

## Maine Revised Statutes

# Title 38: WATERS AND NAVIGATION

## Chapter 3: PROTECTION AND IMPROVEMENT OF WATERS

### §490-D. PERFORMANCE STANDARDS

**1. Significant wildlife habitat and other protected areas.** Affected land may not be located in, on or over a significant wildlife habitat or other type of protected natural resource, as defined in section 480-B, or in an area listed pursuant to the Natural Areas Program, Title 12, section 544. The department may allow excavation to occur under this section as long as a permit is obtained pursuant to article 5-A. Permit requirements for certain excavations in, on or over high and moderate value inland waterfowl and wading bird habitat are also governed by section 480-GG.

[ 2009, c. 293, §5 (AMD) . ]

**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. The department may not grant a variance from the provisions of this subsection.

[ 1995, c. 287, §8 (AMD) . ]

**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.

A. A 200-foot separation must be maintained between any excavation and any private drinking water supply that is a point-driven or dug well and was in existence prior to that excavation. [1995, c. 700, §24 (AMD) . ]

B. A 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. [1995, c. 700, §24 (AMD) . ]

C. Separation must be maintained between any affected land and any public drinking water source existing prior to the filing of a notice of intent to comply under section 490-C 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. [2007, c. 297, §5 (AMD) . ]

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 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. [1995, c. 287, §8 (AMD).]

E. 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. If the yield of groundwater flow to protected 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. [1995, c. 700, §24 (NEW).]

F. In the event of excavation below the seasonal high water table, the operator of a mining activity that affects a public drinking water source or private drinking water supply by excavation activities causing 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 paragraph is not intended to replace any independent action that a person whose water supply is affected by a mining activity may have. [1995, c. 700, §24 (NEW).]

G. In the event of excavation below the seasonal high water table, a 300-foot separation must be maintained between the permitted limit of excavation and any predevelopment private drinking water supply, and a 1,000-foot separation must be maintained between the permitted limit of excavation and any predevelopment public drinking water source or area previously designated for potential use as a public drinking water source by a municipality or private water company. [2007, c. 297, §6 (AMD).]

The department may grant a variance allowing excavation between 2 and 5 feet of the seasonal high water table. The separation distance requirements described in paragraphs A, B and C do not apply when the private water supply or public drinking water source is owned by the owner of the excavation site.

[ 2007, c. 297, §§5, 6 (AMD) .]

**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, at or below the seasonal high water table.

The medium borrow pit owner or operator may not further excavate in areas where gravel had been extracted to a level less than 5 feet above, at or below the seasonal high water table unless a variance is granted by the department.

A. The department may not require the medium borrow pit owner or operator to elevate the medium borrow pit floor to 5 feet or more above the seasonal high water table as a condition of operation. [1995, c. 287, §9 (NEW).]

B. [1995, c. 700, §24 (RP).]

C. The medium borrow pit owner or operator may reclaim as a pond that area of the medium borrow pit on which gravel had been extracted to a level at or below the seasonal high water table. [1997, c. 603, §6 (AMD).]

[ 1997, c. 603, §6 (AMD) .]

**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 the excavation or activities related to the excavation 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. The department may not grant a variance from the provisions of this subsection.

[ 1995, c. 700, §24 (AMD) .]

## 5. Protected natural resources.

[ 1995, c. 287, §10 (RP) .]

**5-A. Protected natural resource buffers.** A natural buffer strip must be maintained between the working edge of an excavation and a river, stream, brook, great pond or coastal wetland as defined in section 480-B. A natural buffer strip must also be maintained between the working edge of an excavation and certain freshwater wetlands as defined in section 480-B and having the characteristics listed in paragraph B. Excavation activities conducted within 100 feet of a protected natural resource must comply with the applicable permit requirement 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, a river flowing to a great pond classified as GPA or a segment of the Kennebec River identified in Title 12, section 403, subsection 7. [2007, c. 616, §4 (AMD).]

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, river, stream, brook, coastal wetland or significant wildlife habitat contained within a freshwater wetland or a freshwater wetland consisting of or containing:

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

(2) Peat lands dominated by shrubs, sedges and sphagnum moss. [1995, c. 700, §24 (AMD).]

C. [1995, c. 460, §12 (AFF); 1995, c. 460, §8 (RP).]

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 or brook or the upland edge of a freshwater or coastal wetland. The department may allow excavation to occur under this subsection as long as a permit is obtained pursuant to article 5-A. An excavation is not eligible for a permit by rule under department rules regarding activities adjacent to a protected natural resource.

[ 2007, c. 364, §2 (AMD); 2007, c. 616, §4 (AMD) .]

## 6. Roads.

[ 1995, c. 287, §12 (RP) .]

**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. [1995, c. 287, §13 (NEW).]

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. [2005, c. 158, §4 (AMD).]

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. [1995, c. 700, §24 (AMD).]

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 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 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.

[ 2005, c. 158, §4 (AMD) .]

**6-B. Medium borrow pits unlicensed on October 1, 1993.** Notwithstanding subsection 6-A, 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 closer than 50 feet to a public or private road.

A. The department may not require the owner or operator of a medium borrow pit to reestablish the required natural buffer strip as a condition of operation. [1997, c. 364, §21 (NEW).]

B. The owner or operator of a medium borrow pit shall regrade and seed the sideslopes to a slope no steeper than 2 horizontal feet for each vertical foot unless otherwise approved by the department.

The owner or operator of a medium borrow pit shall install visual screening and safety measures as required by the department. [1997, c. 364, §21 (NEW).]

[ 1997, c. 364, §21 (NEW) .]

**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.

[ 2005, c. 158, §4 (AMD) .]

**8. Erosion and sedimentation control.** A working pit 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. [1993, c. 350, §5 (NEW).]

B. Stockpiles consisting of topsoil to be used for reclamation must be seeded, mulched or otherwise temporarily stabilized. [1993, c. 350, §5 (NEW).]

C. Sediment may not leave the parcel or enter a protected natural resource. [1995, c. 700, §24 (NEW).]

D. Grubbed areas not internally drained must be stabilized. [1995, c. 700, §24 (NEW).]

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. [2005, c. 561, §2 (AMD).]

F. All areas other than a working pit area that are not naturally internally drained must meet the erosion and sedimentation control standards of section 420-C. [2005, c. 561, §2 (NEW).]

The department may grant a variance from this subsection, except for paragraphs C, D, E and F. 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.

[2005, c. 561, §2 (AMD).]

**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. [2005, c. 158, §5 (NEW).]

B. A waste discharge must meet standards and obtain authorization if required pursuant to section 413. [2005, c. 158, §5 (NEW).]

C. If a reclaimed slope or working pit is adjacent to steep slopes and a protected natural resource, measures must be taken to prevent storm water from ponding at the base of the reclaimed slope or working pit. [2007, c. 507, §1 (NEW).]

[2007, c. 507, §1 (AMD).]

## **10. Stockpiles.**

[1995, c. 700, §24 (RP).]

**11. Traffic.** The following provisions govern traffic.

A. [T. 38, §490-D, sub-§11, ¶ A (RP).]

B. Any excavation activity that generates 100 or more passenger car equivalents at peak hour must comply with the applicable permit requirements under Title 23, section 704-A. [1999, c. 468, §16 (AMD).]

[1999, c. 468, §16 (AMD).]

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

[1995, c. 700, §24 (AMD).]

**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.

[2005, c. 158, §6 (AMD).]

**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; [ 1993 , c. 350 , §5 (NEW) . ]
- 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; [ 1993 , c. 350 , §5 (NEW) . ]
- C. Removing all structures and, once no longer in use, reclaiming all access roads, haul roads and other support roads; [ 1995 , c. 700 , §24 (AMD) . ]
- D. Reclaiming all affected lands within 2 years after final grading; and [ 1995 , c. 700 , §24 (AMD) . ]
- E. Stockpiling soil that is stripped or removed for use in reclaiming disturbed land areas. [ 1995 , c. 700 , §24 (NEW) . ]

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

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

The department may grant a variance from paragraph A, provided that the slopes exhibit substantial vegetation and are stable. The department may not 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.

[ 2001 , c. 466 , §9 (AMD) . ]

**15. Recreational management areas.** An owner or operator may request a variance to develop a recreational management area on the affected land as an alternative to reclamation in accordance with subsection 14. The department may grant a variance under section 490-E if the Off-road Recreational Vehicle Office determines the site is suitable under Title 12, section 1893-A.

[ 2013 , c. 405 , Pt. D , §17 (AMD) . ]

**16. Blasting.** Blasting must be conducted in accordance with the standards in section 490-Z, subsection 14 unless otherwise approved by the department.

[ 2007, c. 297, §7 (NEW) .]

**17. Lighting.** Lighting must be shielded from adjacent highways and residential areas.

[ 2007, c. 616, §5 (NEW) .]

#### SECTION HISTORY

1993, c. 350, §5 (NEW). 1995, c. 287, §§8-15 (AMD). 1995, c. 460, §8 (AMD). 1995, c. 460, §12 (AFF). 1995, c. 700, §24 (AMD). 1997, c. 364, §21 (AMD). 1997, c. 603, §6 (AMD). 1999, c. 468, §16 (AMD). 1999, c. 556, §34 (AMD). 2001, c. 466, §§9,10 (AMD). 2005, c. 158, §§4-6 (AMD). 2005, c. 561, §2 (AMD). 2007, c. 290, §11 (AMD). 2007, c. 297, §§5-7 (AMD). 2007, c. 364, §2 (AMD). 2007, c. 507, §1 (AMD). 2007, c. 616, §§3-5 (AMD). 2009, c. 293, §5 (AMD). 2013, c. 405, Pt. D, §17 (AMD).

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