



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection
FROM: Mike Mullen, Division of Land Resource Regulation
DATE: June 18, 2009
RE: Request Adoption: Amendments to Chapter 305 Permit by Rule Standards

Statutory and Regulatory Reference:

Chapter 305 Permit by Rule Standards ("PBR") are adopted pursuant to general statutory authority at 38 M.R.S.A. Section 341-D(1) and specific authority at 38 M.R.S.A. Section 480-H.

Status of process:

Proposed amendments to Chapter 305 were posted to hearing and public comment. A hearing was held on May 21, 2009. The public comment period ended 5:00 p.m. June 1, 2009. The department is requesting the Board's adoption of the amendments today.

Description:

The proposed amendments include new submission requirements in certain sections of the rule for describing and detailing the scope of proposed activities. New standards are proposed to be added that require adherence to the descriptions and details submitted with the notification form. Other proposed amendments include:

- limiting access ways to natural resources to paths, steps and stairs;
-eliminating riprap on the coastal shoreline as eligible for the permit by rule process;
-requiring that culverts be set fully on or in the stream bed and riprapped at both ends; and
-allowing new activities in existing developed areas in significant vernal pool habitat.

In addition, other amendments are proposed to clarify definitions and standards that would minimally, if at all, limit the applicability of the rule.

Response to comments

Three persons commented on the draft amendments. Only three minor revisions were made to the rule in response to those comments: 1) the word "protected" was added into a sentence in Section 8(C)(17); 2) a note about obtaining riprap guidance in the erosion control BMP manual was added in Section 10(C)(10)(h); and 3) wording was added to update a reference to the Maine Department of Transportation's (DOT) current crossing policy in Section 11(B)(8). Responses can be found in the Basis Statement in the Board packet.

Many suggested revisions to the rule, particularly in Section 11 State transportation facilities, were made by the DOT. Some of these suggested revisions are substantial in nature and deserve a full review with other natural resource agencies, DOT and the Maine Turnpike Authority, which is also allowed to perform activities under Section 11. Rather than integrate some of the suggested revisions into the rule at this time, the Department proposes to bring the necessary parties together and discuss these revisions in detail. Pending the outcome of that effort, the Department may proceed with a separate rule making effort for Section 11.

Department Recommendation:

The department recommends that the Board adopt these amendments to Chapter 305 Permit by Rule Standards.

Estimated Time of Presentation:

Approximately 15 minutes.

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