

Rulemaking Fact Sheet

(5 MRSA §8057-A)

AGENCY: Department of Environmental Protection

DEPARTMENT CONTACT:

Mark Margerum
Maine Dept. of Environmental Protection
17 State House Station
Augusta, ME 04333
(phone) 207-287-7842
(fax) 207-287-7826
(email) mark.t.margerum@maine.gov

CHAPTER NUMBER and TITLE:

Chapter 373 Financial Capacity Standard of the Site Location Law
Chapter 375 No Adverse Environmental Effect Standard of the Site Location Law
Chapter 380 Long-Term Construction Projects (Site Law)

STATUTORY AUTHORITY: 38 M.R.S.A §§ 341-D(1-B), 343, 485-A(1-C)

DATE AND PLACE OF PUBLIC HEARING:

9:00 AM
October 15, 2015
Augusta Civic Center
Augusta, Maine

COMMENT DEADLINE:

October 26, 2015

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

The Department is proposing a suite of three rulemakings to update and incorporate new provisions in its Site Location of Development Law (Site Law) permitting program. The Site Law (38 M.R.S.A. 481 et. seq.) requires review of developments that may have a substantial effect upon the environment. These types of development have been identified by the Legislature, and include developments such as projects occupying more than 20 acres, large structures and subdivisions, and oil terminal facilities. A permit is issued if the project meets applicable standards addressing areas such as stormwater management, groundwater protection, infrastructure, wildlife and fisheries, noise, and unusual natural areas.

The Department is proposing the following rulemakings:

Chapter 373. Chapter 373 establishes “financial capacity” and “technical ability” standards for projects under the Site Location of Development Law. The Department is proposing to update the requirements for financial capacity and technical ability to reflect changes in

nomenclature and Department practices since the rule was adopted in 1979, remove surplus language, provide greater clarity as to how an applicant may satisfy the requirements of this Chapter, and provide examples of common terms and conditions applied to Site Location Law permits issued by the Department. The Department is also proposing to reallocate sections currently in Chapter 373 addressing environmental matters (e.g., adequate provision for solid waste disposal) from the existing Chapter 373 to Chapter 375, which deals with environmental standards under Site Location Law.

Chapter 375. Chapter 375 establishes the Department's scope of review in determining an applicant's compliance with the "no adverse effect on the natural environment" standard of the Site Law (38 M.R.S.A. Section 484(3)); the information an applicant must submit (when appropriate), and the terms and conditions the Department may impose on the approval of an application to ensure compliance with the standard. As part of its Site Law rulemaking effort, the Department is proposing to amend its Chapter 375 rules to incorporate updated requirements that are currently contained within Chapter 373. These standards, which address solid waste, the control of odors and the procurement and maintenance of sufficient and healthful water supplies are more appropriately contained within Chapter 375, since they address environmental impacts.

Chapter 380. The proposed Chapter 380 would repeal and replace the existing Chapter 380 Planning Permit rule with a new rule describing requirements associated with long-term construction projects permitted under the Site Location of Development Law. The proposal also provides a process for a development issued a planning permit under the original Chapter 380 Planning Permit rule to receive approval under the new Chapter 380 Long-Term Construction Projects rule.

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

These amendments will not significantly alter the manner in which the Department administers the Site Location Law. The proposed amendments to Chapters 372 and 375 will update and clarify the provisions regarding financial and technical ability, and reallocate environmental provisions to Chapter 375 where they more logically belong. The repeal and replacement of Chapter 380 will be in fulfillment of the legislative directives established in statute at 38 M.R.S. A. §485-A(1-C).

FISCAL IMPACT OF THE RULE:

The proposed amendments to the Chapter 373 (Financial Capacity) rules may have an indeterminate, but potentially minor negative fiscal impact on the regulated community as they must demonstrate they have the financial capacity to design, construct, operate, and maintain the development in a manner consistent with state environmental standards and the provisions of the Site Law. While this will not increase the cost of the project, the requirement of the demonstration of that fiscal capacity may be perceived as an increased burden.

The proposed amendments to Chapter 375 (No Adverse Environmental Effect) are not expected to have a fiscal impact.

The proposed Chapter 380 (Long-Term Construction Projects) rules are expected to provide a significant cost-savings for some applicants, as owners and operators of phased-in projects may avoid the need for frequent permit amendments and project delays.

BRIEF SUMMARY OF INFORMATION CONSIDERED DURING RULE DEVELOPMENT:

In developing the draft proposals, the Department considered feedback received during a 2009 and 2010 stakeholder process and the experience of Department staff in administering the Site Location Law.

FOR RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:

BENEFITS OF THE RULE: