

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

No. 1858

S.P. 748

In Senate, March 19, 1996

An Act to Establish a General Permit for Agricultural Irrigation Ponds.

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator KIEFFER of Aroostook.
Cosponsored by Representative DONNELLY of Presque Isle and
Senator PARADIS of Aroostook, Representatives: AHEARNE of Madawaska, CLARK of
Millinocket, CLUKEY of Houlton, DESMOND of Mapleton, DRISCOLL of Calais, JOY of
Crystal, KNEELAND of Easton, O'NEAL of Limestone, ROBICHAUD of Caribou, SIROIS
of Caribou, WHEELER of Bridgewater.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 **Whereas,** current law requires an individual permit pursuant
to the laws governing the protection of natural resources for the
alteration of a stream for the purpose of constructing an
8 irrigation pond; and

10 **Whereas,** it is necessary to allow a simplified, general
permit procedure for alteration of certain streams in order to
12 meet the needs of farmers for pond construction prior to this
year's growing season; and

14
16 **Whereas,** in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
18 necessary for the preservation of the public peace, health and
safety; now, therefore,

20
22 **Be it enacted by the People of the State of Maine as follows:**

24 **Sec. 1. 38 MRSA §480-Y** is enacted to read:

26 **§480-Y. Creation of agricultural irrigation ponds**

28 **1. General permit.** A general permit is required for the
alteration of a freshwater, nontidal stream to construct an
agricultural irrigation pond. If the provisions of this section
30 are met, an individual permit is not required.

32 **2. Eligibility criteria.** The following eligibility
criteria must be met.

34 **A.** The farm must have an irrigation management plan,
referred to in this section as the "irrigation plan." The
36 irrigation plan must identify the total number of irrigated
acres on the farm or on a specified management unit, the
38 amount of water needed, the potential sources of water for
irrigating the field and the water management practices that
40 will be used to ensure that the amount of water used for
crop irrigation will be kept to a minimum. For the purposes
42 of this subsection, "farm" has the same meaning as in Title
17, section 2805.

44 **B.** The department must have assessed the affected area as
46 having no significant habitat for fish and wildlife. For
the purposes of this section, "significant habitat" means
48 the same as "significant wildlife habitat" in section 480-B,
subsection 10; a fish spawning or nursery habitat; a habitat
50

2 required for migration of fish species to or from a spawning
3 or nursery habitat; or a habitat otherwise supporting a
4 moderate to high population of salmonid species as
5 determined by the Department of Inland Fisheries and
6 Wildlife.

7 C. The pond may not be located in a wetland containing
8 endangered or threatened plant species as determined
9 pursuant to Title 5, section 13078, subsection 3 or
10 containing a natural community that is imperiled (S1) or
11 critically imperiled (S2) as defined by the Natural Areas
12 Program pursuant to Title 5, section 13076.

13 D. A site assessment must be conducted by the department
14 prior to the submission of an application. The department
15 may defer a site assessment for a reasonable period when
16 winter conditions prevent the department from properly
17 evaluating the affected area.

18 **3. Standards.** The following standards must be met.

19 A. The pond, dams and outlets must be designed by a
20 professional engineer to United States Natural Resources
21 Conservation Service standards.

22 B. Dam fill material must be specified by the professional
23 engineer and must be compacted to 95% of standard proctor.
24 Compaction testing must be conducted with tests performed at
25 a minimum of 2 per dam site or one every 100 feet of dam
26 length, whichever is greater.

27 C. The pond outlet must be designed to passively discharge
28 a minimum flow equal to inflow or the site-specific aquatic
29 base flow, whichever is less, at all times. The
30 site-specific aquatic base flow must be that specified by
31 the department following consultation with the Department of
32 Inland Fisheries and Wildlife, the United States Natural
33 Resources Conservation Service and other qualified advisors
34 during the site assessment.

35 D. The pond outlet must be designed and maintained to
36 ensure a cold water release by using a method such as a
37 bottom draw and to induce dissolved oxygen by using a method
38 such as a riprap slope to increase water turbulence.

39 E. An erosion control plan must ensure that siltation or
40 sedimentation downstream of the dam site is kept to a
41 minimum, to the fullest extent practical, during
42 construction, operation and maintenance of the irrigation
43 pond.

2 F. The landowner shall maintain a permanently vegetated
4 buffer strip that consists of field grasses or woody
6 vegetation 25 feet wide around the pond except where slopes
8 are equal to or greater than 20%, in which case the buffer
10 strip must be 75 feet wide. Unless recommended to be
12 thinned or mowed on an annual basis by the department or the
14 United States Natural Resources Conservation Service, buffer
16 strip vegetation may not be cut. An access road and
18 irrigation pipes may cross through the buffer strip.

20 G. All instream construction activities must be conducted
22 between July 15th and October 1st of the same year unless
24 the department determines in the site assessment that an
26 earlier start date will not cause a significant adverse
28 impact to fish and wildlife resources.

30 4. Submissions. The following provisions apply to the
32 submission of applications.

34 A. An application must be filed with the department and
36 must include the following:

38 (1) The application cover sheet, as provided by the
40 department;

42 (2) The United States Geological Survey topographical
44 map with the boundaries of the farm and the pond site
46 clearly marked;

48 (3) A photograph of the stream at the proposed dam
50 site;

(4) A copy of the irrigation plan for the farm;

(5) Site plans showing existing and proposed
topography, stream channel location, existing wetland
boundaries, maximum pool elevation, normal pool
elevation, dam footprints, outlet location, emergency
spillway location, access roads, stockpile locations
and buffer strips;

(6) Cross sections through the dam and outlet
structure, including proposed maximum pool elevation
and normal pool elevation;

(7) A plan to maintain minimum flow downstream,
including any calculations used to create the plan;

(8) A complete erosion control plan using practices
contained in the "Maine Erosion and Sediment Control

2 Handbook for Construction: Best Management Practices"
3 (1991) unless otherwise approved or required by the
4 department. The erosion control plan must include a
5 narrative with a sequence for implementing the plan,
6 provisions to inspect and maintain erosion controls and
7 a site plan showing locations of control measures. The
8 plan must include provisions for maintaining a dry
9 construction site. These provisions may consist of
10 construction during a no-flow period, a temporary
11 cofferdam or a stream diversion. The erosion control
12 plan must also include provisions for dewatering and
13 disposal of dredged and excavated soil material. The
14 disposal of soil material dredged from the stream must
15 comply with the requirements of the State's solid waste
16 management rules;

17 (9) Test pit logs and test results from a minimum of 2
18 test pits dug in the footprint of the dam and results
19 of tests done under the direction of a professional
20 engineer on the dam fill material; and

21 (10) A copy of the property deed, lease, purchase and
22 sale agreement or other legal document establishing
23 that the applicant has title or right to or interest in
24 the property proposed for pond development.

25 All design materials used to show that the dam design meets
26 the standards of the general permit must be signed and
27 stamped by a professional engineer.

28 B. Following construction and prior to operation of the
29 irrigation pond, the permittee must submit an inspection
30 report by a professional engineer stating that the
31 professional engineer inspected the dam and that it was
32 constructed in conformance with the standards established in
33 subsection 3. The report must specifically include evidence
34 that the proper number of compaction tests were done and
35 proper compaction specifications have been achieved. The
36 inspection report must include a copy of the job diary and
37 information on when inspections were done and what was
38 inspected.

39 **5. Review period.** Work may not commence until 30 days
40 after the department has accepted an application for processing.

41 **6. Notification.** The department shall notify the applicant
42 in writing within 30 days of acceptance for processing if the
43 department determines that the requirements of this section have
44 not been met. This notification must specifically cite the
45 requirements of this section that have not been met. If the
46 requirements of this section that have not been met. If the
47 requirements of this section that have not been met. If the
48 requirements of this section that have not been met. If the
49 requirements of this section that have not been met. If the
50 requirements of this section that have not been met. If the

2 department has not notified the applicant under this section
3 within the specified time period, a general permit is deemed to
4 have been granted.

6 7. Fees. The department shall assess a fee for review of
7 an application filed pursuant to this section. The fee must be
8 equivalent to the amount assessed for activities requiring an
9 individual permit for stream alterations.

10 8. Violation. A violation occurs when an activity takes
11 place that is not in compliance with the provisions of this
12 section or the plans submitted with the application. Any
13 deviation from the approved plans must receive prior department
14 approval.

16 **Sec. 2. Evaluation period.** The Department of Environmental
17 Protection shall monitor the effectiveness of the general permit
18 established by the Maine Revised Statutes, Title 38, section
19 480-Y from the effective date of this Act until October 1, 1997.
20 The department shall provide an interim report by February 1,
21 1997 and a final report by January 1, 1998 to the joint standing
22 committee of the Legislature having jurisdiction over natural
23 resource matters. The reports must include information on the
24 number of applications submitted for review and an assessment of
25 the overall effectiveness of the general permit in terms of
26 administrative efficiency and equivalent or enhanced protection
27 of the natural resources affected. The reports must include
28 recommendations on any necessary statutory changes.

30 **Emergency clause.** In view of the emergency cited in the
31 preamble, this Act takes effect when approved.
32

34 STATEMENT OF FACT

36 This bill establishes a general permit under the Natural
37 Resources Protection Act for alteration of a stream to construct
38 an irrigation pond. The general permit is deemed approved 30
39 days from the date an application has been accepted for
40 processing by the department unless the applicant is notified
41 that specified requirements have not been met. When eligibility
42 criteria and specified standards are met, the general permit
43 would replace the requirement for an individual permit under the
44 Natural Resources Protection Act.

46 This bill also requires the Department of Environmental
47 Protection to report back to the joint standing committee of the
48 Legislature having jurisdiction over natural resource matters
49 concerning the effectiveness of the new general permit.
50