

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1996

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Legislative Document

No. 1854

H.P. 1353

House of Representatives, March 14, 1996

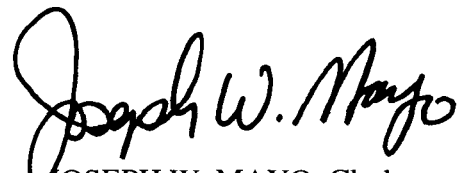
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**An Act to Implement the Recommendations of the Land and Water  
Resources Council Regarding Gravel Pits and Rock Quarries.**

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Reported by Representative DEXTER for the Land and Water Resources Council pursuant to Resolve 1995, chapter 21.

Reference to the Joint Standing Committee on Natural Resources suggested and printing ordered under Joint Rule 20.

  
JOSEPH W. MAYO, Clerk

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

2  
3       **Sec. 1. 38 MRSA §480-Q, sub-§3**, as enacted by PL 1987, c. 809,  
4       §2, is repealed.

6       **Sec. 2. 38 MRSA §482, first ¶**, as amended by PL 1993, c. 350,  
7       §1, is further amended to read:

8  
9       As used in this article ~~and article 7~~, unless the context  
10       otherwise indicates, the following terms have the following  
11       meanings.

12       **Sec. 3. 38 MRSA §482, sub-§2**, as repealed and replaced by PL  
13       1993, c. 680, Pt. C, §7, is amended to read:

14  
15       **2. Development that may substantially affect the**  
16       **environment.** "Development that may substantially affect the  
17       environment," in this article also called "development," means  
18       any federal, state, municipal, quasi-municipal, educational,  
19       charitable, residential, commercial or industrial development  
20       that:

21       A. Occupies a land or water area in excess of 20 acres;

22       B. ~~Contemplates drilling for or excavating natural~~  
23       ~~resources on land or under water where the area affected is~~  
24       ~~in excess of 60,000 square feet;~~

25       C. Is a metallic mineral mining or advanced exploration  
26       activity as defined in this section;

27       D. Is a structure as defined in this section; or

28       E. Is a subdivision as defined in this section.

29       ~~"Development" does not include borrow pits regulated under~~  
30       ~~article 7.~~

31  
32       **Sec. 4. 38 MRSA §482, sub-§2-B**, as repealed and replaced by PL  
33       1993, c. 383, §5 and affected by §42, is amended to read:

34       **2-B. Metallic mineral mining or advanced exploration**  
35       **activity.** "Mining Metallic mineral mining or advanced exploration  
36       activity," in this article also called "mining," means an  
37       activity or process necessary for the extraction or removal of  
38       the ~~product~~ metallic minerals or overburden or for the  
39       preparation, washing, cleaning or other treatment of the ~~product~~  
40       ~~and includes one or more of the following:~~ metallic minerals and  
41       includes the bulk sampling, extraction or beneficiation of  
42       metallic minerals, not including test sampling methods conducted

2 in accordance with rules adopted by the department such as test  
3 boring, test drilling, hand sampling and digging of test pits  
4 with a limited maximum surface opening or methods determined by  
5 the department to cause minimal disturbance of soil or vegetative  
6 cover.

7 A. ~~An excavation of more than 5 acres of land for borrow,~~  
8 ~~topsoil, clay or silt whether alone or in combination;~~

10 B. ~~The bulk sampling, extraction or beneficiation of~~  
11 ~~metallic minerals, not including test sampling methods~~  
12 ~~conducted in accordance with rules adopted by the department~~  
13 ~~such as test boring, test drilling, hand sampling and~~  
14 ~~digging of test pits with a limited maximum surface opening~~  
15 ~~or methods determined by the department to cause minimal~~  
16 ~~disturbance of soil or vegetative cover; or~~

18 C. ~~The extraction or removal of more than 1,000 cubic yards~~  
19 ~~of product or overburden, other than an excavation for~~  
20 ~~borrow, topsoil, clay, silt or metallic minerals, from the~~  
21 ~~earth within 12 successive calendar months.~~

22 "Mining activity or advanced exploration" ~~does not include either~~  
23 ~~excavation or grading preliminary to a construction project,~~  
24 ~~unless intended to circumvent this article, or any other mining~~  
25 ~~activity specifically exempted in this Title. An excavation of 5~~  
26 ~~or fewer acres of land for topsoil, clay or silt must be~~  
27 ~~conducted and reclaimed in accordance with the erosion and~~  
28 ~~sedimentation control standards contained in board rules.~~

30 **Sec. 5. 38 MRSA §482, sub-§4-A,** as enacted by PL 1979, c. 466,  
31 §13, is repealed.

34 **Sec. 6. 38 MRSA §484, sub-§3, ¶¶D and E,** as enacted by PL 1995,  
35 c. 287, §2, are repealed.

36 **Sec. 7. 38 MRSA §484-A, first and last ¶¶,** as enacted by PL 1993,  
37 c. 350, §4, are amended to read:

40 ~~Notwithstanding section 482, subsection 2, If a borrow pit~~  
41 ~~within the jurisdiction of the department that on October 1, 1993~~  
42 ~~was between 5 and 30 acres on October 1, 1993 and did not possess~~  
43 ~~a valid license was not licensed as required under this article,~~  
44 its owner or operator is not required to obtain a license under  
45 this article if:

46 An unlicensed borrow pit of 5 or more acres is in violation  
47 of this article if the owner or operator of that pit does not  
48 file a notice of intent to comply under subsection 1. The  
49 written enforcement policy for responding to violations referred  
50 to in this article.

2 to in section 343-C, subsection 1 does not apply to the owner or  
operator of an excavation regulated under article 7.

4 **Sec. 8. 38 MRSA §488, sub-§11**, as enacted by PL 1993, c. 383,  
§26 and affected by §42, is amended to read:

6 **11. Farm and fire ponds.** A pond or ponds having a total  
8 surface area of less than 10 acres, on a parcel, that is used for  
10 irrigation of field crops, water storage for cranberry operations  
12 or fire protection determined to be necessary in that location by  
the municipal fire department is exempt from review under this  
14 article. This provision does not provide an exemption for mining  
or advanced exploration activity or excavation for borrow, clay,  
topsoil or silt.

16 **Sec. 9. 38 MRSA §488, sub-§16**, as enacted by PL 1995, c. 287,  
§5, is repealed.

18 **Sec. 10. 38 MRSA §489-A, sub-§1, ¶F**, as enacted by PL 1993, c.  
20 383, §27 and affected by §42, is repealed.

22 **Sec. 11. 38 MRSA §490, sub-§1**, as affected by PL 1989, c. 890,  
Pt. A, §40 and amended by Pt. B, §103, is further amended to read:

24 **1. Requirement.** All-mining Mining activities must include  
26 provisions for safety and reclamation of the land area affected  
or otherwise comply with an approval issued pursuant to this  
28 chapter. ~~For a metallic ore mine, these~~ These provisions must  
include a plan for the maintenance of the mine site during mining  
30 and for a period after termination of mining, including the  
methods and annual estimated costs for gas monitoring; leachate  
32 pumping, transportation, monitoring and treatment; ground water  
monitoring, collection and analysis; such revegetation as the  
34 department determines necessary; and activities necessary for  
prevention of soil erosion and for protection of ground and  
36 surface waters.

38 **Sec. 12. 38 MRSA c. 3, sub-c. I, art. 7** is amended by repealing  
the article headnote, as enacted by PL 1993, c. 350, §5, and  
40 enacting the following in its place:

42 **Article 7**

44 **PERFORMANCE STANDARDS FOR**  
46 **EXCAVATIONS FOR BORROW, CLAY, TOPSOIL OR SILT**

48 **Sec. 13. 38 MRSA §490-A, sub-§1**, as enacted by PL 1993, c.  
350, §5, is amended to read:

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

8           **Sec. 14. 38 MRSA §490-A, sub-§1-A** is enacted to read:

10           **1-A. Excavation.** "Excavation" means an excavation for  
11 borrow, topsoil, clay or silt, whether alone or in combination.

12           **Sec. 15. 38 MRSA §490-A, sub-§§2-B to 2-F** are enacted to read:

14           **2-B. Naturally internally drained.** "Naturally internally  
15 drained" means areas of a site that, as a result of the  
16 predevelopment topography and interim and final topography  
17 produced during development of the site, are and will remain at  
18 all times over the course of the development graded so that  
19 neither eroded materials nor runoff either crosses the property  
20 boundary or enters a protected natural resource, natural buffer  
21 strip or other protected area. Areas that rely on man-made  
22 structures, including but not limited to berms, dikes, basins or  
23 undersized culverts, in order to maintain internal drainage are  
24 not considered naturally internally drained.

26           **2-C. Overburden.** "Overburden" means earth and other  
27 materials naturally lying over the product to be removed.

28           **2-D. Owner or operator.** "Owner" or "operator" means the  
29 owner or operator of an excavation.

30           **2-E. Passenger car equivalents at peak hour.** "Passenger  
31 car equivalents at peak hour" means the number of passenger cars,  
32 or, in the case of nonpassenger vehicles, the number of passenger  
33 cars that would be displaced by nonpassenger vehicles, that pass  
34 through an intersection or on a roadway under prevailing roadway  
35 and traffic conditions at that hour of the day during which the  
36 traffic volume generated by the development is higher than the  
37 volume during any other hour of the day. For purposes of this  
38 article, one tractor-trailer combination is the equivalent of 2  
39 passenger cars.

40           **2-F. Primary sand and gravel recharge area.** "Primary sand  
41 and gravel recharge area" means the surface directly overlying  
42 sand and gravel formations that provides direct replenishment of  
43 groundwater in sand and gravel fractured bedrock aquifers. The  
44 term does not include areas overlying formations that have been  
45  
46  
47  
48

2 identified as unsaturated and are not contiguous with saturated  
3 formations.

4 **Sec. 16. 38 MRSA §490-A, sub-§3**, as enacted by PL 1993, c.  
5 350, §5, is amended to read:

6  
7 **3. Private drinking water supply.** "Private drinking water  
8 supply" means a surface water supply, a dug well, or a spring or  
9 a hole drilled, driven or bored into the earth that is used to  
10 extract drinking water for human consumption and that is not part  
11 of a public drinking water supply.

12  
13 **Sec. 17. 38 MRSA §490-A, sub-§5**, as repealed and replaced by  
14 PL 1995, c. 287, §6, is amended to read:

15  
16 **5. Public drinking water source.** "Public drinking water  
17 source ~~of supply~~" means any groundwater well or any surface water  
18 source that directly or indirectly serves a water distribution  
19 system that has at least 15 service connections or regularly  
20 services an average of at least 25 individuals daily at least 30  
21 60 days out of the year.

22  
23 **Sec. 18. 38 MRSA §490-A, sub-§5-A** is enacted to read:

24  
25 **5-A. Reclamation.** "Reclamation" means the rehabilitation  
26 of the area of land affected by mining, including, but not  
27 limited to, the stabilization of slopes and creation of safety  
28 benches, the planting of forests, the seeding of grasses and  
29 legumes for grazing purposes, the planting of crops for harvest  
30 and the enhancement of wildlife and aquatic habitat and aquatic  
31 resources.

32  
33 **Sec. 19. 38 MRSA §490-A, sub-§6**, as enacted by PL 1993, c.  
34 350, §5, is amended to read:

35  
36 **6. Regulator.** "Regulator" means:

37  
38 A. For ~~medium-borrow-pits~~ an excavation located wholly  
39 within a municipality that is registered under section 490-I  
40 to enforce this article, the municipality; and

41  
42 B. For all other ~~medium--berrow--pits~~ excavations, the  
43 Department of Environmental Protection.

44  
45 **Sec. 20. 38 MRSA §490-A, sub-§§6-A to 6-C** are enacted to read:

46  
47 **6-A. Significant sand and gravel aquifer.** "Significant  
48 sand and gravel aquifer" means a deposit of ice-contact and  
glacial outwash sediment that stores and transmits significant

2 quantities of recoverable water. Significant sand and gravel  
4 aquifers are typically located in stratified drift deposits such  
6 as eskers, glaciomarine deltas, kames, kame terraces and outwash  
8 plains.

10 6-B. Silt or clay. "Silt" or "clay" means a material that  
12 consists of particles of such a size that 45% or more of the  
14 fraction of those particles able to pass through a 3-inch sieve  
16 pass through the United States Standard Number 200 sieve, or a  
18 material that exhibits similar erosion potential, difficulty of  
20 stabilization or runoff based upon its gradation, plasticity,  
22 permeability or other relevant criteria.

24 6-C. Topsoil. "Topsoil" means the top layer of soil that  
26 is predominantly fertile and ordinarily moved in tillage or the  
28 equivalent of such a layer in uncultivated soils.

30 Sec. 21. 38 MRSA §490-A, sub-§7, as enacted by PL 1993, c.  
32 350, §5, is repealed and the following enacted in its place:

34 7. Working pit. "Working pit" means the extraction area,  
36 including side slopes, of an excavation for borrow, clay, silt or  
38 topsoil. "Working pit" does not include a stockpile area or an  
40 area that has a permanent fixed structure such as an office  
42 building, permanent processing facility or fixed fuel storage  
44 structure.

46 Sec. 22. 38 MRSA §490-B, as enacted by PL 1993, c. 350, §5,  
48 is repealed and the following enacted in its place:

50 **§490-B. Applicability**

Sections 490-A to 490-K apply to any excavation for borrow,  
clay, topsoil or silt, whether alone or in combination, if the  
total excavated area on a parcel is 5 or more acres, including  
reclaimed and unreclaimed areas, and section 490-M applies to a  
total excavated area of less than 5 acres. This article applies  
if the excavation is located in whole or in part within an  
organized area of this State.

A person in possession of a valid site location of  
development permit for a borrow pit or topsoil, clay or silt  
mining operation shall operate that pit or operation in  
compliance with the terms and conditions of the permit. Any  
modification of the permit must be in conformance with section  
484. A person with a permit under article 6 may file a notice of  
intent to comply under this article. The permit issued under  
article 6 lapses as of the date a complete notice of intent is  
filed with the department. If the permittee chooses to  
substitute a notification pursuant to this article, all terms and



2 conditions that applied to the permit issued pursuant to article  
3 6 are incorporated into the notification approved pursuant to  
4 this article.

6 This article does not apply to:

8 2. Maine Land Use Regulation Commission pits. An  
9 excavation wholly within the jurisdiction of the Maine Land Use  
10 Regulation Commission;

12 4. Excavations reviewed under laws regarding the protection  
13 of natural resources. An excavation to the extent that it is  
14 located in a protected natural resource and requires a permit  
15 under the laws regarding the protection of natural resources in  
16 article 5-A; or

18 5. Grading preliminary to construction. An excavation or  
19 grading preliminary to a construction project unless it is  
20 intended to circumvent this article.

22 **Sec. 23. 38 MRSA §490-C**, as amended by PL 1995, c. 287, §7,  
23 is further amended to read:

24 **§490-C. Notice of intent to comply**

26 Except as provided in section 484-A, a person intending to  
27 ~~operate a borrow pit as a medium borrow pit~~ create or operate an  
28 excavation under this article must file a notice of intent to  
29 comply before expanding that pit to the total area of excavation  
30 on the parcel equals 5 or more acres excavated since January 1,  
31 1970. Both reclaimed and unreclaimed areas are added together in  
32 determining whether this 5-acre threshold is met. A notice filed  
33 under this section must be complete, submitted on forms approved  
34 by the department and mailed to the municipality, the department,  
35 the Maine Historic Preservation Commission and each abutting  
36 property owner. The notice that is mailed to the regulator must  
37 be sent by certified mail, return receipt requested. Upon  
38 receiving the postal receipt, the owner or operator may commence  
39 operation of the borrow pit.

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

44 **1. Name, address and telephone number.** The name, mailing  
45 address and telephone number of the owner ~~of the borrow pit~~ and,  
46 if different from the owner, the operator ~~of the borrow pit~~;

48 **2. Map and site plan.** A location map and site plan drawn  
49 to scale showing property boundaries, stockpile areas, existing  
50 reclaimed and unreclaimed lands, proposed maximum acreage of all

2 affected lands, all applicable private drinking water supplies or  
public drinking water ~~source~~-of supplies and all existing or  
4 proposed solid waste disposal areas;

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

8 **4. Information on abutters.** The name names and address  
10 addresses of abutting property owners;

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

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

18 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  
20 the notice.

22 **Sec. 24. 38 MRSA §490-D**, as amended by PL 1995, c. 460, §8,  
is further amended to read:

24 **§490-D. Performance standards**

26 **1. Significant wildlife habitat.** Affected land may not be  
28 located in a significant wildlife habitat, as defined in section  
480-B, or in an area listed under pursuant to the Maine-Natural  
30 Heritage-Program-under Natural Areas Program, Title 5, section  
~~13074-A~~ 13076. The department may not grant a variance from the  
32 provisions of this subsection.

34 **2. Solid waste.** Solid waste, including stumps, wood waste  
and land-clearing debris generated on the affected land must be  
36 disposed of in accordance with chapter 13, including any rules  
adopted to implement those laws. The department may not grant a  
38 variance from the provisions of this subsection.

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

46 A. A 200-foot separation must be maintained between any  
48 excavation and any private drinking water supply that is a  
point-driven or dug well and was in existence prior to that  
50 excavation.

2 B. A 100-foot separation must be maintained between any  
4 excavation and any private drinking water supply that is  
6 drilled into saturated bedrock and was in existence prior to  
that excavation ~~and~~.

8 C. Separation must be maintained between any excavation  
and any public drinking water ~~source of~~ supply as follows:

10 (1) For systems serving a population of 500 persons or  
12 less, the minimum separation must be 300 feet;

14 (2) For systems serving a population of 501 persons up  
to 1,000 persons, the separation must be 500 feet;

16 (3) For systems serving a population of more than  
18 1,000 persons, the separation must be 1,000 feet; and

20 (4) For any system that holds a valid filtration  
waiver in accordance with the federal Safe Drinking  
22 Water Act, the separation must be 1,000 feet.

24 The department may grant a variance from the provisions of  
this paragraph upon consultation with the public water  
26 supply affected by the excavation. The department may not  
grant a waiver from the provisions of paragraph A, B or D ~~and~~.

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

40 E. Excavation below the seasonal high water table of an area  
42 previously designated for potential use as a public drinking  
44 water supply by a municipality or private water company is  
46 prohibited. If the yield of groundwater flow to protected  
48 waters or wetlands is not adversely affected, the department  
may grant a variance allowing excavation below the seasonal  
high water table of a mapped significant sand and gravel  
aquifer, or primary sand and gravel recharge area, or an  
unconsolidated deposit in other locations.

50

2 F. In the event of excavation below the seasonal high water  
4 table, the operator of a mining activity that affects a  
6 public or private drinking water supply by excavation  
8 activities causing contamination, interruption or diminution  
10 must restore or replace the affected water supply with an  
12 alternate source of water, adequate in quantity and quality  
14 for the purpose served by the supply. This paragraph is not  
16 intended to replace any independent action that a person  
18 whose water supply is affected by a mining activity may have.

12 G. In the event of excavation below the seasonal high water  
14 table, a 300-foot separation must be maintained between the  
16 limit of excavation and any predevelopment private drinking  
18 water supply, and a 1000-foot separation must be maintained  
20 between the limit of excavation and any public drinking  
22 water supply or area previously designated for potential use  
24 as a public drinking water supply by a municipality or  
26 private water company.

20 ~~The separation distance requirements described in paragraphs A, B~~  
22 ~~and C do not apply when the private or public water supply is~~  
24 ~~owned by the owner of the excavation site.~~

24 The department may grant a variance allowing excavation between 2  
26 and 5 feet of the seasonal high water table. ~~The department may~~  
28 ~~grant a variance allowing reclamation as a pond, provided the~~  
30 ~~pond resulted from excavation below the seasonal high water table~~  
32 ~~prior to October 1, 1993. The separation distance requirements~~  
34 ~~described in paragraphs A, B and C do not apply when the private~~  
36 ~~or public water supply is owned by the owner of the excavation~~  
38 ~~site.~~

34 **3-A. Medium borrow pits unlicensed on October 1, 1993.**

34 Notwithstanding subsection 3, the following provisions apply to a  
36 medium borrow pit that on October 1, 1993 was not licensed under  
38 article 6 and on which gravel had been extracted to a level less  
40 than 5 feet above the seasonal high water table.

40 A. The department may not require the medium borrow pit  
42 owner or operator to elevate the medium borrow pit floor to  
44 5 feet or more above the seasonal high water table as a  
46 condition of operation.

44 ~~B. The department may permit excavation between 5 feet and~~  
46 ~~2 feet of the seasonal high water table, providing~~  
48 ~~sufficiently detailed information is submitted to allow the~~  
~~department to determine that groundwater will not be~~  
~~adversely affected.~~

2 C. The medium borrow pit owner or operator may reclaim as a  
3 pond that area of the medium borrow pit less than 5 feet  
4 above the seasonal high water table.

6 **4. Natural buffer strip.** Existing vegetation within a  
7 natural buffer strip may not be removed. If vegetation within  
8 the natural buffer strip has been removed or disturbed by the  
9 excavation or activities related to ~~operation-of-the-borrow-pit~~  
10 the excavation before submission of a notice of intent to comply,  
11 that vegetation must be reestablished as soon as practicable  
12 after filing the notice of intent to comply. The department may  
13 not grant a variance from the provisions of this subsection.

14 **5-A. Protected natural resources.** A natural buffer strip  
15 must be maintained between the working edge of an excavation and  
16 a river, stream, brook, great pond or coastal wetland as defined  
17 in section 480-B. A natural buffer strip must also be maintained  
18 between the working edge of an excavation and certain freshwater  
19 wetlands as defined in section 480-B and having the  
20 characteristics listed in paragraph B. ~~Any-excavation~~ Excavation  
21 activities conducted within 100 feet of a protected natural  
22 resource must comply with the applicable permit requirement under  
23 article 5-A. The width requirements for natural buffer strips  
24 are as follows.

26 A. A natural buffer strip at least 100 feet wide must be  
27 maintained between the working edge of the excavation and  
28 the normal high water line of a great pond classified as GPA  
29 or a river flowing to a great pond classified as GPA.

30 B. A natural buffer strip at least 75 feet wide must be  
31 maintained between the working edge of the excavation and  
32 any other water body, river, stream, brook, coastal wetland,  
33 or significant wildlife habitat contained within a  
34 freshwater wetland or a freshwater wetland consisting of or  
35 containing:

38 (1) Under normal circumstances, at least 20,000 square  
39 feet of aquatic vegetation, emergent marsh vegetation  
40 or open water, except for artificial ponds or  
41 impoundments; or

42 (2) Peatlands Peat lands dominated by shrubs, sedges  
43 and sphagnum moss.

46 For purposes of this subsection, the width of a natural buffer  
47 strip is measured from the upland edge of floodplain wetlands; if  
48 no floodplain wetlands are present, the width of the natural  
49 buffer strip is measured from the normal high water mark of a  
50 great pond, river, stream, or brook or the upland edge of a

2 freshwater or coastal wetland. The department may not grant a  
3 variance from this subsection.

4 **6-A. Public and private roads.** A natural buffer strip must  
5 be maintained between the working edge of an excavation and a  
6 road as follows.

8 A. A natural buffer strip at least 150 feet wide must be  
9 maintained between the working edge of an excavation and a  
10 road designated as a scenic highway by the Department of  
11 Transportation.

12 B. A natural buffer strip at least 100 feet wide must be  
13 maintained between the working edge of an excavation and any  
14 public road not designated as a scenic highway by the  
15 Department of Transportation. A natural buffer strip at  
16 least 25 feet wide must be maintained between the working  
17 edge of a topsoil excavation and any public road not  
18 designated as a scenic highway by the Department of  
19 Transportation.

22 C. A natural buffer strip at least 50 feet wide must be  
23 maintained between the working edge of an excavation and any  
24 private road or right-of-way. If a private road is  
25 contained within a wider right-of-way, the buffer is  
26 measured from the edge of the right-of-way. The width of  
27 the natural buffer strip adjacent to a private road may be  
28 reduced if the applicant receives written permission from  
29 the person or persons having a right-of-way over the private  
30 road.

32 Except for paragraph B, the department may not grant a variance  
33 from the provisions of this subsection. The department may grant  
34 a variance from paragraph B, provided that the variance will not  
35 result in the natural buffer strip being reduced to less than 50  
36 feet between the working edge of the excavation and any road and  
37 provided that the owner or operator installs visual screening and  
38 safety measures as required by the department.

40 ~~This distance is measured from the outside edge of the shoulder~~  
41 ~~of the road.~~

42 A distance specified in this subsection is measured from the  
43 outside edge of the shoulder of the road unless otherwise  
44 specifically provided.

46 **7. Property boundary.** A natural buffer strip at least 50  
47 feet wide must be maintained between any excavation and a any  
48 property boundary. A natural buffer strip at least 25 feet wide  
49 must be maintained between any topsoil excavation and a property  
50

boundary. ~~This distance~~ These distances may be reduced to not less than 10 feet with the written permission of the affected property owner or owners, except that the distance may not be reduced to less than 25 feet from the boundary of a cemetery or burial ground. The buffer strip between ~~berrow-pits~~ excavations owned by abutting owners may be eliminated with the abutter's written permission, provided the elimination of this buffer strip does not increase the runoff from either excavation across the property boundary. All property boundaries must be identified in the field by markings such as metal posts, stakes, flagging or blazed trees. The department may not grant a variance from the provisions of this subsection.

14           **8. Erosion and sedimentation control.** All reclaimed and unreclaimed areas, except for access roads, must be naturally internally drained at all times unless a variance is obtained from the department. ~~Berms--or--other--structures--may--not--be constructed--to--create--or--maintain--internal--drainage.~~

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

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

26           C. Sediment may not leave the parcel or enter a protected natural resource.

28           D. Grubbed areas not internally drained must be stabilized.

30           E. Erosion and sedimentation control for access roads must be conducted in accordance with the department's best management practices for erosion and sedimentation control.

34 ~~Except for the provisions of paragraph A, the department may not grant a variance from the provisions of this subsection. Notwithstanding any other provision of this article, a variance from paragraph A may not result in the combined working pit and stockpile area exceeding 15 acres. The department may grant a variance from this subsection, except for paragraphs C, D and E.~~

42           **9. Surface water protection and storm water management.** Surface water discharges from areas not required to be naturally 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, 24-hour storm. Structures such as detention ponds, retention ponds and undersized culverts may not be used to meet this standard unless a variance is obtained from the department. ~~Sediment may not leave the parcel or enter a protected natural resource. Grubbed areas not internally drained must be~~

2 stabilized. ~~Erosion and sedimentation control for access roads~~  
3 ~~must be conducted in accordance with the best management~~  
4 ~~practices for the control of erosion and sediment adopted by the~~  
5 ~~department.~~

6 Grading or other construction activity on the site may not alter  
7 natural drainageways such that the drainage, other than that  
8 which occurred before development, adversely affects an adjacent  
9 parcels parcel of land, or that the any drainageways flowing from  
10 an adjacent parcels parcel of land to the parcel are impeded.

12 ~~10. Stockpiles. There may not be more than 2 acres of~~  
13 ~~stockpiles within the working pit at any time. The department~~  
14 ~~may grant a variance from this subsection, except that a variance~~  
15 ~~may not result in the combined working pit and stockpile area~~  
16 ~~exceeding 15 acres.~~

18 ~~11. Traffic. Entrances and exits of the borrow pit must be~~  
19 ~~located, posted and constructed in accordance with standards for~~  
20 ~~roadways in rules adopted by the board. Adequate sight distances~~  
21 ~~for entering, exiting and stopping must be maintained in~~  
22 ~~accordance with these standards. The department may not grant a~~  
23 ~~variance from the provisions of this subsection. The following~~  
24 ~~provisions govern traffic.~~

26 A. Entrances and exits of the borrow pit must be located,  
27 posted and constructed in accordance with standards for  
28 roadways in rules adopted by the board. Adequate sight  
29 distances for entering, exiting and stopping must be  
30 maintained in accordance with these standards. The  
31 department may not grant a variance from the provisions of  
32 this subsection. This paragraph is repealed January 1, 1997.

34 B. Any excavation activity that generates 100 or more  
35 passenger car equivalents at peak hour must comply with the  
36 applicable permit requirements under article 6. This  
37 paragraph takes effect January 1, 1997.

38 ~~12. Noise. Noise levels may not exceed applicable noise~~  
39 ~~limits in rules adopted by the board. ~~The department may not~~~~  
40 ~~~~grant a variance from the provisions of this subsection.~~~~

42 ~~13. Dust. Dust generated by activities at the borrow pit~~  
43 ~~excavation site, including dust associated with traffic to and~~  
44 ~~from the borrow pit excavation site, must be controlled by~~  
45 ~~sweeping, paving, watering or other best management practices for~~  
46 ~~control of fugitive emissions. Dust control methods may include~~  
47 ~~the application of calcium chloride, providing the manufacturer's~~  
48 ~~labeling guidelines are followed. The department may not grant a~~  
49 ~~variance from the provisions of this subsection.~~



2           **14. Reclamation.** The affected land must be restored to a  
3 condition that is similar to or compatible with the conditions  
4 that existed before excavation. Reclamation should be conducted  
5 in accordance with the department's best management practices for  
6 erosion and sediment control, and must include:

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

10           B. Establishing a vegetative cover by seeding within one  
11 year of the completion of excavation. Vegetative cover is  
12 acceptable if, within one year of seeding:

13                   (1) The planting of trees and shrubs results in a  
14 permanent stand or a stand capable of regeneration and  
15 succession, sufficient to ensure a 75% survival rate;  
16 and

17                   (2) The planting of all materials results in permanent  
18 90% ground coverage;

19           C. Removing all structures and, once no longer in  
20 ~~productive~~ use, reclaiming all access roads, haul roads and  
21 other support roads; and

22           D. Reclaiming all affected lands within 2 years after final  
23 grading; and

24           E. Stockpiling soil that is stripped or removed for use in  
25 reclaiming disturbed land areas.

26  
27  
28           The department may require a bond payable to the State with  
29 sureties satisfactory to the department or such other security as  
30 the department may determine adequately secures compliance with  
31 this article, conditioned upon the faithful performance of the  
32 requirements set forth in this article. Other security may  
33 include a security deposit with the State, an escrow account and  
34 agreement, insurance or an irrevocable trust. In determining the  
35 amount of the bond or the security, the department shall take  
36 into consideration the character and nature of the overburden,  
37 the future suitable use of the land involved and the cost of  
38 grading and reclamation required. All proceeds of forfeited  
39 bonds or other security must be expended by the department for  
40 the reclamation of the area for which the bond was posted and any  
41 remainder returned to the operator.

42  
43           The board may adopt or amend rules to carry out this subsection,  
44 including rules relating to operation or maintenance plans;  
45 standards for determining the reclamation period; annual  
46

2 revisions of those plans; limits, terms and conditions on bonds  
4 or other security; proof of financial responsibility of a person  
6 engaged in excavation activity or the affiliated person who  
8 guarantees performance; estimation of reclamation costs; reports  
10 on reclamation activities; or the manner of determining when the  
12 bond or other security may be discharged.

8 ~~Except for paragraph A, the department may not grant a variance~~  
10 ~~from the provisions of this subsection.~~ The department may grant  
12 a variance from paragraph A, provided that the slopes exhibit  
14 substantial vegetation and are stable. The department may not  
16 assess a fee for a request for a variance from paragraph A. The  
department may grant a variance from paragraph E if the applicant  
demonstrates that the soil is not needed for reclamation  
purposes. The department may not grant a variance from the other  
provisions of this subsection.

18 **Sec. 25. 38 MRSA §490-E**, as enacted by PL 1993, c. 350, §5,  
20 is amended to read:

22 **§490-E. Variances**

24 The owner or operator ~~of a medium borrow pit~~ must comply  
26 with the performance standards in section 490-D unless a variance  
28 from those performance standards is approved by the department.  
30 Except where prohibited by section 490-D, the department may  
32 grant a variance from the performance standards in this article  
34 if the owner or operator affirmatively demonstrates to the  
36 department that the variance does not adversely affect natural  
38 resources or existing uses and does not adversely affect the  
40 health, safety and general welfare of the public. ~~The department~~  
42 ~~must use the applicable provisions of rules adopted under the~~  
~~site location of development laws to decide upon variances.~~ A  
variance request must be mailed to the department by certified  
mail, return receipt requested. ~~At the time a variance request~~  
~~is mailed to the department, a copy of the variance request must~~  
~~be sent to each abutting property owner and to the municipality~~  
~~in which the borrow pit is located.~~ A variance request  
44 application must include any fee applicable under section 490-J.  
46 The department shall process the variance application according  
48 to chapter 2 and the rules adopted by the department for  
50 processing an application.

44 The department shall publish a timetable for responding to  
46 variance ~~requests~~ applications in the same manner prescribed in  
48 section 344-B. A variance is not valid unless approved by the  
50 department and, if a municipality is the regulator, the  
municipality. In making its decision on variance ~~requests~~  
applications, the department shall consider comments or  
information received ~~from abutters~~ and the compliance record of

2 the owner or operator. The department shall inform the owner or  
operator ~~of the borrow-pit~~ of any significant concerns or issues  
4 raised ~~by abutters~~.

6 **Sec. 26. 38 MRSA §490-F, first ¶**, as amended by PL 1995, c. 287,  
§16, is further amended to read:

8 Before expanding a ~~borrow-pit~~ an excavation beyond an area  
10 that exceeds a total of 10 acres of reclaimed and unreclaimed  
~~land, and before expanding a borrow-pit beyond an area that~~  
~~exceeds a total of 20 acres of reclaimed and unreclaimed land~~  
12 each additional 10-acre expansion, the owner or operator shall  
14 notify the regulator of an intent to expand and must request an  
inspection. In the same manner as prescribed in section 344-B,  
16 the department shall publish a timetable for responding to  
inspection requests and shall inspect the site within that time  
18 period to determine the ~~pit's~~ excavation's compliance with this  
article and other applicable laws administered by the  
20 department. The department may defer an inspection for a  
reasonable period when winter conditions at the site prevent the  
22 department from evaluating an expansion request. The department  
shall notify the owner or operator of a deferral under this  
24 section. Mining Excavation activities ~~at the pit~~ may continue  
after the filing of a notice of an intent to expand. The failure  
26 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.

28 **Sec. 27. 38 MRSA §490-G**, as enacted by PL 1993, c. 350, §5,  
30 is amended to read:

32 **§490-G. Inspections**

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

38 **Sec. 28. 38 MRSA §490-H, sub-§1**, as enacted by PL 1993, c.  
40 350, §5, is amended to read:

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

48 **Sec. 29. 38 MRSA §490-H, sub-§3** is enacted to read:

2           3. Reclamation. If, after an opportunity for a hearing,  
3           the commissioner determines that the owner of an excavation site  
4           or the person who was engaged in the excavation activity at the  
5           excavation site has violated this article, the commissioner shall  
6           direct the department staff or contractors under the supervision  
7           of the commissioner to enter on the property and carry out the  
8           necessary reclamation. The person engaged in mining or any  
9           affiliated person who guarantees performance at the excavation  
10           site is liable for the reasonable expenses of the necessary  
11           reclamation. The commissioner may use the bond or other security  
12           to meet the reasonable expenses of reclamation.

13           **Sec. 30. 38 MRSA §490-I, sub-§1,** as enacted by PL 1993, c.  
14           350, §5, is amended to read:

15           **1. Relation to home rule.** Nothing in this section may be  
16           construed to limit a municipality's authority under home rule to  
17           adopt ordinances regulating borrow pits, topsoil, clay or silt  
18           excavations.

19           **Sec. 31. 38 MRSA §490-J,** as enacted by PL 1993, c. 350, §5,  
20           is amended to read:

21           **§490-J. Fees**

22           The owner or operator of ~~a medium borrow pit operating an~~  
23           excavation being operated under this article must pay the  
24           regulator:

25           **1. Initial fee.** A fee of \$250 upon filing a notice of  
26           intent to comply under section 484-A or 490-C;

27           **2. Annual fee.** By March 1st of each year, an annual fee of:

28           A. ~~Two~~ Three hundred and fifty dollars for ~~borrow pits that~~  
29           will have an excavation from which 2,500 cubic yards or more  
30           of material will be extracted during that year; and

31           B. Fifty dollars, for all other ~~borrow pits~~ excavations. To  
32           be eligible for the annual fee under this paragraph, the  
33           owner or operator must include with the payment of this fee  
34           a signed statement certifying that ~~the fewer~~ less than 2,500  
35           cubic yards of material will be extracted during that year;

36           **3. Variance fee.** A fee of \$250 for each variance requested  
37           under section 490-E, ~~and,~~ except for the following:

38           A. A fee of \$500 for a variance to excavate below the  
39           seasonal high water table;

40

2            B. A fee of \$500 for a variance to create an externally  
drained pit; and

4            C. A fee of \$125 for a variance to waive the topsoil  
salvage requirement; and

6  
8            **4. Notice of intent to expand.** A fee of \$250 upon filing a  
notice of intent to expand under section 490-F.

10           Notwithstanding any other provision of this section, the  
12           total for all fees paid under subsections 1 and 2 for one borrow  
pit, clay, topsoil or silt excavation in one calendar year may  
14           not exceed \$250 ~~\$350~~.

16           Payment of the annual fee under subsection 2 is no longer  
required after reclamation is complete as determined by the  
department. The department shall inspect the site before making  
18           this determination.

20           **Sec. 32. 38 MRS §490-K**, as enacted by PL 1995, c. 287, §17,  
22           is amended to read:

24           **§490-K. Transfer of ownership or operation**

26           A person who purchases a ~~berrow-pit~~ an excavation that  
operates is operated under a notice of intent to comply or who  
28           obtains operating authority of a ~~pit~~ an excavation that operates  
under a notice of intent to comply must file within 2 weeks after  
30           the purchase or the obtaining of operating authority a notice of  
intent to comply on a form developed by the department. The new  
32           owner or operator may operate the ~~berrow-pit~~ excavation during  
this 2-week period without having filed a notice of intent to  
34           comply, providing the new owner or operator complies with all  
standards under this article.

36           **Sec. 33. 38 MRS §490-L**, as enacted by PL 1995, c. 287, §17,  
is repealed.

38           **Sec. 34. 38 MRS §490-M** is enacted to read:

40           **§490-M. Erosion control requirements for clay, topsoil, or silt**  
42           **excavations of less than 5 acres**

44           An excavation of less than 5 acres of land for clay, topsoil  
or silt must be conducted and reclaimed in accordance with the  
46           following standards.

48           **1. Stabilization and control.** Sediment may not leave the  
parcel or enter a protected natural resource as defined in  
50           section 480-B. Properly installed erosion control measures must

2 be in place before the excavation begins. Vegetative cover must  
3 be established on all affected land. Topsoil must be placed,  
4 seeded and mulched within 7 days of final grading. Permanent  
5 vegetative cover is acceptable for purposes of erosion control  
6 if, within one growing season of seeding, the planting of trees  
7 and shrubs results in a permanent stand or a stand capable of  
8 regeneration and succession sufficient to ensure a 75% survival  
9 rate and the planting of all materials in permanent 90% ground  
10 coverage.

11 2. Phases. The excavation must be reclaimed in phases so  
12 that the working pit does not exceed 2 acres at any one time.

13 **Sec. 35. 38 MRSA c. 3, sub-c. I, art. 8-A is enacted to read:**

14 **Article 8-A**

15 **PERFORMANCE STANDARDS FOR QUARRIES**

16 **§490-W. Definitions**

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

19 1. Affected land. "Affected land" means all reclaimed and  
20 unreclaimed land, land that has or will have the overburden  
21 removed, land on which stumps, spoil or other solid waste has or  
22 will be deposited and storage areas or other land, except natural  
23 buffer strips, that will be or has been used in connection with a  
24 quarry.

25 2. Airblast. "Airblast" means an atmospheric compression  
26 wave resulting from the detonation of explosives, whether  
27 resulting from the motion of blasted materials or the expansion  
28 of gases from the explosion.

29 3. Blaster. "Blaster" means a person qualified to be in  
30 charge of or responsible for the loading and firing of a blast.

31 4. Blasting. "Blasting" means the use of explosives to  
32 break up or otherwise aid in the extraction or removal of a rock  
33 or other consolidated natural formation.

34 5. Blast site. "Blast site" means the area where explosive  
35 material is handled during the loading of drilled blastholes,  
36 including the perimeter formed by the loaded blastholes and 50  
37 feet in all directions from loaded blastholes.

2           6. Detonating cord. "Detonating cord" means a flexible  
cord containing a center core of high explosives that may be used  
to initiate other explosives.

4  
6           7. Explosive. "Explosive" means any chemical compound or  
other chemical substance that contains oxidizing or combustible  
materials used for the purpose of producing an explosion intended  
8           to break or move rock, earth or other materials.

10           8. Flyrock. "Flyrock" means rock that is propelled through  
the air or across the ground as a result of blasting and that  
12           leaves the blast area.

14           9. Matting. "Matting" means a covering placed over load  
holes and adjacent areas in order to minimize generation of  
16           flyrock and limit airblast effects.

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

22           11. Passenger car equivalents at peak hour. "Passenger car  
equivalents at peak hour" means the number of passenger cars, or,  
24           in the case of nonpassenger vehicles, the number of passenger  
cars that would be displaced by nonpassenger vehicles, that pass  
26           through an intersection or on a roadway under prevailing roadway  
and traffic conditions at that hour of the day during which  
28           traffic volume generated by the development is higher than the  
volume during any other hour of the day. For purposes of this  
30           article, one tractor-trailer combination is the equivalent of 2  
passenger cars.

32           12. Peak particle velocity. "Peak particle velocity" means  
34           the maximum rate of ground movement measured by any of the 3  
mutually perpendicular components of ground motion.

36           13. Preblast survey. "Preblast survey" means  
38           documentation, prior to the initiation of blasting, of the  
condition of buildings, structures, wells or other  
40           infrastructures; protected natural resources; historic sites; and  
unusual natural areas.

42           14. Private drinking water supply. "Private drinking water  
44           supply" means a surface water supply, a dug well, a spring or a  
hole drilled, driven or bored into the earth that is used to  
46           extract drinking water for human consumption and that is not part  
of a public drinking water supply.

2 15. Production blasting. "Production blasting" means  
blasting conducted for the purpose of extracting or removing  
natural materials for commercial sale or beneficiation.

4  
6 16. Public drinking water supply. "Public drinking water  
supply" means a groundwater well or a surface water source that  
directly or indirectly serves a water distribution system that  
8 has at least 15 service connections or regularly services an  
average of at least 25 individuals daily at least 60 days of the  
10 year.

12 17. Quarry. "Quarry" means a place where rock is excavated.

14 18. Reclamation. "Reclamation" means the rehabilitation of  
the area of land affected by mining, including, but not limited  
16 to, the stabilization of slopes and creation of safety benches,  
the planting of forests, the seeding of grasses and legumes for  
18 grazing purposes, the planting of crops for harvest and the  
enhancement of wildlife and aquatic habitat and aquatic  
20 resources. "Reclamation" does not include the filling in of pits  
and the filling or sealing of shafts and underground workings  
22 with solid materials unless necessary for the protection of  
groundwater or for reasons of safety.

24 19. Regulator. "Regulator" means:

26 A. For a quarry located wholly within a municipality that  
28 is registered under section 490-DD to enforce this article,  
the municipality; and

30 B. For all other quarries, the Department of Environmental  
32 Protection.

34 20. Rock. "Rock" means a hard, nonmetallic material that  
requires cutting, blasting or similar methods of forced  
36 extraction.

38 21. Stemming. "Stemming" means inert material used in a  
blasthole to confine the gaseous products of detonation.

40 22. Surface blasting. "Surface blasting" means any  
42 blasting for which the blast area lies at the surface of the  
ground.

44 23. Underground production blasting. "Underground  
46 production blasting" means a blasting operation carried out  
beneath the surface of the ground by means of shafts, declines,  
48 adits or other openings leading to the natural material being  
mined or extracted.

50



2                   **§490-X. Applicability**

4                   This article applies to any quarry that is more than one  
6                   acre in size, including reclaimed and unreclaimed areas, or at  
8                   which underground production blasting is proposed.

10                   This article does not apply to a quarry located wholly  
12                   within the jurisdiction of the Maine Land Use Regulation  
14                   Commission.

16                   This article does not apply to an excavation or grading  
18                   preliminary to a construction project, unless intended to  
20                   circumvent this article.

22                   A person with a valid permit for a quarry under article 6  
24                   must operate that quarry in compliance with the terms and  
26                   conditions of that permit. Any modification of the permit must  
28                   be in conformance with section 484. A person with a permit under  
30                   article 6 may file a notice of intent to comply with this  
32                   article. The permit issued under article 6 lapses as of the date  
34                   a complete notice of intent is filed with the department. If the  
36                   permittee chooses to substitute a notification pursuant to this  
38                   article, all terms and conditions that applied to the permit  
40                   issued pursuant to article 6 are incorporated into the  
42                   notification approved pursuant to this article.

26                   **§490-Y. Notice of intent to comply**

28                   Except as provided in section 484-A, a person intending to  
30                   create or operate a quarry under this article must file a notice  
32                   of intent to comply before the total area of excavation of rock  
34                   or overburden on the parcel exceeds one acre. Both reclaimed and  
36                   unreclaimed areas are added together in determining whether this  
38                   one-acre threshold is exceeded. A notice filed under this  
40                   section must be complete, submitted on forms approved by the  
42                   department and mailed to the municipality where the quarry is  
44                   located, the department, the Maine Historic Preservation  
46                   Commission and each abutting property owner. The notice that is  
48                   mailed to the department must be sent by certified mail, return  
receipt requested. Upon receiving the postal receipt, the owner  
or operator may commence operation of the quarry.

42                   A notice of intent to comply is not complete unless it  
44                   includes the following:

46                   1. Name, address and telephone number. The name, mailing  
48                   address and telephone number of the owner of the quarry and, if  
different from the owner, the operator of the quarry;

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

7           3. Parcel description. A description of the parcel  
8 including size and deed description;

9           4. Legal interest. A copy of the lease or other document  
10 showing that an operator who is not the owner has a legal right  
11 to excavate on the property. Stumpage information does not have  
12 to be shown;

13           5. Information on abutters. The names and addresses of  
14 abutting property owners;

15           6. Signed statement. A statement signed and dated by the  
16 owner or operator certifying that the quarry will be operated in  
17 compliance with this article; and

18           7. Fees. A fee paid to the department as provided by  
19 section 490-EE.

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

23           §490-Z. Performance standards for quarries

24           1. Significant wildlife habitat. Affected land may not be  
25 located in a significant wildlife habitat as defined in section  
26 480-B, subsection 10 or in an area listed pursuant to the Natural  
27 Areas Program, Title 5, section 13076. The department may not  
28 grant a variance from the provisions of this subsection.

29           2. Solid waste. Solid waste, including stumps, wood waste  
30 and land-clearing debris generated on the affected land must be  
31 disposed of in accordance with chapter 13, including any rules  
32 adopted to implement those laws. The department may not grant a  
33 variance from the provisions of this subsection.

34           3. Groundwater protection. To ensure adequate groundwater  
35 protection, the following setback requirements must be met.

36           A. A 200-foot separation must be maintained between an  
37 excavation and a private drinking water supply that is point  
38 driven or dug and was in existence prior to the excavation.

2 B. A 100-foot separation must be maintained between an  
4 excavation and a private drinking water supply that is  
drilled into saturated bedrock and was in existence prior to  
the excavation.

6 C. Separation must be maintained between an excavation and  
8 a public drinking water supply as follows:

10 (1) For systems serving a population of 500 persons or  
less, the minimum separation must be 300 feet;

12 (2) For systems serving a population of 501 persons up  
14 to 1,000 persons, the separation must be 500 feet;

16 (3) For systems serving a population of more than  
1,000 persons, the separation must be 1,000 feet; and

18 (4) For any system that holds a valid filtration  
20 waiver in accordance with the federal Safe Drinking  
Water Act, 42 United States Code, Sections 300f to  
22 300j-26 (1988), the separation must be 1,000 feet.

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

36 E. In the event of excavation below the seasonal high water  
table, a 300-foot separation must be maintained between the  
38 limit of excavation and any predevelopment private drinking  
water supply and a 1000-foot separation must be maintained  
40 between the limit of excavation and any public drinking  
water supply or area previously designated for potential use  
42 as a public drinking water supply by a municipality or  
private water company.

44 The department may grant a variance from the provisions of  
46 paragraph C upon consultation with the person or entity that  
controls the public drinking water supply affected by the  
48 excavation. The department may not grant a waiver from the  
provisions of paragraph A, B or D.

2 Excavation below the seasonal high water table of an area  
4 previously designated for potential use as a public drinking  
6 water supply by a municipality or private water company is  
8 prohibited. The department may grant a variance allowing  
10 excavation below the seasonal high water table if the applicant  
12 demonstrates that the yield of groundwater flow to protected  
14 waters or wetlands or public or private drinking water supplies  
16 will not be adversely affected by the excavation.

18 In the event of excavation below the seasonal high water table,  
20 the operator of a mining activity that affects by excavation  
22 activities a public or private drinking water supply by  
24 contamination, interruption or diminution must restore or replace  
26 the affected water supply with an alternate source of water,  
28 adequate in quantity and quality for the purpose served by the  
30 supply. This provision is not intended to replace any  
32 independent action that a person may have whose water supply is  
34 affected by a mining activity.

36 **4. Natural buffer strip.** Existing vegetation within a  
38 natural buffer strip may not be removed. If vegetation within  
40 the natural buffer strip has been removed or disturbed by the  
42 excavation or activities related to operation of a quarry before  
44 submission of a notice of intent to comply, that vegetation must  
46 be reestablished as soon as practicable after filing the notice  
48 of intent to comply. The department may not grant a variance  
50 from the provisions of this subsection.

**5. Protected natural resources.** A natural buffer strip  
2 must be maintained between the working edge of an excavation and  
4 a river, stream, brook, great pond or coastal wetland as defined  
6 in section 480-B. A natural buffer strip must also be maintained  
8 between the working edge of an excavation and certain freshwater  
10 wetlands as defined in section 480-B and have the characteristics  
12 listed in paragraph B. Excavation activities conducted within  
14 100 feet of a protected natural resource must comply with the  
16 applicable permit requirements under article 5-A. The width  
18 requirements for natural buffer strips are as follows.

20 A. A natural buffer strip at least 100 feet wide must be  
22 maintained between the working edge of the excavation and  
24 the normal high water line of a great pond classified as GPA  
26 or a river flowing to a great pond classified as GPA.

28 B. A natural buffer strip at least 75 feet wide must be  
30 maintained between the working edge of the excavation and a  
32 body of water other than as described in paragraph A, a  
34 river, stream or brook, coastal wetland or significant  
36 wildlife habitat contained within a freshwater wetland  
38 consisting of or containing:

2           (1) Under normal circumstances, at least 20,000 square  
4           feet of aquatic vegetation, emergent marsh vegetation  
            or open water, except for artificial ponds or  
6           impoundments; or

8           (2) Peat lands dominated by shrubs, sedges and sphagnum  
            moss.

10          For purposes of this subsection, the width of a natural buffer  
12          strip is measured from the upland edge of a floodplain wetland.  
14          If no floodplain wetlands are present, the width is measured from  
            the normal high water mark of the river, stream or brook. The  
            width is measured from the normal high water mark of a great pond  
            and upland edge of a freshwater or coastal wetland.

16          The department may not grant a variance from this subsection.

18           6. Roads. A natural buffer strip must be maintained  
20          between the working edge of an excavation and a road as follows.

22           A. A natural buffer strip at least 150 feet wide must be  
24           maintained between the working edge of an excavation and a  
            road designated as a scenic highway by the Department of  
            Transportation.

26           B. A natural buffer strip at least 100 feet wide must be  
28           maintained between the working edge of the excavation and  
            any other public road.

30           C. A natural buffer strip at least 50 feet wide must be  
32           maintained between the working edge of an excavation and a  
34           private road or a right-of-way. If a private road is  
36           contained within a wider right-of-way, the buffer is  
38           measured from the edge of the right-of-way. The width of  
            the natural buffer strip adjacent to a private road may be  
            reduced if the applicant receives written permission from  
            the persons having a right-of-way over the private road.

40          The department may not grant a variance from the provisions of  
42          paragraph A or C. The department may grant a variance from  
44          paragraph B if the variance does not result in the natural buffer  
46          strip being reduced to less than 50 feet between the working edge  
            of the excavation and any road and if the owner or operator  
            installs visual screening and safety measures as required by the  
            department.

48          A distance specified in this subsection is measured from the  
50          outside edge of the shoulder of the road unless otherwise  
            specifically provided.

2           7. Property boundary. A natural buffer strip at least 100  
4           feet wide must be maintained between an excavation and any  
6           property boundary. This distance may be reduced to 10 feet with  
8           the written permission of the affected abutting property owner or  
10           owners, except that the distance may not be reduced to less than  
12           25 feet from the boundary of a cemetery or burial ground. The  
14           natural buffer strip between quarries owned by abutting owners  
16           may be eliminated with the abutter's written permission if the  
18           elimination of this natural buffer strip does not increase the  
20           runoff from either excavation across the property boundary. All  
22           property boundaries must be identified in the field by markings  
24           such as metal posts, stakes, flagging or blazed trees. The  
26           department may not grant a variance from the provisions of this  
28           subsection.

30           8. Erosion and sedimentation control. All reclaimed and  
32           unreclaimed areas, except for access roads, must be naturally  
34           internally drained at all times unless a variance is obtained  
36           from the department. Stockpiles consisting of topsoil to be used  
38           for reclamation must be seeded, mulched or otherwise temporarily  
40           stabilized.

42           A. Sediment may not leave the parcel or enter a protected  
44           natural resource.

46           B. Grubbed areas not internally drained must be stabilized.

48           C. Erosion and sedimentation control for access roads must  
50           be conducted in accordance with the department's best  
              management practices for erosion and sedimentation control.

The department may not grant a variance from the provisions of  
              paragraph A, B or C.

54           9. Surface water protection and storm water management.  
56           Surface water discharges from areas not required to be naturally  
58           internally drained may not be increased as a result of storm  
60           water runoff from storms up to a level of a 25-year, 24-hour  
62           storm. Accumulated water from precipitation must be put into  
64           sheet flow and the discharge point must be directed to an  
66           undistributed natural buffer strip. The discharge point must be  
68           at least 250 feet away from a protected natural resource. The  
70           slope of the discharge area may not exceed 5%.

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

2 Structures such as detention ponds, retention ponds and  
4 undersized culverts may not be used to meet the standard in this  
subsection unless a variance is obtained from the department.

6 **10. Traffic.** The following provisions govern traffic.

8 A. Entrances and exits of the quarry must be located,  
10 posted and constructed in accordance with standards for  
12 roadways in rules adopted by the board. Adequate distances  
14 for entering, exiting and stopping must be maintained in  
accordance with these standards. The department may not  
grant a variance from the provisions of this subsection.  
This paragraph is repealed January 1, 1997.

16 B. Any excavation activity that generates 100 or more  
18 passenger car equivalents at peak hour must comply with the  
applicable permit requirements under article 6. This  
paragraph takes effect January 1, 1997.

20 **11. Noise.** Noise levels may not exceed applicable noise  
22 limits in rules adopted by the board.

24 **12. Dust.** Dust generated by activities at a quarry,  
26 including dust associated with traffic to and from a quarry, must  
be controlled by sweeping, paving, watering or other best  
28 management practices for control of fugitive emissions. Dust  
control methods may include calcium chloride as long as the  
30 manufacturer's labeling guidelines are followed. The department  
may not grant a variance from the provisions of this subsection.

32 **13. Reclamation.** The affected land must be restored to a  
34 condition that is similar to or compatible with the conditions  
that existed before excavation. Reclamation may be conducted in  
36 accordance with the department's best management practices for  
erosion and sedimentation control and must include the following.

38 A. Highwalls, or quarry faces, must be treated in such a  
40 manner as to leave them in a condition that minimizes the  
possibility of rock falls, slope failures and collapse. A  
42 highwall that is loose must be controlled by the use of  
blasting or scaling, the use of safety benches, the use of  
44 flatter slopes or reduced face heights or the use of  
benching near the top of the face or rounding the edge of  
the face.

46 B. A vegetative cover must be established by seeding or  
48 planting within one year of the completion of excavation.  
Vegetative cover must be established on all affected land,  
50 including safety benches, except for quarry walls and

2 flooded areas. Topsoil must be placed, seeded and mulched  
3 within 30 days of final grading. Vegetative cover is  
4 acceptable if within one year of seeding:

5 (1) The planting of trees and shrubs results in a  
6 permanent stand or a stand capable of regeneration and  
7 succession sufficient to ensure a 75% survival rate; and

8 (2) The planting of all material results in permanent  
9 90% ground cover.

10 Vegetative cover used in reclamation must consist of  
11 grasses, legumes, herbaceous or woody plants, shrubs, trees  
12 or a mixture of these.

13 C. All structures, once no longer in use, and all access  
14 roads, haul roads and other support roads must be reclaimed.

15 D. All affected lands must be reclaimed within 2 years  
16 after final grading.

17 E. Topsoil that is stripped or removed must be stockpiled  
18 for use in reclaiming disturbed land areas. The department  
19 may grant a variance from this paragraph if the applicant  
20 demonstrates that the soil is not needed for reclamation  
21 purposes.

22 F. The department may require a bond payable to the State  
23 with sureties satisfactory to the department or such other  
24 security as the department determines adequately secures  
25 compliance with this article, conditioned upon the faithful  
26 performance of the requirements set forth in this article.  
27 Other security may include a security deposit with the  
28 State, an escrow account and agreement, insurance or an  
29 irrevocable trust. In determining the amount of the bond or  
30 the security, the department shall take into consideration  
31 the character and nature of the overburden, the future  
32 suitable use of the land involved and the cost of grading  
33 and reclamation required. All proceeds of forfeited bonds or  
34 other security must be expended by the department for the  
35 reclamation of the area for which the bond was posted and  
36 any remainder returned to the operator.

37 G. The board may adopt or amend rules to carry out this  
38 subsection, including rules relating to operational or  
39 maintenance plans; standards for determining the reclamation  
40 period; annual revisions of those plans; limits, terms and  
41 conditions on bonds or other security; proof of financial  
42 responsibility of a person engaged in excavation activity or  
43 the affiliated person who guarantees performance; estimation  
44 of the amount of the bond or security; and  
45 the amount of the bond or security to be posted.



2 of reclamation costs; reports on reclamation activities; and  
3 the manner of determining when the bond or other security  
4 may be discharged.

6 14. **Blasting.** The applicant must ensure that the blasting  
7 is conducted in accordance with Title 25, section 2441.

8 A. The owner or operator shall use sufficient stemming,  
9 matting or natural protective cover to prevent flyrock from  
10 leaving property owned or under control of the owner or  
11 operator or from entering protected natural resources or  
12 natural buffer strips. Crushed rock or other suitable  
13 material must be used for stemming when available; native  
14 gravel, drill cuttings or other material may be used for  
15 stemming only if no other suitable material is available.

16 B. The maximum allowable airblast at any inhabited building  
17 not owned or controlled by the developer may not exceed 129  
18 decibels peak when measured by an instrument having a flat  
19 response (+ or - 3 decibels) over the range of 5 to 200  
20 hertz.

21 C. The maximum allowable airblast at an uninhabited  
22 building not owned or controlled by the developer may not  
23 exceed 140 decibels peak when measured by an instrument  
24 having a flat response (+ or - 3 decibels) over the range of  
25 5 to 200 hertz.

26 D. Monitoring of airblast levels is required in all cases  
27 for which a preblast survey is required by paragraph F. The  
28 department may waive the monitoring requirement if the owner  
29 or operator secures the permission of affected property  
30 owners to increase allowable airblast levels on their  
31 property and the department determines that no protected  
32 natural resource will be adversely affected by the increased  
33 airblast levels.

34 E. If a blast is to be initiated by detonating cord, the  
35 detonating cord must be covered by crushed rock or other  
36 suitable cover to reduce noise and concussion effects.

37 F. A preblast survey is required for all production  
38 blasting and must extend a minimum radius of 2000 feet from  
39 the blast site. The preblast survey must document any  
40 preexisting damage to structures and buildings and any other  
41 physical features within the survey radius that could  
42 reasonably be affected by blasting. Assessment of features  
43 such as pipes, cables, transmission lines and wells and  
44 other water supply systems must be limited to surface  
45 conditions and other readily available data, such as well  
46 logs, aerial photographs, and other data.

2 yield and water quality. The preblast survey must be  
3 conducted prior to the initiation of blasting at the  
4 operation. The owner or operator shall retain a copy of all  
5 preblast surveys for at least one year from the date of the  
6 last blast on the development site.

7 (1) The owner or operator is not required to conduct a  
8 preblast survey if the department determines that no  
9 protected natural resource within the limits of the  
10 otherwise required survey is likely to be affected by  
11 blasting and production blasting will not occur within  
12 2000 feet of any building not owned or under the  
13 control of the developer.

14 (2) The owner or operator is not required to conduct a  
15 preblast survey on properties for which the owner or  
16 operator documents the rejection of an offer by  
17 registered letter, return receipt requested, to conduct  
18 a preblast survey. Any person owning a building within  
19 a preblast survey radius may voluntarily waive the  
20 right to a survey.

21 (3) The owner or operator is not required to conduct a  
22 preblast survey if the owner or operator agrees to  
23 design all blasts so that the weight of explosives per  
24 8 millisecond or greater delay does not exceed that  
25 determined by the equation  $W=(D/D_s)^2$ , where W is the  
26 maximum allowable weight of explosives per delay of 8  
27 milliseconds or greater, D is the shortest distance  
28 between any area to be blasted and any inhabitable  
29 structure not owned or controlled by the developer and  
30 Ds equals 70 ft./ $(lb.)^{1/2}$ .

31 G. Blasting may not occur in the period between sundown and  
32 sunrise the following day or in the period between 7:00 p.m.  
33 and 7:00 a.m., whichever is greater. Routine production  
34 blasting is not allowed in the daytime on Sunday.  
35 Detonation of misfires may occur outside of these times but  
36 must be reported to the department within 5 business days of  
37 the misfire detonation. Blasting may not occur more  
38 frequently than 4 times per day. Underground production  
39 blasting may be exempted from these requirements provided  
40 that a waiver is granted by the department.

41 H. Sound from blasting may not exceed the following limits  
42 at any protected location:

43	<u>Number of Blasts Per Day</u>	<u>Sound Level Limit</u>
44		
45		
46		
47		
48		
49		
50	<u>1</u>	<u>129 decibels</u>

2	<u>2</u>	<u>126 decibels</u>
2	<u>3</u>	<u>124 decibels</u>
4	<u>4</u>	<u>123 decibels</u>

4  
6 I. The maximum peak particle velocity at inhabitable structures not owned or controlled by the developer may not exceed the levels established in Table 1 in paragraph K and the graph published by the United States Department of the Interior in "Bureau of Mines Report of Investigations 8507," Appendix B, Figure B-1. The department may grant a variance to allow ground vibration levels greater than 2 inches per second on undeveloped property not owned or controlled by the applicant if the department determines that no protected natural resource, unusual natural area or historic site will be adversely affected by the increased ground vibration levels. If inhabitable structures are constructed on the property after approval of the development and prior to completion of blasting, the developer immediately must notify the department and modify blasting procedures to remain in compliance with the standards of this subsection.

22 J. Based upon an approved engineering study, the department may grant a variance to allow higher vibration levels for certain buildings and infrastructures. In reviewing a variance application, the department shall take into account that the standards in this paragraph and paragraph I are designed to protect conventional low-rise structures such as churches, homes and schools. In cases of practical difficulty, the department may grant a variance from paragraph I if it can be demonstrated that no adverse impacts on existing infrastructures or protected natural resources, unusual natural areas or historic sites will result.

34 K. Table 1 of this paragraph or the graph published by the United States Department of the Interior in "Bureau of Mines Report of Investigations 8507," Appendix B, Figure B-1 must be used to evaluate ground vibration effects for those blasts for which a preblast survey is required.

42 (1) Either Table 1 of this paragraph or the graph published by the United States Department of the Interior in "Bureau of Mines Report of Investigations 8507," Appendix B, Figure B-1 may be used to evaluate ground vibration effects when blasting is to be monitored by seismic instrumentation.

48 (2) Blasting measured in accordance with Table 1 of this paragraph must be conducted so that the peak particle velocity of any one of the 3 mutually

2 perpendicular components of motion does not exceed the  
3 ground vibration limits at the distances specified in  
4 Table 1 of this paragraph.

5 (3) Seismic instruments that monitor blasting in  
6 accordance with Table 1 of this paragraph must have the  
7 instrument's transducer firmly coupled to the ground.

8 (4) An owner or operator using Table 1 of this  
9 paragraph must use the scaled-distance equation,  
10  $W=(D/D_s)^2$ , to determine the allowable charge weight of  
11 explosives to be detonated in any 8 millisecond or  
12 greater delay period without seismic monitoring, where  
13 W is equal to the maximum weight of explosives, in  
14 pounds, and D and D<sub>s</sub> are defined as in Table 1 of this  
15 paragraph. The department may authorize use of a  
16 modified scaled-distance factor for production blasting  
17 if the owner or operator can demonstrate to a 95%  
18 confidence level, based upon records of seismographic  
19 monitoring at the specific site of the mining activity  
20 covered by the permit, that use of the modified  
21 scaled-distance factor will not cause the ground  
22 vibration to exceed the maximum allowable peak particle  
23 velocities of Table 1 of this paragraph.

24 (5) Blasting monitored in accordance with the graph  
25 published by the United States Department of the  
26 Interior in "Bureau of Mines Report of Investigations  
27 8507," Appendix B, Figure B-1 must be conducted so that  
28 the continuously variable particle velocity criteria  
29 are not exceeded.

30 The owner or operator may apply for a variance of the ground  
31 vibration monitoring requirement prior to conducting  
32 blasting at the development site if the owner or operator  
33 agrees to design all blasts so that the weight of explosives  
34 per 8 millisecond or greater delay does not exceed that  
35 determined by the equation  $W=(D/D_s)^2$ , where W is the maximum  
36 allowable weight of explosives per delay of 8 milliseconds  
37 or greater, D is the shortest distance between any area to  
38 be blasted and any inhabitable structure not owned or  
39 controlled by the developer and D<sub>s</sub> equals 70 ft./lb.<sup>-1/2</sup>.  
40 As a condition of the variance, the department may require  
41 submission of records certified as accurate by the blaster  
42 and may require the owner or operator to document compliance  
43 with the conditions of this paragraph.

44 The following is Table 1.

45 Distance versus Peak Particle Velocity Method

<u>Distance (D) from the blast area (feet)</u>	<u>Maximum allowable peak particle velocity (Vmax) for ground vibration (in./sec.)</u>	<u>Scaled-distance factor (Ds) to be applied without seismic monitoring</u>
<u>0 to 300</u>	<u>1.25</u>	<u>50</u>
<u>301-5000</u>	<u>1.00</u>	<u>55</u>
<u>Greater than 5000</u>	<u>0.75</u>	<u>65</u>

L. A record of each blast, including seismographic data, must be kept for at least one year from the date of the last blast, must be available for inspection at the development or at the offices of the owner or operator if the development has been closed, completed or abandoned before the one-year limit has passed and must contain at a minimum the following data:

- (1) Name of blasting company or blasting contractor;
- (2) Location, date and time of blast;
- (3) Name, signature and social security number of blaster;
- (4) Type of material blasted;
- (5) Number and spacing of holes and depth of burden or stemming;
- (6) Diameter and depth of holes;
- (7) Type of explosives used;
- (8) Total amount of explosives used;
- (9) Maximum amount of explosives used per delay period of 8 milliseconds or greater;
- (10) Maximum number of holes per delay period of 8 milliseconds or greater;
- (11) Method of firing and type of circuit;
- (12) Direction and distance in feet to the nearest dwelling, public building, school, church or commercial or institutional building neither owned nor controlled by the developer;

- 2           (13) Weather conditions, including factors such as  
3           wind direction and cloud cover;
- 4
- 5           (14) Height or length of stemming;
- 6
- 7           (15) Amount of mats or other protection used;
- 8
- 9           (16) Type of detonators used and delay periods used;
- 10
- 11           (17) The exact location of each seismograph and the  
12           distance of each seismograph from the blast;
- 13
- 14           (18) Seismographic readings;
- 15
- 16           (19) Name and signature of the person operating each  
17           seismograph; and
- 18
- 19           (20) Names of the person and the firm analyzing the  
20           seismographic data.

21           M. All field seismographs must record the full analog wave  
22           form of each of the 3 mutually perpendicular components of  
23           motion in terms of particle velocity. All seismographs must  
24           be capable of sensor check and must be calibrated according  
25           to the manufacturer's recommendations.

26

27           **§490-AA. Inspections**

28           The department may periodically inspect a site, examine  
29           relevant records of the owner or operator of a quarry, take  
30           samples and perform tests necessary to determine compliance with  
31           the provisions of this article.

32

33           **§490-BB. Enforcement and penalties**

34

35           The department shall administer and enforce the provisions  
36           of this article.

37

38           1. Stop-work order. The department may order the owner or  
39           operator of a quarry that is not operating in compliance with  
40           this article to cease operations until the noncompliance is  
41           corrected.

42

43           2. Penalty. A person who violates a provision of this  
44           article commits a civil violation and is subject to the penalties  
45           established under section 349. Penalties assessed for  
46           enforcement actions taken by the State are payable to the State.  
47

2       3. Reclamation. If, after an opportunity for a hearing,  
3       the commissioner determines that the owner of an excavation site  
4       or the person who was engaged in the excavation activity at the  
5       excavation site has violated this article, the commissioner shall  
6       direct the department staff or contractors under the supervision  
7       of the commissioner to enter on the property and carry out the  
8       necessary reclamation. The person engaged in mining or any  
9       affiliated person who guarantees performance at the excavation  
10       site is liable for the reasonable expenses of this necessary  
11       reclamation. The commissioner may use the bond or other security  
12       paid under section 490-Z, subsection 13, paragraph F to meet the  
13       reasonable expenses of reclamation.

14       **§490-CC. Variances**

16       An owner or operator must comply with the performance  
17       standards in section 490-Z unless a variance from those  
18       performance standards is approved by the department. Except when  
19       prohibited by section 490-Z, the department may grant a variance  
20       from the performance standards in this article if the owner or  
21       operator affirmatively demonstrates to the department that the  
22       variance does not adversely affect natural resources or existing  
23       uses and does not adversely affect the health, safety and general  
24       welfare of the public. A variance application must include any  
25       fee applicable under section 490-EE. The department shall  
26       process the variance application according to chapter 2 and the  
27       rules adopted by the department for processing an application.

28       The department shall publish a timetable for responding to  
29       variance applications in the same manner prescribed in section  
30       344-B. A variance is not valid unless approved by the department  
31       and, if a municipality is the regulator, the municipality. In  
32       making its decision on a variance application, the department  
33       shall consider comments or information received and the  
34       compliance record of the owner or operator. The department shall  
35       inform the owner or operator of any significant concerns or  
36       issues raised.

38       **§490-DD. Municipal enforcement; registration**

40       A municipality may register for authority to enforce this  
41       article by adopting and submitting to the commissioner an  
42       ordinance that meets or exceeds the provisions of this article.  
43       The commissioner shall review that ordinance to determine whether  
44       that ordinance meets the provisions of this article and if the  
45       municipality has adequate resources to enforce the provisions of  
46       this article. If the commissioner determines that the ordinance  
47       meets the provisions of this article and that the municipality  
48       has the resources to enforce this article, the commissioner shall  
49       register that municipality for authority to enforce this  
50       article.

2 article. Immediately upon approval by the commissioner, primary  
3 enforcement authority for this article vests in that  
4 municipality. The commissioner may not approve an ordinance  
5 under this section unless the ordinance requires that any request  
6 for a variance from the standards in the article be approved by  
7 the commissioner before the variance is valid.

8 1. Relation to home rule. This section may not be  
9 construed to limit a municipality's authority under home rule to  
10 adopt ordinances regulating quarries.

11 2. Optional participation. This article may not be  
12 construed to require a municipality to adopt any ordinance.

13 3. Suspension of approval. The commissioner may act to  
14 enforce any provision of this article or suspend the registration  
15 of a municipality if the commissioner determines that a municipal  
16 ordinance no longer conforms to the provisions of this article or  
17 that the municipality is not adequately enforcing this article.  
18 The commissioner shall notify a municipality of any such  
19 determination in writing. Suspension of municipal registration  
20 by the commissioner does not void or in any way affect a  
21 municipal ordinance or in any way limit the municipality's  
22 authority to enforce the provisions of its ordinance.

23 4. Appeal. A municipality may appeal to the board any  
24 decision of the commissioner under this section. Any decision by  
25 the board on appeal by a municipality constitutes final agency  
26 action.

27 **§490-EE. Transfer of ownership or operation; review before**  
28 **expansion; fees**

29 1. Review before expansion. Before expanding a quarry  
30 beyond an area that exceeds a total of 10 acres of reclaimed and  
31 unreclaimed land and before each additional 10-acre expansion,  
32 the owner or operator shall notify the regulator of the owner's  
33 or operator's intent to expand and must request an inspection.  
34 In the same manner as prescribed in section 344-B, the department  
35 shall publish a timetable for responding to inspection requests  
36 and shall inspect the site within that time period to determine  
37 the quarry's compliance with this article and other applicable  
38 laws administered by the department. The department may defer an  
39 inspection for a reasonable period when winter conditions at the  
40 site prevent the department from evaluating an expansion  
41 request. The department shall notify the owner or operator of a  
42 deferral under this section. Excavation activities may continue  
43 after the filing of a notice of an intent to expand. The failure  
44 of a regulator to conduct a site visit within a published time  
45 period shall not constitute a violation of this article.



2 period is not a sufficient basis for a stop-work order under  
3 section 490-BB, subsection 1.

4 At the time of filing a notification of intent to expand, the  
5 owner or operator shall pay any fee required by this section.

6  
7 2. Transfer of ownership or operation. A person who  
8 purchases a quarry that is operated under a notice of intent to  
9 comply, as established under section 490-Y, or who obtains  
10 operating authority of a quarry that operates under a notice of  
11 intent to comply must file within 2 weeks after the purchase or  
12 the obtaining of operating authority a notice of intent to comply  
13 on a form developed by the department. The new owner or operator  
14 may operate the quarry during this 2-week period without having  
15 filed a notice of intent to comply if the new owner or operator  
16 complies with all standards of this article.

17 3. Fees. The owner or operator of a quarry shall pay the  
18 regulator:

19  
20 A. An initial fee of \$250 upon filing a notice of intent to  
21 comply under section 490-Y;

22  
23 B. By March 1st of each year, an annual fee of:

24  
25 (1) Three hundred fifty dollars for an excavation from  
26 which 2,500 cubic yards or more of material will be  
27 extracted during that year; and

28  
29 (2) Fifty dollars for all other excavations. To be  
30 eligible for the annual fee under this paragraph, the  
31 owner or operator must include with the payment of this  
32 fee a signed statement certifying that less than 2,500  
33 cubic yards of material will be extracted during that  
34 year;

35  
36 C. A fee of \$250 for each variance requested under section  
37 490-CC, except for the following:

38  
39 (1) A fee of \$500 for a variance to excavate below the  
40 seasonal high water table;

41  
42 (2) A fee of \$500 for a variance to create an  
43 externally drained quarry;

44  
45 (3) A fee of \$125 for a variance to waive the topsoil  
46 salvage requirement;



2 for mining activities to file a notice of intent to comply. The  
3 permit issued under the site location of development law lapses  
4 as of the date the notice of intent to comply is filed.

6 3. An exemption for the activities associated with grading  
7 preliminary to a construction project is provided.

8 4. The performance standards are amended to allow  
9 excavation into the seasonal high water table if a variance is  
10 obtained. The owner or operator of an excavation is required to  
11 replace a public or private drinking water supply if the  
12 excavation activities impact the drinking water supply. The  
13 distances required between an excavation activity and private and  
14 public water supplies are altered.

16 5. A natural buffer strip for topsoil excavations is  
17 required.

18 6. The performance standard for stockpile areas is repealed.

20 7. The Department of Environmental Protection may grant a  
21 variance for externally drained excavations.

24 8. The standards for traffic for excavation activities  
25 become the standards and requirements under the site location of  
26 development laws, effective January 1, 1997.

28 9. A variance may be requested from the noise standards  
29 adopted by the Board of Environmental Protection.

30 10. The Department of Environmental Protection may require  
31 financial assurance for a variance application for a larger  
32 working pit.

34 11. The variance process is altered to include requirements  
35 for public participation. These requirements include a public  
36 information meeting, a public notice and an appeal process.

38 12. The annual fee for operators who extract more than  
39 2,500 cubic yards of material is increased.

42 13. The exemption for a common scheme of development is  
43 repealed.

44 14. Performance standards for erosion control for  
45 excavations for clay, topsoil or silt less than 5 acres in size  
46 are added.

48 15. Definitions for "naturally internally drained,"  
49 "passenger car equivalents at peak hour," "primary sand and  
50

2 gravel recharge area," "reclamation," "significant sand and  
3 gravel aquifer," "topsoil," "silt" and "clay" are added.

4 The bill makes the following changes to the laws that  
5 regulate quarries.

6  
7 1. A new article containing performance standards for  
8 quarries is enacted. It is an amended version of the article  
9 containing performance standards for small road quarries that was  
10 repealed December 31, 1995.

11  
12 2. The applicability section of the law includes any quarry  
13 that is more than one acre in size or at which underground  
14 production blasting is proposed.

15  
16 3. A transition provision is provided that allows a person  
17 in possession of a valid site location of development laws permit  
18 for mining activities to file a notice of intent to comply under  
19 the new article. The permit issued under the site location of  
20 development laws lapses as of the date the notice of intent to  
21 comply is filed.

22  
23 4. An exemption for the activities associated with grading  
24 preliminary to a construction project is provided.

25  
26 5. The performance standards are altered to allow  
27 excavation into the seasonal high water table if a variance is  
28 obtained. The owner or operator of an excavation is required to  
29 replace a public or private drinking water supply if the  
30 excavation activities impact the drinking water supply. The  
31 distances required between an excavation activity and private and  
32 public water supplies are altered.

33  
34 6. The distances a quarry must be from a protected natural  
35 resource are altered.

36  
37 7. The distance between abutting quarries may be eliminated  
38 if the distance elimination does not increase the volume of water  
39 runoff from any of the abutting quarries.

40  
41 8. The Department of Environmental Protection may grant a  
42 variance for externally drained excavations.

43  
44 9. The standards for traffic for excavation activities are  
45 the standards and requirements under the site location of  
46 development laws.

47  
48 10. The Department of Environmental Protection may require  
49 financial assurance for a variance application for a larger  
50 working pit.

2

11. Performance standards for blasting are set.

4

12. A municipality may register for authority to administer the article containing performance standards for quarries.

6

13. The Department of Environmental Protection may defer inspections of quarries for which expansion is sought when winter conditions at the site prevent the department from evaluating an expansion request.

12

14. A person who purchases a quarry that is operated under a notice of intent to comply must file within 2 weeks after the purchase a notice of intent to comply.

14

16

15. Fees for a quarry are established.

18