

Notice of Agency Rule-making Proposal

AGENCY: Maine Department of Environmental Protection

RULE TITLE OR SUBJECT: Amendment of *Permit by Rule Standards*, 06-096CMR 305
Section 10 Stream crossings

PROPOSED RULE NUMBER:

CONCISE SUMMARY: The proposed amendments, which are considered major substantive rules by the Legislature, include new submission requirements, standards and definitions designed to ensure new crossings will allow for passage of fish and other aquatic organisms and achieve natural stream flow in accordance with P. L. 2009 Chapter 460 An Act to Ensure that Replacement Culverts Permit Fish Passage. New standards are proposed that will require culverts and other structures with bottoms to be embedded in the stream. New crossings on streams with ledge will be required to use an open bottom structure, such as a bridge or arch. Crossings structures will be required to span, or have a diameter equal to, 1.2 times the stream width. Stream width and depth will be measured based on new definitions related to the bankfull capacity of the stream, which in many cases results in larger measurements than those based on the normal high water line of the stream. The requirement that new crossing structures have a cross sectional area three times the cross sectional area of the stream is being increased to 3.5 times. 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 waive from the new stream crossing standards being proposed. New submission requirements include plans showing the cross sectional area of the stream to be crossed and the size and type of crossing structure to be used. Also, applicants will need to submit approval from the Departments of Inland Fisheries and Wildlife and Marine Resources for:

- crossings constructed between October 2 and July 14 of the year;
- culvert maintenance, repair or replacement activities that use a 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; and
- crossings on ledge that do not use an open bottom structure due to a natural barrier for fish passage.

THIS RULE WILL HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 38 M.R.S.A. §§341-D(1-B); 38 M.R.S.A. § 480-H;
P.L. 2009 Chap. 460

PUBLIC HEARING: November 5, 2009 9:00 am
Holiday Inn/Ground Round
110 Community Drive
Augusta, ME 04330

DEADLINE FOR COMMENTS: November 20, 2009

Comments may be submitted by mail, e-mail or fax to the contact person listed below. To ensure the comments are considered, they must include your name and the organization you represent, if any. A copy of the rule is available upon request from the contact below, and on the web at:
<http://www.maine.gov/dep/blwq/rule.htm>

A copy of the small business economic impact statement may be obtained from the contact below.

AGENCY CONTACT PERSON FOR INFORMATION ON THIS RULE, INCLUDING A STATEMENT OF IMPACT ON SMALL BUSINESS IF RELEVANT:

CONTACT PERSON'S NAME: Mike Mullen
AGENCY NAME: Department of Environmental Protection
ADDRESS: 17 SHS
Augusta, ME 04333

TELEPHONE: 207-287-4728
FAX: 207-287-7826
E-MAIL: mike.mullen@maine.gov

Please approve bottom portion of this form and assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____ DATE: _____
Authorized signature

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