

Rule-Making Fact Sheet
(5 MRSA §8057-A)

AGENCY: 06-096 Department of Environmental Protection

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE TITLE: *Permit by Rule Standards*, 06-096 CMR 305
Section 10 Stream crossings

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

DATE AND PLACE OF PUBLIC HEARING: November 5, 2009 9:00 a.m.
Holiday Inn/Ground Round, 110 Community Drive, Augusta, ME 04330

COMMENT DEADLINE: 5:00 p.m. November 20, 2009

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

P.L. 2009 Chapter 460 An Act to Ensure that Replacement Culverts Permit Fish Passage directed the Department to amend Permit by Rule Standards 06-096 CMR 305 to ensure stream crossing activities will allow for the passage of fish and other aquatic organisms and ensure natural stream flow. To do this requires that new crossings use larger structures, such as culverts, in many cases and in some cases use a bridge or open bottom arch to span the stream.

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

These amendments will result in the need in many cases for larger stream crossing structures, or the use of bridge or other spans, for new crossings in order to ensure passage for fish and other aquatic organisms and to achieve natural stream flow as required by P.L. 2009 Chapter 460. New standards require stream measurements be based on the bankfull capacity of streams, which will result in a larger cross sectional area measurement and therefore the use of larger crossing structures such as culverts in order to pass natural stream flows.

FISCAL IMPACT OF THE RULE:

As many as 350 new stream crossings are permitted under the Permit by Rule process in recent years. In many cases, new crossings may require a culvert two sizes bigger to meet the new standards, which could cost \$100.00 to \$300.00 more. New standards require that culverts be embedded in the stream which will result in additional earth work, equipment, and overall construction costs. In some cases, applicants will be required to use open bottom arches or bridges which can cost significantly more. The cost increase between a culvert or a bridge crossing cannot be generalized but could in some cases increase a project cost 10 times. Evaluations of the cost to maintain these types of larger culverts or spans indicates that the higher additional installation costs are offset to some extent by reduced maintenance costs over the life of the project. Estimates of the reduced maintenance costs from one type of culvert specified in this rule that were installed in Maine over the last five years indicate that approximately \$6,000 in savings would accrue as a result of the significantly less maintenance required for the larger structures. No additional revenue to the Department is anticipated as a result of these rule amendments.

FOR RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:

BENEFITS OF THE RULE:

Note: If necessary, additional pages may be used