

DEP Proposes Changes to Gravel Pit & Quarry Laws

For the first time since 1996, the Maine Department of Environmental Protection is proposing changes to the gravel pit and quarry Performance Standards. Currently, gravel pits and quarries are licensed under either the Site Location of Development laws or the Performance Standards for Excavations and Quarries. According to DEP staff, inconsistencies between the two laws, as well as changes needed to comply with federal stormwater regulations are the primary reasons behind the DEP legislation. At the time of printing of this newsletter, the DEP legislation was not printed, but a draft includes the following requirements:

1. Performance standards for handling and storage of petroleum products including requirements for spill prevention, containment and countermeasures (SPCC) plans will apply to all gravel pits and quarries under both the Site laws and the Performance Standards.

2. A limit on fugitive emissions (dust) to no more than 20 percent opacity for more than 5 minutes in any one-hour period will apply to all gravel pits and quarries under both the Site laws and Performance Standard.
3. Require that areas including access roads, within a gravel pit or quarry that are not naturally internally drained and are of sufficient size to meet the threshold of the Maine Erosion and Sedimentation Control Law (38 MRSA §420-D) to meet the standards of that law.
4. Clarify that areas are not "naturally internally drained" if surface discharges are impeded using such structures as detention or retention ponds, or undersized culverts.

Note: A variance for areas not naturally internally drained satisfies the requirements for stormwater management. In addition, current law (38 MRSA 420-D(5)) allows the DEP to require excavations meet the standards of the stormwater management laws.

5. Require a 50-foot wide buffer between the working edge of an excavation and any right-of-way that does not contain a road, and allow the width of a buffer along a public road or right-of-way be reduced with a variance.
6. Require that written agreements with abutters to reduce or eliminate buffers are recorded in the registry of deeds.
7. Amend the definition of reclamation to include residential, commercial or industrial development as an option.
8. Allow the DEP to grant a release from the requirements of the bor-

row pit or quarry law after reclamation standards are met. The release would terminate if excavation resumed.

9. Clarify the notification requirements so that comments may be sent directly to the Department.

In addition to the changes listed above, add to the quarry law the following:

1. Clarify that a variance is always required to excavate below the water table.
2. Extend the pre-blast survey requirement from 2000 feet to one-half mile to make it consistent with federal rules.

According to DEP staff, the changes relating to stormwater management (item #3 above) reflect federal requirements and are necessary to maintain a one-stop, comprehensive regulatory program for pits and quarries. Without these changes, pits and quarries would have to obtain a separate stormwater management permit.

MAA Board of Directors met with DEP staff several times to discuss the legislation, and, pending final review, MAA Directors voted to support the DEP initiative.

Once the DEP legislation is printed and the Public Hearing Date is set, MAA will alert the membership.

Meanwhile, contact your local legislators and ask them to send you a copy of the DEP's legislation and tell them of your interest in other bills that impact gravel pit and quarry operations (see related story on page 5).

For more information, contact State Mining Coordinator Mark Stebbins at the DEP offices in Portland at 822-6367.



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*All Directors are elected for one year
terms that expire June 30, 2005*

12th Annual MAA Membership Banquet

April 20, 2005 is the date for the Maine Aggregate Association 12th Annual Membership Meeting & Banquet at Verrillo's Restaurant & Convention Center in Westbrook. Annual election of a Directors and Officers top the business agenda, followed by a special evening program.

Mark Stebbins, Mining Coordinator for the Maine Department of Environmental Protection will provide a summary of inspections and industry compliance. MAA Lobbyist Ted Johnston of Resource Policy Group will provide an overview of issues and legislation of interest to the aggregate industry.

The Annual Meeting is more than just business. Good friends meet and old acquaintances are renewed during the Reception. And this year, we will enjoy a special guest appearance by Gary Crocker, a Real Maine Grown Humorist. Crocker believes in the power of humor and will share his observation and Downeast stories in the classic Maine tradition. Crocker has appeared throughout New England and across the country in such places as San Francisco, Dallas, Orlando, Chicago and Spearfish.....South Dakota.

All MAA members are invited. Look for the advance registration inserted with this newsletter.

See you there!



Emission Observer Training Scheduled

Training and Certification of EPA Method 9 Visible Emissions Observer is scheduled in April. Visible emission training is an important program to assist aggregate processing facilities maintain compliance and improve environmental operations and performance.

Morrison Environmental Engineering is offering training & certification on behalf of the Maine DEP in three locations.

- ◆ Portland - April 14 & 15, 2005 at the DEP Southern Maine Regional Office, 312 Cango Road
- ◆ Augusta - April 19 & 20, 2005 at the Pine Tree State Arboretum, 153 Hospital Road
- ◆ Presque Isle - April 27, 2005 at Northern Maine Community College, Reed Hall

First time observers must attend classroom sessions beginning at 9:00 AM on the first scheduled date of each session followed by field sessions beginning at 10:00 AM. For recertification, participants do not need to attend classroom session, although the class is recommended as a refresher every three years.

For more information contact: Morrison Environmental Engineering, 16 Pine Meadows Lane, North Yarmouth, ME 04097 or (207) 846-9897 or email mee-inc@maine.rr.com



Visit Maine Aggregate Association Website

www.maineaggregate.org

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Email us at: info@maineaggregate.org

VERNAL POOLS

Not Just another Spring Puddle

After 10 years of work, the Maine Department of Inland Fisheries & Wildlife (IF&W) has finalized the definition of **Significant Vernal Pools** and set regulatory standards under the Maine Natural Resources Protection Act (NRPA). First added under the NRPA in 1995, IF&W was tasked with identifying and mapping **Significant Vernal Pools** throughout Maine.

At a Public Hearing before the Legislature's Natural Resource Committee, representatives of the Maine DEP & IF&W testified that a lack of a working definition and inadequate resources to identify and conduct field surveys were the primary reasons for the 10-year delay, and why mapping of **Significant Vernal Pools** was not completed.

Vernal Pools are defined as a naturally occurring, temporary to semi-permanent body of water occurring in a shallow depression that typically fills during the spring or fall and may dry during the summer. Vernal pools have no permanent inlet or outlet and hence no viable population of predatory fish.

Not all vernal pools are protected natural resources. Only "**Significant Vernal Pools**" are protected under the NRPA, which are defined as those high-end vernal pools exhibiting one of the two following criteria in any given year:

1. **Rarity**—documented use by state-listed endangered or threatened species that commonly require a vernal pool to complete a critical portion of their life-history; or
2. **Abundance**—documented breeding abundance of one of more of the following indicator species: a) Blue-spotted salamanders: eggs present, b) Four-toed salamanders: eggs present, c) Fairy shrimp: presence, d) Spotted salamander: 15 or more egg masses, or e) Wood frogs: 40 or more egg masses.

The NRPA protects **Significant Vernal Pools** and includes a 250-foot buffer. Any activities in, over or adjacent to

Significant Vernal Pools are prohibited without a permit. The Performance Standards for Excavations & Quarries (38 MRSA §490) already prohibit excavation in Significant Wildlife Habitat, which includes **Significant Vernal Pools**.

In addition to clarifying **Significant Vernal Pool** protection, passage of the DEP and IF&W legislation includes protection for wading fowl habitat. However, unlike **Significant Vernal Pools**, maps for wading fowl habitat are available from IF&W.

The significance of passage of this legislation for gravel pit and quarry owners will vary greatly. For existing operations, no impact is likely. However, for new excavations or expansions, there could be a significant impact. Wading Fowl Habitat are associated with high value freshwater wetlands already protected under the NRPA. The availability of maps of Wading Fowl Habitat facilitate identification.

Maps of **Significant Vernal Pools** are not available. As a result, the operator will have to conduct a field survey and delineate their location on the site plan submitted to the DEP. For pits or quarries that are not naturally internally drained, field surveys by a trained individual will be necessary, and will add considerable expense. For naturally internally drained pits or quarries, the presence of vernal pools is less likely, but overburden comprised of hydric soils could inhibit drainage and vernal pools could accumulate in spring or fall, and again, field surveys may be necessary.

For more information, contact your regional DEP or IF& field offices.



DEP GRAVEL PIT & QUARRY PROGRAM 2004 SUMMARY

Since the effective date of the law (October 1993), the Maine Department of Environmental Protection (DEP) has received 578 "Notices of Intent to Comply." Of those, 35 represent rock quarries, 3 clay mines and 1 is a topsoil operation. The remaining 539 Notices represent gravel pits.

The registration system includes a

variance process that provides an opportunity for operators to vary from the specific statutory Performance Standards for Excavation and for Quarries (38 MRSA §490-D & §490-Z). The variance review process is similar to the existing Site Location of Development Law application process.

Since July, 1997, the Department has processed approximately 70 variance applications. Under the performance standards, the Department can consider the compliance history as part of the

approval process for a variance. Due to the history of an applicant operating in noncompliance, only one variance application has been denied and one was withdrawn by the applicant. The most common variance applied for is excavating gravel from below the water table.

Since amnesty ended in 1996, the Department has initiated 78 formal enforcement actions resulting in approximately \$315,571 assessed in civil penalties. To date, the

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DEP Step-Up Program: Right for your Business?

By Ron Dyer

Would you be interested in a DEP program that:

- * Establishes a fundamental change in the relationship between DEP, the public, and participating entities.
- * Creates a method to facilitate ever improving, and ultimately sustainable, environmental practices and performance.
- * Establishes entry requirements and benefits that progressively increase from track to track.
- * From CEOs to line employees, gain facility-wide commitments to continual environmental performance improvements, and ultimately the integration of environmentally sustainable practices
- * Evaluates progress using a common environmental performance measurement system (metrics).
- * Includes public reporting and local community involvement as a basic program component.
- * Educates other entities and the public regarding environmentally sustainable practices of your sector.
- * Uses written agreements to define relationships and environmental sustainability commitments.

If your interested, lets talk. DEP's **Step-Up Program** does these things and more.

The program consists of three tracks. Each track focuses on creating an environmentally sustainable enterprise by using renewable energy, producing zero waste, employing so-called closed loop systems, or eliminating use of toxics, among others. Companies in the **Step-Up Program** agree to serve as environmental leaders and mentors to other businesses. The DEP is currently seeking members for the commitment track.

Commitment Track: Objective: Making exemplary environmental protection a fundamental aspect of day-to-day business operations.

Entry Requirements:

1. Business commitment to enter into a two-year agreement and institute a business model that includes environmental protection as a basic element

in day-to-day decision making, evidenced by: a) Environmental Management Pathway – Implementation of a 3rd-party certified Environmental Management System that, in part, ensures compliance with regulatory requirements, and

- b) Worker & Community Pathway – Integration of responsibility for environmental management into each employee's job description.
2. Sustainability commitments – Follow at least one additional sustainability pathway.
3. Performance measurement – Define goals, establish a baseline, set benchmarks, and track performance for the selected pathways.

Benefits:

1. Recognition – Member facilities will receive public recognition from DEP for participation in the program.
2. Relationship – Participants define and negotiate the relationship needed with DEP to facilitate the achievement of Smart Production goals.
3. Mentoring – Leadership and Sustainability Track entities, and/or DEP will provide free assistance at a member's facility.
4. Penalty forbearance – As appropriate, DEP will use its existing enforcement policies to allow member facilities to avoid potential penalties for non-compliance, while endeavoring to come into compliance.

The first step is to send DEP a letter of intent to participate. DEP will meet with you to discuss your sustainability and business objectives, and determine which track fits as an entry point into the program. Once the entry point is identified, a negotiated agreement will define specific commitments and benefits. Agreements will be for specified periods of time, during which performance in will be measured. At the end of an agreement, progress will be assessed, new goals established and new agreements for continued participation.

Ronald E. Dyer is Director of the DEP Office of Innovation & Assistance. You can contact Ron at 17 State House Station Augusta, ME 04333, Phone: 207-287-4152 or Email: ron.e.dyer@maine.gov



DEP SUMMARY

(Continued from page 3)

Department has conducted 1070 compliance inspections and the overall industry compliance rate is steadily increasing and now stands at 86 percent.

According to Mark Stebbins, DEP Mining Coordinator, the most common deficiency is insufficient natural buffer strips. Stebbins urges operators flag property lines with metal posts, stakes, flagging or blazed trees, and although not required by the law, Stebbins also recommends flagging buffer strips to ensure they remain intact during excavation activity.

Stebbins says he is very enthusiastic about the collaborative efforts with the aggregate industry and the program's success as a regulatory program.

Mark Stebbins will present a more detailed review of the Gravel Pit & Quarry Program at the MAA Annual Membership Banquet on April 20, 2005.

For more information contact Mark Stebbins, DEP Mining Coordinator at the Bureau of Land & Water Quality, 312 Canco Road, Portland, Maine 04103, Phone: 207-822-6367



Sand & Gravel News

Sand & Gravel News is a periodic publication of the Maine Aggregate Association and is available free as a service to its membership. For a membership application or to read the newsletter visit us online at:

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GRAVEL PITS UNDER ATTACK

Since adoption of reforms in 1993, the gravel pit and quarry Performance Standards have proven effective and preferable to regulation under the Site Location of Development Laws. Over 570 gravel pits and quarries have registered under the program. Since the end of the amnesty period in 1996, the Maine DEP has conducted 1,070 onsite compliance inspections and issued 78 enforcement actions resulting in over \$300,000 in fines. Even with aggressive regulatory enforcement, the overall compliance rate is steadily increasing and stands today at 86%.

The DEP has identified a number of issues in the existing gravel pit & quarry regulations and drafted recommendations for changes (see front page story). After discussions with regulators and careful consideration, the MAA Board of Directors voted to support the DEP initiative.

In addition to the DEP bill, there are several other proposals that will affect the aggregate industry. Two bills sponsored by Representative Arthur Lerhman (D-Augusta), are of particular concern; LD 1218 "Resolve, Directing the Department of Environmental Protection to Coordinate Regulation of Activities in Sand and Gravel Pits", and LD 1428 "An Act To Modernize Regulation of Sand and Gravel Pits".

Under current law sand & gravel pit activities are regulated under either the Site Location of Development Laws or the Performance Standards for Excavation. LD 1218 requires the Maine Department of Environmental Protection to review regulations for sand and gravel pits in both the Site Law and Performance Standards including storage of various materials including explosives, rock crushing, and asphalt reprocessing.

In addition, the bill specifically includes review of standards for snow

dumps even though snow dumps operate independent of aggregate production and location of snow dumps is a municipal issue.

LD 1428 mandates excavations licensed under the site location of development law transfer to the Performance Standard Program and directs the Board of Environmental Protection to adopt rules to address the issue of repeat violations by an owner or operator of an excavation. Finally, LD 1428 requires a new notice of intent to transfer the ownership or operation of an excavation to the DEP.

In developing its proposal DEP considered requiring Site Licensed pits & quarries to transfer to the Performance Standards and found that such a requirement would likely present significant legal issues. Also, DEP already has authority to consider past performance in reviewing permit applications in assessing fines for violations and requiring the DEP to adopt rules is not necessary. Finally, the Performance Standards for Excavations (38 MRS §490-K) already requires new owners to file a Notice of Intent to Comply within 2 weeks of a transfer. LD 1418 is simply unnecessary.

The DEP staff completed a thorough review of gravel pit and quarry regulations as the basis for drafting its own initiative and has presented compelling arguments to support their regulatory changes. However, there is little evidence that either LD 1218 or LD 1428 is needed.

Another bill of interest is LD 1265, "An Act To Protect Aquifers", sponsored by Senator Elizabeth Mitchell, (D-Kennebec). Senator Mitchell's legislation requires the DEP to establish rules for modeling and mapping aquifers. The bill directs the DEP to develop regulations to protect aquifer areas, which are defined as any area consisting of well fields, and contri-

bution and recharge areas identified on maps approved by the DEP. According to Mitchell's bill, standards for aquifer protection must include: 1) Best management practices (BMPs) and a schedule for compliance for existing activities, 2) BMPs and prohibitions for new activities; 3) Procedures for exempting activities that do not pose a threat to existing or potential drinking water supplies; and 4) Requirements for design and installation of groundwater monitoring. LD 1265 requires the DEP to submit legislation in December 2005, and for municipalities to adopt regulations for aquifer protection.

Arguably, the Performance Standards for Excavation (38 MRSA §490-D) and Performance Standards for Quarries (38 MRSA §490-Z) already provide BMPs for aggregate production in aquifer protection areas. Furthermore, the extension of performance standards for storage and handling of petroleum products to all gravel pits and quarries statewide as proposed in the DEP legislation also addresses Senator Mitchell's concerns.

The issues raised in Senator Mitchell's legislation appear addressed by the DEP initiative and like LD 1218 and 1428, LD 1265 is probably unnecessary.

Public Hearings on the DEP legislation, which has not yet been printed, as well as LD 1218, 1265 and 1428 were not scheduled at the time of printing of this newsletter. Once available, MAA will alert its membership regarding the date and time of the Public Hearings.

Meanwhile for more information contact your local state Representative and Senator and let them know of your interest in gravel pit legislation.



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 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. Ensuring the rules regulating gravel and rock extraction remain effective and practical is a top priority (see related stories on pages 1 & 5).

Other issues include truck weights, transportation and highway issues, and environmental and land use regulations. Air emission license and compliance requirements for rock crushers and regulation of air emissions diesel engine are also issues of concern.

MAA also works with the rest of the Business Community to help control the rising costs of workers compensation, which like state spending and taxes continue to rise out of control.

The MAA Board of Directors, elected annually at the Annual Membership Meeting, slated for April 20, 2005 at Verrillo's Restaurant in Westbrook, stays on top of issues by maintaining a full-time lobbyist in Augusta. In addition, many of the directors serve on various volunteer 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

Sand & Gravel NEWS

MAINE AGGREGATE ASSOCIATION

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