

NRPA Permit By Rule Section 1

INTRODUCTION

A “permit by rule” or “PBR,” when approved by the Department of Environmental Protection (DEP), is an approval for an activity that requires a permit under the Natural Resources Protection Act (NRPA). Only those activities described in this chapter may proceed under the PBR process. A PBR activity will not significantly affect the environment if carried out in accordance with this chapter and generally has less of an impact on the environment than an activity requiring an individual permit. A PBR satisfies the NRPA permit requirement and Water Quality Certification requirement.

If a proposed activity is not described in this chapter or will not be conducted in accordance with the standards of this chapter, the applicant must obtain an individual permit prior to beginning the activity.

A. Location of Activity

The location of an activity may affect whether an activity qualifies for PBR, and whether review by the Department of Inland Fisheries and Wildlife (IF&W), the Department of Marine Resources (DMR), or the Maine Geological Survey (MGS) is required.

- (1) **Type of resource.** For some types of activities, the availability of a PBR is affected by the type of natural resource in or adjacent to which the activity is proposed. For example, an applicant proposing an activity consisting of “Movement of rocks or vegetation” may receive a PBR only if the activity will take place in a great pond, river, stream or brook. Limitations concerning the location of activities are addressed in the “Applicability” provision in each section of this chapter.
- (2) **Essential Habitat.** Essential Habitats include areas critical to the survival of threatened and endangered species such as the least tern, roseate tern, and piping plover. If the activity is located in Essential Habitat, such as near piping plover-nesting sites, a PBR is only available if the applicant obtains written approval from IF&W. This approval from IF&W must be submitted to the DEP with the PBR notification form, and the applicant must follow any conditions stated in the IF&W approval.

NOTE: Maps showing areas of essential habitat are available from the Department of Inland Fisheries and Wildlife regional headquarters, municipal offices, the Land Use Regulation Commission (for unorganized territories) and DEP regional offices. If the activity is located in essential habitat, IF&W must be contacted to request and obtain a “certification of review and approval.”

- (3) **Other activities requiring IF&W, DMR, or MGS approval.** Other activities authorized under this rule require preapproval from state natural resource agencies. The requirements are noted in each section of the rule. For example, activities occurring in tidal waters require DMR approval of the timing of the activity, and certain activities in coastal sand dune systems require pre-approval from MGS. Please read the requirements of each section carefully to ensure the necessary pre-approvals are obtained and provided with the PBR notification form.



NRPA Permit By Rule Section 1

B. Notification to Department

The applicant must file notice of the activity with the DEP prior to beginning work on the activity. The notification must be on a form provided by the DEP and must include any submissions required in this chapter. The applicant must keep a copy to serve as the permit.

The notification form must be filed electronically at maine.gov/dep/, sent to the DEP by certified mail (return receipt requested), or hand delivered to the DEP and date stamped by DEP. By signing the notification form, the applicant is representing that the activity will meet the applicability requirements and standards of the rule. In addition, by signing the notification form the applicant represents that the applicant has sufficient title, right, or interest in the property where the proposed activity is to take place.

C. Public Notice

Within 30 days prior to filing notice of the activity with the DEP, the applicant must mail public notice to abutters and to the municipal office. “Abutter” for the purposes of public notice means any person who owns property that is contiguous with the property on which the activity is proposed, unless the abutter is located one mile or more from the proposed activity.

Notice may be provided on a public notice form provided by the DEP. The notice must include the name, U.S. postal address, electronic mail address, and telephone number of the applicant; the location of the proposed activity, including a physical address where applicable; a summary of the proposed activity; a statement that the activity is regulated by the Natural Resources Protection Act and the DEP’s Chapter 305 Natural Resources Protection Act – Permit by Rule Standards; an anticipated date on which the notification form will be filed with the Department; a statement providing the DEP web address and the location of the municipal office where the notification form and submissions will be available for public inspection; and a statement that public comments on the application may be submitted to the Department during the 20 working day review period, with the DEP web address, DEP electronic mail address, and DEP regional office address to which comments may be submitted.

A list of persons to whom notice was provided must be submitted with the PBR notification form.

D. Effective Period

- (1) Beginning of period. The PBR becomes effective 20 working days after the DEP receives the notification form, unless the DEP approves or denies the PBR or requests additional information, prior to that date. If the DEP does not speak with or write to the applicant within this 20-working day period regarding the PBR notification, the applicant may proceed to carry out the activity. Working days are weekdays (Monday-Friday), excluding State holidays and any other day State of Maine offices are closed.



NRPA Permit By Rule Section 1

There are three exceptions regarding the effective date of an approved PBR:

(a) Activities listed in Section 10 (Stream crossings) occurring in association with forest management are exempt from the 20-working day waiting period.

(b) Activities listed in Section 10 (Stream crossings) performed or supervised by individuals currently certified in erosion control practices by the DEP are exempt from the 20-working day waiting period. To be certified in erosion control practices, an individual must successfully complete all course requirements of the Voluntary Contractor Certification Program administered by the DEP's Nonpoint Source Training and Resource Center.

(c) Activities that are part of a larger project requiring a permit under the Site Location of Development or the Storm Water Management Laws may not proceed until any required permit under those laws is obtained.

NOTE: Activities that are part of a larger project may require other permits from the DEP also. These other laws may prohibit the start of construction of any part of the project unless a permit under that law is obtained. In these cases, while not a violation of this rule, starting work on a PBR approved activity would be a violation of those other applicable laws.

(2) End of period. The PBR is generally effective for 2 years from the date of approval, except that a PBR for "Replacement of structures" under Section 4 is effective for 3 years.

NOTE: Activities that qualify under this chapter may need to meet other local, state and federal requirements. Examples – (1) If an activity extends below the low water line of a lake, coastal wetland or international boundary water, the applicant should contact the Bureau of Parks and Lands' Submerged Lands Program (207-287-3061) concerning possible lease or easement requirements, or (2) If an activity will involve work below the mean high-water line in navigable waters of the United States, the applicant should contact the Army Corps of Engineer (207-623-8367).



NRPA Permit By Rule Section 1

E. Discretionary Authority

Notwithstanding compliance with the PBR applicability requirements and standards set forth in this chapter, the DEP may require an individual permit application to be filed in any case where credible evidence indicates that the activity:

- (1) May violate the standards of this rule or the NRPA (38 M.R.S. Section 480-D);
- (2) Could lead to significant environmental impacts, including cumulative impacts; or
- (3) Could adversely impact a resource of special concern.

If an individual permit is required pursuant to this subsection, the DEP will notify the applicant in writing within the 20-working day waiting period described in sub-section (C) above. When the DEP notifies an applicant that an individual permit is required, no work may be conducted unless and until the individual permit is obtained.

F. Violations

A violation of law occurs when a person, or his or her agent, performs or causes to be performed any activity subject to the NRPA without first obtaining a permit from the DEP, or acts contrary to the provisions of a permit. The person, his or her agent, or both, may be held responsible for the violation. Commonly, the "person" is the landowner, and the "agent" is the contractor carrying out the activity. A violation occurs when:

- (1) An activity occurs that is not allowed under PBR, whether or not a PBR notification form has been filed with and/or approved by the DEP;
- (2) An activity occurs that is allowed under PBR, but a PBR for the activity has not become effective prior to the beginning of the activity; or
- (3) An activity occurs that is allowed under PBR and a PBR for the activity is in effect, but the standards specified in this chapter are not met.

See the "applicability" provision under each activity for rules concerning what activities are allowed under PBR. A PBR is only valid for the person listed on the notification form, or for his or her agent.

Each day that a violation occurs or continues is considered a separate offense. Violations are subject to criminal penalties and civil penalties of not less than \$100 nor more than \$,000 for each day of that violation ([38 M.R.S. Section 349](#)).

NOTE: A local Code Enforcement Officer (CEO) may take enforcement action for a violation of the Natural Resources Protection Act if the CEO is authorized to represent a municipality in District Court, and they have been certified as familiar with court procedures, [30-A M.R.S. Section 4452\(7\)](#).

