Chapter 692: SITING OF OIL STORAGE FACILITIES

SUMMARY: This chapter sets forth restrictions on the geographic location of new oil storage facilities.

**1. Purpose.** The purpose of this chapter is to protect drinking water resources from oil contamination by controlling the location of oil storage facilities consistent with legislative policy under 38 M.R.S. §1391.

**2. Definitions.** The following terms as used in this Chapter have the following meaning:

1. **Aboveground heating oil supply tank.** "Aboveground heating oil supply tank" means an aboveground oil storage tank that is connected directly to an oil-burning heating appliance and is used solely to store heating oil.
2. **Aboveground oil storage facility.** "Aboveground oil storage facility" means any aboveground oil storage tank or tanks, together with associated piping, transfer and dispensing facilities located over land or water of the State at a single location for more than 4 months per year and used or intended to be used for the storage or supply of oil. Oil terminal facilities, as defined in 38 M.R.S. §542(7) are not included in this definition.
3. **Aboveground oil storage tank.** "Aboveground oil storage tank" means any aboveground container, less than 10 percent (%) of the capacity of which is beneath the surface of the ground, that is used or intended to be used for the storage or supply of oil. Included in this definition are any tanks situated upon or above the surface of a floor and in such a manner that they may be readily inspected. Drums or other storage containers that have a capacity of 60 gallons or less and oil-containing electrical equipment are not included in this definition.
4. **Bulk plant.** "Bulk plant" means an intermediate fuel oil distribution facility with truck loading racks.
5. **Chapter 34.** "Chapter 34" means the Department of Public Safety *Rules and Regulations for Flammable and Combustible Liquids*, 16-219 C.M.R. ch. 34.
6. **Chapter 691.** "Chapter 691" means the Department of Environmental Protection *Rules for Underground Oil Storage Facilities*, 06-096 C.M.R. ch. 691.
7. **Commissioner.** "Commissioner" means the Commissioner of the Department of Environmental Protection.
8. **Community drinking water well.** "Community drinking water well" means a public drinking water well that supplies a community water system as defined under 22 M.R.S. §2660-B(2).
9. **C.M.R.** "C.M.R." means the *Code of Maine Regulations*.
10. **Department.** "Department" means the Department of Environmental Protection composed of the Board of Environmental Protection and the Commissioner.

**K. Double-walled tank.** "Double-walled tank" means a tank with inner and outer walls separated by an interstitial space that allows detection and containment of leaks.

**L. Fire marshal.** "Fire Marshal" means the Office of the State Fire Marshal in the Department of Public Safety.

**M. Marketing and distribution facility.** "Marketing and distribution facility" means any underground and/or aboveground oil storage facility where oil is stored for eventual resale.

**N. M.R.S.** "M.R.S." means the *Maine Revised Statutes*.

**O. Oil.** "Oil" means oil, oil additives, petroleum products and their by-products of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other nonhazardous waste, crude oils and all other liquid hydrocarbons regardless of specific gravity. "Oil" does not include propane, liquefied natural gas or other liquefied petroleum that is a gas at ambient temperatures.

**P. Oil storage facility.** "Oil storage facility" or "facility" means an aboveground oil storage facility or an underground oil storage facility.

**Q. Person.** "Person" means any natural person, firm, association, partnership, corporation, trust, the State and any agency of the State, government entity, quasi-governmental entity, the United States and any agency of the United States and any other legal entity.

**R. Private drinking water well.** "Private drinking water well" means a well that is used to supply water for human consumption and that is not a public drinking water well.

**S. Public drinking water well.** "Public drinking water well" means a drinking water supply well for a public water system as defined in 22 M.R.S. §2601(8).

**T. Public drinking water supply.** "Public drinking water supply" means any well or other source of water that furnishes water to the public for human consumption for at least 15 connections, regularly serves an average of at least 25 individuals daily at least 60 days out of the year, or that supplies bottled water for sale.

**U. Significant sand and gravel aquifer.** "Significant sand and gravel aquifer" means a porous formation of ice-contact and glacial outwash sand and gravel that contains significant recoverable quantities of water likely to provide drinking water supplies. For the purposes of this Chapter, surficial deposits with moderate to good potential ground water yield expected to yield 10 or more gallons per minute but no more than 50 gallons per minute are generally defined as moderate yield while surficial deposits with good to excellent ground water yield expected to yield greater than 50 gallons per minute are generally defined as high yield.

**V. Underground oil storage facility.** "Underground oil storage facility" means any underground oil storage tank or tanks, as defined in subsection W, below, together with associated piping and dispensing facilities located under any land at a single location and used, or intended to be used, for the storage or supply of oil, as defined in this Chapter. Underground oil storage facility also includes piping located under any land at a single location associated with above ground storage tanks and containing 10% or more of the facility's volume capacity.

**W. Underground oil storage tank.** "Underground oil storage tank" means any container, 10% or more of its volume being beneath the surface of the ground and which is used, or intended to be used, for the storage, use, treatment, collection, capture or supply of oil as defined in this subchapter, but does not include any tanks situated in an underground area if these tanks or containers are situated upon or above the surface of a floor and in such a manner that they may be readily inspected. For the purpose of this Chapter, "underground oil storage tank" does not include underground propane storage tanks, underground oil-water separators, storm water andemergencycatch basins, and hydraulic lift tanks. An overflow tank associated with an oil-water separator is considered an underground oil storage tank.

**X. Wellhead protection zone.** "Wellhead protection zone" means:

1. In the case of a private drinking water well, the area within 300 feet of the well; and
2. In the case of a public drinking water well, the greater of:
3. The area within 1,000 feet of the well; and
4. The source water protection area of the well if mapped by the Department of Health and Human Services as described under 30-A M.R.S. §2001(20-A).

**3. Prohibition on facilities in wellhead protection zones.** A person may not install or cause to be installed an oil storage facility in a wellhead protection zone. For the purposes of Section 3(A)(2) and (3), the oil storage facility owner shall notify the local public water utility or other community public water provider, if any, of their expansion or conversion intentions prior to the installation of any tanks.

1. **Exceptions.** The prohibition of this section does not apply to:

(1) An underground oil storage facility in existence on September 30, 2001 or an aboveground oil storage facility in existence on September 30, 2008;

(2)The replacement or expansion of an underground oil storage facility in existence on September 30, 2001 or an aboveground oil storage facility in existence on September 30, 2008 as long as the replacement or expansion occurs on the same property. The facility must meet all applicable requirements of Chapter 34 and Chapter 691 and, in the case of replacement, the facility owner:

1. Within 30 days after removal of the existing facility, notifies the Commissioner in writing of the owner’s intent to replace the facility and:
2. If located in an organized area, notice must also be provided to the municipal code enforcement officer; or
3. If located in an unorganized or deorganized area, notice must also be provided to the Office of County Commissioners and the Maine Land Use Planning Commission (LUPC); and
4. Commences construction of the replacement facility within two years and completes construction within five years after removal of the existing facility;

(3)The conversion of an aboveground oil storage facility permitted by the Fire Marshal and in existence on September 30, 2001 to an underground oil storage facility or the conversion of an underground oil storage facility to an aboveground oil storage facility as long as the conversion occurs on the same property. The facility must meet all applicable requirements of Chapter 691 and Chapter 34.

(4) A facility used solely to store heating oil for consumption on the premises;

(5)Facility components, such as buildings and parking lots, that are not designed or intended to contain oil in a liquid or vapor phase; or

(6)The wellhead protection zone of a well located on the same property as the facility and serving only users of that property.

This subsection may not be interpreted to allow the conversion, expansion or replacement of an underground oil storage tank or underground oil storage facility subject to the abandonment requirements of 38 M.R.S. §566-A and Chapter 691 §11.

1. **Variances.** The Commissioner may grant a variance to the prohibition of this section if:
2. In the case of a community drinking water well, a private drinking water well or a well that supplies drinking water to a school, the applicant demonstrates to the Commissioner’s satisfaction that no hydrogeologic connection exists between the proposed facility and the water supply at issue; or
3. In the case of a public drinking water well other than a community drinking water well or a drinking water well supplying drinking water to a school, the Commissioner determines that the engineering and monitoring measures proposed by the applicant exceed regulatory requirements and will effectively minimize the likelihood of drinking water contamination due to the discharge of oil.

In considering whether to grant a variance under this section, the Commissioner may consider the importance of the ground water resource, the hydrogeology of the site and other relevant factors. The Commissioner may require the applicant to provide additional information to be used in making this determination.

**C. Special requirements for heating oil supply tanks.**  Effective July 1, 2009, a person may not install an aboveground heating oil supply tank in the wellhead protection zone of a community drinking water well unless:

1. The tank is a double-walled tank or has secondary containment approved by the Commissioner;
2. The tank and any secondary containment are listed and approved by a nationally recognized, independent testing authority; and
3. The tank is installed by a journeyman or master oil burner technician licensed by the Maine Fuel Board under 32 M.R.S. §2401-B or, in the case of an outside tank serving manufactured housing, by a person licensed by the Maine Fuel Board under 32 M.R.S. §2401 to install such tanks.

The requirements of this subsection do not apply to tanks with a capacity of more than 660 gallons or to tanks at an aboveground oil storage facility with an aggregate tank capacity of more than 1,320 gallons. The requirements of this section are in addition to any other installation standards provided for in law or rule.

**4. Prohibition on facilities on significant sand and gravel aquifers.** A person may not install or cause to be installed an oil storage facility on a significant sand and gravel aquifer mapped by the Maine Geological Survey. This prohibition applies regardless of proximity to a public or private drinking water well.

NOTE: Significant Sand and Gravel Aquifer maps are available at most municipal offices and from the Maine Geological Survey, (207) 287-2801.

1. **Exceptions.** The prohibition of this section does not apply to:
2. An underground oil storage facility in existence on July 1, 2002 or an aboveground oil storage facility in existence on July 1, 2010;
3. The replacement or expansion of a motor fuel or marketing and distribution underground oil storage facility in existence on July 1, 2002 or an aboveground oil storage facility permitted by the Fire Marshal and in existence on July 1, 2010 as long as the replacement or expansion occurs on the same property, the facility meets all applicable requirements of Chapter 691 and Chapter 34 and, in the case of replacement, the facility owner:
4. Within 30 days after removal of the existing facility, notifies the Commissioner in writing of the owner’s intent to replace the facility and:
5. If located in an organized area, notice must also be provided to the municipal code enforcement officer; or
6. If located in an unorganized or deorganized area, notice must also be provided to the Office of County Commissioners and the Maine Land Use Planning Commission (LUPC); and
7. Commences construction of the replacement facility within two years and completes construction within five years after removal of the existing facility;
8. The conversion of an aboveground oil storage facility permitted by the Fire Marshal and in existence on July 1, 2002 to an underground oil storage facility or the conversion of an underground oil storage facility to an aboveground oil storage facility as long as the conversion occurs on the same property and the facility meets all applicable requirements of Chapter 691 and Chapter 34;
9. A facility used solely to store heating oil for consumption on the premises;
10. Facility components, such as buildings and parking areas, that are not designed or intended to contain oil in a liquid or vapor phase;
11. A facility located on a mapped significant sand and gravel aquifer if a site specific hydrogeological investigation shows to the Commissioner’s satisfaction that the location is not on a significant sand and gravel aquifer; or
12. A facility consisting of no more than two double-walled aboveground storage tanks with a total aggregate storage capacity of 1,100 gallons or less on a single parcel of property, provided the tanks are used exclusively to store diesel fuel for heavy equipment used to mine sand and gravel and further provided the tank meets the requirements of subsection B below.

This subsection may not be interpreted to allow the conversion, expansion or replacement of an underground oil storage tank or underground oil storage facility subject to the abandonment requirements of 38 M.R.S. §566-A and Chapter 691 §11.

1. **Requirements for use of diesel fuel supply tanks on mapped significant sand and gravel aquifers.** As provided under subsection A, paragraph 7, the aboveground storage of diesel fuel for equipment used to mine sand and gravel is exempt from the siting prohibition of this section provided:
2. The oil storage facility is part of amining operation for sand and gravel licensed in accordance with 38 M.R.S. §§ 481 through 490 and 490-A through 490‑K;
3. The tank is not located on a portion of the significant sand and gravel aquifer mapped as a high potential aquifer with a yield exceeding 50 gallons per minute; and
4. The tank is not located in a wellhead protection zone as defined by this Chapter;

**NOTE:** As resources allow, the Department may be able to assist a facility owner or operator in the determination of the GIS location of the proposed new tank location to determine if a proposed tank location qualifies for this exemption. Any request for assistance should be made at least 10 business days in advance of the planned installation date on the notification form.

1. The tank is an aboveground, double-walled tank with continuous interstitial space monitoring for leaks and installed in accordance with the following standards:
2. The tank must be listed and constructed in accordance with Underwriters Laboratories Standards 142, 2080 or 2085;
3. No product piping runs are associated with the tank, and the dispenser is located directly on the tank;
4. The tank is equipped with an audible overfill alarm that alerts the operator when the tank is 90% of capacity, equipment that automatically shuts off the flow of the fuel when the tank is 95% or less of total capacity, and a visual product level gauge. Such equipment shall be installed by a manufacturer’s certified representative or a Maine certified underground oil storage tank installer;
5. Tanks and the vehicle fueling areas are located on a single impervious concrete pad or a continuous asphalt pad treated with a petroleum compatible polymer based sealant, installed and maintained in accordance with manufacturer instructions. The pad is to be of adequate size to allow for the clean up of small spills before reaching surrounding soils; and

(e) The tank and all other facility equipment are installed in accordance with the manufacturer’s instructions and the rules of the Office of the State Fire Marshal in the Department of Public Safety adopted in accordance with 25 M.R.S. §2482, including but not limited to, maintaining a minimum of a 25-foot setback from all buildings, property lines and public roads.

1. The oil storage facility (i.e., tank, tank appurtenances and fueling area) is operated and maintained in accordance with the following requirements:
2. Evidence of a leak in the tank, including fuel in the tank interstitial space as indicated by the leak detection system, must be reported to the Department within 24 hours of discovery.
3. The facility must be inspected for spills on days when it is in operation receiving or dispensing fuel and a written log or other documentation of the inspections must be maintained at the facility or the owner or operator’s normal place of business for up to three calendar years, with the date and findings of each inspection and initialed by the person conducting the inspection.
4. All oil spills and discharges must be reported to the Department within 2 hours of discovery, and immediately cleaned up to the Commissioner’s satisfaction.

**NOTE:** Oil spills may be reported 24 hours a day at 1-800-482-0777

1. The overfill protection and prevention devices must be operated and maintained in accordance with manufacturer instructions;
2. The facility owner or operator shall require fuel delivery personnel to: check in with the on-site representative of the owner or operator before filling a tank to verify the quantity ordered and the tank’s ability to receive that volume; remain with the delivery vehicle and monitor filling of the tank; check that hose lines are properly connected and disconnected at the start and completion of the filling operation; inspect the filling area for spills; and report spills to the facility on-site representative. The facility owner and operator shall further ensure that delivery personnel know what procedures to follow in the event of an overfill or other spill; and
3. A passing annual inspection of the facility must be submitted to the Department by July 1, 2013 and each year thereafter. The inspection must include, but is not limited to, certification that the overfill protection and prevention equipment and leak detection monitoring is operating properly. Any deficiencies discovered must be corrected prior to the annual July 1 inspection report submission deadline. The inspection must be conducted in accordance with the equipment manufacturer instructions and signed by a qualified representative of the facility owner or operator. The inspection results must be recorded and submitted on a form provided by the Commissioner.
4. The tank owner or operator submits a signed written notice and certification of compliance at least 24 hours prior to installation using a form provided by the Commissioner for that purpose and including, at a minimum, the name and contact information for the facility’s owner and operator, the tank GIS location, driving directions, the number of tanks and the maximum volume of each tank. The notice and certification may be provided on the day of installation if the installation is necessitated by any of the following:
5. An act of war;
6. An act of God, meaning an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency; or

(c) The proclamation of an emergency pursuant to 38 M.R.S. §547. The tank owner or operator shall submit an amended notice and certification of compliance within 5 business days of a change in the information provided on the form and within 5 business days of moving a tank between locations that previously have been certified as in compliance with this subsection.

1. The tank is properly abandoned if it is out of service or intended to be out of service for 24 or more consecutive months, including:
2. Removal of all diesel fuel from the tank;
3. Removal of the tank;
4. Proper disposal or re-use of the tank;
5. Written notification to the Commissioner 10 business days prior to abandonment; and
6. Completion and submission of an environmental site assessment to determine the presence of oil contamination within 30 days of the transfer of ownership, or a change from a mining operation to another land use, of the parcel upon which the tank was located. The site assessment shall be stamped by a Maine certified geologist, Maine licensed professional engineer, or a geologist or engineer otherwise in compliance with Maine’ professional regulation statutes. The site assessment must be conducted to the satisfaction of the Commissioner and must include adequate soil sampling and analyses representative of soil conditions immediately surrounding and underlying the facility and sufficient to determine if any contamination is a risk to ground water. Soil analyses must be conducted using a field method approved by the Commissioner and confirmed with a laboratory soil analysis from soil with the highest field readings. Laboratory samples are to be analyzed by a laboratory method approved by the Commissioner and by a laboratory certified by the State of Maine to conduct this analysis.
7. **Variance for polluted significant sand and gravel aquifers and other significant sand and gravel aquifers with low potential for use.** The Commissioner may grant a variance to the prohibition of this section if the proposed facility meets the design standards of section 5 and the Commissioner finds that the aquifer has a low potential for future use as a public or private drinking water supply because one of the following circumstances applies:
8. 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;
9. The proposed facility is located in an area where the installation of drinking water supply wells within 1,000 feet of the proposed facility site is prohibited by property deed restrictions, municipal land use ordinance or a zoning rule of the Maine LUPC; or
10. The applicant has submitted hydrogeological studies or ground water quality testing data demonstrating to the Commissioner’s satisfaction that:
	1. The significant sand and gravel aquifer is polluted with one or more man-made contaminants in concentrations exceeding federal maximum contaminant levels (MCLs) or an MCL or maximum exposure guideline (MEG) established by the Maine Center for Disease Control and Prevention; and
	2. The significant sand and gravel aquifer 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 significant sand and gravel aquifer to a quality suitable for human consumption.
11. **Variance for moderate yield significant sand and gravel aquifers.** The Commissioner may grant a variance to the prohibition of this section if the applicant demonstrates to the Commissioner’s satisfaction that:
12. The significant sand and gravel aquifer is mapped by the Maine Geological Survey as generally yielding 10 or more gallons per minute but no more than 50 gallons per minute or the applicant has determined, and the Commissioner has concurred, that the ground water yield of the aquifer at the proposed facility location generally yields 10 or more gallons per minute but no more than 50 gallons per minute as confirmed by conducting a Commissioner-approved hydrogeological evaluation in accordance with Appendix A.

The Commissioner may require a hydrogeologic evaluation, as defined in Appendix A of this rule, when a proposed facility is located in an area identified by the Department as an area with a high likelihood of containing an unmapped, high yield significant sand and gravel aquifer, including but not limited to aquifers 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 will be made based on readily available information and best professional judgement and input from the local public water utility, if any; and

1. The proposed facility meets the design standards of section 5.
2. **Variance for municipalities located on high yield significant sand and gravel aquifers.** The Commissioner may grant a variance to the prohibition of this section if the applicant demonstrates to the Commissioner’s satisfaction that:
3. The majority of the land area of the municipality or town center is located on a high yield significant sand and gravel aquifer as delineated by Maine Geological Survey mapping or a Commissioner-approved hydrogeological evaluation conducted in accordance with Appendix A;
4. The proposed facility meets the design standards of section 5;
5. The facility is staffed at all times when oil is being pumped; and
6. The municipality submits a letter stating that the facility is needed within the community and the specific location is acceptable to the municipality and the public water utility, if any.

**F. High yield significant sand and gravel aquifers; variance prohibited.** Except for sections 4(C) or 4(E), the Commissioner shall not grant a variance from the prohibition of this section if any part of the proposed facility site overlies a mapped significant sand and gravel aquifer that has good to excellent potential ground water yield, generally exceeding 50 gallons per minute. High yield significant sand and gravel aquifers include:

1. Any area designated on a Maine Geological Survey map as a significant sand and gravel aquifer with good to excellent yield~~s~~ of greater than 50 gallons per minute;
2. An aquifer or ground water resource protection zone as designated in a municipal ordinance or a LUPC zoning rule;
3. The source water or recharge area of a community public drinking water system supply well, including a well that is in the process of being developed, or areas within 1,000 feet of such a well, whichever is greater, provided the significant sand and gravel 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
4. A portion of a mapped significant sand and gravel aquifer that, based on a borehole test conducted in the center of a proposed facility site and in accordance with Appendix A of this Chapter, is expected to yield more than 50 gallons per minute.

**NOTE:** If the applicant believes that a high yield significant sand and gravel aquifer, as listed above, has been incorrectly mapped or identified, the applicant should engage the entities responsible for that mapping or identification regarding appropriate changes.

**5. Design standards.** The design of a proposed facility granted a variance under sections 3(B), 4(C), 4(D) or 4(E) must meet the requirements of this section.

1. The facility must be designed, installed, operated and monitored with a combination of leak detection and spill prevention equipment, discharge monitoring equipment, or other engineering, operational and monitoring measures that collectively are more stringent than state and federal requirements as determined by the Commissioner to effectively minimize the risk of oil discharges and the likelihood of future ground water contamination; and

**NOTE:** The following are examples of an acceptable combination of leak detection and spill prevention equipment and discharge monitoring equipment: overfill alarms and positive shut-off devices, remote leak detection alarms, electronic solenoid valves, pump shut-off probes with telemetry, electronic line leak detectors, and concrete pads in tank refueling areas.

1. The facility must implement a Commissioner-approved facility-specific communication and training program to address potential catastrophic releases due to equipment failure, delivery accidents and human error.

**6. Variance procedure.** Processing of applications for a variance under sections 3 and 4 including, but not limited to, application requirements, public notice, and appeal procedures, are governed by the Department’s *Rule Concerning the Processing of Applications and Other Administrative Matters*, 06-096 C.M.R. ch. 2, except as specified below.

1. **Application requirements.** Requests for variance from the siting restrictions of this Chapter must be submitted in writing on forms provided by the Commissioner. In addition to the information required under Chapter 2 §11, the application must include at a minimum the following information:
2. The registration materials required under Chapter 691 §4;
3. The names and mailing addresses of all abutters to the property on which the facility is proposed;
4. 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;
5. 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 Universal Traverse Mercator (UTM) system. The datum system used is the NAD83 (North American Datum 1983) version.

1. If a variance is sought under section 3(B) or (C) of this chapter, 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 must be accurately shown on the land use map; and
2. If a variance is sought under sections 3(B), 4(C), 4(D) or 4(E) of this chapter, facility design meeting the standards of section 5 and a narrative explaining how the enhancements will effectively minimize the risk of oil discharges and the likelihood of future ground water contamination.

**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.

1. **Public notice.** Within 30 days before filing an application, the applicant shall provide notice by certified mail of the application:
2. 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 LUPC director if the facility is proposed in an unorganized or deorganized area;

(2) To the local public water utility or other community public water provider, if any;

1. To abutters of the property on which the facility is proposed;
2. To other interested persons who have requested in writing of the Commissioner to receive materials related to a particular application; and

(5) 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 §14(A), including, but not limited to, a statement that public comments on the variance application may be provided to the Department.

1. **Public meeting.** In lieu of, or in addition to, holding a public hearing on a variance application as provided under Chapter 2 §7, the Commissioner may hold a public informational meeting where deemed appropriate for the applicant to provide information about the variance request to interested persons. 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 LUPC director and appropriate county commissioners if the facility is proposed in an unorganized or deorganized area) and other interested persons who have requested in writing of the Commissioner to receive materials related to a particular application.
2. **Decision; appeal.** The Commissioner may deny a variance request or approve the request with or without conditions. The decision must be in writing with findings sufficient to explain the basis of the decision. A copy of the decision 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 LUPC director and county commissioners if the facility is proposed in an unorganized or deorganized area). 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, as provided under 38 M.R.S. §341‑D(4)(A) and Chapter 2 §24.
3. **Transfer of Variances.** Variance approvals are not transferrable unless the Department approves

a license transfer pursuant to Chapter 2 and applicable law.

**APPENDIX A**: Determination of the Water Supply Potential of a Proposed New Oil Storage Facility on a Mapped Significant Sand and Gravel Aquifer

If the proposed facility site falls within a significant sand and gravel aquifer mapped as potentially yielding 10 or more gallons per minute (gpm) but no more than 50 gpm (moderate yield) or more than 50 gpm (high yield), the applicant may implement a Commissioner-approved hydrogeological evaluation to verify the actual aquifer yield at the location of the proposed facility.

The hydrogeological evaluation must determine to the Commissioner’s satisfaction the well yield from a properly constructed well in the sand and gravel aquifer beneath the site. The hydrogeological plan and associated fieldwork must be completed by a Maine-certified geologist with demonstrated experience in hydrogeology. A written report, signed and certified by the Maine-certified geologist supervising the work, must be submitted to the Department for review and approval.

The Sand and Gravel Aquifer Mapping Program at the Maine Geological Survey has used a single-borehole evaluation to estimate the projected long-term yield of aquifers. The techniques are described on pages 15 to18 of Maine Geological Survey Open File No. 98-2, Hydrogeology and Water Quality of Significant Sand and Gravel Aquifers in Parts of Piscataquis and Somerset Counties, Maine, 1998, Nichols, W. J., Neil, C. D., Locke, D. B. and Foley, M. E. (authors). Using this method, a single borehole is advanced to the bedrock surface with continuous soils sampling. Geological information including material observations and aquifer thickness, along with the grain size analysis of the representative soilsin the overburden is used to calculate the aquifer transmissivity and to estimate the long-term yield of a well at that location. The Commissioner may consider other methods of aquifer evaluation based on the available hydrogeologic data of the aquifer if the data is considered to be applicable to the site under consideration.

NOTE: Copies of the above referenced technical document are available from the Department or the Maine Geological Survey.

STATUTORY AUTHORITY:

 38 M.R.S. §§ 341-H and 1400; Public Laws 2007, chapter 569, §7; Resolves 2011, chapters 26 and 149

EFFECTIVE DATE:

 April 24, 2010 – filing 2010-104

 April 24, 2012 – filing 2012-109 (EMERGENCY)

 July 23, 2012 – filing 2012-206

 August 7, 2019 – filing 2019-116