

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 7, 1994 to June 30, 1995**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 29, 1995**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1995**

following the running of the period within which that appeal must have been initiated, prejudice is presumed, although this presumption is rebuttable by the petitioner. For purposes of this subsection, "final disposition" means that point in time when the mandate of the Law Court is entered in the docket of the trial court and "presumption" has the same meaning as under Rule 301(a) of the Maine Rules of Evidence.

See title page for effective date.

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## CHAPTER 287

### S.P. 525 - L.D. 1423

#### An Act to Amend the Laws Pertaining to the Regulation of Borrow Pits

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

**Whereas,** deadlines have expired for the owners or operators of medium-sized gravel pits to participate in the procedures for performance standards for medium borrow pits; and

**Whereas,** standards are needed for rock quarries 2 acres or less in size to allow quarry owners or operators to provide the Department of Transportation with the necessary aggregate to perform road projects during the upcoming construction season; and

**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 necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 38 MRSA §484, sub-§1,** as repealed and replaced by PL 1987, c. 812, §§10 and 18, is amended to read:

**1. Financial capacity.** The developer has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards and with the provisions of this article. The commissioner may issue a permit under this article that conditions any site alterations upon a developer providing the commissioner with evidence that the developer has been granted a line of credit or a loan by a financial institution authorized to do business in this State as defined in Title 9-B, section 131, subsection 17-A or with evidence of any other

form of financial assurance the board determines by rule to be adequate.

**Sec. 2. 38 MRSA §484, sub-§3, ¶¶D and E** are enacted to read:

D. The department may issue a permit under this article for operation of a borrow pit conditioned upon the owner or operator of a borrow pit complying with rules pertaining to noise within 30 days after the commencing of processing operations.

E. Calcium chloride may be used to control dust on roads, providing the calcium chloride is applied according to the manufacturer's labeling guidelines.

**Sec. 3. 38 MRSA §484-A, sub-§1, ¶¶A and B,** as enacted by PL 1993, c. 350, §4, are amended to read:

A. April 1, ~~1994~~ 1995, for pits having reclaimed or unreclaimed areas that drain externally or having reclaimed or unreclaimed areas where internal drainage is achieved with berms or other structures; or

B. October 1, ~~1994~~ 1995, for pits where all reclaimed and unreclaimed lands are naturally internally drained; and

**Sec. 4. 38 MRSA §484-A, sub-§2,** as enacted by PL 1993, c. 350, §4, is amended to read:

**2. Adherence to compliance schedule.** By October 1, ~~1995~~ 1996:

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

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

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

**Sec. 5. 38 MRSA §488, sub-§16** is enacted to read:

**16. Small road quarry.** A quarry regulated by the department under article 8 is exempt from review under this article.

**Sec. 6. 38 MRSA §490-A, sub-§5,** as enacted by PL 1993, c. 350, §5, is repealed and the following enacted in its place:

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

**Sec. 7. 38 MRSA §490-C, sub-§2,** as enacted by PL 1993, c. 350, §5, is amended to read:

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

**Sec. 8. 38 MRSA §490-D, sub-§§2 and 3,** as enacted by PL 1993, c. 350, §5, are amended to read:

**2. Solid waste.** Solid waste, including stumps, wood waste and land-clearing debris generated on the affected land must be disposed of in accordance with ~~section 421 and~~ chapter 13, including any rules adopted to implement those laws. The department may not grant a variance from the provisions of this subsection.

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

A. A ~~300-foot~~ 200-foot separation must be maintained between any ~~area used to store oils~~ excavation and any private drinking water supply that is a point-driven or dug well and was in existence prior to that excavation;

B. A ~~200-foot~~ 100-foot separation must be maintained between any excavation and any private drinking water supply that is drilled into saturated bedrock and was in existence prior to that excavation; and

C. ~~A 1,000-foot separation must be maintained between any excavation and any public drinking water supply; Separation must be maintained between any excavation and any public drinking water source of supply as follows:~~

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

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

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

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

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

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

~~The department may not grant a variance from the provisions of paragraphs A to D.~~

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

The department may grant a variance allowing excavation between 2 and 5 feet of the seasonal high water table. The department may grant a variance allowing reclamation as a pond, provided the pond resulted from excavation below the seasonal high water table prior to October 1, 1993.

**Sec. 9. 38 MRSA §490-D, sub-§3-A** is enacted to read:

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

A. The department may not require the medium borrow pit owner or operator to elevate the me-

dium borrow pit floor to 5 feet or more above the seasonal high water table as a condition of operation.

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

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

**Sec. 10. 38 MRSA §490-D, sub-§5,** as enacted by PL 1993, c. 350, §5, is repealed.

**Sec. 11. 38 MRSA §490-D, sub-§5-A** is enacted to read:

**5-A. Protected natural resources.** A natural buffer strip must be maintained between the working edge of an excavation and a river, stream, brook, great pond, freshwater wetland or coastal wetland as defined in section 480-B. Any excavation activities conducted within 100 feet of a protected natural resource requires a permit under article 5-A. The width requirements for natural buffer strips are as follows.

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

B. A natural buffer strip at least 75 feet wide must be maintained between the working edge of the excavation and any other water body, stream, brook or Class I or Class II wetland, as defined in 06-096-CMR 310.

C. A natural buffer strip at least 25 feet wide must be maintained between the working edge of the excavation and a Class III wetland, as defined in 06-096-CMR 310.

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

**Sec. 12. 38 MRSA §490-D, sub-§6,** as enacted by PL 1993, c. 350, §5, is repealed.

**Sec. 13. 38 MRSA §490-D, sub-§6-A** is enacted to read:

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

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

B. A natural buffer strip at least 100 feet wide must be maintained between the working edge of an excavation and any public road not designated as a scenic highway by the Department of Transportation.

C. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any private road or 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 person or persons having a right-of-way over the private road.

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

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

**Sec. 14. 38 MRSA §490-D, sub-§7,** as enacted by PL 1993, c. 350, §5, is amended to read:

**7. Property boundary.** A natural buffer strip at least ~~450~~ 50 feet wide must be maintained between any excavation and a property boundary, ~~including a road right of way~~. This distance may be reduced to not less than 10 feet with the written permission of the affected ~~abutting~~ 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 ~~distance~~ buffer strip between borrow pits owned by abutting owners may be ~~reduced to not less than 50 feet~~ 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 ~~section~~ subsection.

**Sec. 15. 38 MRSA §490-D, sub-§§11, 13 and 14,** as enacted by PL 1993, c. 350, §5, are amended to read:

**11. Traffic.** Entrances and exits of the borrow pit must be located, posted and constructed in accordance with standards for ~~commercial or industrial entrances of the Department of Transportation roadways in rules adopted by the board.~~ Adequate sight distances 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.

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

**14. Reclamation.** 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 productive use, reclaiming all access roads, haul roads and other support roads; and

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

Except for paragraph A, the department may not grant a variance from the provisions of this subsection. The department may grant a variance from paragraph A, provided that ~~the variance will not result in a reclaimed slope steeper than 2 horizontal feet for each vertical foot~~ slopes exhibit substantial vegetation and

are stable. The department may not assess a fee for a request for a variance from paragraph A.

**Sec. 16. 38 MRSA §490-F, first ¶,** as enacted by PL 1993, c. 350, §5, is amended to read:

Before expanding a borrow pit beyond an area 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, the owner or operator shall notify the regulator of an intent to expand and must request an inspection. In the same manner as prescribed in section 344-B, the department shall publish a timetable for responding to inspection requests and shall inspect the site within that time period to determine the pit's compliance with this article and other applicable laws administered by the department. The department may defer an inspection for a reasonable period when winter conditions at the site prevent the department from evaluating an expansion request. The department shall notify the owner or operator of a deferral under this section. Mining activities at the pit may continue after the filing of a notice of an intent to expand. The failure of a regulator to conduct a site visit within a published time period is not sufficient basis for a stop-work order under section 490-H, subsection 1.

**Sec. 17. 38 MRSA §§490-K and 490-L** are enacted to read:

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

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

**§490-L. Exemption from common scheme of development**

A borrow pit covered under this article is not part of a common scheme of development when a period of 5 years or more elapses between the ownership or operation of an existing borrow pit and the ownership or operation of an adjacent borrow pit, the acquisition of adjacent property to be used for operation of a borrow pit or the development of a borrow pit on adjacent property.

**Sec. 18. 38 MRSA c. 3, sub-c. I, art. 8** is enacted to read:

**ARTICLE 8****PERFORMANCE STANDARDS FOR SMALL ROAD QUARRIES****§490-P. Definitions**

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

A. "Affected land" means all reclaimed and un-reclaimed land, land that has or will have the overburden removed, land on which stumps, spoil or other solid waste has or will be deposited and a storage area or other land, except a natural buffer strip, that will be or has been used in connection with a quarry.

B. "Airblast" means an atmospheric compression wave resulting from the detonation of explosives, whether resulting from the motion of blasted materials or the expansion of gases from the explosion.

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

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

E. "Blasting" means the use of explosives to break up or otherwise aid in the extraction or removal of a rock, ore or other consolidated natural formation, or in construction or demolition work.

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

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

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

I. "Public drinking water source of supply" means a groundwater well or a surface water source that directly or indirectly serves a water distribution system that has at least 15 service connections or regularly services an average of at

least 25 individuals daily at least 30 days out of the year.

J. "Quarry" means a place where rock is excavated.

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

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

**§490-Q. Applicability**

This article applies to quarries that are of 2 acres or less including reclaimed and unreclaimed areas, if products from the quarry are used solely to supply aggregate for Department of Transportation projects.

This article does not apply to projects subject to quarry regulations under article 6 or a quarry within the jurisdiction of the Maine Land Use Regulation Commission. A person with a valid permit for a quarry under article 6 must operate that quarry in compliance with the terms and conditions of that permit.

**§490-R. Notice of intent to comply**

Except as provided in section 484-A, a person intending to operate a quarry under this article must file a notice of intent to comply before extracting or removing more than 1,000 cubic yards of rock or overburden from the earth within 12 successive calendar months. A notice filed under this section must be complete, submitted on forms approved by the department and mailed to the municipality where the quarry is located, the department, the Maine Historic Preservation Commission and each abutting property owner. The notice that is 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.

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

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

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

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

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

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

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

**7. Fees.** A fee of \$250 paid to the department.

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

#### **§490-S. Performance standards for quarries**

**1. Significant wildlife habitat.** Affected land may not be located in a significant wildlife habitat as defined in section 480-B, subsection 10 or in an area listed under the Natural Areas Program, Title 5, chapter 383, subchapter III, article 2-A.

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

**3. Groundwater protection.** To ensure adequate groundwater protection the following setbacks must be met:

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

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

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

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

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

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

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

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

**4. Natural buffer strip.** Existing vegetation within a natural buffer strip may not be removed. If vegetation within the natural buffer strip has been removed or disturbed by activities related to operation of the quarry before submission of a notice of intent to comply, that vegetation must be reestablished as soon as practicable after filing the notice of intent to comply.

**5. Protected natural resources.** A natural buffer strip must be maintained between the working edge of an excavation and a river, stream, brook, great pond, freshwater wetland or coastal wetland as defined in section 480-B as follows.

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

B. A natural buffer strip at least 75 feet wide must be maintained between the working edge of the excavation and a river, stream or brook or Class I or Class II wetland as defined in department rules.

C. A natural buffer strip at least 25 feet wide must be maintained between the working edge of the excavation and a Class III wetland as defined in department rules.

Any excavation activity conducted within 100 feet of a protected natural resource requires a permit under article 5-A.

For purposes of this subsection, the width of a natural buffer strip is measured from the upland edge of a



floodplain wetland. 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.

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

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

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

C. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation, a private road or a 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.

**7. Property boundary.** A natural buffer strip at least 100 feet wide must be maintained between the excavation and a property boundary. This distance may be reduced to 10 feet with the written permission of the affected abutting 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.

**8. Erosion and sedimentation control.** All reclaimed and unreclaimed areas, except for access roads, must be naturally internally drained at all times. Berms or structures may not be constructed to create or maintain internal drainage. Stockpiles consisting of topsoil to be used for reclamation must be seeded, mulched or otherwise temporarily stabilized.

**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 a 25-year, 24-hour storm. Structures such as detention ponds, retention ponds and undersized culverts may not be used to meet this standard. Sediment may not leave the parcel or enter a protected natural resource.

Removal of accumulated water from precipitation must be put into sheet flow and the discharge point must be directed to an undistributed natural buffer strip. The discharge point must be at least 250 feet away from a protected natural resource. The slope of the discharge area may not exceed 5%.

Grubbed areas not internally drained must be stabilized. Erosion and sedimentation control for access roads must be conducted in accordance with the department's best management practices for erosion and sedimentation control.

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 adjacent parcels of land, or that the drainageways flowing from adjacent parcels of land to the parcel are impeded.

**10. Traffic.** Entrances and exits of the quarry must be located, posted and constructed in accordance with standards for roadways in rules adopted by the board. Adequate sight distances for entering, exiting and stopping must be maintained in accordance with these standards.

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

**12. Dust.** Dust generated by activities at the quarry, including dust associated with traffic to and from the quarry, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Dust control methods may include calcium chloride as long as the manufacturer's labeling guidelines are followed.

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

A. Highwalls, or quarry faces, must be treated in such a manner as to leave them in a condition that minimizes the possibility of rock falls, slope failures and collapse. A highwall that is loose must be controlled by the use of blasting or scaling, the use of benches that have a minimum width of 25 feet, the use of flatter slopes or reduced face heights, or the use of benching near the top of the face or rounding the edge of the face.

B. A vegetative cover must be established by seeding within one year of the completion of excavation. Vegetative cover must be established on all affected land, including safety benches, except for quarry walls and flooded areas. Topsoil must be placed, seeded and mulched within 30 days of final grading. 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 material results in permanent 90% ground cover.

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

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

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

E. Topsoil that is stripped or removed must be stockpiled for use in reclaiming disturbed land areas.

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

A. The owner or operator shall use sufficient stemming, matting or natural protective cover to prevent flyrock from leaving property owned or under control of the owner or operator, or from entering protected natural resources or natural buffer strips.

B. The maximum allowable airblast at any inhabited building not owned or controlled by the developer may not exceed 129 decibels peak when measured by an instrument having a flat response (+ or - 3 decibels) over the range of 5 to 300 hertz;

C. The maximum allowable airblast at an uninhabited building not owned or controlled by the developer may not exceed 140 decibels peak when measured by an instrument having a flat response (+ or - 3 decibels) over the range of 5 to 300 hertz.

D. The blast site must be at least 2,000 feet away from the nearest building not owned or controlled by the developer.

E. The peak particle velocity may not exceed one inch per second.

The department may not grant a variance for the performance standards of this section.

#### **§490-T. Inspections**

The department may periodically inspect a site, examine relevant records of the owner or operator of the quarry, take samples and perform tests necessary

to determine compliance with the provisions of this article.

#### **§480-U. Enforcement and penalties**

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

**1. Stop-work order.** The department may order the owner or operator of a quarry that is not operating in compliance with this article to cease operations until the noncompliance is corrected or until the owner or operator of the quarry obtains a permit under article 6.

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

#### **§490-V. Repeal**

This article is repealed December 31, 1995.

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

Effective June 23, 1995.

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## CHAPTER 288

S.P. 359 - L.D. 479

### An Act to Provide Merchants Greater Recourse to Combat Deceptive and Illegal Practices

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

**Sec. 1. 14 MRSA §6071**, as amended by PL 1989, c. 502, Pt. D, §8, is further amended to read:

#### **§6071. Civil penalties for bad checks**

**1. Recovery of costs.** In any action against a person who makes, issues or draws any ~~liable for a dishonored check, draft or order for the payment of money which has been dishonored for lack of funds or credit to pay the check, draft or order, or because the maker, issuer or drawer has no account with the drawee,~~ the holder may recover from the maker, issuer or drawer the amount of the check, draft or order, plus the court costs, service costs, collection costs and the processing charges incurred by the holder. ~~The amount of the check, draft or order, plus the enumerated costs, may be recovered only, plus interest at the rate of 12% per annum from the date of dishonor if:~~