

§420-D. Storm water management

A person may not construct, or cause to be constructed, a project that includes one acre or more of disturbed area without prior approval from the department. A person proposing a project shall apply to the department for a permit using an application provided by the department and may not begin construction until approval is received. This section applies to a project or any portion of a project that is located within an organized area of this State. [PL 2005, c. 219, §3 (AMD).]

1. Standards. The department shall adopt rules specifying quantity and quality standards for storm water. Storm water quality standards for projects with 3 acres or less of impervious surface may address phosphorus, nitrates and suspended solids but may not directly address other dissolved or hazardous materials unless infiltration is proposed. [PL 2005, c. 219, §4 (AMD).]

2. Review. If the applicant is able to meet the standards for storm water using solely vegetative means, the department shall review the application within 45 calendar days. If structural means are used to meet those standards, the department shall review the application within 90 calendar days. The review period begins upon receipt of a complete application and may be extended pursuant to section 344-B or if a joint order is required pursuant to subsection 5. The department may request additional information necessary to determine whether the standards of this section are met. The application is deemed approved if the department does not notify the applicant within the applicable review period.

The department may allow a municipality or a quasi-municipal organization, such as a watershed management district, to substitute a management system for storm water approved by the department for the permit requirement applicable to projects in a designated area of the municipality. The municipality or quasi-municipality may elect to have this substitution take effect at the time the system is approved by the department, or at the time the system is completed as provided in an implementation schedule approved by the department.

[PL 2005, c. 330, §9 (AMD).]

3. Watersheds of bodies of water most at risk. The department shall establish by rule a list of watersheds of bodies of water most at risk from new development. In regard to lakes, the list must include, but is not limited to, public water supply lakes and lakes identified by the department as in violation of class GPA water quality standards or as particularly sensitive to eutrophication based on current water quality, potential for internal recycling of phosphorus, potential as a cold water fishery, volume and flushing rate or projected growth rate in a watershed. The department shall review and update the list as necessary. A municipality within the watershed of a body of water most at risk may petition the department to have the body of water added to or dropped from the list.

[PL 1995, c. 704, Pt. B, §2 (NEW); PL 1997, c. 603, §§8, 9 (AFF).]

4. Degraded, sensitive or threatened regions or watersheds. The department shall establish by rule a list of degraded, sensitive or threatened regions or watersheds. These areas include the watersheds of surface waters that:

A. Have been degraded or are susceptible to degradation of water quality or fisheries because of the cumulative effect of past or reasonably foreseeable levels of development activity within the watershed of the affected surface waters; and [PL 2011, c. 206, §7 (AMD).]

B. Are not classified as "watersheds of bodies most at risk" under subsection 3. [PL 1995, c. 704, Pt. B, §2 (NEW); PL 1997, c. 603, §§8, 9 (AFF).]

[PL 2011, c. 206, §7 (AMD).]

5. Relationship to other laws. A storm water permit pursuant to this section is not required for a project requiring review by the department pursuant to any of the following provisions but the project may be required to meet standards for management of storm water adopted pursuant to this section: article 6, site location of development; article 7, performance standards for excavations for borrow,

clay, topsoil or silt; article 8-A, performance standards for quarries; article 9, the Maine Metallic Mineral Mining Act; sections 631 to 636, permits for hydropower projects; and section 1310-N, 1319-R or 1319-X, waste facility licenses. When a project requires a storm water permit and requires review pursuant to article 5-A, the department shall issue a joint order unless the permit required pursuant to article 5-A is a permit-by-rule or general permit, or separate orders are requested by the applicant and approved by the department.

A storm water permit pursuant to this section is not required for a project receiving review by a registered municipality pursuant to section 489-A if the storm water ordinances under which the project is reviewed are at least as stringent as the storm water standards adopted pursuant to section 484 or if the municipality meets the requirements of section 489-A, subsection 2-A, paragraph B.

[PL 2011, c. 653, §14 (AMD); PL 2011, c. 653, §33 (AFF).]

6. Urbanizing areas. The department shall work with the Department of Agriculture, Conservation and Forestry to identify urban bodies of water most at risk and incorporate model ordinances protective of these bodies of water into assistance provided to local governments.

[PL 2011, c. 655, Pt. JJ, §29 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF); PL 2011, c. 657, Pt. W, §5 (REV).]

7. Exemptions. The following exemptions apply.

A. Forest management activities as defined in section 480-B, subsection 2-B, including associated road construction or maintenance, do not require review pursuant to this section as long as any road construction is used primarily for forest management activities that do not constitute a change in land use under rules adopted by the Department of Agriculture, Conservation and Forestry, Bureau of Forestry concerning forest regeneration and clear-cutting and is not used primarily to access development, unless the road is removed and the site restored to its prior natural condition. Roads must be the minimum feasible width and total length consistent with forest management activities. This exemption does not apply to roads within a subdivision as defined in Title 30-A, section 4401, subsection 4, for the organized portions of the State. [PL 2009, c. 537, §2 (RPR); PL 2011, c. 657, Pt. W, §5, 7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

B. Disturbing areas for the purpose of normal farming activities, such as clearing of vegetation, plowing, seeding, cultivating, minor drainage and harvesting, does not require review pursuant to this section. A manure storage facility that is designed, constructed, managed and maintained in accordance with the United States Department of Agriculture, Natural Resources Conservation Service guidelines does not require review pursuant to this section. For purposes of this paragraph, "manure storage facility" means a facility used primarily for containing manure. [PL 2003, c. 607, §1 (AMD).]

C. If the commissioner determines that a municipality's ordinance meets or exceeds the provisions of this section and that the municipality has the resources to enforce that ordinance, the commissioner shall exempt any project within that municipality. The department shall maintain a list of municipalities meeting these criteria and update this list at least every 2 years. The commissioner shall immediately notify municipalities on the list of municipalities meeting these criteria of new or amended rules adopted by the department pursuant to this article. If a municipality on the list no longer meets these criteria, it must be removed from the list, except that if the municipality no longer meets these criteria due to new or amended department rules, then the municipality remains on the list if:

(1) The municipality adopts amendments to its ordinances within one calendar year of the effective date of the new or amended department rules;

(2) The municipality submits the amended ordinances to the commissioner within 45 calendar days of adoption for review; and

(3) The commissioner determines that the amended ordinances meet or exceed the provisions of this section.

A project constructed after a municipality is removed from the list must obtain approval pursuant to this section. [RR 2005, c. 2, §23 (COR).]

D. [PL 2005, c. 219, §5 (RP).]

E. Impervious and disturbed areas associated with construction or expansion of a single-family, detached residence on a parcel do not require review pursuant to this section. [PL 1995, c. 704, Pt. B, §2 (NEW); PL 1997, c. 603, §§8, 9 (AFF).]

F. [PL 2011, c. 206, §9 (RP).]

G. Projects involving roads, railroads and associated facilities conducted by or under the supervision of the Department of Transportation or the Maine Turnpike Authority, do not require review under this section as long as the projects are constructed pursuant to storm water quality and quantity standards set forth in a memorandum of agreement between the department and the conducting or supervising agency and the project does not require review under article 6. A memorandum of agreement described in this paragraph must be updated whenever the rules concerning storm water management adopted by the department are finalized or updated. [PL 1995, c. 704, Pt. B, §2 (NEW); PL 1997, c. 603, §§8, 9 (AFF).]

H. Trail management activities that are part of the development and maintenance of the statewide snowmobile or all-terrain vehicle trail system developed as part of the Maine Trails System under Title 12, section 1892, including new construction and maintenance of trails, do not require review pursuant to this section if, for each trail being managed:

- (1) The trail is constructed and maintained in accordance with best management practices for motorized trails established by the Department of Agriculture, Conservation and Forestry;
- (2) The trail is the minimum feasible width for its designated use; and
- (3) No lane exceeds 12 feet in width and no trail includes more than 2 lanes.

As used in this paragraph, "trail management activities" includes the construction and maintenance of motorized trails used for motorized or multiple use. [PL 2013, c. 43, §1 (AMD).]

I. An existing project that is expanded does not require review pursuant to this section for the existing portion of the project as long as the existing portion met all applicable state and municipal standards for storm water management in effect at the time the existing portion was constructed. This exemption does not apply to:

- (1) An existing project that is expanded if the existing storm water management system will be used, in whole or in part, to treat storm water flowing from the expanded portion of the existing project;
- (2) The expanded portion of the existing project; or
- (3) A redevelopment project as defined by the department by rule. [PL 2015, c. 34, §1 (NEW).]

J. A trail does not require review pursuant to this section if:

- (1) The trail is intended, constructed and managed for use by persons walking, snowshoeing, skiing, hiking or riding mountain bikes;
- (2) The trail is generally constructed and maintained in accordance with best management practices for motorized trails established by the Department of Agriculture, Conservation and Forestry, including requirements to provide sediment and erosion control;
- (3) The trail creates a treadway surface of not more than 6 feet in width; and

(4) The trail corridor does not exceed 8 feet in width.

For the purposes of this paragraph, "mountain bike" means a bicycle designed for off-road cycling and "treadway surface" means the part of a trail upon which a person travels. [PL 2023, c. 8, §1 (AMD).]

[PL 2023, c. 8, §1 (AMD).]

8. Enforcement. Any activity that takes place contrary to the provisions of a valid permit issued under this article or without a permit having been issued for that activity is a violation of this article. Each day of a violation is a separate offense. A finding that any such violation has occurred is prima facie evidence that the activity was performed or caused to be performed by the owner of the property where the violation occurred. Prior to July 1, 1998, the department may not seek to impose civil or criminal penalties for a violation of this section against any person who has made a good faith effort to comply.

[PL 1995, c. 704, Pt. B, §2 (NEW); PL 1997, c. 603, §§8, 9 (AFF).]

9. Rules. With the exception of minor clerical corrections and technical clarifications that do not alter the substance of requirements applying to projects, rules adopted pursuant to this section after January 1, 2010 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2011, c. 359, §2 (AMD).]

10. Fees.

[PL 2005, c. 219, §6 (RP).]

11. Compensation project or fee. The department may establish a nonpoint source reduction program to allow an applicant to carry out a compensation project or pay a compensation fee in lieu of meeting certain requirements, as provided in this subsection.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. The department may allow an applicant with a project in the direct watershed of a lake to address certain on-site phosphorus reduction requirements through implementation of a compensation project or payment of a compensation fee as provided in this paragraph. The commissioner shall determine the appropriate compensation fee for each project. The compensation fee must be paid either into a compensation fund or to an organization authorized by the department and must be a condition of the permit.

(1) The department may establish a storm water compensation fund for the purpose of receiving compensation fees, grants and other related income. The fund must be a nonlapsing fund dedicated to payment of the costs and related expenses of compensation projects. Income received under this subsection must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by statute. Interest on these investments must be credited to the fund. The department may make payments from the fund consistent with the purpose of the fund.

(2) The department may enter into a written agreement with a public, quasi-public or private, nonprofit organization for purposes of receiving compensation fees and implementing compensation projects. If the authorized agency is a state agency other than the department, it shall establish a fund meeting the requirements specified in subparagraph (1). The authorized organization shall maintain records of expenditures and provide an annual summary report to the department. If the organization does not perform in accordance with this section or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this paragraph. If an organization's authorization is revoked, any remaining funds must be provided to the department.

(3) The commissioner may set a fee rate of no more than \$25,000 per pound of available phosphorus.

(4) Except in an urbanized part of a designated growth area, best management practices must be incorporated on site that, by design, will reduce phosphorus export by at least 50%, and a phosphorus compensation project must be carried out or a compensation fee must be paid to address the remaining phosphorus reduction required to meet the parcel's phosphorus allocation. In an urbanized part of a designated growth area, an applicant may pay a phosphorus compensation fee in lieu of part or all of the on-site phosphorus reduction requirement. The commissioner shall identify urbanized parts of designated growth areas in the direct watersheds of lakes most at risk, in consultation with the Department of Agriculture, Conservation and Forestry.

(5) Projects carried out or funded through compensation fees as provided in this paragraph must be located in the same watershed as the project with respect to which the compensation fee is paid. [PL 2011, c. 655, Pt. JJ, §30 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF); PL 2011, c. 657, Pt. W, §5 (REV).]

B. The department may allow an applicant with a project within the direct watershed of a coastal wetland, river, stream or brook to address all or part of the storm water quality standards for the project through implementation of a compensation project or payment of a compensation fee as provided by rules adopted pursuant to this subsection. [PL 2011, c. 206, §10 (AMD).]

[PL 2011, c. 655, Pt. JJ, §30 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF); PL 2011, c. 657, Pt. W, §5 (REV).]

12. Fees.

[PL 2007, c. 558, §5 (RP).]

13. Significant existing sources. The department may require a person owning or operating a significant existing source of storm water to implement a storm water management system. The owner or operator shall obtain approval from the department pursuant to this subsection for the storm water management system.

For the purposes of this subsection, "significant existing source" means a significant existing source of storm water pollution based on quantity or quality standards for storm water from a developed area that was in existence prior to July 1, 1997 and is located in the direct watershed of a waterbody that is impaired due to urban runoff. The department shall identify significant existing sources as provided in this subsection.

A. The department shall develop a total maximum daily load for the watershed of a waterbody impaired due to urban runoff prior to designating significant existing sources within the watershed. [PL 2005, c. 219, §7 (NEW).]

B. The department shall adopt rules prior to requiring that an owner or operator of a significant existing source within the direct watershed of a specific waterbody obtain approval of a storm water management system. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The rules must include, but are not limited to, the following:

- (1) The name of or other means of identifying the waterbody that is impaired due to urban runoff;
- (2) A list of significant existing sources or a description of the types or classes of significant existing sources;
- (3) A date or schedule indicating when approvals must be obtained; and

- (4) Storm water quantity and quality standards for storm water management systems. [PL 2005, c. 219, §7 (NEW).]
- C. The owner or operator of a site designated as a significant existing source shall apply to the department for approval of a storm water management system. [PL 2005, c. 219, §7 (NEW).]
- D. "Significant existing source" does not include:
- (1) Types of sources or activities described in subsection 7;
 - (2) The developed area of a facility required to meet ongoing storm water management standards pursuant to a storm water general or individual permit issued pursuant to section 413; and
 - (3) A municipal storm water conveyance system unless the storm water pollution originates with the conveyance system. [PL 2005, c. 219, §7 (NEW).]
- [PL 2005, c. 219, §7 (NEW).]

14. Rescission. The commissioner shall rescind a permit upon request and application of the permittee if no outstanding permit violation exists, the project is not continued and the permittee has not constructed or caused to be constructed, or operated or caused to be operated, a project requiring a permit. For purposes of this section, "a project requiring a permit" is a project that requires a permit as defined either at the time of permit issuance or at the time of application for rescission. [PL 2007, c. 292, §19 (NEW).]

This section may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this section. [PL 1995, c. 704, Pt. B, §2 (NEW); PL 1997, c. 603, §§8, 9 (AFF).]

SECTION HISTORY

PL 1995, c. 704, Pt. B, §2 (NEW). PL 1995, c. 704, Pt. C, §2 (AFF). PL 1997, c. 502, §§2-4 (AMD). PL 1997, c. 603, §§8, 9 (AFF). PL 2001, c. 232, §§13, 14 (AMD). PL 2003, c. 318, §1 (AMD). PL 2003, c. 607, §1 (AMD). RR 2005, c. 2, §23 (COR). PL 2005, c. 219, §§3-7 (AMD). PL 2005, c. 330, §9 (AMD). PL 2005, c. 602, §§2-4 (AMD). PL 2007, c. 292, §19 (AMD). PL 2007, c. 558, §5 (AMD). PL 2007, c. 593, §1 (AMD). PL 2009, c. 537, §2 (AMD). PL 2009, c. 602, §1 (AMD). PL 2011, c. 206, §§7-10 (AMD). PL 2011, c. 359, §§1, 2 (AMD). PL 2011, c. 653, §14 (AMD). PL 2011, c. 653, §33 (AFF). PL 2011, c. 655, Pt. JJ, §§29, 30 (AMD). PL 2011, c. 655, Pt. JJ, §41 (AFF). PL 2011, c. 657, Pt. W, §§5, 7 (REV). PL 2013, c. 43, §1 (AMD). PL 2013, c. 405, Pt. A, §23 (REV). PL 2015, c. 34, §1 (AMD). PL 2021, c. 507, §1 (AMD). PL 2023, c. 8, §1 (AMD).

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