



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection
FROM: Hetty Richardson and John Hopeck, Land & Water Quality
DATE: March 4, 2010
RE: Chapter 342, Significant Groundwater Wells (New)

Statutory and Regulatory Reference: The Maine Legislature enacted two unallocated law provisions providing for new rules pertaining to significant groundwater wells. One provided for a fee structure to support monitoring data assessment, and one provided for public information meetings. See PL 2007, ch. 399(14) and (15), as amended by PL 2009, ch. 295(3) and (4)(attached).

An additional provision in this rulemaking concerning pre-submission and pre-application meetings is proposed pursuant to the department's general rulemaking authority at 38 M.R.S.A §341-D(1-B).

Scope: This rule establishes a fee structure, a public information meeting requirement, and pre-application and pre-submission requirements. As revised in response to public comment, the rule also include a new minor notice requirement.

Description:

(1) The rule establishes a fee structure as required by PL 2007, ch. 399(15). The department was required to develop a fee structure to provide funding for contracts with independent environmental professionals. The contracts are for technical review and assessment of monitoring information submitted to the department in regards to significant groundwater wells.

(2) The rule establishes a public information meeting requirement for applications for permits for significant groundwater wells as required by PL 2007, ch. 399(14). The new requirement applies to applications for permits for significant groundwater wells permitted under the Natural Resources Protection Act (NRPA). Chapter 342 references existing public information procedures in *Rules Concerning the Processing Applications and Other Administrative Matters*, 06-096 CMR 2. Developments requiring Site Law permits are already subject to a public information meeting requirement pursuant to Chapter 2.

(3) The rule establishes a pre-application and pre-submission meeting requirement for an NRPA permit for a significant groundwater well.

History: On December 17, 2009, the Board of Environmental Protection (BEP) posted this proposed rule to public comment without a hearing. Notices were mailed to the Department's subscription list, and to additional persons the department identified as potentially interested in the chapter. The rulemaking materials were posted on the department's website. The comment deadline was January 29, 2010 at 5:00 pm.

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Note concerning date error and correction: The original notice for which mailing was completed on December 31, 2009 contained an error in the comment deadline date of January 29, 2009 (rather than 2010). After a member of the public called and mentioned the error, a second mailing was done with a corrected date to the list of persons most likely to be interested in the chapter, and a note concerning the correction was added to the Bureau of Land & Water rulemaking web page.

A few people called with questions who did not submit comments. Written comments for the record were received from four persons, and have been provided to the BEP. No requests for a hearing were received.

A copy of the rule showing proposed changes as a result of comments has been provided, together with a “clean copy” with all changes incorporated.

Environmental issues: The rule does not raise significant environmental issues. It establishes a fee schedule, and certain additional requirements pertaining to permit applications.

Discussion and department recommendation: The basis statement summarizes comments received and responses from the department. Some provisions were revised in response to public comment. The revised chapter is not substantially different from the posted draft.

Some of the changes to the proposed chapter suggested organizational changes. The provisions describing wells or withdrawals that are not subject to the fee requirement have been collected in one section for ease of use. Also the concept of a fee “waiver” has been changed to an “exclusion”, which more closely tracks the unallocated law text.

One person suggested revised language that included an additional exclusion from the fee requirement. The suggested exclusion repeats text from a general unallocated law provision authorizing the department to specify exceptions from the fee requirement. The department has not added this provision to the chapter. Repeating the general unallocated law’s authorization language, as suggested, would have the effect of providing for case-by-case fee exceptions to the fee requirement based on very general criteria. This approach would be unacceptably time consuming and difficult to administer. Instead, the department specified two specific exclusions from the fee requirement, for wells with a minor amount of required monitoring, and wells where the water is returned to the same surficial or bedrock aquifer.

One person commented generally that the notice provisions in Chapter 2 for public information meetings, which were referenced in the proposed chapter, are inadequate given the reach of potential impact of a proposed significant groundwater well. The department has added an additional notice provision to the chapter in response to the comment, although it is somewhat narrower than what the comment suggested, because of the department’s concerns that the notice be designed so as to try to reach persons likely to be affected by a proposed significant groundwater well, and that the class required to be notified be clearly identified for the applicant.

- Department Recommendation: The Department recommends the proposed chapter be adopted as revised in response to public comments.

Estimated Time of Presentation: Approximately 30 minutes.

PL 2007, ch. 399(14) and (15), as amended by PL 2009, ch. 295(3) and (4)

Sec. 14. Rulemaking public information meetings. The Department of Environmental Protection and the Maine Land Use Regulation Commission *shall amend their rules to require that a public information meeting be held prior to submission of an application for a significant groundwater well or project* including a significant groundwater well unless the project already has a public information meeting requirement. The public information meeting must meet the requirements for public information meetings contained in the Department of Environmental Protection's rule concerning the processing of applications and other administrative matters. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

For purposes of this section, "significant groundwater well" has the same meaning as in the Maine Revised Statutes, Title 38, section 480-B, subsection 9-A, except that a development or part of a development requiring a permit pursuant to Title 38, chapter 3, subchapter 1, article 6 or a structure or development requiring a permit from the Maine Land Use Regulation Commission is not excluded from the definition of "significant groundwater well."

This section applies to a significant groundwater well that requires approval pursuant to Title 12, chapter 206-A or Title 38, chapter 3, subchapter 1, article 5-A or 6.

Sec. 15. Rulemaking independent monitoring; fees. The Department of Environmental Protection and the Maine Land Use Regulation Commission shall periodically contract with independent environmental professionals to provide a technical review and assessment of monitoring information submitted to the Department of Environmental Protection or the Maine Land Use Regulation Commission related to significant groundwater wells that are part of projects or developments permitted under the Maine Revised Statutes, Title 12, chapter 206-A or Title 38, chapter 3, subchapter 1, article 5-A or 6, and *each shall through rulemaking develop a fee structure to provide funding for the contracts*. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

For purposes of this section, "significant groundwater well" has the same meaning as in the Maine Revised Statutes, Title 38, section 480-B, subsection 9-A, except that a development or part of a development requiring a permit pursuant to Title 38, chapter 3, subchapter 1, article 6 or a structure or development requiring a permit from the Maine Land Use Regulation Commission is not excluded from the definition of "significant groundwater well."

The Department of Environmental Protection or the Maine Land Use Regulation Commission may exclude certain types of pumping or certain significant groundwater wells or portions of significant groundwater wells from a fee requirement when appropriate based upon considerations such as the applicability of other fees, the type or amount of pumping or insignificant risk to protected natural resources or other wells. (*emphasis added*)