

## EPA Proposes New Rules Expanding Waters of the State

Recently, the Maine Aggregate Association commented on the U.S. Army Corps of Engineers (ACOE) and Environmental Protection Agency (EPA) proposed rule to revise the definition of "Waters of the United States" under the Clean Water Act (CWA). In a letter to the EPA, MAA expressed concerns that the proposed changes are over-reaching and have the potential to greatly undermine the success the aggregate industries has had in Maine to protect and enhance surface water quality.

Quality aggregates are formed in specific areas, often in floodplains and dry stream beds that do not have a discernible surface hydrologic connection to flowing streams and rivers. Determination of the CWA's scope is critical to our members, impacting the costs of planning, financing, constructing and operating aggregate facilities. Our major concerns with the proposed rule are as follows:

- The proposed rule would sweep in many marginally aquatic areas that only have a remote and insubstantial impact on traditional navigable waters. In effect, the rule

removes "significant nexus" and replaces it with "any nexus."

- The proposed rule allows the Corps field staff to make jurisdictional determinations based on "desktop" studies without gathering site-specific information which will likely lead to arbitrary and inconsistent determinations by Corps field staff.
- Contrary to the claims of the EPA and the Corps, the proposed rule will actually cause more confusion than clarity. The agencies "categorical" inclusion of all tributaries defined by an observed "mark" on the landscape and its regulation of wetlands and waters adjacent to tributaries based on vague "neighboring," "riparian," "floodplain" and "shallow subsurface" connection criteria makes it virtually impossible to know what areas are regulated and what areas are not.
- The proposed rule's "watershed aggregation" approach in defining "significant nexus" will lead to increased regulation of remote and ephemeral areas and

increased mining costs without providing any discernible ecological benefit.

- The exclusions in the proposed rule (particularly for ditches) **do not provide any real clarity**. While the proposed rule purports to exclude "drainage ditches," such ditches can be regulated if they perform as intended by conveying water away from a site even indirectly to a navigable water. Many existing drainage ditches would become subject to onerous permitting and costly mitigation requirements.
- The agency's reliance on its "connectivity study" essentially transforms a handpicked aggregation of scientific studies into the controlling legal interpretation of "waters of the United States." The legal interpretation should start with the limits set out by Justice Kennedy in his *Rapanos* opinion and determine how scientific evidence should be interpreted to define a "bright line"

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## Tier 4 Technology

By Mike Sullivan

Do you and your operators know about the new Tier 4 interim and final technology on the new construction equipment?

When new machines are being sold, the salesman is usually selling to the decision maker in the company, typically the owner. The salesman explains all of the features and benefits of the machine while sitting in an office, having lunch or even sometimes over a beer or two. When the deal is done and the new

machine is delivered the owner/decision-maker knows everything there is to know about the machine, including how the new Tier 4 technology works, then the operator gets the machine and then the troubles start.

Tier 4 exhaust cleaning systems are not only adding cost to the machines, but also new challenges for owners, operators, dealers and technicians. It's somewhat new to the heavy

equipment business but has been around for a while with highway trucks. Starting with Tier 1 engines about 15 years ago, to the newest Tier 4 final engines available in 2014. The new emission controls are all about removing nitrogen oxides and particulate matter from the diesel exhaust. I am not going to go into the history of it, we are where we are; and it is going to cost us more money. However, there will be some savings in fuel

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## EPA Clean Water Act Rules

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between "any nexus" and "significant nexus."

- EPA's economic analysis does not take into account the real costs of permitting and mitigation and must be redone. EPA and the Corps must also convene a Small Business Regulatory Flexibility Act panel as required by law to assess the impacts on small businesses that make up most of MAA's membership.
- The proposed rule is so expansive that it will trigger numerous additional environmental reviews to address such issues as endangered species and historic preservation, which will make it even more difficult and costly for our members to ensure timely supply of aggregates for public works projects essential to economic recovery.
- The proposed rule lacks any "grandfathering" provision. Our gravel pit and quarry plans require long-term planning often with phased mining which depend on regulatory certainty to make sound business decisions. Without clear grandfathering language, our plans will be at risk of being subject to new, expansive and unforeseeable jurisdictional determinations.

It is clear MAA members pride themselves on environmental responsibility and have worked hard to achieve a very high regulatory compliance rate. According to

Maine DEP Mining Coordinator Mark Stebbins, MAA members have for years consistently had a compliance rate over 95 percent.

In its letter to the EPA, MAA expressed concern that the broadened scope of the proposed rule would directly impact our members operations, with little environmental benefit. These impacts would increase costs on public works projects, costs that are borne by the taxpayer. We believe the ability of our members to efficiently provide needed materials for critical infrastructure such a roads, bridges and flood control projects essential to protect public health and safety will be greatly impaired.

MAA also copied the Maine Congressional Delegation and asked them to urge the EPA and ACOE to withdraw this proposed rule and work with our industry and other stakeholders to craft a rule that is clear and that does not impose an undue economic burden on our industry that will significantly increase the costs of public works projects and have the unintended consequences of hurting Maine taxpayers and the state's economy.

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## Groundwater Monitoring as a Performance Standard

By Don McFadden

Many pits and quarries operate within five feet of the seasonal-high groundwater table or below the groundwater table. These operations are required to conduct groundwater level measurements and/or water quality testing events to remain in compliance with the performance standards set forth in Maine Department of Environmental Protection (MEDEP) Chapter 378 Variance Criteria for Excavation of Rock Borrow, Topsoil, Clay or Silt (Chapter 378). As part of these requirements, a report documenting the groundwater level data and groundwater quality data must be submitted to the MEDEP Mining Program on an annual basis (before March 30<sup>th</sup> for the previous year's events). In addition, as of 2007, the Maine Uniform Electronic Transaction Act, 10 M.R.S.A.

§9418 (2) (A), that requires Electronic Deliverable Data (EDD) also be submitted to the MEDEP Environmental and Geographic Analysis Database (EGAD) system annually. However, DEP Mining Coordinator Mark Stebbins has advised MAA that many of the operations currently permitted for groundwater variances do not monitor and/or submit data for groundwater levels and groundwater quality on an annual basis. According to Mark Stebbins, of the 62 facilities required to submit annual data in 2014, almost 50% have not.

With all the regulatory compliance issues associated with the licensing and operation of an extraction operation, it's no surprise that some operations have not maintained the required groundwater monitoring programs. However, even without the

regulatory requirement, groundwater monitoring is beneficial to an operation since complete groundwater level and groundwater quality data can be used as a defense if the operation is accused of off-site surface water and/or groundwater impacts.

If operating with a variance it is important to review your variance to determine whether the required groundwater monitoring and data submittals are being performed in accordance with the variance requirements.

One performance standard requirement in Chapter 378 for below groundwater table variances is groundwater quality testing for gasoline range organics (GRO) and diesel range organics (DRO). DRO analytical testing methodology detects a wide range of organic

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## Groundwater Monitoring

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matter and reports it as “Diesel-Range.” Many DRO test results in the past have included organic matter that was not related to any type of petroleum source. These “false positives” had caused unnecessary costs to operators associated with additional testing and investigations. In 2009, the MEDEP Bureau of Remediation Waste Management (BRWM) published new Remedial Standards for Petroleum Contaminated Sites in Maine. Under these new standards the Maine DEP makes “risk based” remediation decisions using a new set of analytical testing methodologies. The DRO

and GRO methodologies were replaced by Extractable Petroleum Hydrocarbon (EPH) and Volatile Petroleum Hydrocarbons (VPH) methodologies, respectively. These new methods have been implemented, in part, because they have the ability to target specific hydrocarbons that are common to oil and other petroleum products, thus eliminating the detection of organic matter that in the past was causing costly DRO “false positives.” Facilities permitted under MEDEP Chapter 378 are now required to analyze water quality for potential petroleum impacts using the VPH and EPH methodologies. Over the past five years the EPH and VPH testing has proven to be effective at reducing “false positives” and has allowed the MEDEP

to focus their attention compliance issues that are directly impacting the natural resources of the State. It is important to review your facility permit, determine the required groundwater monitoring and perform field data collection and submittals in accordance with the permit requirements. Some operations choose to perform the monitoring with “in-house” personnel while others contract out their groundwater monitoring program. Regardless of the personnel utilized to complete the requirements, it is beneficial for the operation in the long run to ensure that field data collection and submittals are done consistently and in a timely manner.

*Don McFadden serves as Secretary of MAA and is a Certified Geologist*

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## Do we really regulate Rain?

Includes excerpts from the MDEP Website

Well yes, the Maine Department of Environmental Protection (DEP) does regulate stormwater associated with industrial activity.

What types of businesses are affected? Is your company engaged in:

- **Mineral mining & dressing?**  
SIC Codes 1411, 1422, 1429, 1442 or 1446
- **Asphalt paving?**  
SIC Code 2951
- **Concrete products?**  
SIC Code 3171
- **Motor Freight Transportation and Warehousing**  
SIC Codes 4212 & 4214
- **Construction & Mining Equipment?**  
SIC Codes 3531 & 3532, 3535 - 3537

Unless your operations is naturally internally drained or otherwise has no stormwater discharges via ditches, swales or other concentrated flow, then you probably are regulated by the Maine DEP under the Multi-Sector General Permit (MSGP) for industrial stormwater?

If you do not know what the MSGP is, and any of the above SIC Codes apply to your business, you may be in violation of both state regulations as well the federal Clean Water Act., which can also be enforced by the EPA. There is help available, and if you register prior to getting caught, significant fines can be avoided.

What is the Maine's Multi-Sector General Permit (MSGP)?

According to the DEP website, Maine's Multi-Sector General Permit (MSGP) is a discharge permit which authorizes the direct discharge or point source dis-



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## **MAA SPONSORS TRAIN THE TRAINER**

The Maine Aggregate Association, State Council of the Joseph A. Holmes Safety Association will host a "Train the Trainer Workshop on February 3<sup>rd</sup> – 5<sup>th</sup> in Gorham Maine. Registration fee to cover the cost of materials is \$100.00 per attendee.

This course is intended to improve the instructional skills, abilities, and knowledge of mine trainers. Participants will be required to select, develop, and present a 15-minute training segment on a health or safety topic in 30 CFR Part 46/48. The presentation will be videotaped for playback and individual review. For approval as a Part 48 instructor you must have at least one year mining experiences and meet a two-part process: First, you must demonstrate that you have knowledge of the subjects that you will be teaching; and second you must demonstrate that you have the ability to teach.

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## **Do we really regulate Rain?**

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charge of stormwater associated with an industrial activity to waters of the state or to a municipal separate stormwater sewer systems (MS4) that discharges to waters of the state, excluding discharges to ground water.

Since 1987, the U.S. Environmental Protection Agency (EPA) has had authority to regulate stormwater discharges through the federal Clean Water Act. In 2001, Maine's DEP received authority to administer this federal program. In 2003, DEP issued general permits for discharges from construction activity and for discharges from in certain regulated communities. In October 2005, the third stormwater general permit, Maine's MSGP, was issued for stormwater discharges associated with industrial activity.

A general permit is a "one-size-fits-all" permit that is often applicable to a

broad class of activities. Coverage under the permit is automatic if the permittee certifies that they are complying with all requirements listed in the permit. The current Maine MSGP expires in the fall of 2016.

To get permitted, along with the current Application Fee of \$307, you file a Notice of Intent (NOI) to comply with the permit. The NOI is an agreement to comply with all permit requirements and to reduce or eliminate the pollutants in the stormwater discharge.

The MSGP is centered around the development and implementation of a Stormwater Pollution Prevention Plan (SWPPP), which is a written plan tailored to site-specific conditions and designed with the goal of eliminating or minimizing stormwater contact with potential pollutants through the use of Best Management Practices.

The SWPPP is not submitted to the DEP but is kept at the permitted facility at all times, in order to be accessible to anyone involved in its implementation and to DEP staff during inspections. The SWPPP requirements are outlined in the general text of Maine's MSGP.

Where can I get help? The DEP says to call them. Or, you can also ask any member of the MAA Board of Directors for some recommendations from the private sector. There are consulting firms that are also MAA members that understand the aggregate industry as well as the DEP rules, regulations and permit requirements.

FMI: Maine DEP Industrial Stormwater website:

<https://www.maine.gov/dep/land/stormwater/multisector.html>

Then click on General permit

# What is the cost of not following the MSHA regulations?

By Chip Laite

The highest cost of not following the MSHA regulations could be the death or injury of a valued employee. Another costly factor: the penalties assessed for violations of the Health and Safety Standards.

The Mine Safety and Health Administration was authorized by the Federal Mine Safety & Health Act of 1977 and the MINER Act of 2006. The purpose of these Acts was to establish mandatory health and safety standards to protect the health and safety of the Nation's miners, and to require that each mine operator and every miner comply with the safety standards.

An MSHA inspector's job is to enforce these regulations. These men and women take their job seriously and will try to make sure you understand what is required. If you choose not to follow these regulations, because you don't agree with the law or don't think it should apply to you, it could be very costly.

Your course of action should be to learn about the regulations and follow the rules on your schedule. If you get caught, not only will you most likely have to stop your crushing or screening operation, you will have to become compliant before you resume your operations. The cost of the lost production and down time can be significant.

A Mine or Gravel Pit owner/operator who ignores these regulations and fails to follow the standards could also be subject to thousands of dollars in penalties. Even if an operator has a good safety program and makes sure that all equipment guards are in place, all back-up alarms and horns work, all fire extinguishers, and berms are in good shape, there could be at least ten violations and each one could carry a penalty of \$100.00 or more. Some of the common violations are in the following areas:

**46.3 Training Plan.** You must develop and implement a written plan, approved by MSHA that contains effective programs for training new miners and newly hired experienced miners, training miners for new tasks, annual refresher training, and site-specific hazard awareness training.

**46.8 - Annual Refresher Training,** you must provide each miner with no less than 8 hours of annual refresher training

**56.1000 Notice of Operations.** The owner, operator, or person in charge of any metal and nonmetal mine shall notify the nearest Mine Safety and Health Administration and Metal and Nonmetal Mine Safety and Health District Office before starting operations, of the approximate or actual date mine operation will commence

**56.18010 First Aid training.** An individual capable of providing first aid shall be available on all shifts.

**56.14100 Safety Defects, Examinations, Correction and Records.** Self-propelled mobile equipment to be used during a shift shall be inspected by the equipment operator before being placed in operation. Defects on the equipment shall be corrected in a timely manner.

**56.18002 Workplace Examinations.** A competent person designated by the operator shall examine each working place at least once each shift for conditions which may adversely affect safety or health

**47.31 HazCom Program.** Each operator must, Develop and implement a written HazCom program, Maintain it for as long as a hazardous chemical is known to be at the mine, and Share relevant HazCom information with other on-site operators whose miners can be affected.

**56.15001 Adequate first-aid materials,** including stretchers and blankets, shall be provided at places

convenient to all working areas. Water or neutralizing agents shall be available where corrosive chemicals or other harmful substances are stored, handled, or used.

**41.13 Legal Identity.** Failure of the operator to notify the Mine Safety and Health Administration, in writing, of the legal identity of the operator or any changes thereof within the time required under this part will be considered to be a violation of section 109(d) of the Act and shall be subject to penalties as provided in section 110 of the Act.

**50.30 Quarterly Employment information.** Each operator of a mine in which an individual worked during any day of a calendar quarter shall complete a MSHA Form 7000-2 in accordance with the instructions and criteria in §50.30-1 and submit the original to the MSHA Office of Injury and Employment Information, P.O. Box 25367, Denver Federal Center, Denver, Colo. 80225, within 15 days after the end of each calendar quarter. These forms may be obtained from the MSHA District Office. Each operator shall retain an operator's copy at the mine office nearest the mine for 5 years after the submission date.

These violations and costs can be avoided by following the regulations. The MSHA Educational Field and Small Mine Services offers free, non-penalty compliance assistance. Upon request, a mining specialist will meet with the operator, evaluate compliance needs and provide necessary compliance materials, including an acceptable training plan.

For more information on what is required and help in developing a training program contact:

**Denis Rickey,**  
rickey.denis@dol.gov  
(603) 703-6958

*Chip Laite is a MAA Director, serves as President of the MAA State Council of the Joseph A. Holmes Safety Council, and is Aggregate Manager for Sargent Corporation.*

## Tier 4 Technology

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consumption which is a welcome side effect of these changes.

The big changes started with Tier 3, which came into effect in 2005 or so, depending on engine HP. Tier 3 is when most manufactures started using EGR (exhaust gas recirculation) and new style turbos to move the exhaust gases back through the engine to cool them before final exhaust. Basically re-burning exhaust in the engine to reduce nitrogen oxides (NOx).

Next came Tier 4 Interim or Tier 4i. Manufacturers were required to start removing the particulate matter (PM) in the exhaust while lowering the NOx even more. Most manufactures added a catalyzed exhaust filter that contains a diesel oxidation catalyst (DOC) and a diesel particulate filter (DPF).

During normal operating conditions (temperature, load, and speed) the engine's natural heat breaks down the PM and cleans the exhaust filter to a point. However, there is some PM build-up and extra heat is needed to "burn" the filter clean. Many require very high temperature ignition and burn cycle to clean the "soot" out of the DPF filter. Most of these systems are able to achieve the burn while the machine is working. If the operator is not familiar with the system there can be a lot of down time. Automatic shut down will occur if the operator doesn't recognize system warnings signs and too there is too much buildup of "soot" and the system needs to regenerate (burn-off). Make sure your operators know how the regeneration system works, what buttons to push and when. Most manufactures have put safety features in the machines to require the operator to acknowledge the need to regenerate to help ensure

the machine is in a safe location. Tier 4i engines exhaust temperature spikes to a very high temperature during regeneration.

Now we have Tier 4 Final or Tier 4F. This is the final phase and requires the exhaust systems to remove almost all of the NOx (even lower than Tier 4i) and remove even more PM. This has forced manufactures to add a Selective Catalytic Reduction unit or SCR system to the DOC system. introduced in Tier 4i. This technology utilizes a urea-based additive, sometimes referred to as diesel exhaust fluid (DEF). The ammonia in the urea mixes with engine exhaust gases in the SCR catalyst to reduce NOx converting it to nitrogen and water vapor. This vapor is then expelled through the exhaust pipe. So now these systems have a large double canister with a filter (DOC) on one side filtering and burning PM, and a chamber on the other side that mixes the DEF with the remainder of the exhaust before it is expelled through the exhaust pipe. Most manufactures are using passive regeneration. In passive regeneration the DOC burns the PM out of the exhaust filter over a longer period of time instead of every day. For example, Volvo machines have gone from requiring a once a day burn to once every 500 hours.

All equipment manufactures claim to have some special method or technology to meet the Tier 4F requirements, but they are all similar and all have to adhere to the same EPA regulations and timelines. There are some advantages to the T4i and some for the Tier 4F, but one thing is for sure, the Tier 3 machines have become a hot commodity because they do not have the regeneration parts on them to worry about.

The next big challenge? What will happen to Tier 4 machines when they are sold to countries that do not have these regulations? There are kits out there now to convert the Tier 4 technology back to almost a Tier 3 technology and that will help these used markets buy our these machines.

Tier 4 is here, it cost more money, it can cause some serious operational headaches, and so far, this technology is only required in North America and parts of Europe. Bottom line: when it comes to Tier 4 technology, ask the questions and get informed or it can be very costly.

*Mike Sullivan is a MAA Director and is General Manager of Chadwick-BaRoss in Westbrook*

## Train the Trainer

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The first requirement is generally accomplished by submitting an application to your local MSHA District Manager listing your mining experience and education. Successful completion of this Train the Trainer course will assist you in meeting the second requirement. The course contents will include:

- ◆ Principles of Adult Instruction
- ◆ Developing Objectives and Criterion Test Items
- ◆ Outlining Training Content
- ◆ Determining Instructional Methods
- ◆ Developing and Using Training Aids
- ◆ Developing Lesson Plans
- ◆ Using Facilitation Skills
- ◆ Part 48/46 Requirements

For more information and registration contact Chip Laite,  
Email to: [claite@sargent-corp.com](mailto:claite@sargent-corp.com).  
Or call: 207-817-7575

## **MAINE AGGREGATE ASSOCIATION**

Maine Aggregate Association is a statewide, member-based group of businesses and individuals involved with the gravel and rock industries. Established in 1994, MAA has become an effective and respected voice for the industry.

MAA membership includes gravel pit owners, quarry operators, aggregate processors and truckers as well as equipment dealers, banks, insurance agencies and consulting firms that serve the aggregate industry. 44 percent of MAA membership is comprised of companies with less than 5 employees, another 34% of our member companies have less than 35 employees, and the remaining 22% have 36 or more employees. Only a handful has more than 100

employees.

MAA members led the drive to reform the gravel pit regulations, helped write the new laws, and then lobbied hard to get them passed. Today MAA continues its advocacy on behalf of the aggregate industry by ensuring that the rules regulating gravel and rock extraction remain effective and practical.

Other issues include truck weights, transportation and highway issues, mine safety, environmental regulations and land use restrictions. Air emission licensing and compliance requirements for rock crushers, stationary diesel engines and concrete and asphalt plants are also of concern.

MAA sponsors environmental compliance workshops and safety seminars for gravel pit & quarry

operators to help keep them informed of and in compliance with regulations.

The MAA Board of Directors, elected annually at the Annual Membership Meeting, slated for April 9, 2014 at the Italian Heritage Center in Portland, stays on top of issues by maintaining a full-time lobbyist in Augusta. In addition, many of the directors serve as volunteers on various state boards and task forces focused on the issues that affect us all.

For more information, contact any of the Directors listed on page 2 of this newsletter, or visit us online at: [www.maineaggregate.org](http://www.maineaggregate.org)

**Join us for the MAA Annual Membership Meeting & Banquet  
See Page 2 for details**

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# **Sand & Gravel NEWS**

**MAINE AGGREGATE ASSOCIATION**

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