Chapter 305: NATURAL RESOURCES PROTECTION ACT

PERMIT BY RULE

Section 3:

Intake pipes & water monitoring devices

NOTE: This Section-by Section version of Permit By Rule is re-formatted to increase usability and includes additional guidance, annotations, and addendum. The entire rule, as published, is available below.

Official Chapter 305 Rule (all sections):
http://www.maine.gov/sos/cec/rules/06/096/096c305.docx

AMENDED:
May 25, 2005 – filing 2005-174 December 5, 2006 – filing 2006-496
February 25, 2008 – Section 20 only, filing 2008-88
July 15, 2009 – filing 2009-339
July 30, 2011 – Section 16 only, filing 2011-211 (Final adoption, major substantive)
June 8, 2012 – filing 2012-146 (Final adoption, major substantive)
December 27, 2022 – Section 16-A only, filing 2022-256

A. APPLICABILITY

1 This section applies to the installation or maintenance of a permanent water intake pipe which will not significantly affect the water level or flow of waters within a coastal wetland, freshwater wetland, great pond, river, stream or brook. This section also applies to the installation of a well in or adjacent to a freshwater wetland or adjacent to a great pond, coastal wetland, river, stream or brook. Allowed uses of water for the purposes of this section include a water supply for a single family residence and a dry hydrant. Some intake pipes and wells adjacent to a great pond may be exempt by law (see Note 2 at the end of this subsection).

2 This section also applies to the installation or maintenance of a permanent device used to monitor water elevations, flow or quality including a gauging station, staff gauge, tide gauge, water recording device, water quality testing and improvement device or other similar scientific equipment within a coastal wetland, freshwater wetland great pond, river, stream or brook.

3 ✗ This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit 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.

4 ✗ This section does not apply to an activity that does not conform to the local shoreland zoning ordinance.

NOTES:

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

(2) In a great pond, the placement of water lines to serve a single-family house or the installation of cables for utilities, such as telephone and power cables, is exempt from permit requirements under 38 M.R.S.A. Section 480-Q provided that the:
(a) Excavated trench for access to the water is backfilled and riprapped to prevent erosion;
(b) Excavated trench on the landward side of the riprapped area is seeded and mulched to prevent erosion; and
(c) Bureau of Parks and Lands has approved the placement of the cable across the bottom of the great pond to the extent that it has jurisdiction.

(3) A permit will be required from the US Army Corps of Engineers for the following types of projects:
(a) Any activity involving open trench excavation in a waterbody or wetland;
(b) Any activity in coastal waterways;
(c) Any activity within a river, stream or brook that takes place between October 2 and July 14; or
(d) Any activity involving work in waterways designated as Essential Fish Habitat for Atlantic salmon including all aquatic habitats in the watersheds of the following rivers and streams, including all tributaries to the extent that they currently or were historically accessible for salmon migration: St. Croix, Boyden, Dennys, Hobart Stream, Aroostook, East Machias, Machias, Pleasant, Narraguagus, Tunk Stream, Patten Stream, Orland, Penobscot, Passagassawaukeag, Union, Ducktrap, Sheepscot, Kennebec, Androscoggin, Presumpscot, and Saco River.

A copy of the PBR notification and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities

B. SUBMISSIONS

Submissions for all sections:

PBR Notification Form

Location Map

Submissions for Section 3:

1

For an activity occurring in tidal waters, notice of approval of the timing of the activity from the Department of Marine Resources must be submitted to the DEP with the notification form.

Marine Resources Timing Form:
https://www.maine.gov/dep/land/nrpa/pbrdmr.pdf

2

The applicant is required to submit photographs of the area which 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.

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C. STANDARDS

1 The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:

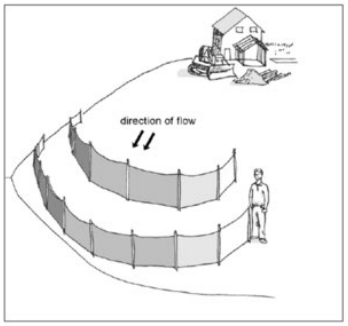
(a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins

(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; an

(e) Within 30 days of final stabilization of the site, any silt fence must be removed.



NOTE: For guidance on erosion and sedimentation control consult the Maine DEP Erosion and Sediment Control Practices Field Guide for Contractors (2015): https://www.maine.gov/dep/land/erosion/escbmps/esc_bmp_field.pdf

2 Disturbance of wetland vegetation must be avoided if possible. If wetland vegetation must be disturbed during the activity, it must be replaced or reestablished immediately upon completion of the activity and must be maintained.

3 Non-native wetland plants may not be planted in disturbed areas..

4 The trench width in any protected natural resource must be no wider than necessary to install the device.

5 Any trench in or adjacent to the wetland must be refilled with the material that was excavated. The original grading and elevation of the wetland must be restored. Residual fill material must be removed from the wetland or water body and properly stabilized. Pipe bedding material such as crushed stone or sand may be used provided clay dams or synthetic boots are used where appropriate to prevent wetland draining through the bedding material.

6

The water intake structure may not interfere with any potential boat usage and may not block fish passage.

7 If the activity occurs within tidal waters, the activity must occur during the time period approved by the Department of Marine Resources.

8 Excavation of a pool to increase depth is prohibited under this section.

9 Maintenance clearing of deposited debris and sediments from the intake area is allowed provided the cleared materials are removed from the resource and are disposed of in an upland location at least 75 feet from any open water body and stabilized to prevent erosion unless a closer upland disposal area is approved under Section 2 of this rule. Disposal of any dredged material or debris must be carried out in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Sections 1301 et seq. Clearing or removal of sediment from a water body for other purposes is not allowed under this section..

C. STANDARDS (CONT.)

10 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.

11 Wheeled or tracked equipment may not be operated in the water. Equipment operating on the shore may reach into the water with a bucket, or similar extension. Equipment may cross streams on rock, gravel or ledge bottom.

12 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.

13 Work below the high water line of a great pond, river, stream or brook must be done at low water, except as required for emergency flood control work. Measures such as a silt boom or staked fencing must be employed to reduce and isolate turbidity

14 Uncured concrete may not be placed directly into the water. Concrete must be pre-cast and cured at least three weeks before placing in the water, or where necessary, must be placed in forms and cured at least one week before the forms are removed. No washing of tools, forms, etc. may occur in or adjacent to the waterbody or wetland.

15 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, provided it is cured on dry land in such a manner to expose 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 the wood will come in contact with water.

16 

Blasting in inundated areas is prohibited.

D. DEFINITIONS

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

1 **Land adjacent to a protected natural resource**. Any land area within 75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.

2 **Non-native wetland plants.** Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, for example, common reed (Phragmites communis) and purple loosestrife (Lythrum salicaria).