

**STATE OF MAINE**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Chapter 378**

**Variance Criteria for the Excavation of  
Rock, Borrow, Topsoil, Clay or Silt**

and

**Performance and Design Standards for the Storage of  
Petroleum Products**

Variance Application



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PART I. GENERAL INSTRUCTIONS

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This document is to be used when applying for a variance pursuant to Performance Standards for Excavations, 38 M.R.S.A. §490-E and Performance Standards for Rock Quarries, 38 M.R.S.A. §490-CC. The applicant must submit specific information for each variance request in accordance with "Chapter 378 Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay or Silt and Performance Standards for the Storage of Petroleum Products".

**Section 1. Pre-submission**

A. Pre-application meeting (optional). The purpose of the pre-application meeting is to help the applicant to understand the variance application review process, to identify particular areas of concern, and to exchange information before commitment to a final design. The meeting may lead to a substantial reduction in processing time. To arrange a pre-application meeting contact the Mining Coordinator.

B. Pre-submission meeting (optional). A pre-submission meeting allows the department and applicant to follow up on issues raised at the pre-application meeting. The meeting is held when the application is ready for submission. Contact the Mining Coordinator concerning scheduling a pre-submission meeting.

C. Public informational meeting (mandatory). An applicant intending to file a variance application must hold a public informational meeting prior to filing that application. At least 10 days prior to the public informational meeting, notice of the informational meeting must be sent by certified mail to abutters and to the municipal office of the municipality(ies) where the project is located. At least 7 days prior to the informational meeting, notice must also be published once in a newspaper of general circulation in the area where the project is located. The notice must contain at least the following information:

- (1) Name, address and telephone number of the applicant.
- (2) Citation of the statutes or rules under which the application will be processed.
- (3) Location and summary description of the activity.
- (4) The date, time and place of the public informational meeting.

A certification signed by the applicant attesting that a public informational meeting was noticed and held in accordance with this section, including an estimate of the number of attendees at the meeting, must be submitted with any variance application.

D. Notice. Provide public notice of the application. The notice form is included in Part IV of this application. A copy of this form or one containing identical information must be used to notify abutters, municipal officials, and local newspapers.

(1) Newspaper. Publish the notice once in a newspaper circulated in the area where the development is located. The notice must appear in the newspaper during the week prior to the date the application is filed with the department.

(2) Abutting property owners. Provide a copy of the notice to the owners of abutting property. Their names and addresses can be obtained from town tax maps or local officials. Abutters must receive notice within 30 days prior to filing a new or amendment application, or a resubmitted application returned as incomplete pursuant to Chapter 2. For the purposes of this application, an abutting property owner means any person who owns property that is **BOTH** 1) adjoining and 2) within 1 mile of the delineated project boundary, including owners of property directly across a public or private right of way.

(3) Municipal or plantation office. Provide a copy of the public notice together with a duplicate of the entire application to the appropriate town clerk or city clerk. The notice must be received during the week prior to the date the application is filed with the department.

DI. Other.

(1) Application notes. Direct questions concerning application requirements to the project manager or, if a project manager has not yet been assigned, to the Mining Coordinator, Division of Land Resource Regulation (822-6300).

(a) Organization. Organize the application in the following manner.

(i) Use a completed copy of the Variance Application, contained in Part IV of this application, as the first page of the application.

(ii) Place a completed copy of the Notice of Intent to File and Notice Certification, after the completed copy of the Variance Application.

(b) Plan, drawing and map specifications. Plans, drawings and maps may be combined as long as all details are clearly shown. Adhere to the following specifications, unless variations are specifically approved prior to submission of the application:

(i) Sheet size 24" X 36";

(ii) Scale of 1" = 100';

(iii) Maximum vertical exaggeration of 5X; and

(iv) Folded to fit 8 1/2" by 11" folders for ease in filing.

(c) Professional assistance. For most variance applications, professional assistance is necessary to satisfactorily complete the application requirements. All plans, drawings and maps must be prepared by appropriate professionals. All work performed by a professional engineer or other licensed professional must be dated, stamped and signed by the professional. As used in this document, a "certified geologist" or "certified soil scientist", is a professional licensed pursuant to 32 M.R.S.A. §4901 et. seq.. A "registered engineer" is a professional licensed pursuant to 32 M.R.S.A. §1351 et. seq.. A "licensed site evaluator" is a professional licensed under authority established by 22 M.R.S.A. §42(3-A).

(d) Retain a copy. Retain a copy of the application, as filed with the department, in order to facilitate communications with the department's staff during the review process.

(2) Source material.

(a) Performance standards. Performance Standards for Excavations for Borrow, Clay, Topsoil or Silt, 38 M.R.S.A. §490-A to 490-M and Performance Standards for Rock Quarries, 38 M.R.S.A §490-W to 490-EE. Available from the Bureau of Land and Water Quality (287-3901).

(b) Erosion and sedimentation control handbook. Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices (March, 1991). Available from the Cumberland County SWCD, 381 Main Street, Suite 3, Gorham, Maine 04038 (839-7842).

(c) Stormwater Management for Maine: Best Management Practices (January 2006). Available from the Nonpoint Source Training and Resource Center, at the DEP office in Augusta (287-7726). Cost: \$20.00 (subject to change).

(d) Hydrology. Soil Conservation Service's TR-55 publication entitled "Urban Hydrology for Small Watersheds" (June, 1986); and TR-20 publication entitled "Computer Program for Project Formulation Hydrology" (May, 1982).

## **Section 2. Submission**

A. Fees. Attach the appropriate application fee to the variance application. Send the original application and 2 copies to: Department of Environmental Protection, Bureau of Land and Water Quality, 312 Canco Road, Portland, Maine 04103. Fees must be paid at the time the application is submitted to the department. Checks should be made payable to: Treasurer, State of Maine.

The department operates under a fee system established by the Legislature of the State of Maine. All fees must be paid at the time the application is submitted to the department. The fee schedule is changed every November 1 and can be found at <http://www.maine.gov/dep/permits/>. Checks should be made payable to: Treasurer, State of Maine.

B. Timing of submission. Submit the application well in advance of the date of construction. The amount of time required for the application review process depends upon the scope of the activity, its environmental impacts, and the quality of the application. Processing timetables are established by the commissioner for each type of new permit or license issued by the department. 38 M.R.S.A. §344-B.

C. Correspondence and questions. Correspondence and questions concerning the application should be directed to the Mining Coordinator. The assigned application number should be included in all correspondence.

## **Section 3. Processing**

A. Acceptance review. Upon submission and payment of all applicable fees, the application is assigned a project number and given to a project manager. The project manager determines if the application is complete and acceptable for processing. Once this review is complete,

(1) The applicant will receive a notification, including the application number and the project manager's name, stating that the application is acceptable for processing; or

(2) The application will be returned with a letter stating that the application is not acceptable for processing as filed and identifying deficiencies in the application.

B. Application review. The project manager makes a recommendation for final action based upon his or her review of the application including knowledge gained from any site visit, and comments received from department staff, other agencies, or the public.

(1) If the application is determined acceptable for processing, the project manager may request additional copies for use by review agencies.

(2) Additional information may be requested. "Acceptance of an application as complete for review does not constitute a determination by the department on the sufficiency of that information and does not preclude the department from requesting additional information during processing." 38 M.R.S.A. §344 (in part).

In review of an application, the burden is on the applicant to prove that the development will not have an adverse environmental impact: it is not up to the department to prove that a development will have an adverse environmental impact.

**Section 4. Final action and appeal.** Depending on the nature of the development, a final decision on the application may be made, either by the Commissioner or by the Board of Environmental Protection. A draft copy of the Findings of Fact and Order is made available, upon request, for review by all interested parties at least 5 working days prior to the final action by the commissioner, or 15 working days prior to final action by the board. Persons aggrieved by a decision may appeal the decision within 30 days following final action.

If an application is approved, a permit is issued and sent to the applicant. The applicant must become familiar with any conditions placed on the approved development. Failure to comply with conditions of approval may lead to action by department enforcement staff, including fines and revocation of the permit.

## **CONDUCTING PUBLIC INFORMATIONAL MEETINGS INTERIM POLICY FOR EXCAVATION VARIANCE REQUEST**

### **Applicability**

This document is an interim policy of the Division of Land Resource Regulation to provide guidance in the conducting of public informational meetings required for a Variance Request for the Excavation of Rock, Borrow, Topsoil, Clay or Silt. This policy outlines the format for conducting public informational meetings by an applicant.

### **Objectives**

The Department objectives for public informational meetings are:

- inform the public of projects pending in their community;
- encourage early public input in the application review process;
- establish a dialogue between the applicant and the public;
- promote a better understanding of the specific project issues between the applicant, agencies and the public.

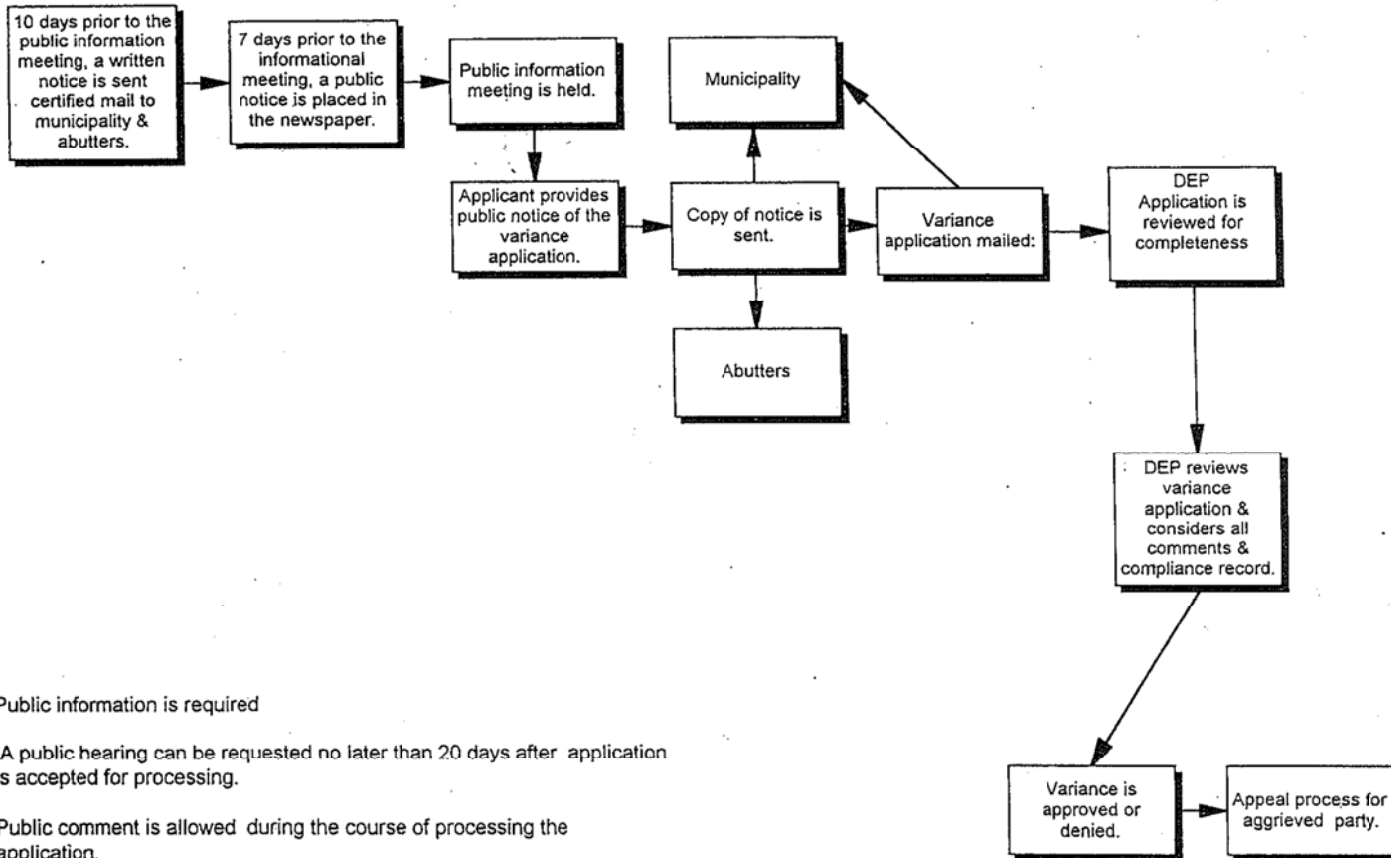
### **Procedural Requirements for Public Informational Meetings**

1. All public informational meetings must be public noticed and held at a public facility that is handicapped accessible<sup>1</sup> and located in the town where the project is proposed.
2. The applicant or their designee shall present an overview of the proposed project which includes a summary of any potential environmental impacts and measures to mitigate the impacts.
3. A summary handout sheet must be made available to the public that details the major aspects of the proposed project and lists the federal, state and local permits required for the project.
4. A summary handout sheet obtained from the Department regarding the application process must be made available at the meeting (see fact sheet).
5. The applicant shall provide ample time during the meeting for the public to ask questions.
6. The applicant or their designee shall provide to the Department a summary of any public comments or concerns regarding the proposed project.

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<sup>1</sup> For public notice requirements, please refer to the Department's administrative rule under Chapter 2 Section 8.

## VARIANCE APPLICATIONS FOR EXCAVATIONS AND ROCK QUARRIES



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Public information is required

A public hearing can be requested no later than 20 days after application is accepted for processing.

Public comment is allowed during the course of processing the application.



**CHAPTER 378: VARIANCE CRITERIA FOR THE EXCAVATION OF ROCK, BORROW, TOPSOIL, CLAY OR SILT AND PERFORMANCE STANDARDS FOR THE STORAGE OF PETROLEUM PRODUCTS**

**Summary:** This chapter describes the standards and submissions required for evaluating variance applications under 38 MRSA §490-D, Performance Standards for Excavations and 38 MRSA §490-Z, Performance Standards for Quarries. It also includes the performance and design standards for the onsite storage of petroleum products.

1. **Applicability.** This rule provides procedures for variances from the performance standards for the mining of rock, borrow, topsoil, clay, or silt as set forth in 38 MRSA §§ 490-D and 490-Z. Certain standards are not subject to variance, as provided in §§ 490-D and 490-Z. The rule also provides the performance and design standards for the onsite storage of petroleum products.
2. **Approval standards for variances.** The Department shall approve a variance when it finds that the applicant has demonstrated that the proposed activity meets the following standards.
  - A. **Lower water quality.** The activity will not violate any state water quality law, including those governing the classification of the State's waters.
  - B. **Interfere with natural groundwater flow.** The activity will not adversely interfere with the natural flow of groundwater.
  - C. **Existing uses.** The activity will not adversely interfere with existing uses.
  - D. **Public safety.** The activity will not adversely affect the health, safety and general welfare of the public.
  - E. **Flooding.** The activity will not unreasonable cause or increase the flooding of adjacent properties **or create an unreasonable flood hazard to any structure.**
  - F. **Soil erosion.** The activity will not cause unreasonable erosion of soil.
  - G. **Harm to habitats.** The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, fresh water, estuarine, or marine fisheries, or other aquatic life.
3. **Submissions.** This section outlines submission requirements related to the variance approval standards described in Section 2, above.
  - A. **Separation of less than five feet from seasonal high water table.** If any part of the excavation is to be less than five feet from the seasonal high water table, the following submissions are required.
    - (1) A plan of the site showing the locations of test pits, borings, monitoring wells, seismic lines, or other subsurface investigations undertaken to establish the elevation of the seasonal high water table. If these investigations have intercepted the seasonal high water table, or otherwise provide evidence of its location, the plan must show the elevations of the seasonal high water table at those points. The contours of the seasonal high water table must be shown throughout the

areas in which excavation is proposed to be less than five feet from the seasonal high water table.

- (2) Logs and other supporting documentation of the subsurface investigations conducted to establish the elevation of the seasonal high water table.
- (3) A plan for regular monitoring of water table elevations at representative locations within the excavation and in the immediate vicinity, and regular reporting of data to the department, at intervals to be determined by the department. During each year of pit operation, water table elevations must be monitored biweekly during April, May, and June, and once in September, December, and March. At least one year of background water level data must be obtained from these wells prior to any excavation to within less than five feet of the seasonal high water table.
- (4) The department reserves the right to require more or less frequent monitoring of water table elevations if, in the opinion of the department, such monitoring is necessary to evaluate the impact of the excavation on water supply wells or protected natural resources. Cases in which more or less monitoring might be required include the following:
  - (a) The department may, at its discretion, require less frequent monitoring of water table elevation if it determines that a statistical analysis of the data shows no evidence of unanticipated changes in water table elevation.
  - (b) The department may require resumption of the original frequency, or substitute another frequency, in the event of evidence of declining water quality in areas impacted by the excavation or changes in water table elevation not anticipated in the study submitted to meet the requirements of this variance.
  - (c) The use of pre-existing data shall be subject to approval by the department. The applicant shall discuss the manner and time in which the data were acquired, the analytical or investigative methods used and any other factors relevant to the quality and applicability of the data.

**B. Excavation into groundwater.** If any part of the proposed excavation will be below the elevation of the seasonal high water table, the following submissions are required in addition to the submissions required under subsection A above.

- (1) A plan of the site showing the estimated post-development water table contours. This plan must show, at a minimum, all areas in which the elevation of the water table is likely to be impacted by the development, and must specifically address the potential impact on any pre-development water supply wells or protected natural resources in the vicinity of the excavation.
- (2) Measurements of the safe yield and water quality of any water supply well within that area in which the elevation of the water table will be impacted by the development. For the purposes of this rule, "safe yield" is defined as the amount of water which can be withdrawn from a well without producing adverse effects

on the quality or quantity of water available to that well, protected natural resources, or other users of groundwater.

- (3) Provisions for regular analysis of the water table data for the site, for the purpose of comparing the data to the estimated post-development water table. This analysis must be submitted to the department on an annual basis, unless another interval is specifically required by the department, until the department determines that reclamation of the excavation is complete.
- (4) Provisions for quarterly measurement of groundwater quality in the vicinity of the excavation. Water quality of upgradient and downgradient wells must be measured for at least the following parameters: iron, manganese, extractable petroleum hydrocarbons (EPH), volatile petroleum hydrocarbons (VPH), pH, and specific conductivity. If explosives are used in the excavation, the applicant must also monitor levels of nitrate or other applicable parameters which are likely residues of explosives. At least one year of background data must be obtained from these wells prior to any excavation in the area proposed for excavation below the water table.
- (5) The department reserves the right to require more or less monitoring parameters if, in the opinion of the department, such monitoring is necessary to evaluate the impact of the excavation on water supply wells or protected natural resources. Cases in which more or less monitoring might be required include the following:
  - (a) The Department may, at its discretion, reduce the list of monitored parameters if it determines that a statistical analysis of the data shows no evidence of declining groundwater quality.
  - (b) Cases in which such additional parameters might be required include, but are not limited to: evidence of declining water quality in areas impacted by the excavation; proximity of the excavation to a known contaminant source, such as a landfill, hazardous waste site, engineered septic system, or waste discharge site.
  - (c) The use of pre-existing data shall be subject to approval by the department. The applicant shall discuss the manner and time in which the data were acquired, the analytical or investigative methods used and any other factors relevant to the quality and applicability of the data.

**C. Reclamation requirements for excavation activities conducted below the seasonal high water table.** In the event of excavation below the seasonal high water table, the operator of the mining activity must reclaim the affected area as a pond according to the following standards.

- (1) The water supply to the pond must be sufficient to maintain the approximate water elevation specified in the design of the pond under normal circumstances. The bottom of the pond must be undulating to provide a variety of water depths.
- (2) In order to provide suitable conditions for safety and egress, shallow areas of less than 3 feet in water depth must exist along the shoreline. These areas must be graded to a slope no steeper than 4H to 1V.

- (3) To increase the pond's productivity, the shoreline must be irregular in shape.
- (4) A pond may not be smaller than one-half acre.

**D. Externally drained pits.** If any area of an excavation or quarry regulated under 38 M.R.S.A. §490-B or 38 M.R.S.A. §490-X will be externally drained at any time during the development, operation, or use of the site, then that portion of the operation must have a stormwater management plan for the control and treatment of runoff. The following standards and submission requirements must be met.

- (1) Site Plan. Submit a topographic plan of the operation showing all areas disturbed or developed as a result of the operation, including all buildings, processing facilities, stormwater management structures, excavation areas, roads, stockpile areas, and existing and proposed contours. The plan must clearly indicate by boundary line the portion(s) of the operation that will be externally drained.
- (2) Basic standard for erosion control, maintenance, and housekeeping. Externally drained excavations or quarries must meet the basic standard identified at 06-096 CMR 500.4(A) and the submission requirements identified at 06-096 CMR 500.8(C).
- (3) General standards for stormwater quality. If the externally drained excavation or quarry is not located in the direct watershed of any lake, then the excavation or quarry must meet the general standard identified at 06-096 CMR 500.4(B)(2)) and the submission requirements identified at 06-096 CMR 500.8(D). For purposes of calculating volumes and sizing buffers for this standard, areas exposed for mining or stockpiling of rock, gravel, borrow, topsoil, clay, or silt shall be considered impervious area.
- (4) Phosphorus standard for stormwater quality. If the externally drained excavation or quarry is located in the direct watershed of any lake, then that portion must meet the phosphorus standard identified at 06-096 CMR 500.4(C) and the submission requirements identified at 06-096 CMR 500.8(D). For purposes of determining phosphorus export for the phosphorus standard, areas exposed for mining or stockpiling of rock, gravel, borrow, topsoil, clay, or silt shall have a phosphorus export equal to that of pavement unless the Department approves alternate export rates.
- (5) Urban impaired stream standard. If the externally drained area of an excavation or quarry is three acres or more of impervious area and is located in the watershed of an urban-impaired stream or stream segment listed in 06-096 CMR 502, Appendix B, then the excavation or quarry must meet the urban-impaired stream standard identified at 06-096 CMR 500.4(D). For purposes of determining the compensation fees and mitigation credits needed for the urban impaired stream standard, areas exposed for mining or stockpiling of rock, gravel, borrow, topsoil, clay, or silt shall be considered non-roof impervious area. Reclamation of existing and proposed mining areas regulated under 38 M.R.S.A. §490-B or 38 M.R.S.A. §490-X may not be used as compensation credit for meeting the urban-impaired stream standard.

- (6) Flooding standard for stormwater quantity. Externally drained excavations or quarries, must meet the flooding standard identified in 06-096 CMR 500.4.D for both site operation and post-reclamation conditions. The following information must be provided to the department.
- (a) A narrative describing the operation layout, the pre-excavation hydrology, the hydrology changes resulting during operations, the hydrology changes after reclamation, and the stormwater management measures to be put in place to prevent stormwater quantity impacts on and off the site.
  - (b) A pre-excavation drainage plan, at a scale and contour interval to be determined by the department, showing drainage subcatchment boundaries, flow paths, reaches, storage areas, cover type boundaries, and soil type boundaries.
  - (c) A site operation drainage plan, at a scale and contour interval to be determined by the department, showing drainage subcatchment boundaries, flow paths, reaches, storage areas, cover type boundaries, and soil type boundaries.
  - (d) A post-reclamation drainage plan, at a scale and contour interval to be determined by the department, showing drainage subcatchment boundaries, flow paths, reaches, storage areas, cover type boundaries, and soil type boundaries.
  - (e) Pre-excavation runoff rate and runoff volume calculations for the 2-year, 10-year, and 25-year storms, including runoff curve number computations and time-of-concentration calculations for each drainage subcatchment; a reach description and routing analysis for each drainage conveyance; and pond description and pond routing analysis for each runoff storage structure.
  - (f) Site operation runoff rate and runoff volume calculations for the 2-year, 10-year, and 25-year storms, including runoff curve number computations and time-of-concentration calculations for each drainage subcatchment; a reach description and routing analysis for each drainage conveyance; and pond description and pond routing analysis for each runoff storage structure.
  - (g) Post-reclamation runoff rate and runoff volume calculations for the 2-year, 10-year, and 25-year storms, including runoff curve number computations and time-of-concentration calculations for each drainage subcatchment; a reach description and routing analysis for each drainage conveyance; and pond description and pond routing analysis for each runoff storage structure.

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NOTE: Acceptable stormwater methodologies and models include “TR-20 Computer Program for Project Formulation – Hydrology,” Second Edition, U. S. Department of Agriculture, Soil Conservation Service (March 1986); “TR-55

Urban Hydrology for Small Watersheds,” Second Edition, U. S. Department of Agriculture, Soil Conservation Service (June 1986); “WIN TR-55 2003.00.24 Microcomputer Program” (January 12, 2003); and “HEC-HMS Flood Hydrology Package,” U. S. Army Corps of Engineers (January 2001). Any methodology or model other than those listed must have prior approval from the department.

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- (h) A detail sheet showing the plan and cross section views for each proposed stormwater management basin, pond, or other storage structure which identifies the permanent pool elevation (if any) and the peak water levels in the basin, pond, or structure due to runoff from the 2-year, 10-year, and 25-year, 24-hour storms.
- (i) A detail and specifications sheet for each basin’s, pond’s, or storage structure’s embankment construction, impoundment construction, outlet control structure fabrication and installation, and emergency spillway construction.
- (j) Logs for soil borings or test pits done at the location of each proposed stormwater management basin, pond, or other storage structure.

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NOTE: Siting and design specifications for stormwater management basins and ponds can be found in 06-096 CMR 500 Appendix E and in Volume III of the department’s manual Stormwater Management for Maine (January 2006).

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- (7) Easements and covenants. If the externally drained portion of the operation will require specific off-site areas for the control, disposal, or treatment of stormwater runoff, then these off-site areas must be protected from alteration through easements or covenants in accordance with the standards in 06-096 CMR 500.4(F).
- (8) Management of stormwater discharges. The discharge of concentrated runoff from stormwater management basins or ponds must be to areas that have received concentrated flows before development of the operation. If an operation must discharge flows through an open-channel or pipe to any point that is not an open channel, an inlet to a storm drain system, or a natural or man-made impoundment, then the discharge will only be allowed if flow can be converted to sheet flow through use of a properly designed level spreader meeting the criteria in 06-096 CMR 500.5(A).
- (9) Plans and calculations for the proposed stormwater management system must be signed by and bear the sealed of a professional engineer registered in Maine and qualified to undertake the design.
- (10) Nothing in 06-096 CMR 378.3(D) may be construed to supersede or replace the Erosion and Sedimentation Control Standard established in 38 M.R.S.A. §490-D(8).

**E. Larger working pits.** The financial assurance provisions below apply to any excavations with a working pit larger than 10 acres. Financial assurance is designed to ensure that the operator satisfactorily meets all requirements of 38 M.R.S.A. §490-D and 38 M.R.S.A. §490-Z. Financial assurance must cover the affected land.

- (1) The amount of financial assurance required is determined by the department. The type of financial assurance must be as described under this rule. The amount of financial assurance must be, at a minimum, the estimated cost to a third party for completing the reclamation for all disturbed areas, and all areas expected to be disturbed within the upcoming year.
- (2) The permittee shall pay into a reclamation fund established for the benefit of the department as follows.
  - (a) The reclamation fund must be funded by the permittee through cash deposits, letter of credit, or surety.
  - (b) The initial deposit for reclamation costs, identified above, must be made prior to site disturbance. Subsequent payments must be made on or prior to the next subsequent anniversary date of permit issuance, and annually thereafter.
  - (c) Annual deposits or increases in the required reclamation fund amount must be made from the beginning of the operation to the end of the operation and until the successful completion of all reclamation activities. Without limitations changes in the amount in the fund may be required by the department due to modifications of the permit, changed financial conditions or site conditions, technology changes, inflation, anticipated changes in mining activity and corrective action, and reclamation. The permittee shall annually report to the department, subject to the department's approval, an estimate of cost changes as provided in this rule. The permit remains in effect only if all required deposits or increases are made within 30 days of the due date provided in this rule. The obligation to make deposits or adjust the letter of credit or bond amount ceases only upon approval from the department.
  - (d) When computing the annual inflation adjustment for reclamation, the department and the permittee must use the Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in "Survey of Current Business".
  - (e) The department may, at its discretion, grant approval for the withdrawal by the permittee of portions of the reclamation fund upon the permittee's verification that the sums authorized have been used solely for their intended, and department-authorized, purposes provided the remaining funds are sufficient to cover expenses required by this rule. In any event, 25% of the total financial assurance obligations must be retained in the trust fund until all reclamation is completed.
  - (f) If a permit is suspended, revoked, or not renewed, the permittee must continue to make deposits according to this rule.
  - (g) The financial assurance cost estimates must be made in U.S. dollars in accordance with established estimating practices and must not incorporate any salvage value that may be realized by the sale of

materials, wastes, site structures or equipment, land, or other assets associated with the site.

- (h) If a permittee fails to post required financial assurance, the department must issue a notice of violation to the permittee.
- (3) The following requirements apply to all financial institutions issuing a letter of credit under this rule.
- (a) The letter of credit must be unconditional, irrevocable, issued for a period of at least one year, and otherwise in a form satisfactory to the department. At least 90 days before the expiration date, the financial institution issuing the letter of credit must notify the permittee and the department if the letter of credit will not be renewed for an additional one year period, and the letter of credit must so provide. If the permittee is unable to obtain a letter of credit that complies with this rule prior to 45 days before the expiration of the current letter of credit, the department shall immediately draw all funds under the letter of credit and deposit those in the reclamation fund. The permittee shall also take all other measures necessary to maintain the letter of credit as provided herein and to assure such letters do not expire unless replaced with another duly qualified letter.
  - (b) The letter of credit must be issued so as to be drawn upon unconditionally by the department to meet the terms of the trust fund or otherwise at the call of the department.
  - (c) The financial institution issuing the letter of credit shall meet the following financial criteria, and must be reviewed no less often than annually by the department:
    - (i) It has assets of not less than \$50 million.
    - (ii) It has Tier 1 leverage capital, as defined by its primary federal regulator, of not less than 6% of total assets.
    - (iii) Its unsecured long-term debt, if rated, is rated A or better by Moody's Investor Service or A or better by Standard and Poor's.
    - (iv) Its parent company, if any, has Tier 1 leverage capital, as defined by its primary federal regulator, of not less than 5% of total assets on a consolidated basis.
    - (v) Its parent company's unsecured long-term debt, if rated, is rated Baa or better by Moody's Investors Service or BBB or better by Standard and Pools.
    - (vii) The proposed letter of credit must be submitted to the department for review and approval.



- (viii) In the event the department delivers to the financial institution a certificate so requesting and signed by the department, the financial institution shall draw down the full amount available under the letter of credit specified in the certificate and shall deposit to the department's reclamation fund the amount drawn down.

In the event that an issuer of a letter of credit ever fails to meet these criteria, the department shall immediately order the permittee to replace it with a properly qualifying letter of credit, failing which the department shall immediately call the letter of credit.

- (4) The following requirements apply to all surety bonds provided under this rule.
  - (a) The bond must be issued for a period of at least one year and in a form acceptable to the department. At least 90 days before the expiration date, the surety company issuing the bond must notify the permittee and the department if the bond will not be renewed for an additional one year period. The text of the bond must include a provision for notice of cancellation. If the bond will not be renewed, the permittee shall immediately replace it.
  - (b) The bond must be issued so as to be drawn upon unconditionally by the department.
  - (c) The surety must be U.S. Treasury listed and licensed to do business in the State of Maine.
  - (d) The surety issuing the bond must have its unsecured long-term debt rated "A" or better by Standard and Poors or "A" or better by Moody's Investor Service.
  - (e) The department will not accept the bond of a surety company which has failed or delayed in making payments on a forfeited surety bond.
  - (f) The proposed bond must be submitted to the department for review and approval.
  - (g) In the event that an issuer of a bond ever fails to meet these requirements, the permittee must replace it with a properly qualifying surety.
  - (h) In the event the department delivers to the surety company a certificate so requesting and signed by the department, the surety company must pay the full amount available under the bond specified in the certificate and deposit that sum to the department's reclamation fund.

- (5) The following requirements apply when releasing financial assurance.
- (a) When requesting close-out or release of financial assurance, the permittee must notify the department. The department shall make an inspection of the area, and if it finds that reclamation has been properly completed, in accordance with the requirements of these rules, applicable laws and the terms and conditions of the permittee's permit, it must notify the permittee.
  - (b) When the department makes a determination to release funds, it must notify the financial institution or surety company and the permittee in writing of the decision. At that time, the department must supply the financial institution or surety company and permittee with written approval to transfer the excess funds or to close the account. The department does not release the permittee from any reclamation or corrective action requirements or third party liability as a result of releasing any funds.
  - (c) If at any time the department finds that reclamation of the affected area is not proceeding in accordance with these rules, applicable laws and the permit, the department under the authority of 38 M.R.S.A. §490 may initiate forfeiture proceedings against the fund filed by permittee.

**F. Side slopes steeper than 2.5H to 1V.** These requirements apply to all externally drained pits. They may apply to internally drained pits if the department determines that there is a reasonable possibility of adverse impact on adjacent properties or protected natural resources due to failure of a slope steeper than 2.5-to-1. The slope stability analysis must consist of the following components.

- (1) A detail sheet showing the cross section of the slope proposed to be graded to a slope steeper than 2.5H to 1V. The cross section must show the slope's soil stratigraphy (i.e., the different soil layers in the slope), the location of springs or seeps, and the location of any perched water tables.
- (2) For each soil layer, a description of the soil (e.g. fine sand or coarse gravel), the thickness of the soil layer, the soil unit weight, if angle of internal friction (if a granular soil), and the soil cohesive shear strength (if a cohesive soil).
- (3) The calculations for the slope stability analysis must show the slope's safety factor against failure.
- (4) Photographs showing the existing condition of the slope.

If the department determines that there is not a reasonable possibility of adverse impact on adjacent properties or protected natural resources due to failure of a slope steeper than 2.5-to-1 in an internally drained pit, the applicant shall notify the department and include in this notification a drawing showing the location of the proposed steeper slopes and a narrative describing how those slopes will be stabilized.

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NOTE: In most cases the slope will have only one or two soil layers. The applicant can obtain values for unit weight, angle of internal friction, and cohesive shear

strength from laboratory tests or from data published in geotechnical textbook design manuals.

NOTE: The applicant can do the analysis by hand calculation, by computer, or (for limited cases) by using published stability charts. For analyses using soil properties obtained from laboratory tests, the slope factor of safety should be greater than 1.10. For analyses using soil properties obtained from general data in reference books, the slope factor of safety should be greater than 1.25.

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**G. Excavating closer than 100 feet to a public road.** If any part of the excavation will be less than 100 feet to a public road, the following information must be submitted to support the variance application.

- (1) A plan showing the location of the existing slope, the road and its associated right-of-way.
- (2) Evidence that adequate provisions for safety and visual screening will be made and maintained, if applicable.
- (3) Photographs showing the condition of the existing natural buffer between the public road and the excavation.

**4. Terms and conditions.** Unless otherwise stated in the variance approval, the operation and reclamation of a mining operation is subject to the following standard conditions.

**A. Standard conditions**

- (1) Approval of variation from plans. The granting of this variance approval is dependent upon and limited to the proposals and plans contained in the variance application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Any such variation undertaken without approval of the department is in violation of 38 M.R.S.A. §483-A and is subject to penalties under 38 M.R.S.A. §349.
- (2) Initiation of development within two (2) years. If the construction or operation of the activity is not begun within two years, this variance approval shall lapse and the applicant may reapply to the department. The applicant may not begin construction or operation of the development until a new variance approval is granted. Re-applications must state the reasons why the development was not begun within 2 years from the granting, and may include information submitted in the initial variance application by reference.
- (3) Approval shown to contractors and agents. Work done by a contractor or agent of the applicant may not begin before the contractor or agent has been provided with a copy of this variance approval.
- (4) Compliance with all terms and conditions of approval. The applicant shall submit all reports and information requested by the department to demonstrate compliance with the terms and conditions of this approval.

**B. Special conditions.** In addition to the standard conditions, the department may, as a term or condition of the variance approval, establish any reasonable requirement deemed necessary to ensure that the excavation or quarry operation meets the licensing criteria of 38 MRSA §§ 490-D and 490-Z. Such conditions must address themselves to specifying particular means of satisfying minor or easily corrected problems, or both, and may not substitute for or reduce the applicant's burden to show that each of the licensing criteria of the 38 MRSA §§ 490-D and 490-Z has been met.

**5. Performance and design standards for the storage of petroleum products.** The owner or operator of an excavation or rock quarry where more than 1320 gallons of petroleum products will be stored must submit a spill prevention control and countermeasures plan to the Department for review at least 45 days before beginning operation. The plan must detail the specific measures for secondary containment, spill prevention control and countermeasures, equipment maintenance, inspections, and staff training as required by the Federal Environmental Protection Agency Regulation, 40 CFR 112. The following standards address the storage of petroleum products at excavation sites and rock quarries.

**A. Performance standards for secondary containment**

- (1) Secondary containment is required for all fixed storage of petroleum products. Secondary containment may be provided by concrete or steel dikes, earth berms, or the use of double-walled tanks. The volume of the storage capacity of the secondary containment structure must be at least 110% of the volume of the largest tank within that secondary structure, after allowing for the volume of tanks, footings and other solid objects within the containment structure.
- (2) If onsite refueling is necessary for equipment, such as loaders, crushers, concrete batch facilities, and hot mix asphalt facilities, a specific refueling area must be designated, and located on impermeable material such as concrete or asphalt pavement.
- (3) A minimum five-foot separation distance must be maintained between the lowest point of the containment structure (including sumps and drains) and the seasonal high water table.
- (4) The filler tube for the fuel storage tank must be within the secondary containment structure or within a structure which drains to the secondary containment. Storage tanks must be equipped with direct-reading gauges and have a venting capacity suitable for the filling and withdrawal rates. Storage tanks must also be equipped with emergency vents as required by NFPA-30.
- (5) If piping or hoses containing petroleum products or other potential contaminants cross areas likely to receive traffic, they must be protected from damage using best engineering practices. These lines may be elevated; this elevation must be clearly posted on the structure suspending the lines. If piping or hoses are installed in protective conduit, they must be installed such that they remain visible on all sides within the conduit. Fuel piping must not be buried or partially buried unless installed in accordance with the requirements of Chapter 691 of the Department's rules. Fuel piping must not be installed in direct contact with soil.

- (6) The use of fuel, gasoline, or kerosene to prevent the adhesion of asphalt to truck beds is prohibited.
- (7) Provisions must be made for the removal of precipitation from the containment structure, unless the containment area is enclosed within a structure or completely covered by a roof. Accumulated stormwater in a containment structures located within 300 feet of a surface water must be discharged through an oil/water separator to 15 ppm or less of oil and grease and may not have a visible sheen or other evidence of contamination. If accumulated stormwater is not treated to this level, it must be transported off site by a licensed waste oil or hazardous waste contractor for disposal.

If the containment structure is located more than 300 feet from surface water, removal of accumulated water requires a visual evaluation of the water quality in the sump or low area of the structure. Any water exhibiting a sheen, or containing tarry or greasy lumps or sludge, may not be discharged onto the ground until the contamination is removed and no further evidence of contamination is present. If the contaminated water cannot be treated on site such that it no longer has any visible evidence of contamination, it must be transported off site by a licensed waste oil or hazardous waste contractor for disposal.

- (8) The Department may as a condition of operation require the owner or operator to install monitoring wells in the vicinity of onsite petroleum product storage. If monitoring wells are required by the Department, groundwater must be monitored for MTBE, extractable petroleum hydrocarbons (EPH) and volatile petroleum hydrocarbons (VPH).
- (9) The requirements for setback from drinking water supply wells for onsite fuel storage are as follows:
  - (a) A minimum 300-foot setback must be maintained between the fuel storage area and a private drinking water well not owned or controlled by the operator.
  - (b) Fuel storage areas must be at least 1000 feet from a public drinking water well and are prohibited from the source water protection area of any public drinking water well, if the area is mapped by the Department of Health and Human Services as described under 30-A M.R.S.A. §2001(20-A).

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NOTE: Variance options may be available under Chapter 692

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**B. Design standards for concrete dikes**

- (1) These structures must have concrete walls and floors.
- (2) Minimum dike sizes are based on the volume of the largest tank, plus approximately 12 inches of additional dike wall height as freeboard for rain and

excess fluid collection. In no case may the volume of the containment structure be less than 110% of the largest tank within it, after allowing for the volume of the tanks, footings and other objects within the containment structure.

- (3) All seams and joints must be caulked, including pipe penetrations. No piping or conduits may penetrate the dike floor or the wall below the height necessary to contain 110% of the volume of stored product.
- (4) A low-point sump is required for removal of rain or spilled liquid. A permanently mounted hand pump is suggested for liquid removal.
- (5) Access and exit ramps may be cast as part of the containment structure.

**C. Design standards for containment berms**

- (1) The floor of the fuel storage area and the berm must be constructed of low permeability earthen materials with a maximum permeability of  $5 \times 10^{-7}$  cm/sec, such as fine-grained till or clay.
- (2) The earthen material must be free of any stones greater than two inches in diameter, and other deleterious material such as roots and other debris.
- (3) The floor of the storage area must have a minimum thickness of six inches, and must be compacted to 95 percent standard proctor. If a thickness of greater than six inches is placed, the material must be placed in six-inch lifts, and each lift compacted separately. Compaction of multiple lifts must be done with a sheepsfoot roller or the equivalent in order to assure bonding between the lifts.
- (4) The berm surrounding the area must be at least one foot in height, and constructed of similar low-permeability material, placed in six-inch lifts with each lift compacted to 95 percent standard proctor.
- (5) The compacted base and berm must then be covered with at least twelve inches of gravel in order to protect the impermeable layer from damage. The berm area must be protected by the use of vegetation or other structural measures to prevent damage from weather.
- (6) Concrete or asphalt ramps must be used for crossings of earth berms whenever possible. Access ramps may be located on uphill sides of the containment area, but must still crest along the axis of the berm and above grade to prevent runoff from entering the containment area. The access ramp must be clearly marked, and other access blocked, to prevent damage to the berm from repeated vehicle and foot traffic.
- (7) Containment areas with liners or compacted earthen floors must have these surfaces protected from the effects of vehicle passage. In areas subject to vehicular or foot traffic, a minimum of one foot of coarse sand or fine gravel should be placed above the liner or earth floor. An appropriately specified geotextile must be placed above earth floors to prevent damage to the compacted liner.

- (8) Pipes through an earth liner must have an anti-seep collar installed around the pipe within the earth liner. No piping or conduits may penetrate the liner below the height necessary to contain 110% of the volume of stored product.

**D. Design standards for double-walled tanks**

- (1) Double-walled tanks must be equipped with a monitoring tube to allow for manual or electronic monitoring of the tank's interstitial space for the presence of liquid.
- (2) The tank must be equipped with an audible overflow alarm set to go off at 90% tank capacity, an automatic shutoff device set to shut off product flow to the tank when it reaches 95% capacity and a liquid level gauge accessible to the delivery operator.
- (3) The tank must be equipped with an emergency vent for the interstitial space of the tank plus an emergency vent for each tank chamber.

**E. Equipment maintenance**

- (1) Under no circumstances may oil or other fluids be drained, topped off, or changed in the pit except when unavoidable due to the location of fixed equipment such as screeners, crushers, and asphalt plant. When draining oils or fluids from fixed equipment, precautionary measures such as portable drip pans or the use of vacuuming devices must be taken to ensure that no spills occur.
- (2) No waste oil, lubricants, antifreeze, or other potential contaminants may be stored on the site unless they are stored securely within a maintenance garage or equivalent structure. These structures must have impermeable floors and may not have floor drains. The floor of any storage area must have a raised lip or sill in order to contain any product spilled onto the floor and to allow for easy and complete clean up.
- (3) No washing of equipment may occur in the pit or in any area where the wash water could contaminate groundwater or surface water.
- (4) In the event that a piece of equipment breaks down within the pit, the operator must tow the equipment out of the mining area rather than attempt to repair it in place. Exceptions: (A) extremely minor repairs such as replacing belts or wires; or (B) in the event that towing the disabled vehicle out of the active excavation would potentially result in a greater spill; or cause greater damage to the disabled piece of equipment; or (C) in the event that towing would create an unsafe condition. The operator must take precautionary measures to ensure that any potential leak of contaminants is contained and cleaned up immediately.

**F. Safety measures**

- (1) Fuel storage tanks require high level alarms set to go off when the tank reaches 90% capacity, to prevent overflow spills. Outlet valves and power switches for pumps must be locked securely when not in use.

- (2) A responsible person must be present at all times during a refueling operation and must remain at arm's reach of the fuel-hose nozzle at all times.
- (3) A spill kit, clearly labeled as such, must also be kept on site in a building or water tight container. All employees involved with petroleum storage or handling must be familiar with the location and use of the spill kit. At a minimum, the spill kit must contain loose oil absorbent materials, oil absorbent pads, and a non-sparking shovel. In addition, liquid tight drums or other containers with a minimum volume of 35 gallons must also be kept on site to hold contaminated materials.

**G. Inspections, reports and training**

- (1) Fuel lines and oil bearing lines must be inspected on a weekly basis, with a record of the inspection kept in a logbook and signed by a responsible person.
- (2) Secondary containment structures must be inspected on a weekly basis to ensure the integrity of the containment structure. If double-walled tanks are used to provide secondary containment the interstitial space of the tank must be checked weekly, unless the interstitial space is monitored electronically. A record of the inspection must be kept in a logbook and signed by a responsible person. Key items in regular inspection of the containment structures must include the following: the presence of oily water in the containment area; soil or dike lining color changes; presence of hydrocarbon odors in the immediate area, visual observance of tanks, pumps, valves and pipe connections; and determination of accumulated liquids contained in the area.
- (3) Employees must be trained in conducting inspections of petroleum storage facilities for evidence of leaks and deterioration of equipment and structures which may lead to potential spills. Employees must be trained in spill containment procedures and clean-up procedures.

**H. Spill containment and clean-up**

- (1) All spills or leaks must be treated as emergencies and cleaned up immediately.
- (2) The operator must immediately notify the Maine DEP 24-hour oil spill hotline at 1-800-482-0777.
- (3) The first step in any attempt to minimize the damage due to a spill or leak is to stop the flow of the potential contaminant, if possible, by closing all valves, uprighting overturned containers, or raising hoses to prevent siphoning.
- (4) If the spill or leak cannot be stopped, containment measures, such as berms, must be constructed at once. If the magnitude of a spill is such that product is flowing across the ground, priority must be given to preventing the flow of the spill toward water bodies or drainage ditches, by methods such as placement of soil berms in advance of the spill, blocking culverts and drainage ditches with absorbent pads or pillows, covering drains and catch basins with rubber pads, and similar measures.



- (5) Typically minor spills are absorbed by the upper few inches of soil; this material should be dug up with shovels or power equipment and stored in or on impervious containers until properly disposed of. Acceptable containers include metal or plastic drums, back of a dump truck, or trash cans in good condition, with lids, or impermeable tarps with another tarp placed over the top of the contaminated material pile. All contaminated material storage piles must be covered to prevent precipitation onto the contaminated material.
- (6) There are several measures available for the disposal of contaminated soils, including use of the petroleum-contaminated soil in an asphalt plant. Under no circumstances, however, should any permanent disposal method be used without the approval of the Department of Environmental Protection Spill Response Unit. The temporary storage methods described above must be utilized until the approved method of final disposal can be implemented.

**I. Maine State Fire Marshal's Requirements for Above Ground Petroleum Storage**

- (1) A permit must be obtained from the Maine State Fire Marshal's Office for all petroleum storage tanks to remain on site for more than 180 days.
- (2) All petroleum storage tanks, regardless of whether they are subject to the permit requirements of the State Fire Marshal's Office, must meet all applicable standards of the State Fire Marshal's Office.

**J. Protection of Significant Sand and Gravel Aquifers**

- (1) Fuel storage on a sand and gravel aquifer mapped as a high yield aquifer (exceeding 50 gallons per minute) is prohibited.
- (2) Fuel storage on a sand and gravel aquifer mapped as a moderate yield aquifer (10- 50 gallons per minute) is allowed provided that not more than 1100 gallons of fuel are stored and all fuel tanks meet the requirements specified in 06-096 CMR 692.

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NOTE: For larger oil storage facilities, the Department may grant a variance. See Chapter 692.

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NOTE: The Maine DEP GIS Unit is now offering selected data to the public via Google Earth. This interactive map for mine sites contains the locations of mine sites licensed by the department, sand and gravel aquifer layers, public water supply buffers, town lines and topographic maps. The software programs Google Earth and/or the Google Earth Plugin will allow viewing of this data.

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AUTHORITY: 38 M.R.S.A. Section 490-E  
38 M.R.S.A. Section 341-D

EFFECTIVE DATE: June 12, 1991  
(ELECTRONIC CONVERSION): May 4, 1996  
REPEALED AND REPLACED: August 21, 1997  
MINOR CORRECTIONS: August 14, 1997 - header and footer adjusted  
AMENDED: February 27, 2007 – filing 2007-57  
AMENDED: June 8, 2012 – filing 2012-148 (*Final adoption, major substantive*)

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
VARIANCE APPLICATION  
PERFORMANCE STANDARDS FOR EXCAVATIONS and ROCK QUARRIES  
(For Use with 38 MRSA §490-E and §490-CC)**

• PLEASE TYPE OR PRINT IN **BLACK INK ONLY**

<b>1. Name of Applicant:</b>		<b>2. Name of Agent:</b> (if applicable)	
<b>3. Applicant's Mailing Address:</b>		<b>4. Agent's Mailing Address:</b>	
<b>5. Applicant's Daytime Phone No.:</b> (with area code)		<b>6. Agent's Daytime Phone No.:</b> (with area code)	
<b>7. Statement of Authorization:</b>	I hereby authorize the above named person to act in my behalf as my agent agent in the processing of this application. <i>Signature of Applicant.</i>		
<b>8. Please check the type of variance you are requesting:</b>	<input type="checkbox"/> reduced setback to a public water supply <input type="checkbox"/> excavation below the water table <input type="checkbox"/> excavating closer than 5 feet of the seasonal high water table <input type="checkbox"/> excavating closer than 100 feet to a public road <input type="checkbox"/> externally drained pit <input type="checkbox"/> an area greater than 10 acres for the working pit <input type="checkbox"/> reclaimed side slopes steeper than 2.5H to 1V <input type="checkbox"/> waiver of the topsoil salvage requirement <input type="checkbox"/> increased ground vibrations greater than 2 inches per second <input type="checkbox"/> waiver of the monitoring requirements for airblast and ground vibrations		
<b>PROJECT INFORMATION</b>			
<b>9. Location of Project:</b> (Nearest Road, Street, Rt. #)			
<b>10. Town:</b>	<b>11. County:</b>	<b>12. Book#:</b>	<b>13. Page #:</b>
<b>14. Detailed Directions to the Project:</b>			
<b>15. Abutting Property Owners:</b> (Use separate sheet, if necessary)	(Name)	(Address)	
<b>16. Has the public notice including notifying abutting property owners, the Municipal Office, and publishing the Notice of Intent to File been done?</b>	<input type="checkbox"/> Yes		<input type="checkbox"/> No

**FOR OFFICE USE ONLY**

App#:	FP:	Assigned:	Decision Date:
CK#:	Rec'd:	Returned:	<input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED

**PUBLIC NOTICE:  
NOTICE OF INTENT TO FILE**

Please take notice that:

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*(Name and Mailing Address of Applicant)*

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*(Phone Number and Email Address of Applicant)*

is intending to file a variance permit application with the Maine Department of Environmental Protection pursuant to the provisions of 38 M.R.S. § 490-E (Performance Standards for Excavations) or 38 M.R.S. § 490-CC (Performance Standards for Quarries) on or about:

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*(Anticipated Filing Date)*

The application is for:

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*(Description of the Project)*

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at the following location:

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*(Project Location)*

A request for a public hearing must be received by the Department in writing no later than 20 days after the application is found by the Department to be complete and is accepted for processing. A public hearing may or may not be held at the discretion of the Commissioner or Board of Environmental Protection. Public comment on the application will be accepted throughout the application processing period.

**For Federally licensed, permitted, or funded activities in the Coastal Zone, review of this application shall also constitute the State's consistency review in accordance with the Maine Coastal Program pursuant to Section 307 of the federal Coastal Zone Management Act, 16 U.S.C. § 1456. (Delete if not applicable.)**

The application will be filed for public inspection at the Department of Environmental Protection's office in  Portland,  Augusta,  Bangor, or  Presque Isle during normal working hours. A copy of the application may also be seen at the municipal offices in \_\_\_\_\_, Maine.  
*(City/Town)*

Written public comments may be sent by email to [LandOnCall@maine.gov](mailto:LandOnCall@maine.gov) or by mail to the regional office in Portland, Augusta, Bangor, or Presque Isle where the application is filed for public inspection:

MDEP, Southern Maine Regional Office, 312 Canco Road, Portland, Maine 04103  
MDEP, Central Maine Regional Office, 17 State House Station, Augusta, Maine 04333  
MDEP, Eastern Maine Regional Office, 106 Hogan Road, Bangor, Maine 04401  
MDEP, Northern Maine Regional Office, 1235 Central Drive, Presque Isle, Maine 04769

*For more information on how to submit public comment with the DEP, please go to our website:  
[Public Participation in the Licensing Process \(Information Sheet\) Maine DEP](#)*

## PUBLIC NOTICE FILING AND CERTIFICATION

Department Rules, Chapter 2, require an applicant to provide public notice for mining variance applications within 30 days prior to filing the application. In the notice, the applicant must provide the information included in the attached Notice of Intent to File form. "Abutter" for the purposes of the notice provision means any person who owns property that is contiguous with the property on which the project requiring a license from the Department is proposed.

1. **Newspaper:** You must publish the Notice of Intent to File in a newspaper circulated in the area where the activity is located. The notice must appear in the newspaper within 30 days prior to the filing of the application with the Department. You may use the attached Notice of Intent to File form, or one containing identical information, for newspaper publication.
2. **Abutters and Others Owning Land Within 1,000 Feet:** You must mail a copy of the Notice of Intent to File to abutters and all persons owning land within 1,000 feet of the proposed project. Their names and addresses can be obtained from the town tax maps or local officials. They must receive notice within 30 days prior to the filing of the application with the Department.
3. **Municipal Office or County Commissioner(s):** You must mail a copy of the Notice of Intent to File and a duplicate of the entire application to the Municipal Office or, if the proposed project is located in an unorganized or deorganized area of the State, to the county commissioner(s). The Municipal Office or county commissioner(s) must receive notice within 30 days prior to the filing of the application with the Department.

**ATTACH a copy of the published notice and a list of persons to whom notice was provided.**

### CERTIFICATION

By signing below, the applicant or authorized agent certifies that:

1. A Notice of Intent to File was published in a newspaper circulated in the area where the project site is located within 30 days prior to filing the application;
2. A mailing of the Notice of Intent to File was sent to all abutters and all other persons owning land within 1,000 feet of the proposed project within 30 days prior to filing of the application;
3. A mailing of the Notice of Intent to File, and a duplicate copy of the application was sent to the town office of the municipality in which the project is located or, if applicable, to the county commissioner(s); and
4. Provided notice of and held a public informational meeting, if required, in accordance with the Department's Chapter 2 rules, Processing of Applications and Other Administrative Matters, Section 12, prior to filing the application. Notice of the meeting was sent to abutters and all other persons owning land within 1,000 feet of the proposed project and to the town office of the municipality in which the project is located or to the county commissioner(s), as applicable, at least at least ten days prior to the meeting. Notice of the meeting was also published once in a newspaper circulated in the area where the project site is located at least seven days prior to the meeting.

The Public Informational Meeting was held on \_\_\_\_\_.  
(Date)

Approximately \_\_\_\_\_ members of the public attended the Public Informational Meeting.

\_\_\_\_\_  
*Signature of Applicant or Authorized Agent*

\_\_\_\_\_  
*Date*

# IRREVOCABLE LETTER OF CREDIT

Letter of Credit Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Amount: \_\_\_\_\_

**Issuing Institution:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

**Beneficiary:**

State of Maine  
Department of Environmental Protection  
State House Station 17  
Augusta, ME 04333

**Applicant/Operator:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Dear Sir or Madam:

(1) The applicant/operator wishes to engage in mining operations in the State of Maine and such excavations are subject to the provisions of the Performance Standards for Excavations, 38 M.R.S.A. §490-A to §490-L of the General Statutes of Maine. Under the Performance Standards for Excavations, 38 M.R.S.A. Section 490-C, requires that an operator file a Notice of Intent to Comply with the Maine Department of Environmental Protection (hereinafter referred to as "Department") before engaging in excavation operations, and Section 490-D allows the Department to require that a surety in favor of the State be maintained or other security be filed with the Department, in connection with said Notice.

(2) Thus, this IRREVOCABLE LETTER OF CREDIT is issued to the Department, in lieu of the surety bond required to be filed by the APPLICANT/OPERATOR, as provided by 38 M.R.S.A. Section 490-D(14).

(3) The undersigned hereby establishes its IRREVOCABLE LETTER OF CREDIT in favor of the Department, for the account of

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APPLICANT/OPERATOR

for the amount of \_\_\_\_\_ dollars(\$ \_\_\_\_\_),  
available by Department's draft(s) drawn on sight.

(4) This IRREVOCABLE LETTER OF CREDIT shall expire on

\_\_\_\_\_  
(date at least one(1) year from effective date)

The expiration date shall be extended automatically for a period of \_\_\_\_\_ on \_\_\_\_\_ and  
(one year or more) (expiration date)

on each successive expiration date, unless, at least ninety (90) days prior to the expiration date, the undersigned notifies the Department and the OPERATOR by certified mail, return receipt requested that the undersigned will not extend this letter of credit beyond the current expiration date. If the undersigned notifies the department that this letter of credit will not be extended, any unused portion of the credit shall be available upon presentation of the department's sight draft within ninety (90) days after the Department's or the OPERATOR's receipt of such notification, whichever is later.

(5) This IRREVOCABLE LETTER OF CREDIT is non-transferable.

(6) Draft(s) shall be marked "Drawn Under \_\_\_\_\_  
(Issuing Institution)

Credit No. \_\_\_\_\_ and shall include the following documentation:

(a) A signed certificate by the Department, referring to the effective date and Number of this IRREVOCABLE LETTER OF CREDIT, and stating that:

"In accordance with 38 M.R.S.A. Section 490-D, we have received a notice of forfeiture of part or all of the Bond Amount. The amount of our drawing does not exceed the amount of the forfeiture as set forth in such notice."

OR

(b) A signed certificate by the Department, referring to the effective date and Number of this IRREVOCABLE LETTER OF CREDIT, and stating that:

"We have received from \_\_\_\_\_  
(Issuing Institution)

written notice stating (1) that this IRREVOCABLE LETTER OF CREDIT has not been renewed; and (2) that the amount of our drawing does not exceed the Bond Amount, less any previous forfeitures thereunder, pursuant to notices received in accordance with 38 M.R.S.A. Section 490-D."

OR

(c) A signed certificate by the department, referring to the effective date and Number of this IRREVOCABLE LETTER OF CREDIT, and stating that:

"We have received from \_\_\_\_\_  
(Issuing Institute)

written notice stating (1) that there exists an Event of Default under the Credit Agreement (as defined in the IRREVOCABLE LETTER OF CREDIT); (2) that a drawing should be made under this IRREVOCABLE LETTER OF CREDIT; and (3) that the amount of the drawing does not exceed the bond amount, less any previous forfeitures thereunder, pursuant to notices received in accordance with General Statutes of Maine, 38 M.R.S.A. Section 490-D.

(7) This IRREVOCABLE LETTER OF CREDIT is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No 500 and the laws of the State of Maine. In the event of any conflict, the laws of the State of Maine will control.

(8) \_\_\_\_\_ hereby agrees with the drawers, endorsers, and bona fide  
(Issuing Institution)  
holders that all drafts drawn under and in compliance with the terms of this IRREVOCABLE LETTER OF CREDIT will be duly honored upon presentation to this bank/issuing institution.

Very truly yours,

\_\_\_\_\_  
(Issuing Institution)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Sworn and subscribed to before me this the  
\_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
Date

(SEAL)



ASSIGNMENT OF CERTIFICATE OF DEPOSIT

This Assignment, made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_, of \_\_\_\_\_, Town of \_\_\_\_\_, County of \_\_\_\_\_, State of Maine and the Department of Environmental Protection; and

WHEREAS, The undersigned \_\_\_\_\_ (hereinafter referred to as "Operator") is desirous of engaging in mining operations in the State of Maine and such excavations are subject to the provisions of the Performance Standards for Excavations, 38 M.R.S.A. §490-A to §490-L of the General Statutes of Maine; and

WHEREAS, Section 490-C requires that operator file a Notice of Intent to Comply from the Maine Department of Environmental Protection (hereinafter referred to as "Department") before engaging in excavation operations, and 490-D requires that a surety in favor of the State be maintained or other security be filed with the Department, in connection with said Notice; and

WHEREAS, the Operator has a savings account in \_\_\_\_\_ at \_\_\_\_\_, Town of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, Savings Account Number \_\_\_\_\_; and

WHEREAS, Section 490-D authorizes the Department to accept from Operator as assignment of a savings account in a Maine bank, in lieu of a surety bond;

NOW, THEREFORE, in consideration of the premise and the Department accepting of said savings account in lieu of a surety, the undersigned Operator does hereby sell, assign, transfer, set over to the Department of Environmental Protection \_\_\_\_\_ dollars (\$\_\_\_\_\_) of

the sums on deposits in his name in \_\_\_\_\_, Town of \_\_\_\_\_, County of \_\_\_\_\_, State of Maine, Saving Account No. \_\_\_\_\_ and

further authorizes \_\_\_\_\_ to pay over to the Department of Environmental Protection the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) out of the above money deposit in

the above account in his name.

The condition of the foregoing assignment is that if the assignor Operator conducts the excavation operations faithfully, honestly, and lawfully and in compliance with the requirements of the Performance standards for Excavations, 38 MRSA §490-D and applicable rules and regulations adopted pursuant thereto, then this assignment shall be null and void; otherwise it shall remain in full force and effect. Compliance with the requirement shall be determined by the Department.

The assignment is made and the \_\_\_\_\_ is to be held by the Department as  
(passbook, deposit book, etc.)  
collateral security for all direct or indirect liabilities of the assignor Operator to the assignee  
Department that may arise by reason of the Performance Standards for Excavations, 38 MRSA  
§490-D.

This assignment shall be direct authorization to \_\_\_\_\_ t o pay said sum  
to  
(bank name)  
the Department on demand by the Department.

\_\_\_\_\_  
(signature of operator)  
Sworn to before me \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_  
Notary Public \_\_\_\_\_  
My Commissions Expires \_\_\_\_\_  
\_\_\_\_\_  
(affix seal)

**ACKNOWLEDGEMENT BY BANK**  
The foregoing Assignment of Savings Account is  
hereby acknowledged this \_\_\_\_\_ day of  
\_\_\_\_\_, 19 \_\_\_\_\_. It is further acknowledged that  
funds in the above account shall not be disbursed  
except to the assignee, Department of  
Environmental Protection, while the assignment  
remains in effect.

This the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by  
\_\_\_\_\_,  
(authorized agent for bank)

\_\_\_\_\_  
(mailing address for bank)  
Sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_\_.

Notary Public  
My Commissions Expires  
\_\_\_\_\_  
(affix seal)

**STATE OF MAINE**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Performance Standards for Excavations, 38 M.R.S.A. Section 490-D(14)**  
**Reclamation Bond**

KNOW ALL MEN BY THESE PRESENTS, That \_\_\_\_\_  
a \_\_\_\_\_ and having its principal office at  
\_\_\_\_\_ in the State of Maine, as principal, and \_\_\_\_\_  
\_\_\_\_\_ - a corporation organized under the laws of the State of  
\_\_\_\_\_, with an office located at \_\_\_\_\_ in the City of  
\_\_\_\_\_, Maine, as surety, are held and firmly bound unto the State of Maine, Department of  
Environmental Protection in the sum of \_\_\_\_\_ Bond  
No. \_\_\_\_\_ lawful money of the United States of America, to the payment of which will  
and truly be made, we bind ourselves, our heirs, administrators and successors jointly and severally, firmly  
by these presents.

Signed, sealed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

THE CONDITIONS OF THIS BOND ARE SUCH, That Whereas, the said Operator conducts the  
excavation operations faithfully, honestly, and lawfully and in compliance with the requirements of the  
Performance Standards for Excavations, 38 M.R.S.A. §490 and applicable rules and regulations adopted  
pursuant thereto, then this obligation shall be null and void; otherwise it shall remain in full force and  
effect until released by the Department of Environmental Protection in accordance with 06-096CMR 378  
(E)(5) or cancelled by the surety. Cancellation by the surety shall be effectuated only upon 90 days  
written notice thereof to the Department of Environmental Protection and the operator as provided in 06-  
096 CMR 378 (E)(4).

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WITNESS:

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ By: \_\_\_\_\_  
\_\_\_\_\_, Attorney-in-Fact