

Laws and Regulatory Requirements to Consider Before You Build a Pond

John M. Jemison, Jr., Extension water quality and soil specialist
Donna Lamb, Extension educator

Pond Management Fact Sheet

Before constructing any pond, make sure you are following all existing rules and regulations regarding pond construction. The Maine Department of Environmental Protection (Maine DEP) is the agency in the state that regulates activities in protected natural resources, such as streams and wetlands, where many ponds are constructed.

This fact sheet provides you with an overview of most of the state and federal laws affecting pond construction. Some of this material is based on information presented by W.E. Taylor, esq., of Pierce, Atwood, Scribner, Allen, Smith and Lancaster at a Maine agricultural law conference. Other materials come from the Maine DEP, and are cited at the end of the paper. You should realize that municipalities may also have rules and regulations regarding ponds. It is beyond the scope of this fact sheet to cover these. We recommend that you talk to your local planning board, code enforcement officer or other local governing body before building your pond. Please be aware that you may need several permits before you can start constructing your pond.

Construction of Farm Ponds

Several rules and laws regulate where a pond can be placed and how large a

pond can be. The most important of these regulations are explained below.

Site Location of Development Law

The Maine Department of Environmental Protection's Site Location of Development Law (Site Law) regulates development projects that can substantially impact the natural environment. Regulated developments usually impact areas that are three acres or greater. However, under the recently amended Site Law, construction of a pond having a total surface area of less than 10 acres that is used to irrigate field crops, store water for cranberry production or fire protection is exempt from review under this act. Ponds used for activities other than those listed may need approval under Site Law, as would a pond with a surface area larger than 10 acres.

The Natural Resources Protection Act

Maine's Natural Resources Protection Act (NRPA) regulates earth moving, filling, excavation, and other activities in, on, over, or next to rivers, floodplains, lakes, streams, ponds, wetlands, and other protected natural resources.

The NRPA's *Permit-by-Rule* regulations apply to certain activities in or adjacent to wetlands or water bodies. For more information, go to

<http://www.state.me.us/dep/blwq/docsta/nd/ip-nrpa.htm> , or call one of the following numbers:

Augusta/Bangor (800) 452-1942
Portland (888) 769-1036
Presque Isle (888) 769-1053

The following pond construction activities require an NRPA permit:

- dredging, bulldozing, displacing soil, sand or other vegetation
- draining or dewatering an area
- filling in a wetland
- constructing, repairing or altering any permanent structure

The proposed activity may not

- reduce the existing scenic, recreational or aesthetic value of the area;
- interfere with navigational uses;
- lower water quality;
- unreasonably harm wildlife, fisheries, aquatic habitat or wetland plant habitat; and/or
- unreasonably interfere with the natural flow of a surface water body.

You will need to get a permit if you construct a pond within 100 feet of a protected natural resource area, which includes great ponds, rivers, streams and brooks. Wetland maps are available to help you determine if this applies to you, but you will want verification from a MEDEP official. Check also with Maine Inland Fisheries and Wildlife to determine if your pond is in a significant wildlife habitat.

Getting a Permit

Do you have to submit a full permit application for your small pond? Some

home and farm pond developments may not need to go through the full permitting process required by the NRPA. The Maine DEP has identified characteristics of pond developments that would be safe for the environment and would receive a permit. This shortened process is called Permit-by-Rule. Permit-by-Rule is designed to save applicant's time and money by identifying pond developments that would not cause significant environmental damage and would be approved.

Activities eligible for permitting in the Permit-by-Rule section:

- Ponds constructed within 100 feet 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, and which retain an undisturbed setback/buffer of at least 25 feet from the edge of the resource.

Activities not eligible for permitting in the Permit-by-Rule section:

- Ponds constructed in a coastal wetland, freshwater wetland, great pond, river, stream or brook.

You can obtain a copy of the Chapter 305 Permit-by-Rule standards from Maine DEP. Read through and see if your pond would meet the criteria. The next steps are as follows:

1. Request a Permit-by-Rule Notification Form from Maine DEP.
2. Send the notice to the appropriate regional office by certified mail. Include photographs of the site, a USGS topographical map or Maine Atlas and Gazetteer™ map with the site clearly located, and \$50 made

payable to “Treasurer, State of Maine.”

3. After completion, submit an after-construction picture.

You may begin work 14 days after the MEDEP receives your Notification Form only if the MEDEP does not contact you. They will contact you if your notice is incomplete or fails to meet the criteria. You have two years to complete the construction. Remember to check with your local municipality and Army Corps of Engineers prior to construction to ensure you are covering all the bases.

Pond Construction Types Most Likely to Be Approved

A pond that is constructed from a wet area caused by a spring is most favorable. A dug-out pond is not likely to harm an existing protected area. Sometimes, water can be diverted from a brook into a pond. The pond outlet will return water to the same brook. These are somewhat less desirable, and a permit for this type of pond may be denied. The complete damming of brooks is not desirable; chances are likely that this will not be permitted.

Clean Water Act — Section 404

Section 404 of the federal Clean Water Act regulates discharge of fill material into existing water bodies or wetlands and is regulated by the Army Corps of Engineers. Under Section 404, most ponds constructed within a wetland or existing water body would require a permit. However, farm or stock ponds are exempt from a permit under this law. If you build a pond for recreational or wildlife/fishing purposes, you must apply for a permit. Many nonfarm related ponds will not be permitted in a wetland or stream. Generally, the

applicant must show that there are no practicable alternatives to constructing in the site, and no alternative sites to locate the pond. If the pond is less than one acre, you may be able to obtain a permit.

Removing Water From a Pond

The NRPA also regulates water withdrawal from ponds if they are located in a protected natural resource. Permanent pumps that require removal or dispersal of soil must be permitted under the NRPA and Section 404 of the Clean Water Act. However, if you use a temporary pump that does not displace the soil or does not significantly reduce water flow, you will not need a permit under either piece of legislation.

The most important thing to do is to ask questions prior to construction. Seek advice. Don't act and ask questions later. That is a sure way to get into trouble. The Maine DEP can provide you with advice and permitting if you apply and meet the criteria. If you choose not to apply, you could find yourself facing some substantial fines.

References:

- Wetland Rules (NRPA). Maine DEP Issue Profile, August 1999.
- National Resources Protection Act. *Permit-by-Rule Standards*, Chapter 305, Section 2. Maine DEP May 1995.
- Natural Resources Protection Act*. Maine DEP Issue Profile, August 1999.
- Planning Projects to Meet Permit-by-Rule Standards*. Maine DEP fact sheet. June 1996.

Mandatory Shoreland Zoning Act.
Maine DEP Issue Profile, August
1994.

*Clearing of Vegetation in the Shoreland
Zone.* Maine DEP Issue profile. Rev.
1993.

U.S. Army Corps of Engineers, Section
404 permits. New England District,
Maine Project Office, 675 Western
Ave., Manchester ME 04351
(207) 623-8367.

Maine Department of Environmental Protection Regional Offices

Augusta	207-287-2111 800-452-1942	State House Station 17 Augusta, ME 04333-0017
Presque Isle	207-764-0477 888-769-1053	1235 Central Dr. Presque Isle, ME 04769
Portland	207-822-6300 888-769-1036	312 Canco Rd. Portland, ME 04103
Bangor	207-941-4570 888-769-1137	106 Hogan Rd. Bangor, ME 04401

For our most current publications, see our online catalog at www.umext.maine.edu

A Member of the University of Maine System

Published and distributed in furtherance of Acts of Congress of May 8 and June 30, 1914, by the University of Maine Cooperative Extension, the Land Grant University of the state of Maine and the U.S. Department of Agriculture cooperating. Cooperative Extension and other agencies of the U.S.D.A. provide equal opportunities in programs and employment. 02/02