

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1428

H.P. 992

House of Representatives, March 22, 2005

An Act To Modernize Regulation of Sand and Gravel Pits

Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative LERMAN of Augusta.
Cosponsored by Senator MITCHELL of Kennebec and
Representatives: ADAMS of Portland, EBERLE of South Portland.

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

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Sec. 1. 38 MRSA §490-B, 2nd ¶, as enacted by PL 1995, c. 700, §22, is amended to read:

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 until and including November 30, 2005 or until a complete notice of intent to comply under this article is filed with the department, whichever comes first. Any modification of the permit must be in conformance with section 484. A person with a permit under article 6 ~~may~~ shall file a notice of intent to comply under this article. The permit issued under article 6 lapses as of December 1, 2005 or the date a complete notice of intent is filed with the department, whichever comes first. ~~If the permittee chooses to substitute a notification pursuant to this article, all~~ All terms and conditions that applied to the permit issued pursuant to article 6 are incorporated into the notification approved pursuant to this article.

Sec. 2. 38 MRSA §490-D, sub-§14, as amended by PL 2001, c. 466, §9, is further amended to read:

14. Reclamation. Except as provided in subsection 15, the affected land must be restored to a condition that is similar to or compatible with the conditions that existed before excavation. Reclamation should be conducted in accordance with the department's best management practices for erosion and sediment control, and must include:

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

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

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

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

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

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

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

8 The department may shall require a bond payable to the State with
sureties satisfactory to the department or such other security as
10 the department may determine adequately secures compliance with
this article, conditioned upon the faithful performance of the
12 requirements set forth in this article. Other security may
include a security deposit with the State, an escrow account and
14 agreement, insurance or an irrevocable trust. In determining the
amount of the bond or the security, the department shall take
16 into consideration the character and nature of the overburden,
the future suitable use of the land involved and the cost of
18 grading and reclamation required. All proceeds of forfeited
bonds or other security must be expended by the department for
20 the reclamation of the area for which the bond was posted and any
remainder returned to the operator.

22 The board may adopt or amend rules to carry out this subsection,
24 including rules relating to operation or maintenance plans;
standards for determining the reclamation period; annual
26 revisions of those plans; limits, terms and conditions on bonds
or other security; proof of financial responsibility of a person
28 engaged in excavation activity or the affiliated person who
guarantees performance; estimation of reclamation costs; reports
30 on reclamation activities; or the manner of determining when the
bond or other security may be discharged. Rules adopted under
32 this subsection are major substantive rules as defined in Title
5, chapter 375, subchapter II-A 2-A.

34 The department may grant a variance from paragraph A, provided
36 that the slopes exhibit substantial vegetation and are stable.
The department may not assess a fee for a request for a variance
38 from paragraph A. The department may grant a variance from
paragraph E if the applicant demonstrates that the soil is not
40 needed for reclamation purposes. The department may not grant a
variance from the other provisions of this subsection.

42 **Sec. 3. 38 MRS §490-D, sub-§16** is enacted to read:

44 16. Amended standards. If the performance standards in
46 this section are amended, the department may grant an owner or
operator a period of time, not to exceed 5 years from the
48 effective date of the amendment, to meet the amended standards.
The department shall adopt rules to implement this subsection.

2 Rules adopted pursuant to this subsection are routine technical
3 rules as defined in Title 5, chapter 375, subchapter 2-A.

4 **Sec. 4. 38 MRSA §490-K**, as amended by PL 1995, c. 700, §32,
5 is further amended to read:

6 **§490-K. Transfer of ownership or operation**

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8 Before transferring ownership or operation of an excavation
9 that is operated under this article, the owner or operator shall
10 notify the department of an intent to transfer and the department
11 shall review the transfer notice. A person who purchases an
12 excavation that is operated under a notice of intent to comply or
13 who obtains operating authority of an excavation that operates
14 under a notice of intent to comply must file within 2 weeks after
15 the purchase or the obtaining of operating authority a notice of
16 intent to comply on a form developed by the department. The new
17 owner or operator may operate the excavation during this 2-week
18 period without having filed a notice of intent to comply,
19 providing the new owner or operator complies with all standards
20 under this article.

21
22 **Sec. 5. Board of Environmental Protection to establish rules to**
23 **address repeat violations.** The Board of Environmental Protection
24 shall adopt rules to address the issue of repeat violations by an
25 owner or operator of an excavation operated under the Maine
26 Revised Statutes, Title 38, chapter 3, subchapter 1, article 7.
27 Rules adopted pursuant to this section are routine technical
28 rules as defined in Title 5, chapter 375, subchapter 2-A.
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31 **SUMMARY**

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33 **34** This bill provides that beginning December 1, 2005,
35 excavations that are currently licensed under the site location
36 of development law must be licensed under the borrow pit law. It
37 also requires the Department of Environmental Protection to
38 require a bond or security to ensure compliance with the law. It
39 also provides that if a performance standard in the borrow pit
40 law is amended, the Department of Environmental Protection may
41 allow owners and operators up to 5 years to meet the new
42 standard. It also requires notice of intent to transfer the
43 ownership or operation of an excavation to be provided to the
44 Department of Environmental Protection. It also directs the
45 Board of Environmental Protection to adopt rules to address the
46 issue of repeat violations by an owner or operator of an
excavation.