



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection  
FROM: George Seel, Jeff Madore, Bureau of Remediation and Waste Management  
DATE: June 18, 2009  
RE: Rulemaking; wellhead protection

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Last year, the Maine Legislature amended Title 38 M.R.S.A. to include chapter 13-D, Wellhead Protection [see PL 2007, chapter 569]. The new chapter prohibits the siting of oil storage facilities and certain facilities that handle hazardous matter in wellhead protection zones except as may be allowed by variance granted by the Commissioner of Environmental Protection.

The purpose of this memo is to request your permission to begin rulemaking to implement the new law. The rulemaking consists of three parts:

- Repeal of Chapter 691, section 3-A, regarding the siting of underground oil storage tanks (USTs) and facilities;
- Re-codification of the UST siting rules in new Chapter 692 governing the siting of both underground and aboveground oil storage facilities; and
- Adoption of new Chapter 700 governing the siting of the other facilities types targeted by the wellhead protection law.

Statutory and regulatory references

- 38 MRSA chapter 13-D (§§1391-1399) [re: wellhead protection].
- 38 MRSA §341-D(1-B) [authorizing the board to adopt, amend or repeal reasonable rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering].
- PL 2007, chapter 569, section 7 [directing the Board of Environmental to adopt rules that restrict the siting of facilities listed in 38 MRSA §1393(1) within significant sand and gravel aquifers mapped by the Maine Geological Survey].

Those sections of proposed Chapters 692 and 700 adopted under the latter rulemaking directive are major substantive and therefore subject to approval by the Legislature prior to final adoption. The remaining provisions of the proposed rules are routine technical. For the sake of expediency

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and to avoid confusion, the department will follow the major substantive rulemaking procedures for the entirety of both chapters.

### Description

Chapter 692 sets forth the proposed rules implementing the wellhead protection law for oil storage facilities. It incorporates the existing rules governing the siting of USTs in mapped aquifers under Chapter 691, section 3-A, which will be repealed. Chapter 700 sets forth the implementing rules for the following facilities: 1) automobile graveyards; 2) auto body shops and automobile maintenance facilities; 3) dry cleaning facilities that use perchloroethylene; 4) metal finishing or plating facilities; and 5) commercial hazardous waste facilities.

Both chapters incorporate the statutory provisions that restrict siting of the targeted facilities within wellhead protection zones, and both establish restrictions for siting the same facilities within sand and gravel aquifers mapped by the Maine Geological Survey. Both also provide for variances from the restrictions in appropriate instances.

### Environmental Issues:

The proposed rules support the implementation of Maine's new 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 purpose mainly by restricting the siting of facilities that, by their nature, pose an unacceptable risk to groundwater quality and therefore should be kept away, if at all possible, from drinking water supplies, including sand and gravel aquifers mapped by the Maine Geological Survey. These aquifers are the most cost effective potential future public water sources for Maine communities fortunate enough to have them but are particularly vulnerable to contamination because of their inherent permeability.

### Department recommendation

The department recommends the Board post Chapter 692 and 700 to public hearing on August 6, 2009 and post the repeal of Chapter 691, section 3-A, for public comment with a comment deadline of July 30, 2009. A hearing on the latter amendment is not recommended given that the repealed rules are to be re-codified in Chapter 692. The department will explain how to request a public hearing in the public notice for this rulemaking.

### Estimated time of presentation:

Approximately 30 minutes.