



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection

FROM: Mark Stebbins, Mining Coordinator, Land & Water Quality

DATE: May 3, 2012

RE: Adoption of amendments to Chapter 378 Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay & Silt and the Performance Standards for the Storage of Petroleum Products

**Statutory and Regulatory Reference:** P.L. 2011, Chapter 26, Resolve To Establish a Single Construction Permit for Certain Above Ground Oil Storage Tanks in Gravel Pits and Quarries and 38 M.R.S.A. § 341-H(2) which provides the Board of Environmental Protection with the authority to adopt, amend and repeal major substantive rules of the Department.

**Location:** The proposed rule only applies to the organized areas of the State and mining operations licensed under the Performance Standards for Excavations, 38 M.R.S.A. §490-C.

**Description:** In 2008, the Legislature enacted the Wellhead Protection Law to protect drinking water wells from contamination by oil or hazardous substances. The law accomplishes this purpose by restricting the location of facilities that, by their nature, pose an unacceptable risk to groundwater quality and therefore should be kept away, if at all possible, from drinking water supplies, including significant sand and gravel aquifers. During implementation of this law, the department became aware of a conflict between the law and the use of fuel storage tanks in gravel pits. Specifically, the rules prohibit the installation of an oil storage facility on significant sand and gravel aquifer mapped by the Maine Geological Survey. Approximately 55 % (421) of DEP-licensed gravel pits are located on mapped sand and gravel aquifers.

In response to this conflict the Legislature directed the Department through Public Law 2011, Chapter 26, to amend its *Chapter 378 Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay or Silt and the Performance Standards for the Storage of Petroleum Products*, (06-096 CMR 378) to allow licensed mining operations to store a small amount of diesel fuel on mapped significant sand and gravel aquifers.

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826  
RAY BLDG., HOSPITAL ST.

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 04679-2094  
(207) 764-0477 FAX: (207) 760-3143

The fuel storage requirements for the mining industry are contained in the variance rules, Chapter 378, Section 5. Specifically, the proposed amendments would allow for up to 2 above ground diesel fuel tanks in a single location with an aggregate capacity not to exceed 1,100 gallons, without obtaining a variance as currently required under department rules. The proposed amendments would also ensure consistency between department programs.

A majority of the amendment language was developed with input from various stakeholders. These stakeholders included representatives from the Maine aggregate industry, Maine Municipal Association, water utilities, and the Maine Drinking Water Program, in addition to DEP Bureau of Remediation and Waste Management and Bureau of Land and Water Quality staff and staff from the State Fire Marshal's office.

During the public hearing and workshop at the Legislature, all comments received by the Energy and Natural Resources Committee supported the proposed changes to the rule. The Resolve was signed by the Governor on March 29, 2012

**Department Recommendation:** The department recommends the Board adopt these rules as amended.

**Estimated Time of Presentation:** Approximately 10 minutes.