



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, Bureau of Land & Water Quality, Augusta
DATE: 12/17/2009
RE: Chapter 342, Significant Groundwater Wells (New; routine technical)

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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).

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.

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**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)*

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

Scope/Description: The proposed rule establishes a public information requirement for significant groundwater wells as required by PL 2007, ch. 399(14) as amended by PL 2009, ch. 295(3), and a fee schedule as required by PL 2007, ch. 399(15) as amended by PL 2009, ch. 295 (4). The public information requirement is only added in regard to Natural Resources Protection Act (NRPA) projects, because an applicant for a Site Law development is already required to hold a public information meeting.

In addition, the proposed rule requires that a pre-application meeting be held prior to submission of an application for a permit pursuant to the Natural Resources Protection Act (NRPA) for a significant groundwater well. A pre-submission meeting would also be required under the proposed rule, unless the requirement was waived by the department. Again, an applicant for permit for a Site Law development is already required to hold these meetings.

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Environmental issues: The proposed rule provides for fees to be paid by permittees with significant groundwater wells. The funds will allow the department to contract with outside environmental professionals for the technical review and assessment of monitoring information submitted to the department, supporting regulatory oversight.

Department Recommendation: The department recommends that the Board post Chapter 342 to public comment without a hearing. The size of the regulated community expected to be affected by this rule is small. Comment on the version of this chapter previously submitted to the Board, and withdrawn, identified a statutory problem that has since been resolved. Following enactment of PL 2009, ch. 295, the proposed rule was revised consistent with the legislative changes. Also, some additional minor changes were made. For example:

- The time period used to calculate the fee was changed to a calendar year from the period of October to September; and
- Language was added requiring the permittee to submit annually a certified statement on a form provided by the department indicating total gallons pumped from January 1 through December 31, together with the annual fee, by the following April 1.

The comment period must extend at least 30 days from the date the notice is published, when no hearing is held. The planned publication date for the rulemaking notice for this rulemaking is December 30, 2009. Assuming that publication date, the department recommends a comment deadline of 5:00 pm, January 29<sup>th</sup>. If for some reason a later publication date is used, the comment deadline would be set so as to allow at least a 30-day comment period.

Estimated Time of Presentation: Approximately 15 minutes.