

Repeal of Section 3-A, Siting Restrictions for New Facilities, Chapter 691, Rules for Underground Oil Storage Facilities

Basis Statement

The Board finally adopted Chapter 692, Siting of Oil Storage Facilities, on March 4, 2010. Chapter 692 incorporated the existing rules governing the siting of underground oil storage facilities in mapped aquifers under Chapter 691, section 3-A with criteria governing the siting of aboveground oil storage facilities. Section 3-A of Chapter 691 is therefore now redundant.

The repeal of Section 3-A, Chapter 691 concludes the department's rulemaking in the implementation of Maine's wellhead protection law, 38 MRSA §§1391 through 1399. The purpose of the law as stated in section 1391 is to protect the health, safety and welfare of Maine's citizens by establishing a coordinated statewide program to protect drinking water wells from contamination by oil or hazardous substances. The law accomplishes this by restricting the siting of facilities that, by their nature, pose an unacceptable risk to groundwater quality near drinking water supplies, including sand and gravel aquifers mapped by the Maine Geological Survey.

Response to Comments

No comments on the rule were received.

Chapter 691**RULES FOR UNDERGROUND OIL STORAGE FACILITIES**

SUMMARY: This rule requires registration of all new and existing underground petroleum tanks. It establishes standards for the siting and installation of new facilities, and the operation and closure of all types of underground oil storage facilities. The rule also outlines requirements for reporting and clean-up of leaks or other oil pollution at underground storage facilities.

The proposed draft amendment to Chapter 691, strikes out Section 3-A as follows:

~~3-A. Siting Restrictions for New Facilities~~

~~A. **Applicability.** This section applies to siting of all proposed new underground oil storage facilities used to store motor fuel or used in the marketing and distribution of oil to others, except where noted in subsection B below. The siting of underground waste oil facilities is also governed by this section. All facility components designed to contain oil in a liquid or vapor phase are subject to the requirements of this section. This section sets forth standards for siting of new facilities over significant sand and gravel aquifers mapped by the Maine Geological Survey (MGS) in the Maine Department of Conservation. This section does not apply to new facilities registered in accordance with section 4 and installed prior to August 1, 2002.~~

~~NOTE: Additional standards for siting new facilities within the source water protection area of a public drinking water supply mapped by the Department of Health and Human Services and in the vicinity of public and private water supplies are contained in 38 M.R.S.A. section 563-C.~~

~~B. **Exemptions.** Except as noted below, this section does not apply to:~~

- ~~(1) Heating oil facilities used for consumption on the premises;~~
- ~~(2) Replacement or expansion of a facility registered and installed before July 1, 2002, provided the replacement or expansion occurs on the same property and the owner or operator continues to pay the annual registration fee;~~
- ~~(3) Conversion of an aboveground oil storage facility permitted by the Department of Public Safety, Office of the State Fire Marshal and installed before July 1, 2002 to an underground oil storage facility, provided the conversion occurs on the same property; or~~
- ~~(4) Underground piping associated with an aboveground oil storage facility.~~

~~Notwithstanding exemptions 2 and 3 above, the siting prohibition in 3-A(C) continues to apply if a facility has been out of service for 12 or more consecutive months unless, as provided in section 11(B)(2) of this rule, the commissioner has~~

approved an application allowing the facility to remain temporarily out of service for a longer period of time.

- C. Prohibition.** A person may not register, install or cause to be installed a new facility within a significant sand and gravel aquifer (herein referred to as “aquifer”) mapped by the Maine Geological Survey.

NOTE: Significant Sand and Gravel Aquifer maps are available for inspection in most municipal offices and are available from the Maine Geological Survey, (207) 287-2801. Electronic versions are available from the Maine Office of Geographic Information Systems through the State of Maine Internet website.

- D. Variances.** Upon application by the owner of the proposed facility, the commissioner may grant a variance to the above siting prohibition where the owner demonstrates to the commissioner’s satisfaction that paragraph 1 or 2 below applies, and in the case of paragraph 2, that the aquifer does not have a high potential as a future public drinking water resource as defined in paragraph 3:

- (1) Variance for Facility on a Low Yield or Polluted Aquifer. The proposed facility site has a low potential for future use as a public or private drinking water supply because one of the following circumstances apply:
- (a) A site specific hydrogeological investigation demonstrates that the proposed facility site does not overlie an aquifer even though it is mapped as such by the Maine Geological Survey;
 - (b) A public water system services all water users within 1000 feet up gradient and 2000 feet down gradient of the proposed facility site, and the site is in an urban area or an area made up of dense commercial land uses, industrial land uses, or dense residential development not served by public sewer;
 - (c) The installation of drinking water supply wells within 1000 feet up gradient or within 2000 feet down gradient is prohibited by property deed restrictions, municipal land use ordinance, or a zoning rule of the Maine Land Use Regulation Commission (LURC);
 - (d) Hydrogeological studies or ground water quality testing data show that the aquifer underlying the proposed facility site is polluted with one or more man-made contaminants in concentrations exceeding federal maximum contaminant levels (MCLs), or a State MCL or maximum exposure guideline (MEG) established by the Maine Bureau of Health, and the aquifer’s ground water has not been and is not now the subject of a commissioner supervised remediation effort with the goal of the eventual restoration of or the protection of ground water in the aquifer to a quality suitable for human consumption; or

~~(e) Other documentation demonstrating to the commissioner's satisfaction that the aquifer is unsuitable or unavailable as a future public or private drinking water resource.~~

~~(2) Variance for Facility on a Moderate Yield Aquifer.~~

~~(a) The proposed facility site is on an aquifer, or a portion thereof, mapped by the Maine Geological Survey as having a moderate potential for future use as a water supply resource, with yields generally less than 50 gallons per minute as confirmed by a commissioner-approved hydrogeological test conducted in accordance with Appendix T; and~~

~~(b) The facility will be designed and installed to include a combination of complementary leak and spill prevention equipment, discharge monitoring equipment, stand-by remediation system equipment, or other engineering and monitoring measures that collectively are more stringent than State or federal requirements and that are determined by the commissioner to further reduce the risk of oil discharges and the likelihood of future ground water contamination.~~

~~The following is an example of a combination of additional facility design and monitoring measures for applicable motor fuel facilities that would meet with the commissioner's approval by minimizing the risk of discharges in the product dispensing system and of overfills, as well as improving the detection of routine small discharges to the environment:~~

- ~~(i) — installation of suction piping systems and liquid-tight dispenser sumps with continuous leak monitoring;~~
- ~~(ii) — annual sump tightness testing;~~
- ~~(iii) — installation of flush-mounted 25-gallon overfill spill containment buckets; and~~
- ~~(iv) — the installation and sampling of a ground-water monitoring well network surrounding the facility.~~

~~Where ground-water monitoring wells are installed, they must be sampled quarterly and samples analyzed in accordance with Appendix S of this rule. For facilities storing gasoline, samples must be analyzed for gasoline, benzene, and methyl tertiary butyl ether (MTBE). For facilities storing diesel fuel, heating oil or waste oil, fuel oil analyses must be performed. The installation and sampling of any ground-water monitoring wells must be conducted under the supervision of a Maine-certified geologist. Positive results must be reported to the commissioner as evidence of a possible leak in accordance with section 5(D) or section 7(D), as applicable. Monitoring wells must be made accessible to the commissioner or the commissioner's agents for inspection and collection of water samples in accordance with Chapter 2 of the department rules.~~

~~(3) Variance Prohibited for Facility on a High Potential Aquifer. The commissioner shall not grant a variance from the prohibition of Section 3-~~

A(C) if any part of the proposed facility site overlies a mapped aquifer that has high potential as a future public drinking water resource. A high potential aquifer is any part of a mapped aquifer that has good to excellent potential ground water yield, generally exceeding 50 gallons per minute, and good water quality. High potential aquifers include:

- (a) Any area designated on a Maine Geological Survey "Significant Sand and Gravel Aquifer Map" as a surficial deposit generally with yields greater than 50 gallons per minute;
- (b) An aquifer or ground water resource protection zone as designated in a municipal ordinance or a LURC zoning rule;
- (c) The source water or recharge area of a community public drinking water system supply well that is in the process of being developed, or within 1000 feet of such a well, whichever is greater, provided the aquifer has been found to yield more than 50 gallons per minute, based on hydrogeological pump test data and analysis by a Maine certified geologist; or
- (d) A portion of a mapped aquifer that, based on a borehole test conducted in the center of a proposed facility site and in accordance with Appendix T of this rule, is expected to yield more than 50 gallons per minute.

(4) Processing of Variance Applications. Processing of applications for a variance under this section including, but not limited to, application requirements, public notice, and appeal procedures, are governed by Chapter 2 of department rules except as specified below.

(5) Variance Application. A variance request application must be submitted in writing on forms provided by the commissioner. In addition to the requirement set forth in Chapter 2 of department rules, the application must include at a minimum the following information:

- (a) The registration materials required under section 4 of this chapter;
- (b) The names and mailing addresses of all abutters to the property on which the facility is proposed;
- (c) A plan view of the proposed facility showing the precise location and footprint of all facility components that will contain oil in either a liquid or vapor phase;
- (d) The map coordinates of each corner of the facility footprint and any proposed ground water monitoring wells to sub meter precision and accuracy in a format compatible with the State of Maine Geographical Information System;

NOTE: The Maine Geographic Information System (GIS) uses as a standard the UTM (Universal Traverse Mercator) system. The datum system used is the NAD83 (North American Datum 1983) version.

- (e) ~~If a variance is sought under paragraph (2) of this subsection, identification and a description of the design, installation, monitoring or other engineering and operating enhancements that will supplement the requirements of this chapter and a narrative explaining how the enhancements further minimize the risk of oil discharges and the likelihood of future ground water contamination; and~~
- (f) ~~If a variance is sought under paragraph (1) of this subsection, a written report supporting the variance request. If the report includes ground water quality or other hydrogeological data that was collected and interpreted in support of the variance request, the data and its written analysis must be certified by a Maine certified geologist. If the variance request is based on a municipal land use ordinance, the report must include a copy of the relevant sections of the ordinance and a copy of the relevant land use mapping, certified by an authorized official of that municipality as being current and true copies. The proposed facility site location shall be accurately shown on the land use map.~~

~~NOTE: A pre-application meeting with the Department is recommended to ensure the applicant understands the variance requirements as they may apply to the specific proposed facility site. Such meetings usually avoid misunderstandings of expectations and processing delays.~~

- (6) ~~Public Notice Requirements. Within 30 days before filing an application, the applicant shall provide notice by certified mail of the application to the following persons:~~
 - (a) ~~To the chief administrative officer and planning board chairperson of the municipality in which the facility is proposed to be located, or to the county commissioners and the LURC director if the facility is proposed in an unorganized township or plantation;~~
 - (b) ~~To the local public water utility or other community public water provider, if any;~~
 - (c) ~~To abutters of the property on which the facility is proposed;~~
 - (d) ~~To other interested persons who have requested in writing of the commissioner to receive variance notices, a list of such persons and their mailing addresses to be maintained by the commissioner; and~~
 - (g) ~~By publication once in a newspaper generally circulated in the area where the facility is proposed.~~

~~The notice must include the information listed in Chapter 2 of department rules.~~

- (7) ~~Public Meeting. In lieu of or in addition to holding a hearing on the application as provided under Chapter 2 of department rules, the commissioner may hold a public informational meeting where deemed~~

appropriate for the applicant to provide information about the variance request to interested parties. If the commissioner decides to hold a public meeting, notice must be sent at least 10 business days prior to the meeting to the applicant, abutters, the local public water utility or community water provider, the planning board chairperson and chief administrative officer of the municipality in which the facility is proposed (or the LURC director and appropriate county commissioners if the facility is proposed in an unorganized township or plantation) and other interested persons who have requested in writing of the commissioner to receive variance notices, a list of such persons and their mailing addresses to be maintained by the commissioner.

- ~~-(8) Notice of Appeal Rights. A copy of the commissioner's decision on the variance request must be provided to the applicant, abutters, the local public water utility or community water provider, and the planning board chairperson and chief administrative officer of the municipality in which the facility is proposed (or the LURC director and county commissioners if the facility is proposed in an unorganized township or plantation). Copies also must be provided to other interested persons upon request. Each copy must be accompanied by a plain statement of the rights of administrative and judicial review of the decision and the time within which those rights must be exercised.~~