

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

H.P. 205 - L.D. 281

Resolve, Regarding Legislative Review of Portions of Chapter 692: Siting of Oil Storage Facilities, a Major Substantive Rule of the Department of Environmental Protection

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, a major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 692: Siting of Oil Storage Facilities, a provisionally adopted major substantive rule of the Department of Environmental Protection that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the following changes are made:

1. The rule must be amended in section 2(U) to delete the definition for "same property";

2. The rule must be amended in section 3 to clarify that for the purpose of section 3(A)(2) and section 3(A)(3), the oil storage facility owner is required to notify the local public water utility or other community public water provider, if any, of the owner's expansion or conversion intentions prior to the installation of any tanks;

3. The rule must be amended in sections 3(A)(2), 3(A)(3), 4(A)(2) and 4(A)(3) to remove language authorizing the expansion of an underground or aboveground oil storage facility on parcels contiguous to the facility;

4. The rule must be amended in sections 3(A)(2) and 3(A)(3) to remove language clarifying that fill pipes for product delivery to tanks and the loading and unloading area of bulk plants or other distribution facilities where oil is transferred to tank trucks or railroad cars may not be located closer to private or public drinking water wells than their location prior to the expansion;

5. The rule must be amended in section 3(B) to provide that the Commissioner of Environmental Protection may require an applicant for a variance to provide additional information to be used in making the variance determination;

6. The rule must be amended in section 4(C)(1) to clarify that the Commissioner of Environmental Protection may grant a variance for a proposed facility located on a polluted significant sand and gravel aquifer or other significant sand and gravel aquifer with low potential for use if the proposed facility is located in an urban area of dense commercial or industrial land uses or an area where a public water supply well is unlikely in the foreseeable future and a public drinking water system serves all drinking water users within 1,000 feet of the proposed facility;

7. The rule must be amended in section 4(C)(1) to remove language authorizing the Commissioner of Environmental Protection to grant a variance for a proposed facility located on a polluted significant sand and gravel aquifer or other significant sand and gravel aquifer with low potential for use if the proposed facility is located in an area where a public water supply well is zoned by a municipality specifically for commercial or industrial land uses;

8. The rule must be amended in section 4(D)(1) to provide that the Commissioner of Environmental Protection may require a hydrogeologic evaluation when a proposed facility is located in an area identified by the Department of Environmental Protection as an area with a high likelihood of containing an unmapped, high yield significant sand and gravel aquifer, including, but not limited to, an aquifer associated with a surface water body or containing deep glacial drift deposits or an area with a high likelihood of being used for a public water supply or the expansion of an existing public water utility. This determination must be made based on readily available information and best professional judgment and with input from the local public water utility, if any;

9. The rule must be amended in section 4(E)(4) to clarify the variance requirement that the applicant submit a letter from the municipality in which the proposed facility is located stating that the facility is needed within the community and that the specific location is acceptable to the municipality and to the local public water utility, if any;

10. The rule must be amended in section 4(F) to delete the cross-reference to section 3(B);

11. All necessary grammatical, formatting, punctuation or other technical nonsubstantive editing changes must be made to the rule; and

12. All other necessary changes must be made to the rule to ensure conformity throughout the rule and consistency with the provisions of this section.

The Department of Environmental Protection is not required to hold hearings or undertake further proceedings prior to final adoption of the rule in accordance with this section.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.