance from the Federal Government as the bureau deems advisable and proper for purposes of this subchapter. The bureau is designated the public agency of the State of Maine for the purposes of meeting requirements of the Federal Government with respect to the administration of such federal funds, not inconsistent with this subchapter.

§ 2145. Personnel

The bureau may employ, subject to the Personnel Law, such personnel as may be necessary to properly administer this subchapter, including mining engineers and persons experienced in land management and reclamation.

§ 2146. Advisory Committee

An Advisory Committee, hereinafter in this subchapter called "the committee", is created and established for the purposes set forth in this subchapter. The committee shall consist of 5 members, each of whom shall be appointed by the Governor and one of whom shall be appointed by the Governor as chairman. Each of the members so appointed shall be a person qualified by experience or affiliation in municipal affairs or in mining, water and related land uses. Each member of the committee shall be appointed for a term of 2 years, and their successors shall be appointed in the same manner and subject to the same qualifications as the original members, provided, that of the members first appointed and constituting the first committee, one shall be appointed for a term of one year, 2 for a term of 2 years and 2 for a term of 3 years. A vacancy in the office of a member, other than by expiration of his term, shall be filled in the same manner, but only for the remainder of such term. All members of the committee shall serve without compensation for their services.

The committee shall meet at the call of the chairman or at the request of any 4 members of the committee. Suitable accommodations for such meetings shall be provided by the bureau. Secretarial assistance shall be provided to the committee by the bureau, and the minutes of the meetings of the committee shall be recorded. The functions and purposes of the committee shall be to assist the bureau in an advisory capacity, to render such technical or other assistance to the bureau as may be appropriate, and to present information, evidence, data and recommendations in the bureau's rule making process as is provided.

§ 2147. Method of reclamation control

It shall be the responsibility of the governing officials of each municipality to appoint a citizen of that municipality, who may be a municipal official, as reclamation agent, hereinafter in this subchapter called the "agent", who will administer and enforce this subchapter. Where an operating area is located in an unorganized township, the county commissioners representing that township will act as the local governing officials for the purposes of this section. The agent may consult with and be assisted by the soil and water conservation district for review of the reclamation plan, and inspection of a reclamation project.

1. Salary and expenses. A percentage, established by the bureau, of the permit fees, not to exceed 10%, is to be used to cover the salary and expenses and costs of the governing officials or the agent, or both, when these officials are enforcing this subchapter.

2. Operating permit. Borrow pit operations shall not be conducted on any land in this State unless an operating permit has been issued by the reclamation agent and the appropriate fees and evidence of financial responsibility have been presented by the operator.

3. Issued. A permit to operate a borrow pit will be issued for areas where a current reclamation plan has been filed with the agent. This plan should indicate the projected operational schedule for a 24-month period, and the program for rehabilitation of that area.

4. Financial obligation. The amount of financial obligation per acre will be established on the basis of that plan. The annual reclamation obligation shall be no less than \$500 per acre of active land within the operating area, up to a maximum of \$1,000 per acre of active land.

5. Standards. In considering proposed reclamation plans for approval, the agent shall be governed by the following standards in addition to all other provisions of this subchapter:

A. The plan shall accomplish the reclamation of the mining area upon completion of all of the operator's mining operations in the area;

B. The reclamation work proposed by the plan need not restore the mining area to a better condition, different use, or higher classification, if the land encompassed by the mining area is classified, than that in which such area was or to which such area was put prior to the commencement of the operator's mining operations;

C. An operator shall not be required to fill mine pits, shafts or underground workings;

D. The agent may provide for reclamation work to be performed according to a reclamation plan covering more than one mining area, for the purpose of achieving cost savings, efficiency and benefits to the people of the State, subject to the limitations of this subchapter as to the reclamation work, expenditures and operator's bond required of each operator or for each mining area.

6. Decision. The agent shall make a decision based on standards defined in this subchapter on the reclamation plan, issuing a permit or re-

questing improvements in the plan within 30 working days after receipt of the plan. Each submission thereafter for the same operating area shall be acted upon within 20 days of submission.

7. Length of permit. An operating permit shall be in force for a period of not less than 12 months and not more than 24 months. This permit may be transferrable by the permit holder to a new operator if the pit is sold or transferred. The agent shall be notified in writing 30 days before the date of transfer. A review of the current reclamation plan may be required by the agent.

8. Amended plan. Changes in the method and schedule of operation or differences in the size of area covered by the reclamation plan should be presented as an amendment to the plan. Adjustment in fees and reclamation schedule will be made by the agent upon his approval of the amended plan. In the event of default by the operator, the agent shall accomplish the reclamation plan and shall have a civil action against the operator for his costs reasonably incurred or to be incurred in such accomplishment.

9. Objectives. The objective of the conservation work will be to conceal borrow pit operations from commonly traveled roads and ways, to cover with grass and trees abandoned pits and to soften the contour of the pit walls through leveling operations. It shall be the obligation of the operator to expend the permit fee account from his operation to accomplish this objective.

10. Application of subchapter. This subchapter shall apply only to the land surface of new or expended operating areas. The existing operating area acreage of any borrow pit shall be exempt from this subchapter. A map or plan of the already existing operating area shall be submitted to the agent to establish a base of a future reclamation plan.

11. — exceptions. This subchapter applies to all surficial construction materials operations, except as the same may be in whole or in part regulated by other departments of this State.

§ 2148. Inspection; violations of Act

1. Inspections. The bureau, the agent, any soil and water conservation district engineer or any of their designees may at all reasonable times inspect each mining area for the purpose of determining whether an operator has complied with the requirements of this subchapter and with the regulations and orders of the bureau, including the determination of whether any mining operations are being conducted on lands other than those described in the schedule on file with the bureau for the mining area.

2. Violations; hearing and order. Whenever it appears to the agent after inspection or investigation that there is a violation of this subchapter or of any regulation made pursuant to this subchapter, he shall forthwith notify the soil and water conservation district engineer assigned to the municipality in which such violation has occurred. The engineer shall thereupon conduct an investigation of the alleged violation and, after such in-

vestigation, if he has reason to believe that such violation has occurred, he shall notify the bureau. Upon receipt of such notification the bureau shall:

A. Notify the alleged violator, in writing, setting forth the act or omission which is claimed to be in violation of applicable law or regulations, and at the written request of the alleged violator made within 10 days of receipt of the notice, the bureau shall schedule a hearing to determine whether such violation has been committed and shall send written notice of the time and place of such hearing to the alleged violator; or

B. Schedule a hearing to determine the existence of such alleged violation and notify the alleged violator, in writing, of the time and place of such hearing. The notice shall set forth in writing the act or omission which is claimed to be in violation of this subchapter.

At any hearing held pursuant to either paragraphs A or B, the alleged violator may appear in person or by attorney, answer the allegations of violation, file a statement of facts, including the methods, practices and procedures adopted or used by the alleged violator to comply with this subchapter or regulation hereunder, and may present such evidence as may be pertinent and relevant to the alleged violation. After consideration of such evidence and argument, or in the event that the alleged violator fails to request a hearing within 10 days under paragraph A, or in the event the alleged violator fails to appear on the date set for a hearing, the bureau shall make findings of fact, if it finds that a violation exists as alleged in the notice, it shall issue an order aimed at ending the violation.

A full and complete record shall be kept of all hearings held under this section.

All orders of the bureau issued under this section shall be enforced by the Attorney General. If any such order of the bureau is not complied with within the time period specified, the bureau shall immediately notify the Attorney General of this fact. Within 30 days thereafter the Attorney General shall commence an action, designed to secure compliance with the bureau's order, in the Superior Court of any county where noncompliance with such order has taken place.