

MAINE STATE LEGISLATURE

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OF THE
STATE OF MAINE

AS PASSED BY THE

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Penmor Lithographers
Lewiston, Maine
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CHAPTER 158

S.P. 522 - L.D. 1506

**An Act To Update the Laws
Governing Borrow Pits and Quarries****Be it enacted by the People of the State of
Maine as follows:****Sec. 1. 38 MRSA §484-B** is enacted to read:**§484-B. Additional standards for quarries and
excavations**

In addition to other standards required by or pursuant to this article, a quarry or an excavation for borrow, clay, topsoil or silt that is licensed pursuant to this article, regardless of the date of licensing, must meet the following minimum standards concerning dust control and spill prevention.

1. Spill prevention. 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 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.

2. Dust control. Dust generated by activities at an excavation site, including dust associated with traffic to and from the excavation site, 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, as long as the manufacturer's guidelines are followed. Visible emissions from a fugitive emission source may not exceed an opacity of 20% for more than 5 minutes in any one-hour period.

The department may require that a quarry or excavation take additional measures or provide additional information when necessary to meet the standards for development set forth in section 484.

Sec. 2. 38 MRSA §490-A, sub-§5-A, as enacted by PL 1995, c. 700, §18, is amended to read:

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

aquatic resources and the development of the site for residential, commercial, recreational or industrial use.

Sec. 3. 38 MRSA §490-C, first ¶, as amended by PL 1995, c. 700, §23, is further amended to read:

Except as provided in section 484-A, a person intending to create or operate an excavation under this article must file a notice of intent to comply before the total area of excavation on the parcel equals 5 or more acres excavated since January 1, 1970. Both reclaimed and unreclaimed areas are added together in determining whether this 5-acre threshold is met. A notice filed under this section must be complete, submitted on forms approved by the department and mailed to the municipality, the department, the Maine Historic Preservation Commission and each abutting property owner. The notice that is mailed to the municipality and each abutting property owner must be mailed at least 7 days prior to filing the notice of intent to comply with the regulator. The notice that is mailed to the regulator must be sent by certified mail, return receipt requested. Upon receiving the postal receipt, the owner or operator may commence operation. The municipality where the proposed excavation is located may submit comments to the department if the proposed excavation may pose an unreasonable adverse impact under the standards in section 490-D. Within 30 days of receipt of the notice of intent to comply, the department must respond to the comments made by the municipality. Abutting property owners, the Maine Historic Preservation Commission or other interested persons may submit comments directly to the department.

Sec. 4. 38 MRSA §490-D, sub-§§6-A, 7 and 8, as amended by PL 1995, c. 700, §24, are further amended 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 or right-of-way 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. A natural buffer strip at least 25 feet wide must be maintained between the working edge of a topsoil excavation and any public road not designated as a scenic highway by the Department of Transportation. A natural buffer strip at least 50 feet wide must be maintained

between the working edge of an excavation and any public right-of-way that does not contain a road. The width of a natural buffer strip adjacent to a public road or right-of-way may be reduced if there is a public entity or entities with authority to grant permission and the applicant receives permission from each authority in writing.

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. If a private road is contained within a wider right-of-way, the buffer is 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 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 if~~ 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 or right-of-way, whichever is farther from the excavation, and provided that if the owner or operator installs visual screening and safety measures as required by the department.

A distance specified in this subsection is measured from the outside edge of the shoulder of the road or edge of the right-of-way unless otherwise specifically provided.

7. Property boundary. A natural buffer strip at least 50 feet wide must be maintained between any excavation and any property boundary. A natural buffer strip at least 25 feet wide must be maintained between any topsoil excavation and a property boundary. 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 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. Any written permission to reduce a buffer must provide that it remains in effect until mining ceases and must be recorded in the registry of deeds. 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.

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.

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

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

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

D. Grubbed areas not internally drained must be stabilized.

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. Areas for access roads that are not naturally internally drained must meet the erosion and sedimentation control standards of section 420-C.

The department may grant a variance from this subsection, except for paragraphs C, D and E. Areas are not considered "naturally internally drained" if surface discharge is impeded through the use of structures such as detention ponds, retention ponds and undersized culverts.

Sec. 5. 38 MRSA §490-D, sub-§9, as amended by PL 1995, c. 700, §24, is repealed and the following enacted in its place:

9. Water quality protection and storm water management. Standards of the laws governing storm water management and waste discharge must be met as provided in this subsection.

A. A variance must be obtained and storm water standards adopted pursuant to section 420-D must be met for any part of a project, other than the working pit area, that is not naturally internally drained if that part of the project would require a storm water management permit pursuant to section 420-D but for the exception for certain excavations in section 420-D, subsection 5. A storm water management permit pursuant to section 420-D is not required.

B. A waste discharge must meet standards and obtain authorization if required pursuant to section 413.

Sec. 6. 38 MRSA §490-D, sub-§13, as amended by PL 1995, c. 700, §24, is further amended to read:

13. Dust. Dust generated by activities at the excavation site, including dust associated with traffic to and from the excavation site, 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. Visible emissions from a fugitive emission source may not exceed an opacity of 20% for more than 5 minutes in any one-hour period.

Sec. 7. 38 MRSA §490-J, sub-§2, ¶¶A and B, as amended by PL 1995, c. 700, §31, are further amended to read:

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

A. ~~Three Four~~ Four hundred and ~~fifty~~ dollars for an excavation from which 2,500 cubic yards or more of material will be extracted during that year; and

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

Sec. 8. 38 MRSA §490-N is enacted to read:

§490-N. Release

The department may grant a release from the requirements of this article to the owner or operator or a transferee after reclamation of the affected area as determined by the department. The department shall inspect the site before making this determination. The release will terminate if any further excavation on the parcel for borrow, clay, topsoil or silt is proposed by the owner or operator or a transferee. A person proposing further excavation on the parcel must file a notice of intent to comply pursuant to section 490-C and comply with all requirements of this article. Payment of the annual fee under section 490-J will resume in the year when the further excavation begins.

Sec. 9. 38 MRSA §490-W, sub-§18, as enacted by PL 1995, c. 700, §35, is amended to read:

18. Reclamation. "Reclamation" means the rehabilitation of the area of land affected by mining, including, but not limited to, the stabilization of slopes and creation of safety benches, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest ~~and~~, the enhancement of wildlife and aquatic habitat and aquatic resources and the development of the site for residential, commercial, recreational or industrial use. "Reclamation" does not include the filling in of pits

and the filling or sealing of shafts and underground workings with solid materials unless necessary for the protection of groundwater or for reasons of safety.

Sec. 10. 38 MRSA §490-Y, first ¶, as amended by PL 1997, c. 364, §22, is further amended to read:

Except as provided in section 484-A, a person intending to create or operate a quarry under this article must file a notice of intent to comply before the total area of excavation of rock or overburden on the parcel exceeds one acre. Both reclaimed and unreclaimed areas are added together in determining whether this one-acre threshold is exceeded. 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 municipality and each abutting property owner must be mailed at least 7 days before the notice of intent to comply is filed with the regulator. 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. The municipality where the proposed quarry is located may submit comments to the department if the proposed quarry may pose an unreasonable adverse impact under the standards in section 490-Z. Within 30 days of receipt of the notice of intent to comply, the department shall respond to the comments made by the municipality. Abutting property owners, the Maine Historic Preservation Commission or other interested persons may submit comments directly to the department.

Sec. 11. 38 MRSA §490-Z, sub-§3, as enacted by PL 1995, c. 700, §35, is amended to read:

3. Groundwater protection. To ensure adequate groundwater protection, the following setback requirements 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 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, 42 United States Code, Sections 300f to 300j-26 (1988), the separation must be 1,000 feet.

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.

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

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

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

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

Sec. 12. 38 MRSA §490-Z, sub-§§6, 7 and 8, as enacted by PL 1995, c. 700, §35, is amended to read:

6. Roads. A natural buffer strip must be maintained between the working edge of an excavation and a road or right-of-way 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. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and any public right-of-way that does not contain a road. The width of a natural buffer strip adjacent to a public road or right-of-way may be reduced if there is a public entity or entities with authority to grant permission and the applicant receives permission from each authority in writing.

C. A natural buffer strip at least 50 feet wide must be maintained between the working edge of an excavation and a private road or a right-of-way. If a private road is contained within a wider right-of-way, the buffer is 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.

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

A distance specified in this subsection is measured from the outside edge of the shoulder of the road or

edge of the right-of-way unless otherwise specifically provided.

7. Property boundary. A natural buffer strip at least 100 feet wide must be maintained between an excavation and any 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. The natural buffer strip between quarries owned by abutting owners may be eliminated with the abutter's written permission if the elimination of this natural buffer strip does not increase the runoff from either excavation across the property boundary. Any written permission to reduce a buffer must provide that it remains in effect until mining ceases and must be recorded in the registry of deeds. 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.

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

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

B. Grubbed areas not internally drained must be stabilized.

C. Erosion and sedimentation control for access roads must be conducted in accordance with the department's best management practices for erosion and sedimentation control. Areas for access roads that are not naturally internally drained must meet the standards of section 420-C.

The department may not grant a variance from the provisions of paragraph A, B or C. Areas are not considered "naturally internally drained" if surface discharge is impeded through the use of structures such as detention ponds, retention ponds and under-sized culverts.

Sec. 13. 38 MRSA §490-Z, sub-§9, as enacted by PL 1995, c. 700, §35, is repealed and the following enacted in its place:

9. Water quality protection and storm water management. Standards of the laws governing storm water management and waste discharge must be met as provided in this subsection.

A. A variance must be obtained and storm water standards adopted pursuant to section 420-D must be met for any part of a project, other than the working pit area, that is not naturally internally drained if that part of the project would require a storm water management permit pursuant to section 420-D but for the exception for certain excavations in section 420-D, subsection 5. A storm water management permit pursuant to section 420-D is not required.

B. A waste discharge must meet standards and obtain authorization if required pursuant to section 413.

Sec. 14. 38 MRSA §490-Z, sub-§12, as enacted by PL 1995, c. 700, §35, is amended to read:

12. Dust. Dust generated by activities at a quarry, including dust associated with traffic to and from a 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. The department may not grant a variance from the provisions of this subsection. Visible emissions from a fugitive emission source may not exceed an opacity of 20% for more than 5 minutes in any one-hour period.

Sec. 15. 38 MRSA §490-Z, sub-§14, ¶F, as enacted by PL 1995, c. 700, §35, is amended to read:

F. A preblast survey is required for all production blasting and must extend a minimum radius of ~~2000 feet~~ 1/2 mile from the blast site. The preblast survey must document any preexisting damage to structures and buildings and any other physical features within the survey radius that could reasonably be affected by blasting. Assessment of features such as pipes, cables, transmission lines and wells and other water supply systems must be limited to surface conditions and other readily available data, such as well yield and water quality. The preblast survey must be conducted prior to the initiation of blasting at the operation. The owner or operator shall retain a copy of all preblast surveys for at least one year from the date of the last blast on the development site.

(1) The owner or operator is not required to conduct a preblast survey if the department determines that no protected natural resource within the limits of the otherwise required survey is likely to be affected by blasting and production blasting will not occur within 2000 feet of any building not

owned or under the control of the developer.

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

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

Sec. 16. 38 MRSA §490-EE, sub-§3, ¶B, as enacted by PL 1995, c. 700, §35, is amended to read:

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

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

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

Sec. 17. 38 MRSA §490-FF is enacted to read:

§490-FF. Release

The department may grant a release from the requirements of this article to the owner or operator or a transferee after reclamation of the affected area as determined by the department. The department shall inspect the site before making this determination. The release will terminate if any further excavation on the parcel is proposed by the owner or operator or a transferee. A person proposing further excavation on the parcel must file a notice of intent to comply pursuant to section 490-Y and comply with all requirements of this article. Payment of the annual fee

under section 490-EE will resume in the year when the further excavation begins.

See title page for effective date.

CHAPTER 159

S.P. 515 - L.D. 1497

**An Act To Amend the Laws
Governing Water Quality Standards
for Ragged and Seboomook Lakes**

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

Sec. 1. 38 MRSA §464, sub-§9, as amended by PL 1993, c. 344, §2, is repealed.

Sec. 2. 38 MRSA §464, sub-§9-A is enacted to read:

9-A. Existing hydropower impoundments managed as great ponds; habitat and aquatic life criteria. The following provisions govern habitat and aquatic life criteria for existing hydropower impoundments managed as great ponds.

A. For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended, and licensing of modifications under section 636, the hydropower project located on the water body referenced in section 467, subsection 7, paragraph C, subparagraph (1), division (b-1), is deemed to have met the habitat characteristics and aquatic life criteria in the existing impoundment if:

(1) The project is in existence on June 30, 1992;

(2) The project creates an impoundment that remains classified under section 465-A after June 30, 1992;

(3) The project creates an impoundment that is subject to water level fluctuations that have an effect on the habitat and aquatic life in the littoral zone so that the habitat and aquatic life differ significantly from that found in an unimpounded great pond; and

(4) The existing impounded waters are able to support all species of fish indigenous to those waters and the structure and function of the resident biological community in the impounded waters is maintained.