

DEP Proposes Major Changes in Site Law, Stormwater Law and NRPA

by Robert McSorley, P.E.

The Maine Department of Environmental Protection (MDEP) has undertaken substantial modifications to existing rules that encompasses the Site Location of Development Act Law (SLODA), Stormwater Law and Natural Resource Protection Act Law (NRPA Law). It has been stated that these modifications are minor and amount to rule changes only; however, it appears that several are substantive in nature. As part of the Maine community that relies on meeting these requirements, we must take note of these modifications and engage MDEP in a meaningful and comprehensive review of them and their effects on our businesses and that of our clients. We must determine the nature of the proposed modifications: whether being passed on from federal regulations, an enactment of rules to new legislation or a perceived problem with rules as seen by MDEP. Once we define the problem, we are better able to recommend solutions that meet the MDEP objectives or clarify why it may not be necessary.

There already have been stakeholder meetings where MDEP has presented an initial overview of the proposed changes to the rules for both Site Law and Stormwater Law. Currently, interested parties and MDEP have broken down into smaller focus groups to discuss and work through the issues of some of the major areas of change. Relative the proposed changes to SLODA rules, some of the major aspects of Site Law being examined are the following changes:

- ◆ Chapter 372 – (1) Consideration of third party inspection administration by MDEP, (2) modification to the Site Law to include a PBR for minor changes
- ◆ (de minimus and minor project

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The Latest on Stream Crossing

by Steve Blais, PE

Crossing a stream with a road or driveway requires a permit from the Department of Environmental Protection (DEP) under the Natural Resources Protection Act (NRPA). A permit by rule (PBR) under DEP Chapter 305 allows for approval of an NRPA permit in two weeks provided all application submission are provided and standards are met.

Legislation enacted earlier this year (P.L. 2009 Chapter 460) required that the DEP modify Section 10 of Chapter 305 Permit by Rule Standards (PBR) to require municipalities to achieve natural stream flow when repairing or maintaining stream crossings. Natural stream flow improves stream hydraulics and habitat connectivity. It also allows for the passage of fish and other aquatic organisms. Crossing structures that span 1.2 times the bankfull width of a stream are presumed to allow for natural stream flow.

The rule amendments were to apply to “water courses containing fish”. The DEP has modified Chapter 305 accordingly and has made the new rules applicable to everyone not exempt under P.L. Chapter 460, and not just municipalities. Furthermore, discussions with fisheries biologist revealed that fish may occupy some portion of any stream. Accordingly, the new rule defines “watercourse containing fish” to mean the same as “river, stream, or brook”. Bottom line: the new rule applies to all rivers, streams, and brooks.

Changes in Design Requirements: Stream measurements must now be based on bankfull capacity of the streams and no longer on the normal high waterline. Definition of Bankfull Width: The width of the bankfull channel at the point the water level, or stream state, begins to overflow into an active floodplain or bench. Where only one side of a stream contains a floodplain or bench, the width is measured as a straight line from that point horizontally across the stream to the opposite bank. Where no floodplain or bench exists, the width is measured as a straight line between the highest points of the normal high water line on each bank.

Span or diameter of crossing structures need to be 1.2 times the stream bankfull width. As an example, a 5-foot wide (bankfull) stream would require a 6-foot wide culvert. A good portion of this culvert would need to be buried to achieve the required span. Proposed structures are also required to have a cross sectional area for 3.5 times the stream cross sectional area, an increase of 0.5 from the old rule.

If ledge prevents properly embedding the culvert, an open span structure must be used. An exception to this rule is if the ledge creates a barrier for fish passage. Sign-off from the IF&W and Department of Marine Resources (DMR) is required to determine if the ledge is a barrier for fish passage. Open bottom structures are also required in perennial watercourses that slope more than 2% or are considered navigable watercourses. The old rule allowed pipe arches in this case.

Culverts must be corrugations or similar internal roughness to decrease water velocity and stream diversions are now required during construction for all streams. The old rule required diversions for streams 3 feet deep or less.

Waivers and Exemptions: Maintenance, repair or replacement of smooth-bore culverts and culverts that are being changed to smaller diameters are not exempt. Certain maintenance and repair activities at existing crossings that result in a smaller diameter culvert, such as so-called slip-lining, or that use smooth bore culverts may be allowed in certain cases to waiver from the new standards.

Many sections of the rule do not apply to forest management activities.

Submission requirements: New submission requirements include scaled drawings

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DEP Mining Program Compliance Update

By Christina Stacey

As the field season swiftly draws to a close, the word that readily comes to mind to describe the past year is "quiet." With the economy in a serious downturn, many of the borrow pits and quarries we visited over the summer were operating at diminished capacity or were altogether shut down. Without owners or employees checking pits on a daily basis, there may be an increased risk of problems resulting from neglected or deferred maintenance. Areas where monitoring and maintenance are crucial are on access roads and around stockpile areas. Keeping culverts, ditches and settling pools clean, and promptly repairing damaged erosion and sediment control structures are easy ways to prevent blowouts and discharges that not only harm protected natural resources but end up costing you money. In addition, keeping an eye on overland water flow patterns in and around the pit can help identify trouble areas and give you time to fix a small problem before it turns into a big one, such as a pit slope failure. Some of the slope failures we saw this season could have been prevented by re-grading the pit to lessen concentrated water buildup and by avoiding excavation in areas of steep-sided slopes, which are at particular risk for failure.

The most common non-compliance issue this field season was insufficient buffer strips, especially along property lines and adjacent to protected natural resources such as streams. The performance standards for gravel pits require a 50-foot-wide natural buffer strip between the working pit and property boundaries, and a 75-foot-wide natural buffer strip along streams. For quarries, the property line buffer is increased to 100 feet. In addition to possible monetary penalties, a buffer strip violation requires planting trees and shrubs to compensate for the lost vegetation. It is much easier to simply avoid removal of the buffer in the first place.

A high number of licensed borrow

pits were found to have exceeded the 10 acre maximum working pit limit. Stay aware of the total working pit area on your property and reclaim finished areas to remain under the 10-acre threshold. Don't forget that the definition of the working pit includes all land that has been stripped of topsoil, in addition to active excavation areas. If the layout of your property necessitates a working pit larger than 10 acres, a variance must be obtained.

This year, the Department also identified a number of unlicensed borrow pits that had been expanded more than five acres since 1970, and requested that the operators file the required Notice of Intent to Comply to bring these pits into the program.

With the frequency and amount of rainfall in the state seemingly on an upswing, the groundwater table may be staying at higher levels throughout the construction season. Because groundwater is not readily visible, it is easy to forget to monitor groundwater levels and maintain the required separation of five feet between the pit floor and the seasonal high groundwater table. The best remedy is to install and maintain water level monitoring wells on the site, but lacking those, one may simply dig test pits to determine the groundwater level, preferably in the spring and fall when groundwater is typically highest.

Fortunately, the most commonly observed non-compliance issues are ones that can be easily avoided with some forethought and planning, and at minimal cost to operators. There is certainly no need for a drop in compliance rates as a result of economic constraints. It is heartening to see that most pit owners and operators continue to take their regulatory obligations seriously, as evidenced by the fact that the majority of pits and quarries visited this year were in substantial compliance with the standards.

If you have any questions or comments about the program, please contact Mining Coordinator Mark Stebbins at 822-6367 or Mining Unit staff members Christina Stacey at 822-6330 and Jim Beyer (in the Bangor region) at 941-4593.

Christina Stacey works in the Mining Unit at Maine DEP Offices in Portland

16th Annual MAA Membership Banquet

April 28, 2010 is the date for the Maine Aggregate Association 16th Annual Membership Meeting & Banquet at the Italian Heritage Center in Portland. Annual election of Directors and Officers tops the business agenda, followed by a special evening program.

Mark Stebbins from the DEP Mining Unit will provide the annual summary of inspections and industry compliance. The report alerts us to issues of concern to the DEP and provides direction on ways to adjust our practices to maintain compliance and avoid enforcement and penalties. Ted Johnston of Resource Policy Group is MAA's Lobbyist and he will provide an overview of issues and legislation of interest to the aggregate industry. MAA continues to maintain a strong and effective presence in Augusta to advocate for our industry. Considering the number of initiatives by the Maine DEP, there will probably be a lot to review.

Maine's construction industry and our employees are facing tough economic times, and we are all anxious for an economic upturn. However, the Annual Meeting is more than just business. Good friends meet and old acquaintances are renewed over refreshments at the Reception; a 50:50 raffle raises money for the Marlee Fund; and we top off the evening with lots of laughs from entertainment provided by Portland's Comedy Connection. All MAA members, employees and guests are invited. We hope to see you on April 28th!

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 information contact us:

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Stream Crossings

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showing the cross sectional area of the stream and the size and type of crossing structure to be used. These drawings must show the bankfull width and calculations to support the cross-sectional area of the stream as well as the available cross-sectional area of the proposed structure. Further requirements were added with respect to Site photographs. These photographs must be taken immediately upstream and downstream of the crossing. Applicants will need to submit approval from the Departments of Inland Fisheries (IF&W) and Wildlife and Marine Resources (DMR) for the following:

Crossing constructed between October 2 and July 14 of the year.

Culvert maintenance, repair or replacement activities that use smooth bore culvert or result in a smaller diameter culvert than the culvert being maintained, repaired or replaced. Crossings that will not allow for fish passage where the purpose is to prevent the spread of invasive fish species, such as pike.

Any crossing where existing ledge prevents embedding of the crossing structure and the ledge condition is deemed a barrier to fish passage by IF&W and DMR.

Cost: DEP states that, based on 350 some recent stream crossings, new crossing may require a culvert two sizes bigger to meet the new standards, which could cost \$100 to \$300 more. It does not appear that these numbers include additional earthwork, and the use of larger installation equipment. The biggest cost implications will be for projects requiring an open bottom structure. These structures can be as much as 10 times more costly to install.

These rules will be presented to the Board of Environmental Protection and once adopted will be in effect for 2010.

Steve Blais is owner of Blais Civil Engineers, a MAA member company located in South Portland Maine. Steve can be contacted at 207-767-7300 or visit his website: www.BLAISce.com

DEP Pushes for Development Tax

Last session the DEP introduced LD 891, An Act To Amend the Site Location of Development Laws to Include Consideration of Greenhouse Gas Emissions as a new standard under the Site Location of Development Laws. The bill was carried over from last session and will be among the first bill considered in the upcoming Second Legislative Session.. This bill proposes to amend the Site Location of Development Law so that any proposed developed subject to DEP review would not contribute to unreasonable emissions of greenhouse gases. The department would consider such factors as location, design, construction and operation of the development, including, land use, transportation, building materials, building energy usage, energy conservation policies and actions, and solid waste. As a general concept, MAA Board of Directors concurs with need for energy efficient development and reducing our reliance on

fossil fuels.

The bill also allows the DEP to require mitigation for any greenhouse gases. Mitigation means any action taken to avoid, minimize, rectify, reduce, eliminate or compensate for emissions of greenhouse gases. The department can also require that compensation for emissions of greenhouse gases and assess a compensation fee. In short, a new tax that is essentially a "Pay to Play" money grab from developers.

MAA Board of Directors strongly opposes LD 891 as proposed. The legislation does not contain any baselines for measuring greenhouse gases, does not provide standards for what would be acceptable as energy efficient developed subjects new developments to what is essentially a new tax on development.

Regardless of how the DEP and other may disguise the fees assessed on development

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DEP CHANGES

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changes), (3) to include that forested buffers are not counted and meadow buffers are counted in the determination for 20 acres and (4) in determination of common scheme need to look at functional relationship and site being within ½ mile radius.

- ◆ Chapter 373 – (1) Strengthen the language of MDEP’s right to disapprove of the contractor with a history of violations and (2) include the provisions for third party inspection.

- ◆ Chapter 375 – (1) Quantifies the setbacks already required by MDEP for Site Law projects 25’ from all wetlands and 100’ from streams, (2) 100’ buffer from significant natural features and threatened and endangered plant species, (3) increases the setbacks for vernal to 250’ from the habitat (500’ with no disturbance), (4) 25’ buffer from the top of slopes, (5) to examine impacts on all resources that could be eligible for inclusion on the Federal Historical Register and (6) standards to be met by electric utility corridors.

- ◆ Chapter 375 (Scenic Character) – Standards that limit development based on project/development appearance in rural areas near mountain areas and significant natural areas.

- ◆ Chapter 375 (Neighborhood Character Standards) – Technical Standards for lighting and building appearance, specifically aimed at communities that do not have standards within their ordinances.

- ◆ Chapter 376 – To include in the rules the MDEP policy that soil investigations may be required on a case by case basis.

- ◆ Chapter 377 – Introduction of technical standards relative to roads, parking and walkways that sets limits on size and amounts in order to minimize developed area.

- ◆ Chapter 380 – (1) Make it easier for Planning Permits of long term projects, (2) change to permit length to 10 yrs from 5 yrs and (3) less reporting for Planning Permitting.

LD 891 Climate Change – Proposed legislation and rules aimed at reducing greenhouse gas emissions in Site Law projects to meet objectives of the State’s Energy Plan including (1) review of buildings for compliance with an energy standard, (2) site layout standards to minimize distances traveled and vehicle idling and the orientation of residential buildings relative to sun exposure and (3)

inclusion of a compensation fee for reducing forested lands and the sequestration of carbons in trees.

Relative the proposed changes to Stormwater Law rules, some of the major aspects are the following changes:

- ◆ Steep Slopes – Rule changes to deal with erosion control and storm water quality issues from projects in the mountain areas. Based upon focus group discussions, MDEP has agreed to include in the BMP manual as BMP guidance.

- ◆ The use of LID – The inclusion for the requirements for the use of Low Impact Development measures on projects and the requirement for clarification why they are not being utilized.

- ◆ Redevelopment – Development of a system to quantify water quality treatment on Site and Stormwater projects that is keyed to increase in impacts due to increases in imperious areas and more intensive development.

- ◆ Infiltration – Simplification of the rules for the use of infiltration and filter systems for certain uses/projects; promote more use of infiltration in limited areas.

Relative to the proposed changes to NRPA Law rules (see related story on page 1) the following changes are proposed:

- ◆ Stream crossings – New rules that require pipe embedment or open bottom structures in streams and different sizing criteria to provide for fish passage and passage of aquatic organisms.

- ◆ Note that there is an upcoming meeting on the proposed Site Law changes relative to Municipal Capacity & Delegation and review of the Construction General Permit on December 16. You can review the status of the proposed changes to both laws as well as monitor for upcoming meetings at the following MDEP website:

http://www.maine.gov/dep/blwq/topic/site_storm_revisions/index.htm

While some of the changes are minor, administrative, clarifying or beneficial changes, some have a much further reaching impact. It is recommended that you review these proposed changes and respond to the responsible MDEP facilitator (Andrew Fisk for SLODA concerns, Andrew.C.Fisk@maine.gov, and Don Witherill for Stormwater Law concerns, Donald.T.Witherill@maine.gov)

Rob McSorley is a Senior Project Manager with Sebago Technics and is registered and worked in several states. Sebago Technics is a MAA member company where Rob can be reached at 856-0277, ext. 278.

MAINE I-95 Truck Weight Pilot Project Advances

A conference committee of US Senate and House members has given final approval to a one-year pilot project that would exempt more of Maine’s Interstate Highway System highways from a controversial federal truck weight limit.

The experiment would allow trucks weighing up to 100,000 pounds to travel Interstate 95 between Augusta and Houlton. Such heavy trucks heading north now are forced off the interstate in Augusta onto secondary roads that travel through cities and towns, raising concerns about safety,

road wear and tear. Most Maine roads outside of the Interstate System as well as I-95 from Kittery to Augusta already allow the higher weight limit.

The pilot project was not included in the House-passed version of an appropriations bill, but it was part of the Senate measure. Sen. Susan Collins, R-Maine, sponsor of the Pilot Program and a member of the conference committee ironing out the differences between the two bills was able to get it included in the final measure.

“Increasing federal truck weight limits on Maine’s interstates has always been one of my top priorities,” Collins said in a

prepared statement issued Tuesday night after the conference committee votes. “A uniform truck weight limit would keep trucks on the interstates where they belong, rather than on the rural roads that pass through our small towns and villages.”

The Fiscal Year 2010 Transportation Appropriations conference report is expected to receive final approval later this month and take effect as soon as the president signs it.

The one-year test will allow officials an opportunity to evaluate the pros and cons of allowing the heavier trucks to use I-95 and then move to allow the higher weights on I-295.

MSHA and Single Deck Screens

By Chip Laite

On October 21, 2009 Joseph A. Main was confirmed as the Assistant Secretary of Labor for Mine Safety and Health (MSHA). Mr. Main has a long history in the mining industry working for the United Mine Workers of America (UMWA) and as a mine safety consultant. He has testified in Congress that the following changes in MSHA are needed;

- ◆ Increased inspections and scrutiny of the work places
- ◆ Improved health and safety standards to protect miners
- ◆ Rules to control the unhealthy diesel exhaust
- ◆ Rules to protect miners from harmful chemicals

Rules for the dust program need to be overhauled

The new Administration will be revisiting enforcement of the Federal Mine Safety & Health Act of 1977 and the Miner Act of 2006, to become more consistent with the

National policy. One of the most significant changes will be the policy of including single deck screens under MSHA's jurisdiction.

In the past MSHA has not enforced the Mine Act on single deck screens. This change will require an operation that meets the definition of a Mine to comply with all MSHA regulations. This means even if you only utilize a screen box similar to a Read Screen you will have to obtain a Mine Identification number for that equipment, also, you will be required to have a MSHA training plan, all employees will have to receive the required training, notifications of relocation must be sent whenever the screen is moved to a new location, and much more.

The Federal Mine Safety & Health Act of 1977 states that each coal or other mine, the products of which enter commerce, or the operations or products of which affect commerce, and each operator of such mine, and every miner in such mine shall be subject to the provisions of the Mine Act. It also states, Mining operations means mine development, drilling, blasting, extraction, milling, crushing, screening, or sizing of materials at a mine. In-

cluding maintenance, repair of mining equipment, and haulage of materials within the mine.

These regulations will be new for many contractors and pit operators and could be very expensive if not complied with. MSHA does have a Small Mines Office that will assist operators with gaining an understanding of the MSHA regulations and completing the necessary paperwork to stay in compliance. In Maine, the contact for the Small Mine Office is;

JOSEPH KANIA

Mine Safety & Health Administration
1000 Elm Street, Ste 10

Manchester, NH 03101

Telephone: (603) 666-7691

Fax: (603) 666-7609

E-Mail: Kania.Joseph@dol.gov

Operators of all screens and crushers that are not currently compliant with the MSHA regulations should contact Joe Kania to get his assistance.

Chip Laite is Aggregate Manager for Sargent Corporation and serves as Vice President of MAA.

DEP Development Tax

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as proposed in LD 891, it is simply a new tax on development. Maine's is already one of the highest taxed states in the nation and adding new taxes on the construction industry, which has been devastated by the current economic collapse, will only further delay economic recovery.

In a recent meetings with the DEP, MAA Directors along with other representatives from the construction industry offered an alternative approach to LD 891 to encourage Energy Efficient Development through establishment of:

A baseline and standards for assessing greenhouse gas emissions from development;

Best management practices for energy efficient development utilizing available

technologies and design standards; Regulatory & Tax Incentives including reduced permit fees and expedited review, allowing accelerated depreciation of capital costs associated with energy efficient designs; and Targeted tax credit for innovative energy efficient designs.

For more information see the story on Page 1 by Robert McSoreley.

MAA Workshop Set

MAA will conduct a Workshop on Maine DEP regulations and performance standards for operation of gravel pits & quarries at the NAWIC ConExpo on April 14, 2010 at the Augusta Civic Center. MAA members will discuss the process and documents needed for regulatory compliance.

There is no cost to attend this workshop and all gravel pit & quarry operators and owners are invited. Details will be posted on the website and mailed to members.

Visit Maine Aggregate Association
www.maineaggregate.org

Members, want a link to your business on the MAA website or got an interesting story?

Email us at: info@maineaggregate.org

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.

In the early 1990s, 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. Ensuring the rules regulating gravel and rock extraction remain effective and practical is a top priority.

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 on a number of issues of mutual interest: land use and other environmental regulations; the high costs of workers compensation; and state

spending and taxes continue to rise out of control are examples.

MAA also sponsors environmental compliance workshops 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 28, 2010 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

Sand & Gravel NEWS

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