

Kirk-Lawlor, Naomi E

From: Beaumail <beaumail@myfairpoint.net>
Sent: Wednesday, April 19, 2017 11:28 AM
To: Kirk-Lawlor, Naomi E
Subject: Proposed Rule Change P-AR

Public Comments:

1) Allowing the operation of a portable rock crusher in the P-AR zone with special exceptions is a reasonable process.

2) The specific provisions to protect ground water in the proposed rule change are reasonable.

- a) The pit be internally drained.
- b) Minimum high water table separation of 5 feet.
- c) No fuel storage.
- d) No equipment washing.
- e) Secondary containment systems.
- f) On site spill response kit.
- g) Equipment setback from wells.

3) In addition to the "specific provisions" what requirements would be included in a Commission approved spill prevention, control and counter measures plan?

Is it possible additional requirements, if any, could be included with the "specific provisions" or a list of conditions in the permit?

4) The proposed changes are a step forward in providing more rule consistency between organized and unorganized towns.

Mark Beauregard
Sent from my iPad

Kirk-Lawlor, Naomi E

From: Ctctrl <ctctrl@aol.com>
Sent: Saturday, March 25, 2017 3:06 PM
To: Kirk-Lawlor, Naomi E
Subject: Public comments on Metallic Mine rock crushing Questions

Naomi

How would you control air born Arsenic in the case of Rock crushing at the Bald Mt. sight?

Deposits as high as 3% lethal to humans are proposed to be processed at that sight.

How can you protect the health and well being of those in the area that will be affected.

How can you insure that the riparian zone is protected.

When massive volcanogenic sulfide deposits are mined how will ARD be controlled.

When a rain event moves the sulfides into the minerals below and precipitates out heavy metals how will you know where they go?

These and many other questions, lead me to believe you need expert advice when setting regulations on VMS deposits.

Please do not allow the ground waters of Maine to be taken for granite they are the life blood of Maine, worth more than oil and should be considered our most valuable resource.

Craig Terrell
T13 R8
Portage lake ME 04768
ctctrl@aol.com



Natural Resources Council of Maine

3 Wade Street • Augusta, Maine • 04330
(207) 622-3101 • nrcm@nrcm.org • www.nrcm.org

Naomi Kirk-Lawlor
22 State House Station
Augusta, Maine 04333

April 20, 2017

Dear Ms. Kirk-Lawlor:

Thank you for the opportunity to submit comments on the proposed rulemaking related to the Aquifer Protection Subdistrict and portable rock crushing. After careful review of the proposed rules, associated memoranda, comparable Department of Environmental Protection statute and regulations, and conversation with you, we have the following comment:

We feel strongly that, as is the case with other uses allowed by Special Exception in the Aquifer Protection Subdistrict (P-AR), an applicant wishing to use portable rock crushing equipment must show by substantial evidence that "there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant." It is our understanding that the rulemaking petitioner found that locating portable rock crushing equipment in a subdistrict where it was an allowed use was cost prohibitive. Though the petitioner owned land in a General Management Subdistrict (M-GN) where this use is allowed, trucking materials to and from that site would have been cost prohibitive. Based on what we learned from Staff, this sounded like a reasonable assessment; indeed, the applicant had to move materials a distance that was cost prohibitive. Staff elected to not require a showing of "no alternative site..." in the proposed rules because they felt that determining whether the site is cost prohibitive is outside of the scope of their regular deliberations. We disagree. We believe that cost factors are an appropriate consideration, among other factors, in determining whether the applicant has shown by substantial evidence that "there is no alternative site . . . reasonably available...."

If this showing is not a requirement, an applicant could potentially locate a portable rock crusher just inside the boundary of a P-AR and just outside the boundary of an M-GN, even though the M-GN site is reasonably available to the applicant. We recommend that the proposed rules be changed to require a showing of "no alternative site..." so that applicants are reasonably challenged to not only find a site that does not pose an unreasonable risk to water resources, but also a site where the use is allowed without Special Exception.

Thank you for your consideration of our comments.

Sincerely,

Eliza Donoghue, Esq.
Forests and Wildlife Policy Advocate & Outreach Coordinator

Kirk-Lawlor, Naomi E

From: Mike White <mwhite@reagan.com>
Sent: Wednesday, March 22, 2017 10:38 AM
To: Kirk-Lawlor, Naomi E
Subject: Emailing: PAR_gravel_Memo.pdf
Attachments: PAR_gravel_Memo.pdf

Naomi; more comments using post it notes. Thanks Mike White

Your message is ready to be sent with the following file or link attachments:

PAR_gravel_Memo.pdf

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PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

Memorandum

To: Commissioners
From: Naomi Kirk-Lawlor, Senior Planner
Date: March 1, 2016
Re: Aquifer Protection Subdistrict Rule Revision

Introduction

At the February meeting the Commission discussed a rulemaking petition that the Commission received at the end of January. The rulemaking petition (Appendix A of this memo), submitted on behalf of Mr. Beauregard¹, advocates that the Commission expand the uses allowed in the Aquifer Protection Subdistrict (P-AR) to include the use of portable mineral processing equipment, specifically rock crushers². Mr. Beauregard owns a borrow pit in Madrid Township in Franklin County.

³The purpose of the P-AR subdistrict is to “protect the quantity and quality of groundwater supply used or potentially available for human or industrial consumption.” The P-AR zone may be assigned to areas that have highly permeable soils or surficial geologic units, highly fractured water bearing bedrock, aquifer recharge areas, and to groundwater supplies that are currently or anticipated to be used for public, industrial or agricultural purposes. Historically, there has been significant variation in the reasons P-AR zones have been designated. Some P-AR subdistricts were created to protect certain specific, vulnerable water resources. An example of such a P-AR subdistrict is the Monhegan Island P-AR that protects a federally designated sole source aquifer. Other P-AR subdistricts, such as the one in Madrid Township, were created based on geological data during a deorganization process.

Summary of Comments on March Memo

Page: 1

Number: 1 Author: Mike Subject: Sticky Note Date: 3/22/2017 11:54:34 AM

I want to state for the record I don't know Mr. Beauregard nor am I familiar with his operations. My comments are offered simply as a former operator of Pits and Quarries.

Number: 2 Author: Mike Subject: Sticky Note Date: 3/22/2017 11:54:32 AM

I'm assuming you are excepting stand alone screen plants? There are such things that process and size gravel without crushing it. Generally most crushing systems in include some level of screening, but not always.

Number: 3 Author: Mike Subject: Sticky Note Date: 3/22/2017 10:18:21 AM

Good paragraph but again can we (society) protect everything? There has to be some use of resources to keep the world moving forward.

At the February meeting the Commission directed Staff to research the risks associated with portable mineral processing equipment, determine recommendations on whether and under what conditions such equipment should be allowed in the P-AR subdistrict, and draft proposed rule revision language.

During the past weeks Staff consulted with:


- the DEP mining coordinator in charge of borrow pits;
- an industry representative who owns multiple borrow pits; and
- Staff members with the most experience permitting gravel pits.

During the past weeks Staff reviewed:

- Performance standards for borrow pit excavations in statute that apply to DEP (38 M.R.S. §§ 490-A to 490-D);
- Wellhead protection statute: Act to Prevent Contamination of Drinking Water Supplies (38 M.R.S. §§ 1391-1399) and corresponding DEP informational fact sheet;
- DEP Chapter 378 Regulations: Variance criteria for the excavation of rock, borrow, topsoil, clay or silt and performance standards for the storage of petroleum products;
- DEP Chapter 692 Regulations: Siting of Oil Storage Facilities;
- State Fire Marshal safety requirements for above ground storage tanks for Flammable or Combustible Liquids;
- Fact sheets about groundwater contamination, environmental impacts of aggregate mining and environmental and public health impacts of asphalt batch plants that were prepared by agencies in other states; and
- Environmental impact fact sheets compiled by both industry associations (e.g., National Asphalt Pavement Association) and environmental advocates (e.g., Center for Health, Environment & Justice).
- A selection of permits issued by the LUPC for gravel pit operations.

Findings

Based on the consultations and review described above, the largest risk to groundwater associated with mineral processing equipment appears to be potential contamination from spilled or leaked fuel or hydraulic fluid. Ways to minimize this risk include limiting the volume allowed in the P-AR subdistrict and requiring secondary containment systems. Risk of groundwater resource contamination can also be reduced by requiring a minimum depth to the water table, requiring minimum setbacks from drinking water wells, and prohibiting the washing of equipment over the aquifer.

If the mineral processing equipment also includes washing of the aggregate, steps should be taken to prevent wash water, which contains fine sediments, from entering nearby surface waters. Requiring borrow pits that use such equipment to be inter  drained would address this issue.

Number: 1 Author: Mike Subject: Sticky Note Date: 3/22/2017 10:22:57 AM

We "crusher people" like internally drained because it makes everything we want to do simpler from a permitting point of view. But there are geological setting where internally drained just wouldn't work. There should be a allowance for this. But as with DEP the level of permitting needs to be tougher.

This requirement should not be burdensome since most borrow pits are excavated to maintain internal drainage for storm water runoff reasons.

The definition of “portable mineral processing” in Chapter 10.02 includes portable batch plants in addition to portable rock crushers. Asphalt batch plants require significantly more fuel to run than portable rock crushers because the liquid asphalt must be kept at a consistently high temperature. The fuel tanks on portable asphalt batch plants can be on the order of 10,000 to 20,000 gallons. In comparison, the fuel tank on a portable rock crusher is usually on the order of 500 to 1,000 gallons. As an additional point of comparison, within their jurisdiction, the DEP does not allow fuel storage on high yield aquifers and limits fuel storage to 1,100 gallons on aquifers that are not high yield (DEP Chapter 378). Because of their greater fuel needs, batch plants have the potential to release greater quantities of hazardous liquids and therefore pose a greater risk to groundwater in P-AR subdistricts than portable rock crushers do.

Possible Rulemaking

Because of the significantly higher risks to groundwater associated with portable asphalt batching plants in comparison with portable rock crushing equipment, staff recommend that, should the Commission decide to pursue rulemaking, the allowed use under consideration be limited to portable rock crushing equipment. Staff further recommend, if the Commission moves ahead with rulemaking, that no storage of fuel or other hazardous materials be allowed within the P-AR subdistrict.

Because there are significant differences in the value and vulnerability of the aquifers that various P-AR subdistricts protect, portable rock crushing equipment seems to be a reasonable candidate for a use allowed by special exception. A special exception use listing allows special criteria to be applied and provides the Commission the ability to consider the particular characteristics of an individual aquifer when evaluating whether or not operating rock crushing equipment in that specific P-AR subdistrict should be an allowed use.

If the Commission would like to move forward with rulemaking to allow rock crushing in the P-AR subdistrict by special exception, staff have prepared draft rule language for Commission consideration (Appendix B). The draft rule, as written, requires that, for the use of a portable rock crusher to be allowed, the applicant show substantial evidence that:

- The use (rock crusher) can be buffered from incompatible uses and resource.
- The use will not pose an unreasonable risk to a valuable groundwater resource.

Page: 3

Number: 1 Author: Mike Subject: Sticky Note Date: 3/22/2017 10:27:02 AM

There are also portable concrete batch plants, F.Y.I.. Generally the cost of setting up a portable batch plant for either product is so high there needs to be a very large quantity needed to make it financially feasible vs hauling it per load a long distance.

Number: 2 Author: Mike Subject: Sticky Note Date: 3/22/2017 10:28:44 AM

Good it should be site specific.

Number: 3 Author: Mike Subject: Sticky Note Date: 3/22/2017 10:29:25 AM

That word again



Number: 4 Author: Mike Subject: Sticky Note Date: 3/22/2017 10:31:31 AM

unreasonable cant be quantified, it can't be weighted, measured, and is subjective. As a person who acquired many permits over the decades its not a word I like. Sorry for editorial

- The particular P-AR subdistrict does not protect a sole source aquifer.
- Other conditions the Commission may reasonably impose in accordance with the Comprehensive Land Use Plan.

Additionally, the draft proposes specific provisions to protect the groundwater within the P-AR subdistricts. These provisions include:

- The seasonal high water table is at least 5 feet below the surface.
 - This is consistent with the statute DEP operates under, 38 M.R.S. § 490-D.
- Minimum distances between the portable rock crushing equipment and existing drinking water sources.
 - This is consistent with the statute DEP operates under, 38 M.R.S. § 490-D.
- No fuel or hazardous material storage and no washing of equipment may occur in the P-AR subdistrict.
 - These are provisions that reduce the risk of groundwater contamination by eliminating the possibility of leaks from stored fuel or hazardous materials and by eliminating the chance of wash water contaminating the groundwater.
- Secondary containment of fuel and hazardous fluids is required in the form of an impermeable spill pad or container sufficient to accommodate the total volume of fluids.
 - This reduces the risk of fuel or other hazardous fluids contaminating the groundwater. Areas beneath fuel tanks, motors and refueling areas are where spills and leaks are most likely to happen and secondary containment is the best way to mitigate the contamination risk the equipment poses. This requirement is a commonly applied condition of the LUPC's gravel pit permits.
- A Commission approved spill prevention, control and countermeasures plan must be followed and available on site along with an adequately stocked spill response kit.
 - This is consistent with the statute DEP operates under, 38 M.R.S. § 490-D. The required plan would not be the same as a federally required spill prevention, control and countermeasures plan. It would be a more limited, site specific plan such as those required by DEP. Many of the components of such a plan are frequently included as conditions of the gravel pit permits that the LUPC issues. Operators who have worked under DEP jurisdiction will likely have experience preparing such plans.

- The borrow pit 1 be internally drained and if mineral washing takes place, appropriate steps must be taken to prevent wash water from contaminating the surface water resources.
 - This provision reduces the risk of fine sediment contamination of surface waters. Maintaining an internally drained topography is a common condition of gravel pit permits issued by the LUPC. As a point of reference, a variance is required by DEP if a borrow pit will not be internally drained. Therefore, gravel pit operators generally 2 plan their operations to maintain internal drainage.

Possible Next Steps

If the Commission decides to move ahead with rulemaking the next step would be to post the draft rule, along with any changes the Commission wishes to make, for a public comment period. Alternatively, if the Commission decides to keep the rules as they are now, the next step would be to provide Mr. Beauregard with written explanation why no further action is being taken.

If the Commission decides to pursue rulemaking, it may be helpful for Staff to visit a borrow pit and see these types of equipment. This is something that would normally occur earlier in the rulemaking process. However, the Commission has tried to be responsive to Mr. Beauregard's timeframe on this issue, so it could be accomplished concurrent with the public comment period, with staff providing any comments during this period.

 Number: 1 Author: Mike Subject: Sticky Note Date: 3/22/2017 10:33:46 AM

Must might want to be a different word. Allow non-internally drained site but make the precautions taken meet higher standards.

 Number: 2 Author: Mike Subject: Sticky Note Date: 3/22/2017 10:34:19 AM

But not always possible.

Kirk-Lawlor, Naomi E

From: Mike White <mwhite@reagan.com>
Sent: Wednesday, March 22, 2017 10:08 AM
To: Kirk-Lawlor, Naomi E
Subject: Emailing: redline PAR Special Exceptions draft.pdf
Attachments: redline PAR Special Exceptions draft.pdf

Naomi; I've tried to attached comments using post it notes to your red-line.
I hope it comes to you with my comments. Thanks Mike White

Your message is ready to be sent with the following file or link
attachments:

redline PAR Special Exceptions draft.pdf

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MAINE LAND USE PLANNING COMMISSION

**Proposed Rule Revisions: Aquifer Protection Subdistrict
Allowed Uses – Portable Rock Crushing**

March 9, 2017

The following amendments propose changes to Chapter 10, Land Use Districts and Standards for Areas within the Jurisdiction of the Maine Land Use Planning Commission. This document only includes relevant sections of Chapter 10 and indicates additions in underline and deletions with a ~~strikethrough~~.

10.23 DEFINITIONS

168. Public Drinking Water Source:

Any groundwater well or any surface water source that directly or indirectly serves a water distribution system that has at least 15 service connections or regularly services an average of at least 25 individuals daily at least 60 days of the year (38 M.R.S. §490-A).*

199. Sole Source Aquifer

An aquifer that supplies at least 50 percent of the drinking water for its service area and for which there is no reasonably available alternative drinking water sources should the aquifer become contaminated.*

**All subsequent definitions will be re-numbered.*



Summary of Comments on redline PAR Special Exceptions draft

Page: 1

 Number: 1 Author: Mike Subject: Sticky Note Date: 3/22/2017 9:51:47 AM
No Comment on 168 and 199

10.23 PROTECTION SUBDISTRICTS (P-AR)

From Chapter 10.23,B,3,d (P-AR):

a. Special Exceptions


The following uses, and related accessory structures, may be allowed within P-AR subdistricts as special exceptions upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. §685-A(10), and subject to the applicable requirements set forth in Sub-Chapter III, provided that the applicant shows by substantial evidence that (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; (b) the use can be buffered from those other uses and resources within the subdistrict with which it is ¹²³compatible; ⁴¹¹ (c) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan:


- (1) Docking structures: New or expanded permanent docking structures;
- (2) Draining, dredging, or alteration of the water table or water level for purposes other than mineral extraction;
- (3) Filling and grading, that is not in conformance with the standards of Section 10.27,F;
- (4) Home occupations: Major home occupations in the following plantations and townships provided there is no suitable or reasonably available location in a development subdistrict:
 - Dallas Plantation,
 - Rangeley Plantation, and
 - Sandy River Plantation;
- (5) Mineral exploration activities: Level B mineral exploration activities;
- (6) Road projects: Level C road projects;
- (7) Trailered ramps: Commercial, private and public trailered ramps; and
- (8) Water-access ways.


The following use, and related accessory structures, may be allowed within P-AR subdistricts as a special exceptions upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. § 685-A(10), and subject to the applicable requirements set forth in Sub-Chapter III, provided that the applicant shows by substantial evidence that (a) the use can be buffered from those other uses and resources within the subdistrict with which it is ⁶¹¹incompatible; (b) the use will not pose an unreasonable risk to a ⁶¹¹valuable groundwater resource; (c) the P-AR subdistrict in which the use is proposed does not protect a sole source aquifer; and (d) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan:

- (9) Portable rock crushing equipment provided that:
 - (a) The seasonal high water table elevation is at least 5 feet below the surface in the area within 50 feet of the portable rock crusher, as determined by a test pit or monitoring well;
 - (b) An impermeable spill containment pad or container sufficient to accommodate the maximum capacity of fluids contained in the motor and fuel tank is installed under the fuel tank, motor, and refueling area;

Page: 2

 Number: 1 Author: Mike Subject: Highlight Date: 3/22/2017 9:52:54 AM

 Number: 2 Author: Mike Subject: Highlight Date: 3/22/2017 9:52:45 AM

 Number: 3 Author: Mike Subject: Highlight Date: 3/22/2017 9:52:51 AM

 Number: 4 Author: Mike Subject: Sticky Note Date: 3/22/2017 9:57:05 AM

This is an assumption that crushing is an incompatible activity. The word can be used by opposition with the support of science and engineering to make that determination. Its too subjective.

 Number: 5 Author: Mike Subject: Sticky Note Date: 3/22/2017 10:00:41 AM

Again subjective; is all groundwater valuable to the extent to limit other activities? There has to be some middle ground.

 Number: 6 Author: Mike Subject: Sticky Note Date: 3/22/2017 9:58:33 AM

Same comment on incompatible

- (c) The borrow pit is intentionally drained and appropriate steps are taken to prevent any water produced during mineral washing or processing from contaminating surface water resources;
- (d) No storage of fuel or other hazardous materials occurs in the P-AR subdistrict;
- (e) No washing of equipment occurs in the P-AR subdistrict;
- (f) Operations are conducted in accordance with a Commission approved spill prevention, control and countermeasures plan. A copy of the plan and an adequately stocked oil and hazardous materials spill response kit are kept on site; and
- (g) The portable rock crushing equipment is setback from existing drinking water sources at least:
 - (i) 100 feet from a bedrock private drinking water well;
 - (ii) 200 feet from a point driven or dug private drinking water well;
 - (iii) 300 feet from a public drinking water source serving 500 or fewer people;
 - (iv) 500 feet from a public drinking water source serving between 501 and 1,000 people;
 - (v) 1,000 feet from a public drinking water source serving more than 1,000 people; and
 - (vi) 1,000 feet from a public drinking water source with a valid filtration waver issued by the EPA in accordance with the Safe Drinking Water Act;

 Number: 1 Author: Mike Subject: Sticky Note Date: 3/22/2017 10:02:41 AM
will address internally drained further on

Kirk-Lawlor, Naomi E

From: Beaumail <beaumail@myfairpoint.net>
Sent: Thursday, April 27, 2017 2:07 PM
To: Kirk-Lawlor, Naomi E
Subject: Rebuttal to Public Comments, Proposed Rule Change P-AR

Follow Up Flag: Follow up
Flag Status: Flagged

The assumption by the Natural Resource Council of Maine that the petitioner found locating a rock crusher in M-GN cost prohibitive is incorrect.

I further disagree with the NRCM comment that a requirement should exist that "there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant" because a portable rock crusher does not pose an unreasonable risk to water resources as they suggest. Furthermore, processing material closer to its native location reduces the carbon foot print associated with the use of heavy equipment.

Mark Beauregard

Sent from my iPad