

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 406, L.D. 519, Bill, "An Act to Exempt Gravel Pits with Less Than 5 Unreclaimed Acres from Regulation by the Department of Environmental Protection under the Site Location of Development Act"

Amend the bill by striking out the title and substituting the following:

'An Act Establishing Performance Standards for Internally Drained Borrow Pits Consisting of 5 to 15 Acres of Reclaimed and Unreclaimed Land'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 38 MRSA §482, first ¶, as amended by PL 1983, c. 743, §13, is further amended to read:

As used in this ~~Article~~ article and article 7, unless the context otherwise indicates, the following terms have the following meanings.

Sec. 2. 38 MRSA §482, sub-§1-A is enacted to read:

1-A. Borrow pit. "Borrow pit" means a mining operation undertaken primarily to extract and remove sand, fill or gravel. "Borrow pit" does not include any mining operation undertaken primarily to extract or remove rock or clay.

Sec. 3. 38 MRSA §482, sub-§2, as repealed and replaced by PL 1987, c. 812, §§2 and 18, is amended to read:

2. Development that may substantially affect the environment. "Development which that may substantially affect the environment," in this article called "development," means any state, municipal, quasi-municipal, educational, charitable, residential, commercial or industrial development which that:

11. 07. 93

COMMITTEE AMENDMENT "B" to H.P. 406, L.D. 519

- 2 A. Occupies a land or water area in excess of 20 acres;
- 4 B. Contemplates drilling for or excavating natural
- 6 resources on land or under water where the area affected is
- in excess of 60,000 square feet;
- 8 C. Is a mining activity as defined in this section;
- 10 D. Is a hazardous activity as defined in this section;
- 12 E. Is a structure as defined in this section;
- 14 F. Is a conversion of an existing structure that meets the
- 16 definition of structure in this section;
- 18 G. Is a subdivision as defined in this section; or
- 20 H. Is a ~~multi-unit~~ multiunit housing development as defined
- in this section located wholly or in part within the
- shoreland zone.

22 This ~~term~~ "Development" does not include state highways, state

24 aid highways and ~~borrow pits for sand, fill or gravel of less~~

26 ~~than 5 acres or when, borrow pits less than 5 acres, borrow pits~~

regulated under article 7, borrow pits regulated by the

28 Department of Transportation, and such borrow pits entirely

 within the jurisdiction of the Maine Land Use Regulation

30 Commission under Title 12, chapter 206-A, and those activities

 regulated by the Department of Marine Resources under Title 12,

 section 6072.

32 Sec. 4. 38 MRSA §484-A is enacted to read:

34 §484-A. Unlicensed pits; temporary licensing exemption

36 Notwithstanding section 482, subsection 2, a borrow pit

38 within the jurisdiction of the department that on October 1, 1993

40 was between 5 and 15 acres and did not possess a valid license

under this article is not required to obtain a license under this

article if:

42 1. Notice of intent to comply. Pursuant to section 490-C,

44 the owner or operator of the pit files a notice of intent to

comply no later than:

- 46 A. April 1, 1994, for pits having reclaimed or unreclaimed
- 48 areas that drain externally or having reclaimed or
- unreclaimed areas where internal drainage is achieved with
- 50 berms or other structures; or

H. 213

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B. October 1, 1994 for pits where all reclaimed and unreclaimed lands are naturally internally drained; and

2. Adherence to compliance schedule. By October 1, 1995:

A. All reclaimed and unreclaimed areas that were not naturally internally drained on October 1, 1993 are stabilized or reclaimed;

B. All other conditions existing on October 1, 1993 comply with the performance standards under article 7; and

C. All activities conducted after filing a notice of intent to comply are conducted in compliance with article 7.

An unlicensed borrow pit of 5 or more acres is in violation of this article if the owner or operator of that pit does not file a notice of intent to comply under subsection 1.

Sec. 5. 38 MRSa, c. 3, sub-c. I, art. 7 is enacted to read:

Article 7

Performance Standards for Medium Borrow Pits

§490-A. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Affected land. "Affected land" means reclaimed and unreclaimed land, land that has or will have the overburden removed, land on which stumps, spoil or other solid waste has or will be deposited and any storage area or other land area, except a natural buffer strip, that will be or has been used in connection with the borrow pit.

2. Medium borrow pit. "Medium borrow pit" means a borrow pit that has a total reclaimed and unreclaimed area from 5 to 15 acres and that has:

A. Except as otherwise provided, a working pit not larger than 10 acres; and

B. Natural internal drainage in all reclaimed and unreclaimed areas.

2. Natural buffer strip. "Natural buffer strip" means an undisturbed area or belt of land that is covered with trees or other vegetation.

2 of 3

COMMITTEE AMENDMENT "B" to H.P. 406, L.D. 519

2 3. Private drinking water supply. "Private drinking water
3 supply" means a surface water supply, dug well, or a spring or a
4 hole drilled, driven or bored into the earth that is used to
5 extract drinking water for human consumption that is not part of
6 a public drinking water supply.

8 4. Protected natural resource. "Protected natural
9 resource" has the same meaning as in section 480-B, subsection 8.

10 5. Public drinking water supply. "Public drinking water
11 supply" has the same meaning as public water system as defined in
12 Title 22, section 2601, subsection 8.

14 6. Regulator. "Regulator" means:
15
16 A. For medium borrow pits located within a municipality
17 that is registered under section 490-I to enforce this
18 article, the municipality; and
19
20 B. For all other medium borrow pits, the Department of
21 Environmental Protection.

22 7. Working pit. "Working pit" means the unreclaimed area
23 of a borrow pit, including side slopes. "Working pit" does not
24 include stockpiles.

25 **§490-B. Applicability**

26 This article does not apply to:

27
28 1. Site law pits. A person in possession of a valid permit
29 for a borrow pit under article 6 on October 1, 1993. A person in
30 possession of a valid permit for a borrow pit under article 6 on
31 October 1, 1993 must operate that pit in compliance with the
32 terms and conditions of that permit;

33
34 2. Maine Land Use Regulation Commission pits. Borrow pits
35 wholly within the jurisdiction of the Maine Land Use Regulation
36 Commission; and

37
38 3. Other mining operations. A mining operation undertaken
39 primarily to extract clay, silt, topsoil, consolidated minerals
40 or peat or any mineral extraction below the normal high water
41 line of any fresh, estuarine or marine surface waters.

42
43 A person having a medium borrow pit site law permit application
44 pending at the department on October 1, 1993 may, at the
45 discretion of that person, withdraw that application and file a
46 notice of intent to comply pursuant to section 490-C. If that
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person does not withdraw that application, the department shall continue to process the application and that person must operate that medium borrow pit in compliance with the terms and conditions of any permit issued as a result of that application.

§490-C. Notice of intent to comply

Except as provided in section 484-A, a person intending to operate a borrow pit as a medium borrow pit under this article must file a notice of intent to comply before expanding that pit to 5 or more acres. A notice filed under this section must be complete, submitted on forms approved by the department and must be mailed to the department, to the municipality, to each abutting property owner and to the Maine Historic Preservation Commission. The notice must be mailed to the regulator by certified mail, return receipt requested. Upon receiving the postal receipt, the owner or operator may commence operation of the borrow pit.

A notice of intent to comply is not complete unless it includes all the following information:

1. Name, address and phone number. The name, mailing address and telephone number of the owner of the borrow pit and, if different from the owner, the operator of the borrow pit;

2. Map and site plan. A location map and site plan drawn to scale showing property boundaries, stockpile areas, existing reclaimed and unreclaimed lands, proposed maximum acreage of all affected lands, all applicable private or public drinking water supplies and all existing or proposed solid waste disposal areas;

3. Parcel description. A parcel description and size, by tax map or deed description;

4. Information on abutters. The name and address of abutting property owners;

5. Signed statement. A statement, signed and dated by the owner or operator, certifying that the borrow pit will be operated in compliance with this article; and

6. Fees. Any fee required by section 490-J.

If the department determines that a notice filed under this section is not complete, the department must notify the owner or operator of the borrow pit no later than 45 days after receiving the notice.

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§490-D. Performance standards for medium borrow pits

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1. Significant wildlife habitat. Affected land may not be located in a significant wildlife habitat, as defined in Title 38, section 480-B, in a significant wildlife habitat area identified by the regulator that is within any proposed affected lands or in an area listed under the Maine Natural Heritage Program under Title 5, section 13074-A.

2. Solid waste. Solid waste, including stumps, wood waste and land-clearing debris generated on the affected land must be disposed of in accordance with section 421 and chapter 13, including any rules adopted to implement those laws.

3. Groundwater protection. Excavation may not occur within 5 feet of the seasonal high water table. A benchmark sufficient to verify the location of the seasonal high water table must be established and at least one test pit or monitoring well must be established on each 5 acres of unreclaimed land. To further ensure adequate groundwater protection:

A. A 300-foot separation must be maintained between any area used to store oils and any private drinking water supply;

B. A 200-foot separation must be maintained between any excavation and any private drinking water supply in existence prior to that excavation;

C. A 1,000-foot separation must be maintained between any excavation and any public drinking water supply; and

D. Refueling operations, oil changes and other maintenance activities requiring the handling of fuels, petroleum products, hydraulic fluids and other on-site activity involving the storage or use of products which, if spilled, may contaminate groundwater, must be conducted in accordance with the department's spill prevention, control and countermeasures plan. Petroleum products and other substances that may contaminate groundwater must be stored and handled over impervious surfaces that are designed to contain spills. The spill prevention, control and countermeasures plan must be posted at the site.

4. Natural buffer strip. Existing vegetation within a natural buffer strip may not be removed. If vegetation within the natural buffer strip has been removed or disturbed by activities related to operation of the borrow pit before submission of a notice of intent to comply, reclamation of that area must begin immediately upon filing the notice and must be conducted in accordance with subsection 14.

2 5. Protected natural resources. An undisturbed natural
4 buffer strip having a width of at least 75 feet plus 4 times the
 average percent slope must be maintained between the affected
 land and any protected natural resource.

6 6. Roads. Excavation may not occur below road level within
8 150 feet of a road or right-of-way, except that excavation below
 road level may occur within 50 feet of any private road with the
10 written permission of the owner of the road.

12 7. Property boundary. A natural buffer strip at least 150
14 feet wide must be maintained between any excavation and a
 property boundary, including a road right-of-way. This distance
16 may be reduced to not less than 10 feet with the written
 permission of the affected abutting property owner or owners,
18 except that the distance may not be reduced to less than 25 feet
 from the boundary of a cemetery or burial ground. The distance
20 between borrow pits owned by abutting owners may be reduced to
 not less than 50 feet with the abutter's written permission.

22 8. Erosion and sedimentation control. All reclaimed and
24 unreclaimed areas, except for access roads, must be naturally
 internally drained at all times. Berms or other structures may
26 not be constructed to create or maintain internal drainage.

28 A. The area of a working pit may not exceed 10 acres.

30 B. Stockpiles consisting of topsoil to be used for
 reclamation must be seeded, mulched or otherwise temporarily
32 stabilized.

34 9. Surface water protection and storm water management.
 Surface water discharges from areas not required to be naturally
36 internally drained may not be increased as a result of storm
 water runoff from storms up to a level of intensity of a 25-year,
38 24-hour storm. Structures such as detention ponds, retention
 ponds and undersized culverts may not be used to meet this
40 standard. Sediment may not leave the parcel or enter a protected
 natural resource. Grubbed areas not internally drained must be
42 stabilized. Erosion and sedimentation control for access roads
 must be conducted in accordance with the best management
44 practices for the control of erosion and sediment adopted by the
 department.

46 Grading or other construction activity on the site may not alter
 natural drainageways such that the drainage, other than that
48 which occurred before development, adversely affects adjacent
 parcels of land or that the drainageways flowing from adjacent
50 parcels of land to the parcel are impeded.

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2 10. Stockpiles. There may not be more than 2 acres of
4 stockpiles within the working pit at any time.

6 11. Traffic. Entrances and exits of the borrow pit must be
8 located, posted and constructed in accordance with standards for
10 commercial or industrial entrances of the Department of
12 Transportation. Adequate sight distances for entering, exiting
14 and stopping must be maintained in accordance with these
16 standards.

18 12. Noise. Noise levels may not exceed applicable noise
20 limits in rules adopted by the board.

22 13. Dust. Dust generated by activities at the borrow pit,
24 including dust associated with traffic to and from the borrow
26 pit, must be controlled by sweeping, paving, watering or other
28 best management practices for control of fugitive emissions.

30 14. Reclamation. The affected land must be restored to a
32 condition that is similar to or compatible with the conditions
34 that existed before excavation. Reclamation should be conducted
36 in accordance with the department's best management practices for
38 erosion and sediment control, and must include:

40 A. Regrading side slopes to a slope no steeper than 2 1/2
42 horizontal feet for each vertical foot;

44 B. Establishing a vegetative cover by seeding within one
46 year of the completion of excavation. Vegetative cover is
48 acceptable if, within one year of seeding:

50 (1) The planting of trees and shrubs results in a
52 permanent stand or a stand capable of regeneration and
54 succession, sufficient to ensure a 75% survival rate;
56 and

58 (2) The planting of all materials results in permanent
60 90% ground coverage;

62 C. Removing all structures and, once no longer in
64 productive use, reclaiming all access roads, haul roads and
66 other support roads; and

68 D. Reclaiming all affected lands within 2 years after final
70 grading.

72 §490-E. Variances

74 The department may not grant any variances from any
76 provisions of this article.

2 §490-F. Review before expansion

4 Before expanding a borrow pit beyond an area that exceeds a
6 total of 10 acres of reclaimed and unreclaimed land, the owner or
8 operator shall notify the regulator of an intent to expand and
10 must request an inspection. In the same manner as prescribed in
12 section 344-B, the department shall publish a timetable for
14 responding to inspection requests and shall inspect the site
16 within that time period to determine the pit's compliance with
this article and other applicable laws administered by the
department. Mining activities at the pit may continue after the
filing of a notice of an intent to expand. The failure of a
regulator to conduct a site visit within a published time period
is not sufficient basis for a stop-work order under section
490-H, subsection 1.

18 At the time of filing a notification of intent to expand,
20 the owner or operator shall pay any fee required by section 490-J.

22 §490-G. Inspections

24 The regulator may periodically inspect a site, may examine
26 relevant records of the owner or operator of the borrow pit and
may take samples and perform tests necessary to determine
compliance with the provisions of this article.

28 §490-H. Enforcement and penalties

30 Except as provided in section 490-I, the department shall
32 administer and enforce the provisions of this article.

34 1. Stop-work order. The regulator may order the owner or
36 operator of any medium pit that is not operating in compliance
with this article to cease operations until the noncompliance is
corrected or until the owner or operator of that pit obtains a
permit under article 6.

38 2. Penalty. A person who violates the provisions of this
40 article commits a civil violation and is subject to the penalties
42 established under section 349. Penalties assessed for
44 enforcement actions taken by the State are payable to the State
46 and penalties assessed for enforcement actions taken by a
municipality registered under section 490-I are payable to that
municipality. For any action brought by a municipality under
48 this article in which the municipality prevails, the court may
require the owner or operator to reimburse the municipality for
costs associated with that enforcement action.

§490-I. Municipal enforcement; registration

2 This section allows a municipality to register for authority
4 to enforce this article by adopting and submitting to the
6 commissioner an ordinance that meets or exceeds the provisions of
8 this article. The commissioner shall review that ordinance to
10 determine if that ordinance meets the provisions of this article
12 and if the municipality has adequate resources to enforce the
14 provisions of this article. If the commissioner determines that
16 the ordinance meets the provisions of this article and that the
18 municipality has the resources to enforce this article, the
20 commissioner shall register that municipality for authority to
22 enforce this article. Immediately upon approval by the
24 commissioner, primary enforcement authority for this article
26 vests in that municipality.

1. Relation to home rule. Nothing in this section may be
2. construed to limit a municipality's authority under home rule to
3. adopt ordinances regulating borrow pits.

4. Optional participation. Nothing in this article may be
5. construed to require a municipality to adopt any ordinance.

6. Suspension of approval. The commissioner may act to
7. enforce any provision of this article or suspend the registration
8. of a municipality if the commissioner determines that a municipal
9. ordinance no longer conforms to the provisions of this article or
10. that the municipality is not adequately enforcing this article.
11. The commissioner shall notify a municipality of any such
12. determination in writing. Suspension of municipal registration
13. by the commissioner does not void or in any way affect a
14. municipal ordinance or in any way limit the municipality's
15. authority to enforce the provisions of its ordinance.

16. Appeal. A municipality may appeal to the board any
17. decision of the commissioner under this section. Any decision by
18. the board on appeal by a municipality constitutes final agency
19. action.

§490-J. Fees

20. The owner or operator of a medium borrow pit operating under
21. this article must pay the regulator:

1. Initial fee. A fee of \$250 upon filing a notice of
2. intent to comply under sections 484-A or 490-C;

3. Annual fee. By March 1st of each year, an annual fee of:

2 A. Two hundred dollars for borrow pits that will have 2,500
3 cubic yards or more of material extracted during that year;
4 and

5 B. Fifty dollars, for all other borrow pits. To be
6 eligible for the annual fee under this paragraph, the owner
7 or operator must include with the payment of this fee a
8 signed statement certifying that fewer than 2,500 cubic
9 yards of material will be extracted during that year; and

10 3. Notice of intent to expand. A fee of \$250 upon filing a
11 notice of intent to expand under section 490-F.

12 Notwithstanding any other provision of this section, the total
13 for all fees paid under subsections 1 and 2 for one borrow pit in
14 one calendar year may not exceed \$250.

15 **Sec. 6. Working group.** The department shall convene a
16 working group to review the site law permitting process for
17 borrow pits larger than 15 acres. The working group must
18 include, but is not limited to, borrow pit operators,
19 representatives of environmental groups and municipal officials.
20 The working group shall report to the Joint Standing Committee on
21 Energy and Natural Resources by January 15, 1994 with
22 recommendations for minimum standards for borrow pits having
23 fewer than 5 acres and recommendations for amending the
24 permitting process under the Maine Revised Statutes, Title 38,
25 chapter 3, article 6 in a manner that reduces the cost of
26 obtaining a permit for borrow pits larger than 15 acres, reduces
27 the time required to obtain the permit and enhances the
28 consistency of the permitting process while ensuring adequate
29 protection of the environment and protected natural resources.
30 The working group shall also assess the nature and extent of
31 municipal regulation of borrow pits.

32 **Sec. 7. Report.** The Department of Environmental Protection
33 shall report to the joint standing committee of the Legislature
34 having jurisdiction over energy and natural resource matters by
35 January 15th of 1994, 1995, 1996 and 1997 on the implementation
36 of this Act. Each report must show total fees received by the
37 department during the previous calendar year from borrow pit
38 operators who filed a notice under this Act, expenditures of the
39 department in the previous calendar year to administer and
40 enforce this Act, a summary of actions taken by the State to
41 enforce this Act, a list of the municipalities that choose to
42 assume sole jurisdiction for borrow pit regulation under the
43 provisions of this Act and any other information useful in
44 assessing the implementation of this Act.

11-01-9

2 Sec. 8. Use of funds. All fees paid to the Department of
Environmental Protection pursuant to the Maine Revised Statutes,
4 Title 38, section 490-J must be retained and used by the
department to carry out the purposes of this Act.

6 **FISCAL NOTE**

8 The overall fiscal impact to the Maine Environmental
Protection Fund from the various regulatory changes affecting
10 certain borrow pits can not be determined at this time.

12 The Department of Environmental Protection will incur some
minor additional costs to convene a working group and to submit
14 an annual report to the Legislature. These costs can be absorbed
within the department's existing budgeted resources.

18 **STATEMENT OF FACT**

20 This amendment is the minority report of the Joint Standing
22 Committee on Energy and Natural Resources.

24 Current law requires a permit issued by the Department of
Environmental Protection for gravel pits of 5 or more acres.
26 This amendment establishes an alternative to site law permitting
for owners or operators of small internally drained gravel pits
28 who wish to expand those pits to 5 or more acres. Under this
amendment, a site law permit would not be required to expand a
30 gravel pit to 5 or more acres if the owner or operator certifies
that the "working pit" area will not exceed 10 acres at any time,
32 that the working pit will remain naturally internally drained at
all times and that all activities will be conducted in compliance
34 with the minimum performance standards established in this
amendment. A site law permit would still be required for any pit
36 larger than 15 acres and for any pit larger than 5 acres that can
not maintain natural internal drainage in excavated areas.

38 The amendment allows owners or operators of unlicensed
40 gravel pits between 5 and 15 acres to exempt themselves from the
site law permitting process by filing a notice of intent to
42 comply with minimum performance standards. That exemption
applies only if the owner or operator of the unlicensed pit
44 certifies in 1994 that all existing conditions at the pit will be
brought into compliance by October 1, 1995 and that all
46 activities conducted after filing that certification will be
conducted in compliance with these minimum performance standards.

48 The performance standards limit the total area of a pit to
50 15 acres and limits the "working pit" size to 10 acres. The

2-23-93
COMMITTEE AMENDMENT "B" to H.P. 406, L.D. 519

standards also prohibit excavation in significant wildlife
2 habitat areas, require minimum buffers around protected natural
resources, prohibit excavation within 5 feet of groundwater,
4 within 200 feet of private drinking water supplies and within
1,000 feet of public water supplies. The standards also require
6 erosion and sedimentation control, surface water protection and
storm water management planning, require reclamation of affected
8 areas and limit traffic, noise and dust generation at the site.

10 The amendment prohibits the department from granting any
variances from these standards.

12 The amendment allows a municipality to register for
14 authority to enforce these standards by adopting an ordinance
that the Commissioner of Environmental Protection certifies as
16 meeting or exceeding the minimum performance standards in this
amendment. Once a municipality is registered to enforce these
18 standards, all fees and fines imposed by this amendment become
payable to that municipality. The commissioner may bring an
20 enforcement action or may suspend municipal registration if a
registered municipality fails to adequately enforce these
22 standards or changes the ordinance in a manner inconsistent with
the standards.

24 Gravel pits currently licensed under site law remain subject
26 to the terms and conditions of that license. Gravel pits that do
not comply with these minimum performance standards can be
28 ordered to cease operations until they comply or until they
obtain a site law permit. Violations of these standards are
30 subject to the general penalty provisions of the Maine Revised
Statutes, Title 38.

32 The amendment requires the Department of Environmental
34 Protection to convene a working group to review the process for
licensing gravel pits larger than 15 acres and requires the
36 department to report annually for the next 4 years on the
implementation of this amendment.

38 The amendment also adds a fiscal note.
40

Reported by the Minority of the Committee on Energy and Natural
Resources
Reproduced and distributed under the direction of the Clerk of the
House
6/2/93 (Filing No. H-567)