



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM  
COMMISSIONER

TESTIMONY OF  
MARK STEBBINS, FIELD SERVICES DIRECTOR  
BUREAU OF LAND RESOURCES  
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN SUPPORT OF L.D 2253  
AN ACT TO AUTHORIZE A STOP-WORK ORDER REGARDING AN ACTIVITY THAT  
IS CREATING A SUBSTANTIAL ADVERSE IMPACT TO A PROTECTED NATURAL  
RESOURCE

PRESENTED BY SENATOR BRENNER  
BEFORE THE JOINT STANDING COMMITTEE  
ON  
ENVIRONMENT AND NATURAL RESOURCES

DATE OF HEARING:

March 7, 2024

Senator Brenner, Representative Gramlich, and members of the Committee, I am Mark Stebbins, Field Services Director, Bureau of Land Resources, of the Department of Environmental Protection speaking in support of L.D. 2253, An Act to Authorize a Stop-Work Order Regarding an Activity That Is Creating a Substantial Adverse Impact to A Protected Natural Resource.

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143

This Department-initiated bill is designed to provide an additional enforcement tool for the Department to resolve violations that cause substantial environmental harm to our protected natural resources when other strategies are ineffective. Enforcement is a necessary component of the administration of environmental law. The Department regularly works with people to help them understand the requirements of Maine's environmental laws and rules, and appreciates when good communication is all that is needed for timely correction of any identified violations. For violations that are not remedied within a reasonable timeframe, the Department may issue a Notice of Violation, and if corrective actions are still not completed, the Department can pursue penalties, administrative consent agreements, and even corrective orders. However, if a violator refuses to implement corrective actions or to stop taking actions that are causing significant environmental harm, the Department can only address the situation by initiating court proceedings and/or lengthy proceedings to suspend a license (when activities are even being done under a license).

In the unusual instances when a violator will not cease activities causing such impacts, the Department does not currently have the authority to require work to stop so that the problem can be fixed. When construction continues even after violations have been identified, it can cause further damage to protected natural resources and higher costs to ultimately remedy the damage.

Recently, I inspected a large-scale construction site with other DEP staff and specifically told the contractor not to use an access road until it was stable. With rain events and warm weather, the access road became a mud run with continued discharges of sediment laden water entering a nearby stream and wetlands. Although advised by staff not to use the road, construction activity continued at the site causing additional environmental harm to protected natural resources. The Department's advice was ignored.

This bill is designed to give the Department another tool to address the above scenario by allowing the Department to issue a stop work order in cases where the activity is creating a substantial adverse impact to a protected natural resource. The bill is intentionally narrow by requiring a certain set of circumstances to issue a stop work order: (1) violation of a license/conditions of license, or construction without a permit, and (2) substantial adverse impact to a protected natural resource. In addition, the duration of the order is limited to a period of 2 weeks for a permitted construction project and can be extended for the additional period necessary to prevent the impact to the resource, but not to exceed 4 weeks.

Stop work authority is not new to the Department. For over 30 years, the mining program (gravel pits and quarries) has had statutory authority to issue stop work orders under 38 M.R.S. §490-H and §490-BB for non-compliance issues. In the 30 years of having this important enforcement tool, the Department has only issued 6 stop work orders. The Department recognizes that such authority should only be utilized in unusual circumstances when other strategies for working with a violator are ineffective and immediate action is necessary to prevent significant environmental damage.

During review of the proposed bill, the Attorney General's Office advised the Department that the proposed bill does not include any due process language as required by statute for a recipient of the stop work order to rescind or modify the stop work order or that the recipient may appeal the issuance of a stop work order to Superior Court pursuant to Maine Administrative Procedures Act. Attached to the Department's testimony is the amended language to address this issue.

In addition, the Land Use Planning Commission has delegation of permit granting authority for the Natural Resources Protection Act and should be afforded the same stop work order authority within their jurisdiction.

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Thank you for the opportunity to provide testimony. I am available to answer any questions now or at the work session.

## An Act to Authorize a Stop-work Order Regarding an Activity That Is Creating a Substantial Adverse Impact to a Protected Natural Resource

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

Sec. 1. 38 MRSA §480-KK is enacted to read:

### §480-KK. Stop-work order

1. Authority. Notwithstanding any other provision of law, if the commissioner finds that an activity is being performed in a manner that violates this Title, rules adopted pursuant to this Title or the terms or conditions of a license or permit issued by the department and that the activity is creating an immediate and substantial adverse impact to a protected natural resource, as determined by the department, the commissioner may issue a stop-work order requiring the cessation of the activity in whole or in part.

2. Issuance. A stop-work order under this section must be in writing and must identify:

A. The portion of the activity that must immediately cease;

B. The terms or conditions of the license or permit, the statute or the department rule that the activity violates;

C. The protected natural resource being substantially adversely impacted by the activity;

D. The duration for which the activity must be ceased; and

E. The conditions under which the activity may resume, which must include, at a minimum, the corrective actions necessary to restore the protected natural resource or remediate or abate the substantial adverse impacts to the protected natural resource from the activity and to prevent any further adverse impacts to the protected natural resource from the activity; and

F. The process by which a recipient of a stop-work order may respond to the order or request that the Commissioner rescind or modify the order during the pendency of the order.

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The commissioner shall deliver the stop-work order to the person responsible for the activity or, if delivery cannot be made to that person, to that person's employee, contractor or agent, or to the owner of the property on which the violation is occurring. The commissioner shall also notify the municipality in which the activity is occurring. Upon the issuance of a stop-work order, the activity subject to the stop-work order must immediately cease. The recipient of the stop-work order, the Commissioner may seek reconsideration, rescind or modify the stop-work order from the Commissioner during the pendency of the order. The issuance of a stop-work order or a modification to the order by the Commissioner may be appealed by the recipient to the Maine Superior Court pursuant to the Maine Administrative Procedures Act.

3. License or permit; duration of order. If the activity subject to a stop-work order under this section is occurring under a license or permit issued by the department, the duration of the stop-work order may not exceed 2 weeks from the date of its issuance. If the licensee or permittee does not achieve to the commissioner's satisfaction the conditions under which the activity may resume, as set forth in the stop-work order, the commissioner may reissue the stop-work order for an additional period necessary to achieve those conditions, not to exceed 4 weeks.

4. Penalty. A person who violates a stop-work order under this section is subject to a civil penalty of up to \$5,000 per day, per violation of the stop-work order, in addition to any other penalties under section 349.

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**5. No limitation on department's authority.** Nothing in this section limits the department's authority to pursue other administrative or enforcement actions relating to the activities described in a stop-work order under this section.

**SUMMARY**

This bill authorizes the Department of Environmental Protection to issue a stop-work order whenever the Commissioner of Environmental Protection finds that an activity is being performed in a manner that violates state environmental protection laws or rules or the terms or conditions of a license or permit issued by the department and that the activity is creating a substantial adverse impact to a protected natural resource.