

MEMORANDUM

TO: Board of Environmental Protection
FROM: Don Witherill, Bureau of Land & Water Quality, Augusta
DATE: December 7, 2006
RE: Adoption of Chapter 500, Stormwater Management, and Chapter 502, Direct Watersheds of Lakes Most at Risk from New Development and Urban Impaired Streams:

Statutory and Regulatory Reference: The applicable regulatory framework for this rule is the Stormwater Management Law (Stormwater Law) 38 M.R.S.A. § 420-D.

Scope: This rule applies to (A) a project that requires a Stormwater permit pursuant to 38 M.R.S.A. § 420-D, (B) a development that may substantially affect the environment and requires a Site Location of Development (Site Law) permit pursuant to 38 M.R.S.A. §§ 481 - 490 and (C) certain projects that may be eligible for license by rule for the infiltration of stormwater pursuant to 38 M.R.S.A. § 413.

Description: The department requests that the Board adopt proposed revisions to Chapter 500, Stormwater Management, and Chapter 502, Direct Watersheds of Lakes Most at Risk from New Development and Urban Impaired Streams. These revisions would be the first since changes became effective on November 16, 2005. The rules are routine technical as a result of legislation approved in the last session.

Background: Significant changes to the Stormwater Rules were approved by the Board on November 4, 2004. These were major substantive rules that were subsequently approved by the Maine Legislature. Among the changes that were approved were revised basic standards that apply to all development projects, new general standards (BMPs) that apply to all projects with at least 20,000 square feet of impervious area in most at risk lake watersheds, or urban impaired stream watersheds, or at least 1 acre of impervious area in all other watersheds. Urban impaired streams were a new category created in Chapter 502. Projects in those watersheds are required to further reduce stormwater impacts by either carrying out a mitigation project, or by paying a compensation fee.

Implementation of the new rules has led to several concerns, which the department proposes to address through additional rule-making. Among these are the need for additional flexibility in meeting the standards for large (Site Law sized) redevelopment projects where strict adherence to the BMP standards can be very expensive. In such instances, a developer might consider going to an undeveloped site rather than redeveloping an existing impervious area due to the expense of stormwater treatment. A proposed revision to Chapter 500 would allow the department to approve redevelopment projects that do not meet all of the new standards, provided there is not an increase in stormwater impacts leaving the site. Other changes are also proposed, all of which are seen as relatively minor in scope.

In Chapter 502, several changes are proposed to the list of Most at Risk Lakes with the addition of 5 lakes due to data showing an increased trophic state and the removal of one lake from the "severely blooming" category. One stream is also proposed to be removed from the Urban Impaired Stream list due to data showing that it is meeting its water quality classification.

Environmental Issues: The Board held a public hearing on the draft rules in Augusta on October 5, 2006. Concern was raised at the public hearing that the posted draft's changes were too lenient for Site Location Law projects involving redevelopment of existing impervious area. The proposal would have required such projects "to meet the general standards to the extent practicable as determined by the department." The concern expressed was that some applicants might choose to say that it is not practicable to do anything to meet the standards. The draft proposed for adoption addresses that concern by adding the following sentence to that paragraph: "If the department determines that it is not practicable to make significant progress towards meeting the general standards for the redeveloped impervious area, the department may require off-site mitigation within the same watershed as an alternative for stormwater treatment."

Department Recommendation: The department recommends the Board adopt the revised Chapters 500 and 502.

Estimated Time of Presentation: Approximately 15 minutes.