

## REGULATORY REFERENCES

Chapter 2: Rules Concerning the Processing of Applications and Other Administrative Matters

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**Chapter 2: Rules Concerning the Processing of Applications and Other Administrative Matters**

**SUMMARY:** These rules govern various administrative activities of the Department of Environmental Protection. Included within these rules are sections which apply to advisory opinions, license application requirements, application fees, public notice, public access to information, processing times, license transfers, and appeals to the Board of Environmental Protection.

1. **Definitions.** The following terms, as used in this Chapter, have the following meanings unless the context indicates otherwise:
  - A. **Abutter.** "Abutter" for the purposes of the notice provisions of this rule, 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.
  - B. **Aggrieved person.** "Aggrieved person" means any person whom the Board determines may suffer particularized injury as a result of a licensing or other decision.
  - C. **Amendment application.** "Amendment application" means any application to modify a license previously granted by the Department, except for minor revisions.
  - D. **Board.** "Board" means the Board of Environmental Protection.
  - E. **Chair.** "Chair" means the Chair of the Board of Environmental Protection, or his or her designee.
  - F. **Commissioner.** "Commissioner" means Commissioner of the Department of Environmental Protection, or his or her designee.
  - G. **Department.** "Department" means the Department of Environmental Protection, including the Board and the Commissioner.
  - H. **Department staff.** "Department staff" means all staff, except staff to the Board.
  - I. **Interested person.** "Interested Person" means any person who submits written comments on an application or who requests, in writing, receipt of materials related to a particular application.
  - J. **License.** "License" means any license, license amendment, license renewal, transfer, permit, variance, approval or certification issued by the Department.
  - K. **Licensee.** "Licensee" means the person named on the license.

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- L. Minor revision.** "Minor Revision" means any proposal to modify a license previously granted by the Department, where the modification significantly decreases or eliminates an environmental impact, does not significantly expand the project, does not change the nature of the project or does not modify any Department findings with respect to any licensing criteria. This term may be further defined by the Board through bureau specific rules.
- M. Party.** "Party" means:
- (1) The specific person whose legal rights, duties or privileges are being determined in the proceeding; and
  - (2) Any person participating in an adjudicatory proceeding pursuant to 5 M.R.S.A. section 9054(1) or (2).
- N. Permit by rule.** "Permit by Rule" means any license or notification that is designated by the Board through rule under the authority of 38 M.R.S.A. section 344(7).
- O. Person.** "Person" means any individual; partnership; corporation; Federal, state or local government entity; association; or public or private organization of any character; except the agency conducting the proceeding.
- P. Processing time.** "Processing Time" means the time established by the Department to process an application, as published pursuant to 38 M.R.S.A. section 344-B(1) or otherwise provided by law.
- Q. Transfer of ownership.** "Transfer of Ownership" means a change in the legal entity that owns a property, facility or structure that is the subject of a license issued by the Department. A sale or exchange of stock, or a merger, is not a transfer of ownership for the purposes of this rule provided the legal entity that owns the property, facility or structure remains the same.

## 2. Scope of rules.

- A. General scope.** These rules apply to processing of applications made to the Department for new, renewed, amended or transferred licenses, and other determinations on specific matters made by the Department, except as noted in section 2(B) of this rule. These rules apply in the absence of procedural requirements imposed by statute or rule. Where other specific procedural requirements apply, those requirements control.
- B. Exceptions.** Groundwater oil clean up fund claims, applications for one-time disposal of special waste; asbestos or lead abatement licenses and certifications; third party damage claims; license or permit by rule; registrations or notifications; waste transporter licenses; reimbursement claims; closure plans;

public benefit determinations; occupational licenses and minor revisions are not subject to this chapter, unless specifically included.

- C. **Effect.** These rules apply to all applications accepted as complete, or requests for review of Department decisions, filed on or after the effective date of these rules, or any amendments to these rules.

3. **Filing of Submissions and Computation of Time.** An application, appeal or petition must include a designated contact person to whom all orders, notices and correspondence regarding the application, appeal or petition must be sent.

Whenever a Department rule or order requires or allows the filing of any paper or submission, that filing is complete:

- A. **On the Department.** Upon the Department, when the Department receives the submission by the close of business (5:00 p.m., as determined by the received time stamp on the received document, fax or electronic mail) by:

- (1) mail,
- (2) in-hand delivery,
- (3) fax, if followed by receipt of an original document within 5 working days, or
- (4) electronic-mail, if the submission is related to an application or a draft license and it is sent to the electronic-mail address specified in the public notice of Intent to File the application or the correspondence accompanying the draft license.

The risk of using less reliable delivery methods such as fax or e-mail is on the sender. Such submissions not received by the Department by a prescribed deadline will be deemed untimely.

- B. **On others.** Upon the applicant or any other person, when the submission is:

- (1) mailed to the recipient or the recipient's attorney;
- (2) delivered in-hand to the recipient or to the recipient's office;
- (3) faxed to the recipient; or
- (4) delivered to the recipient by electronic mail.

The risk of using less reliable delivery methods such as fax or e-mail is on the sender. Such submissions not received by the recipient by a prescribed deadline will be deemed untimely.

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For the purpose of this rule, "days" are calendar days unless otherwise designated. "Working days" excludes Saturdays, Sundays, state holidays and any other day state offices are not open for business. In computing any period of time prescribed or allowed by these rules, the first day of that period is not included. The last day of the period is included unless it is not a working day, in which event the period runs until the end of the next day which is a working day. If a person is required to take some action within a prescribed period after filing of notice or other paper and the notice or paper is served by mail, three (3) days shall be added to the prescribed period.

4. **Advisory rulings.** Any person may by petition request that the Department issue an advisory ruling with respect to the applicability of any statute or rule administered by the Department to that person's property or to acts or events in which that person has a substantial interest. A request for an advisory ruling must be based on existing facts and not on hypothetical situations.

A. **Petition.** A petition for an advisory ruling must be in writing and must include:

- (1) The name, address, and telephone number of the person requesting the ruling;
- (2) The statute or rule of which an interpretation is requested;
- (3) A clear and definite statement of the ruling requested and the issues presented by the request;
- (4) All facts that are necessary to issue the advisory ruling;
- (5) All assumptions that relate to the advisory ruling;
- (6) Facts that establish the substantial interest of the requesting person in the acts, events or property with respect to which the ruling is requested; and
- (7) A statement indicating whether, to the petitioner's knowledge, the issue upon which an advisory ruling is sought is the subject of a pending Department licensing or enforcement proceeding or a prior advisory ruling.

The written petition must be clearly captioned as "REQUEST FOR ADVISORY RULING" and directed to the bureau responsible for administering the statute or rule in question.

B. **Department action.**

- (1) Issuance of advisory rulings by the Department is discretionary and will be decided on a case-by-case basis.

27. **Revocation, modification, or suspension of licenses.** Any person, including the Commissioner, may petition the Board to revoke, modify or suspend a license. The petition must be addressed to the Chair of the Board and must state which of the criteria listed below is being invoked. It must specifically describe the factual basis for the petition, including what evidence will be offered to support the petition. The petition, once filed, may not be supplemented, except in a public hearing. The petitioner must serve a copy of the petition on the Commissioner and the licensee at the time the petition is filed with the Board.

Unless otherwise provided by law, no later than 30 days following the filing of a petition to revoke, modify or suspend, and after notice and opportunity for the petitioner and the licensee to be heard, the Board shall dismiss the petition or schedule a hearing on the petition. The procedure before the Board is the same as described in section 24(B)(6) of this rule. Any hearing must be scheduled within 45 days of the decision to hold a hearing and must be conducted in accordance with section 7(C) of this rule.

After a hearing, the Board may modify in whole or in part any license, issue an order prescribing necessary corrective action, or refer a license to District Court for revocation or suspension when the Board finds that:

- A. The licensee has violated any condition of the license;
- B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;
- C. The licensed activity poses a threat to human health or the environment;
- D. The license fails to include any standard or limitation legally required on the date of issuance;
- F. There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license;
- G. The licensee has violated any law administered by the Department; or
- H. The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990.

AUTHORITY: 38 M.R.S.A., sections 341-D and 343-B.

EFFECTIVE DATE: August 1, 1994

EFFECTIVE DATE (ELECTRONIC CONVERSION):

REPEAL AND REPLACE EFFECTIVE: April 1, 2003

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**BASIS STATEMENT****August 1, 1994**

The Board of Environmental Protection enacted Chapter 2 to replace the Department's outdated procedural and fee rules, and to provide for a clearer and more efficient system of processing applications that reflects recent changes in law and practice. This rule balances the interest of the applicant in a streamlined process, the interest of the public in an open and accessible process and the interest of the Department in a process that can be easily and fairly administered. Chapter 2 supersedes Chapters 1 and 50, which are repealed as of August 1, 1994.

**BASIS STATEMENT****March 6, 2003**

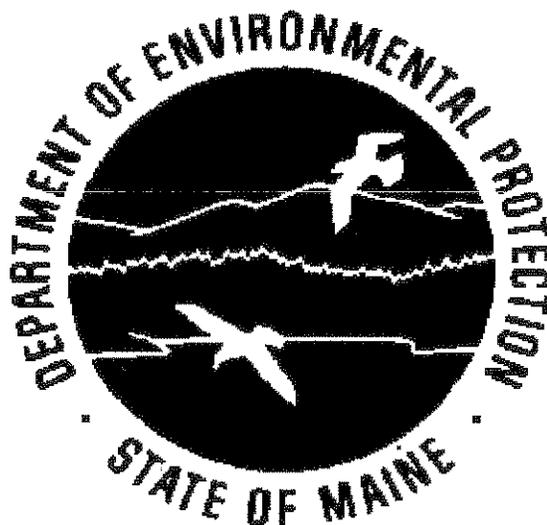
**The repeal and replace of Chapter 2 adopted in 2003 updated the rule based on experience since its adoption in 1994, incorporating statutory changes and ideas for improvement originating from experience with the 1994 rule. A primary amendment was to restructure the process for handling appeals once they are filed in order to clarify and speed up the time it takes to get the appeal before the Board. In addition, the rule was reorganized and a table of contents added.**

**STATE OF MAINE**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**NATURAL RESOURCES PROTECTION ACT**

**Permit By Rule Standards**

**Chapter 305**

**SECTION 10**  
**Stream crossings (bridges, culverts and fords)**



**Chapter 305: PERMIT BY RULE**

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1. **Introduction.** A "permit by rule" or "PBR", when approved by the Department of Environmental Protection (DEP), is an approval for an activity that requires a permit under the Natural Resources Protection Act (NRPA). Only those activities described in this chapter may proceed under the PBR process. A PBR activity will not significantly affect the environment if carried out in accordance with this chapter, and generally has less of an impact on the environment than an activity requiring an individual permit. A PBR satisfies the Natural Resources Protection Act (NRPA) permit requirement and Water Quality Certification requirement.

If a proposed activity is not described in this chapter, or will not be conducted in accordance with the standards of this chapter, the applicant must obtain an individual permit prior to beginning the activity.

- A. Location of activity.** The location of an activity may affect whether an activity qualifies for PBR, and whether review by the Department of Inland Fisheries and Wildlife is required.

- (1) Type of resource. For some types of activities, the availability of a PBR is affected by the type of natural resource in or adjacent to which the activity is proposed. For example, an applicant proposing an activity consisting of "Movement of rocks or vegetation" may receive a PBR only if the activity will take place in a great pond, river, stream or brook. Limitations concerning the location of activities are addressed in the "Applicability" provision in each section of this chapter.
- (2) Essential habitat. Essential habitats include areas critical to the survival of threatened and endangered species such as the bald eagle, least tern, roseate tern, and piping plover. If the activity is located in essential habitat, such as near an eagle nesting site, a PBR is only available if the applicant obtains written approval from the Department of Inland Fisheries and Wildlife (IF&W). This approval from IF&W must be submitted to the DEP with the PBR notification form, and the applicant must follow any conditions stated in the IF&W approval.

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NOTE: Maps showing areas of essential habitat are available from the Department of Inland Fisheries and Wildlife regional headquarters, municipal offices, the Land Use Regulation Commission (for unorganized territories) and DEP regional offices. If the activity is located in essential habitat, IF&W must be contacted to request and obtain a "certification of review and approval".

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- B. Notification.** The applicant must file notice of the activity with the DEP prior to beginning work on the activity. The notification must be on a form provided by the DEP and must include any submissions required in this chapter. The applicant must keep a copy to serve as the permit.

The notification form must be sent to the DEP by certified mail (return receipt requested), or hand delivered to the DEP and date stamped by the department. By signing the notification form, the applicant is representing that the activity will meet the applicability requirements and standards of the rule. In addition, by signing the notification form the applicant represents that the applicant has sufficient title, right, or interest in the property where the proposed activity is to take place.

### C. Effective period

- (1) Beginning of period. The PBR becomes effective 14 calendar days after the DEP receives the notification form, unless the DEP approves or denies the PBR prior to that date. If the DEP does not speak with or write to the applicant within this 14 day period regarding the PBR notification, the applicant may proceed to carry out the activity.

There are three exceptions regarding the effective date of an approved PBR:

- (a) Activities listed in Section 10 (Stream crossings) occurring in association with forest management are exempt from the 14 day waiting period.
- (b) Activities listed in Section 10 (Stream crossings) performed or supervised by individuals currently certified in erosion control practices by the DEP are exempt from the 14 day waiting period. To be certified in erosion control practices, an individual must successfully complete all course requirements of the Voluntary Contractor Certification Program administered by the DEP's Nonpoint Source Training and Resource Center.
- (c) Activities that are part of a larger project requiring a permit under the Site Location of Development or the Storm Water Management Acts may not proceed until any required permit under those laws is obtained.

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NOTE: Activities that are part of a larger project may require other permits from the DEP also. These other laws may prohibit the start of construction of any part of the project unless a permit under that law is obtained. In these cases, while not a violation of this rule, starting work on a PBR approved activity would be a violation of those other applicable laws.

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- (2) End of period. The PBR is generally effective for 2 years from the date of approval, except that a PBR for "Replacement of structures" under Section 4 is effective for 3 years.

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NOTE: Activities that qualify under this chapter may need to meet other local, state and federal requirements. Examples -- (1) If an activity extends below the low water line of a lake, coastal wetland or international boundary water, the applicant should contact the Bureau of Parks and Lands (287-3061) concerning possible lease or easement requirements, or (2) If an activity will involve work below the mean high water line in navigable waters of the United States, the applicant should contact the Army Corps of Engineers (623-8367).

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**D. Discretionary authority.** Notwithstanding compliance with the PBR applicability requirements and standards set forth in this chapter, the DEP may require an individual permit application to be filed in any case where credible evidence indicates that the activity:

- (1) May violate the standards of this rule or the NRPA (38 M.R.S.A. Section 480-D);
- (2) Could lead to significant environmental impacts, including cumulative impacts; or
- (3) Could adversely impact a resource of special concern.

If an individual permit is required pursuant to this subsection, the DEP shall notify the applicant in writing within the 14 calendar day waiting period described in sub-section (C) above. When the DEP notifies an applicant that an individual permit is required, no work may be conducted unless and until the individual permit is obtained.

**E. Violations.** A violation of law occurs when a person, or his or her agent, performs or causes to be performed any activity subject to the NRPA without first obtaining a permit from the DEP, or acts contrary to the provisions of a permit. The person, his or her agent, or both, may be held responsible for the violation. Commonly, the "person" is the landowner, and the "agent" is the contractor carrying out the activity. A violation occurs when:

- (1) An activity occurs that is not allowed under PBR, whether or not a PBR notification form has been filed with and/or approved by the DEP;
- (2) An activity occurs that is allowed under PBR, but a PBR for the activity has not become effective prior to the beginning of the activity; or
- (3) An activity occurs that is allowed under PBR and a PBR for the activity is in effect, but the standards specified in this chapter are not met.

See the "applicability" provision under each activity for rules concerning what activities are allowed under PBR. A PBR is only valid for the person listed on the notification form, or for his or her agent.

Each day that a violation occurs or continues is considered a separate offense. Violations are subject to criminal penalties and civil penalties of not less than \$100 nor more than \$10,000 for each day of that violation (38 M.R.S.A. Section 349).

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NOTE: A local Code Enforcement Officer (CEO) may take enforcement action for a violation of the Natural Resources Protection Act if he or she is authorized to represent a municipality in District Court, and he or she has been certified as familiar with court procedures, 30-A M.R.S.A. Section 4452(7).

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## 10. Stream crossings (bridges, culverts and fords)

### A. Applicability

- (1) This section applies to the construction of a bridge span or culvert crossing of a river, stream or brook, and associated accessway construction within 25 feet of the river, stream or brook crossing excluding the following:
  - (a) Crossings of outstanding river segments identified in 38 M.R.S.A. Section 480-P;
  - (b) Crossings of any river as defined by 38 M.R.S.A. Section 436-A(11), the Mandatory Shoreland Zoning Act (information is available at the Town Office); or
  - (c) Crossings of any portion of a river, stream or brook that experiences tidal action.

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NOTE: Temporary structures do not require a permit from the department under the Natural Resources Protection Act (NRPA) provided no filling and minimal soil disturbance occurs. All crossings involving filling in and adjacent to a river, stream or brook, such as culvert crossings, are subject to the NRPA and must first receive a permit before construction.

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- (2) This section also applies to the establishment of a permanent stream ford for purposes of timber harvesting, livestock, agriculture and construction and maintenance of a utility line.
- (3) A stream crossing constructed between July 15 and October 1 that is associated with forest management activities is exempt from the 14 day waiting period required in Section 1(C)(1).
- (4) A stream crossing constructed between July 15 and October 1 that is performed or supervised by individuals currently certified in erosion control practices by the DEP is exempt from the 14 day waiting period required in Section 1(C)(1).
- (5) Multiple stream crossings may be submitted on one PBR notification form as long as all of the crossing activities are located within one town.
- (6) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of permits issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.
- (7) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

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#### NOTES:

- (1) Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.

- (2) Maintenance and repair of a public or private crossing of a river, stream or brook is exempt from the NRPA provided that:
  - (a) Erosion control measures are taken to prevent sedimentation of the water;
  - (b) The crossing does not block fish passage in the water course; and
  - (c) Any replaced culvert is not more than 25% longer than the culvert being replaced and is not longer than 75 feet.
- (3) A permit will be required from the US Army Corps of Engineers for the following types of projects:
  - (a) Any activity involving impacts (direct and secondary) to freshwater wetlands; or
  - (b) An activity within a river, stream or brook between October 2 and July 14.

A copy of the PBR notification form and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

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#### **B. Submissions**

- (1) For any crossing involving trenching or disturbance of substrate in a river, stream or brook that occurs between October 2 and July 14, the proposed dates for construction of the crossing must be clearly identified on the notification form under "Description of Project".
- (2) Except for crossings associated with forest management activities, the applicant is required to submit photographs of the area that will be affected by the activity proposed.
- (3) Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labeled with the applicant's name and the town in which the activity took place.

#### **C. Standards**

- (1) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
  - (a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;
  - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
  - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;

- (d) All disturbed soils must be permanently stabilized; and
- (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

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NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

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- (2) If a perennial watercourse to be crossed is used for navigation, the crossing must consist of a bridge span or pipe arch with at least 4 feet of clearance during normal high water for boat traffic.
- (3) If the stream to be crossed is a perennial watercourse and has a slope of more than 2%, a bridge or a pipe arch must be used to maintain the natural streambed.
- (4) Fill sideslopes in a stream or floodplain wetland must be maintained at a slope no shallower than 3 horizontal to 1 vertical and no steeper than 1.5 horizontal to 1 vertical. Fill sideslopes must be stabilized at the completion of the activity.

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NOTE: Uncompacted soils or sandy soils that are saturated at the toe of a slope will be unstable at a 1.5 to 1 slope.

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- (5) A bridge or culvert must provide an opening with a cross-sectional area at least equal to 3 times the cross-sectional area of the stream channel or sufficient in size to accommodate 25-year frequency water flows.

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NOTE: Stream crossings allowable under this section but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM) must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a crossing may be required to pass a 100-year flood event.

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- (6) Road surfaces must be constructed in a manner to prevent erosion of material into the river, stream or brook.
- (7) Surface water on or adjacent to crossing approaches must be diverted through vegetative filter areas at least 25 feet long to avoid sedimentation of the watercourse. Roadside ditches may not extend to the resource being crossed.

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NOTE: Surface water on or adjacent to crossing approaches should be diverted through vegetative filter areas to avoid sedimentation of the watercourse. Because roadside ditches may not extend to the resource being crossed, filter areas should be established in accordance with the following tables:

Average slope of land between  
exposed mineral soil and  
normal high water mark (percent)

Width of strip between ditch terminus  
and normal high water mark  
(feet along surface of the ground)

10	45
20	65
30	85
40	105
50	125
60	145
70	165

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- (8) A stream ford must be lined with crushed stone, blasted ledge, washed stone, gabion blankets or geotextile material for erosion control when the natural stream bed does not consist of ledge or rock.
- (9) A stream ford must allow for fish passage at all times of the year and may not impound water. The fords must also allow for maintenance of normal stream flows.
- (10) Culvert crossings must:
- (a) Be limited to 75 feet in length. This limit may not be exceeded within a half-mile length of the stream or within the length of stream controlled by the applicant, if less;
  - (b) Follow the alignment and grade of the existing stream channel where possible. On perennial streams the culvert's gradient may not exceed 1%;
  - (c) Have the bottom of the entire culvert installed at or below stream bed elevation, except for additional culverts at the same crossing;
  - (d) Where two or more culverts are installed, be offset in order to concentrate low flows into the culvert within the natural channel;
  - (e) Be seated on firm ground, or on geotextiles, logs or other materials used to stabilize the ground;
  - (f) Be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater;
  - (g) Have the soil compacted at least halfway up the side of the culvert; and
  - (h) Have the inlet and outlet ends stabilized by riprap in accordance with Section 8 Shoreline stabilization standards to avoid erosion of material around the culvert.

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NOTE: For guidance on riprap installation, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

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- (11) Wheeled or tracked equipment may not operate in the water. Equipment operating on the shore may, where necessary, reach into the water with a bucket or similar extension. Equipment may cross streams on rock, gravel or ledge bottom.

- (12) Work below the normal high water line must be done during periods of low water level or flow.
- (13) If the crossing involves trenching or disturbance of substrate in a river, stream or brook between October 2 and July 14, the activity must occur during the time period approved by the DEP. The approved time period may be the time period proposed by the applicant or an alternative time period approved by the DEP. An alternative time period will be required where it appears an unreasonable impact on water quality or fisheries may result at the point of crossing or immediately downstream of the crossing. The applicant will be notified by the DEP within 14 days if an alternative time period, other than the one proposed by the applicant, is required for constructing the crossing.
- (14) If work is performed in a river, stream or brook that is less than three feet deep at the time of the activity and at the location of the activity, the applicant must provide for temporary diversion of flow to the opposite side of the channel while work is in progress.
- (a) Diversion may be accomplished by placing sandbags, timbers, sheet steel, concrete blocks, 6+ mil polyethylene or geotextiles from the bank to midstream on the upstream side of the activity. No more than two-thirds (2/3) or 25 feet of stream width, whichever is less, may be diverted at one time.
  - (b) Any material used to divert water flow must be completely removed upon completion of the activity, and the stream substrate must be restored to its original condition.
  - (c) A pump may be operated, where necessary, for a temporary diversion. The pump outlet must be located and operated such that erosion or the discharge of sediment to the water is prevented.
- (15) All wheeled or tracked equipment that must travel or work in a vegetated wetland area must travel and work on mats or platforms in order to protect wetland vegetation.
- (16) All excavated material must be stockpiled either outside the wetland or on mats or platforms. Hay bales or silt fence must be used, where necessary, to prevent sedimentation.
- (17) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used only if necessary and only if use is allowed under federal law and not prohibited from sale under 38 M.R.S.A. 1682, and provided it is cured on dry land in a way that exposes all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where it will contact water.

**D. Definitions.** The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

- (1) **Cross-sectional area.** The cross-sectional area of a stream channel is determined by multiplying the stream channel width by the average stream channel depth. The stream channel width is the straight line distance from the normal high water line on one side of the channel to the normal high water line on the opposite side of the channel. The average stream channel depth is the average of the vertical distances from a straight line between the normal high water marks of the stream channel to the bottom of the channel.
- (2) **Crossing.** Any activity extending from one side to the opposite side of a protected natural resource, or to an island or upland within a protected natural resource whether under, through or over that resource. Such activities include, but are not limited to roads, fords, bridges, culverts, utility lines, water lines, sewer lines and cables, and the clearing and removal of vegetation necessary to install and maintain these crossings.
- (3) **Fill.** a. (verb) To put into or upon, supply to, or allow to enter a water body or wetland any earth, rock, gravel, sand, silt, clay, peat, or debris; b. (noun) Material, other than structures, placed in or adjacent to a water body or wetland.
- (4) **Ford.** A permanent crossing of a stream utilizing an area of existing, non-erodible substrate of the stream, such as ledge or cobble, or by placing non-erodible material such as stone or geotextile on the stream bottom.
- (5) **Perennial watercourse.** A river, stream or brook depicted as a solid line on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15 minute series topographic map.
- (6) **Riprap.** Heavy, irregularly-shaped rocks that are fit into place, without mortar, on a slope. Square or rectangular rocks with flat faces, such as quarry stone or manufactured blocks, do not qualify as "irregularly-shaped".
- (7) **Used for navigation.** Those rivers, streams or brooks used by motorized watercraft.

**§341-D. Board responsibilities and duties**

The board is charged with the following duties and responsibilities. [1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]

**3. Modification, revocation or suspension.** After written notice and opportunity for a hearing pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, or may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license, whenever the board finds that:

- A. The licensee has violated any condition of the license; [1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]
- B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts; [1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]
- C. The licensed discharge or activity poses a threat to human health or the environment; [1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]
- D. The license fails to include any standard or limitation legally required on the date of issuance; [1989, c. 890, Pt. A, §13 (NEW); 1989, c. 890, Pt. A, §40 (AFF).]
- E. There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license; [1995, c. 642, §1 (AMD).]
- F. The licensee has violated any law administered by the department; or [1995, c. 642, §1 (AMD).]
- G. The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990. [1995, c. 642, §2 (NEW).]

For the purposes of this subsection, the term "license" includes any license, permit, order, approval or certification issued by the department and the term "licensee" means the holder of the license.

[ 1995, c. 642, §§1, 2 (AMD) .]

