

Filing No. 2017-11

**CERTIFICATION OF OFFICIAL TEXT TO ADOPT AN ORDINANCE
BY THE SELECT BOARD OF THE TOWN OF RUMFORD
[30-A M.R.S. ' 3002(2)]**

**Adopt Chapter 55
Ordinance Governing the Large Scale Extraction of Ground Water by Aquifer-
Dependent Industries from Aquifers within the Town of Rumford, Maine**

To: **BETH BELLEGARDE**, *Town Clerk*:

We hereby certify to you that the document to which we have affixed this certificate is a true copy of the official text for a proposed amendment of the ordinance entitled **Chapter 55, Ordinance Governing the Large Scale Extraction of Ground Water by Aquifer-Dependent Industries from Aquifers within the Town of Rumford, Maine** approved by the Select Board and which is to be presented to the voters for their consideration on June 13, 2017.

Pursuant to 30-A M.R.S. ' 3002(2), you will retain this copy of the complete text of the proposed ordinance amendment as a public record and make other copies available for distribution to the voters, and you will ensure that copies are available at the Town Meeting/Polling Places on the day of the vote.

Dated: March 2, 2017

SELECT BOARD OF THE TOWN OF RUMFORD



JEFFREY STERLING, Chair

MARK N. BELANGER, Vice-Chair

Michael Peter Chase

M. PETER CHASE, Selectperson



JAMES WINDOVER, Selectperson

CMB

CHRISTOPHER BRENNICK, Selectperson

CHAPTER 55
Ordinance Governing the Large Scale Extraction
of Ground Water by Aquifer-Dependent Industries from
Aquifers within the Town of Rumford, Maine

Section I – Purpose

The purpose of the Ordinance Governing the Large Scale Extraction of Ground Water, by Aquifer-Dependant Industries from Aquifers within the Town of Rumford, Maine (“the Ordinance”) is to protect the quality and quantity of ground water located wholly or partially within the Town of Rumford (“the Town”), to insure that any large scale water extraction is subjected to prior review and approval so as to establish the ongoing sustainability and quality of said water supplies and the avoidance of any interruption or degradation of water quality and quantity to members of the general public within the Town, and generally to protect the health, safety and welfare of persons dependent upon such water supplies.

Section II – Authority

This Ordinance is adopted and enacted pursuant to the Maine Constitution, Article VIII, Part Second, Section 1, 30-A M.R.S. §§ 3001 *et seq.* (“Municipal Home Rule”), and all other applicable State laws and Town ordinances.

Section III – Definitions

Words and phrases, unless their context requires otherwise, shall be defined as follows: first, as set forth below; second, in accordance with their generally accepted technical meaning within the involved scientific disciplines; third, as defined by Maine Statutes; and fourth, their common dictionary definition.

- (A) **Aquifer** means an underground body of earth, sand, gravel, or rock that contains sufficient saturated permeable material to conduct and yield economically significant quantities of ground water to wells and springs. The term “aquifer” as used in this Ordinance includes all areas specifically mapped or identified on Maine Geological Survey Significant Sand and Gravel Aquifer Maps, as ground water aquifers.

- (B) **Aquifer-dependent industry** means a commercial or industrial water extraction facility and water bottling facility that involves the extraction of ground water in an amount greater than 5,000 gallons in any day and is subject to the provisions of 35-A M.R.S. § 6109-B. The term “aquifer-dependent industry” as used in this Ordinance includes, but is not limited to, accessory uses such as wells, springs, water storage tanks, water treatment, packaging and shipping, piping, and pumping stations, and all structures and utilities needed to house or accommodate such accessory uses for the purpose of the resale of water outside the municipal boundaries of Rumford.

- (C) **Extraction** (or “water extraction” or “extraction of water”) means withdrawal, removal, diversion, taking, or collection by any means of water from ground water sources,

aquifers, springs, wells, pumps or similar.

- (D) **Extraction point or extraction facility** means the physical location where water is extracted, whether by well, pump, pipeline, catchment, or other similar method.
- (E) **Ground water** means underground water located in an aquifer or unconsolidated sediment or rock below the water table.
- (F) **Large scale water extraction** means extraction of water from ground water sources, aquifers, springs, wells or similar resources in a total daily amount on any given day of 5000 gallons or more, as extracted by the same individual or entity, or consortium or association of individuals or entities, regardless of the number of extraction facilities utilized, for the purpose of the resale of water outside the municipal boundaries of Rumford.
- (G) **Reviewing authority** (or “reviewing agency,” “Selectboard” or “Board”) are used interchangeably in this Ordinance and have the same meaning, all referring to the Municipal Officers (Selectboard) of the Town of Rumford, Maine.
- (H) **Water bodies or surface water(s)** means lakes, ponds, river, streams, wetlands and similar.
- (I) **Water table** means the underground water surface at which the pressure is equal to that of the atmosphere. The water table changes throughout the year in response to precipitation recharge and the level of nearby surface waters. The water table fluctuates naturally in response to recharge by precipitation and discharge to surface water.
- (J) **Zone of contribution** means that area of an aquifer that contributes water to a well or other extraction point under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at approved yield with no recharge from precipitation). It is bounded by the ground water divides that result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases the zone of contribution shall extend up gradient to its point of intersection with prevailing hydrogeologic boundaries (a ground water flow divide, a contact with till or bedrock, or a recharge boundary).

Section IV – Large Scale Water Extraction by Aquifer-Dependent Industries

(A) Permit Required

The daily (meaning on any given day) extraction of more than 5000 gallons of ground water by an aquifer-dependent industry, regardless of the number of extraction facilities utilized, shall require a written permit issued by the Selectboard under this Ordinance, whose jurisdiction and authority shall be exclusive with respect to the issuance or denial of any such permit, including permit conditions pertaining to such extraction and/or transport of water so extracted within the geographic limits of the Town of Rumford, after public hearing and opportunity for public comment. This permit can be issued for any area

or areas within the Town of Rumford, subject to other Town ordinances.

(B) Inapplicability

The requirement of review and approval under this Ordinance shall not apply to extraction of water which is to be used within the Town of Rumford for: (1) standard agricultural purposes; (2) drinking water and domestic water supply to private residences; (3) public facilities; (4) fire suppression; or (5) any other domestic, sanitary, commercial, and industrial purpose within the Town of Rumford to the limit of historical use which exist as of the date of the adoption of this Ordinance.

(C) Application Requirements

The application shall be in writing and be accompanied by site plans prepared by a licensed surveyor, licensed engineer, or similar appropriately licensed professional. Any application shall be accompanied by an application fee payable to "Town of Rumford" for each proposed extraction point, in accordance with the following schedule:

- i. Initial application = \$500.00
- ii. Amended application = \$250.00

The application shall include:

- (1) Evidence of the Applicant's right, title, and interest in and to the property(ies) from which the water is to be extracted. If such evidence is other than outright ownership and title as evidenced by a deed duly recorded in the Oxford County Registry of Deeds, the entire document/documentation (other than reference(s) to purchase price and financing terms, which may be redacted) whether by lease, option, contract, or otherwise establishing right, title, and interest shall be submitted with the application.
- (2) A statement of the total maximum daily quantity of water to be extracted, from all extraction points operated by the same individual or entity, or consortium or association of individuals or entities.
- (3) The location(s) of the points of extraction.
- (4) The method(s) of extraction.
- (5) The proposed use for which the water is to be extracted, including the identity of any end user of the extracted water whose facilities for use, processing, transporting, storage, bottling, sales, or other similar activities are located outside the Town of Rumford.
- (6) A copy of all required state and federal permit applications, when filed, including, but not limited to, permit applications as required by 22 M.R.S. §§ 2660 *et seq.* (transport of water for commercial purposes) and under applicable Department of Human Services and Department of Environmental Protection rules and regulations. A copy of these applications will be submitted at least thirty (30) days prior to a public hearing being held by the Selectboard on the application. Any approval by the Board shall include a condition requiring compliance with all requirements of all required state and federal permits.

(7) A written hydrogeologic investigation report stamped by a Maine-Certified Geologist or Maine Registered Professional Engineer. The report shall be based on a hydrogeologic investigation of sufficient detail to provide the following information:

- a. A map of the entire topographic drainage basin upgradient of the water extraction site(s) showing the basin boundaries, sub-basin boundaries that may be of significance to the recharge of the water extraction site(s), and the location of the extraction site(s).
- b. Two maps of the aquifer as specified below showing the spring(s), well(s), or excavation(s) from which water is to be extracted; and wetlands, and surface water bodies within 2,000 feet of the extraction site(s). These maps shall be at an appropriate scale to depict topographic contours at an interval of twenty (20) feet or less. The two maps shall show the following information, respectively: 1) water table contours under ambient conditions, and 2) water table contours under actual pumping conditions at the completion of a five day constant rate pumping test at a rate at or above that proposed for operation. These maps shall be based on water table elevation measurements from monitoring wells and surface water bodies in the vicinity of the extraction site(s), and must include estimated surface water elevations for more distant locations. Nothing in this paragraph shall require an applicant to include other than public information for land not owned by the Applicant.
- c. A map showing the long-term zone of contribution to the extraction site(s) based on maximum proposed extraction rates, and a quantitative water budget analysis that includes precipitation input, evapotranspiration losses, surface water runoff, ground water flux, and discharge-recharge relationships between surface water and ground water.
- d. Two scaled geologic cross-sections showing geologic characteristics of the aquifer and ground water and surface water elevations at and adjacent to the water extraction site(s).
- e. Predictions of the effects of long-term water extraction on: local and regional ground water levels; wetlands; pond or lake levels; base flow in streams; and any water quality changes in ground water and in surface water due to the proposed use.
- f. The aquifer characteristics including a detailed description of geologic materials, hydraulic conductivity and transmissivity, average daily, monthly, and annual extraction rates.

(8) Traffic.

- a. A statement of the estimated number (for the AM and PM peak hours) and loaded weight of all truck trips, including but not limited to empty and loaded vehicles transporting bulk or bottled water and packaging materials.

- b. A statement of the estimated number (for the AM and PM peak hours) of all non-truck trips.
 - c. A statement of the hours during which vehicular traffic is expected and how traffic volume is anticipated to vary by time of day and season.
 - d. A reasonable projection of all anticipated routes (Town and State) of all vehicles transporting bulk or bottled water.
 - e. A copy of the Traffic Movement Permit application filed under Chapter 305 of the Maine Department of Transportation Regulations (“Rules and Regulations Pertaining to Traffic Movement Permits”); such application shall include those studies and reports required under Chapter 305 and prepared, certified, and sealed by a Maine traffic engineer, including those applicable requirements set forth in Section 7 of Chapter 305, as may be amended. Where Chapter 305 provides discretion to the MDOT to waive submittal requirements, the Selectboard shall, after conferring with its traffic consultant, determine whether it will require the submittal.
- (9) A written statement of sound from routine operations, maintenance operations, and construction (both daytime and nighttime), expected to be generated by the proposed use, and an assessment of the anticipated noise levels at property lines.
- (10) A statement of the artificial lighting anticipated for the proposed use, and an assessment of the impact of lighting at property lines.

The application shall also be accompanied by:

- (1) Written notification of the application and an explanation of the intent, scope, and location of the proposed water extraction in terms readily understandable to a layman to be addressed and mailed to, via certified mail, return receipt requested, to the following:
- a. The owners of record of all parcels of land lying on or within 500 feet of the long-term zone of contribution to the extraction site(s) cited in the application.
 - b. For purposes of these notification requirements an applicant is entitled to rely on the information on file at the Rumford Town Office as represented by its most recent assessors’ maps and the mailing addresses maintained by the Town as to the owners of the affected parcels shown thereon. Actual posting of the certified mail notices is not required until the application is declared or deemed to be complete.
- (2) A small scale site plan depicting at least the following:
- a. The limits (outside perimeter) of the aquifer or other water source cited in the application, and the bounds of the land used by the Applicant.
 - b. The location of the extraction site(s).

- c. The existing network of public or private roads leading to or by the extraction point(s).
- d. Any proposed new roads or driveways to be constructed for access to and egress from the extraction point(s), and the point(s) of intersection of such proposed roads or driveways with existing roads.
- e. Any existing or proposed utility lines to be utilized in the extraction operation(s).
- f. The location and type of monitoring and test wells.
- g. Any existing or proposed pipes, roads, highways, easements or rights of way, pipelines, aqueducts or similar infrastructure that are intended to facilitate transport of extracted water from the extraction point(s) towards the intended end user, if any part of the extracted water is ultimately to be transported outside the geographic limits of the Town of Rumford. To the extent any proposed transport of extracted water will utilize, cross, or merge with state highway, town roads, or public easements, a detailed disclosure of the traffic routes to be employed, the types of vehicles to be utilized, the loaded weight of the vehicles to be used, and the number of daily vehicle trips (both arrivals and departures at any load out station(s)) shall be included on the plan, or appended to the plan in a narrative or tabular format as appropriate.
- h. Any other relevant and material detail(s) bearing on the proposed extraction process, the omission of which would tend to hinder the ability of the reviewing authority, affected land owners, or the public from developing a full understanding of the scope and impact of the proposal.

(3) A large scale site plan depicting at least the following:

- a. A detailed plan of the extraction point(s) including, without limitation, well heads, pumping facilities, monitoring or test wells, buildings, sheds, paving, vehicular drives, parking and turn around, utility lines, fencing, access roads or driveways, elevation and contour lines.
- b. Any other relevant and material detail(s) bearing on the proposed extraction process, the omission of which would tend to hinder the ability of the reviewing authority, affected landowners or the public from developing a full understanding of the scope and impact of the proposal.

(D) Application Process

- (1) Five (5) copies of the entire application, including studies, reports, site plans and all other items referred to in Article IV (C) above shall be submitted to the Selectboard.
- (2) The Selectboard shall have thirty (30) days from the date of submission to conduct a preliminary review of the application solely for the purpose of determining whether the application is complete as required by this Ordinance. For good cause shown, and upon

receipt of confirmatory independent technical advice, the Selectboard may waive one or more of the application details upon a determination that such details are unnecessary, unobtainable as a practical matter, or duplicative and that such waiver would not tend to hinder the ability of the Board, affected landowners, or the public from developing a full understanding of the scope and impact of the proposal.

- (3) If within said thirty (30) day period the Selectboard deems the application incomplete in any material or relevant respect it shall so inform the Applicant by the best practical means, either by writing or verbally at a regularly scheduled meeting of the Board at which the Applicant or its duly authorized representative is present, after which the Applicant shall have a period of time not to exceed sixty (60) days to complete its application in accordance with this Ordinance, upon failure of which the application shall be deemed withdrawn.
- (4) If by the end of said thirty (30) day period for review for completeness the Selectboard has not informed the Applicant the application is incomplete it shall as a result be deemed complete, in which case the Board shall schedule a public hearing on the application at a date not later than sixty (60) days from the date the application was originally submitted, or not later than sixty (60) days from the date a supplemented application originally deemed incomplete, was reviewed for completeness and declared (or deemed by the passage of a thirty (30) day period) complete.
- (5) Any review of the application by the Selectboard or its agents for completeness is preliminary only and is not to be deemed a substantive review, and confers no vested rights upon the Applicant or under the application. Substantive review shall not be deemed to occur until the convening of a public hearing on the application under this Ordinance.
- (6) The Applicant's obligations of written notification via certified mail of property owners as set forth above shall not accrue until the application is declared or deemed complete under this Ordinance.

(E) Review Process; Hearing Process

- (1) The completed application shall be reviewed by the Selectboard at a public hearing convened for that purpose, pursuant to fifteen (15) days' published notice in a newspaper of general circulation within the Town of Rumford and posting of notice at three (3) conspicuous public places within the Town, and upon confirmation on the hearing date that certified mail notice has been sent to all affected landowners as previously set forth in this Ordinance.
- (2) The Selectboard shall be entitled to adopt whatever procedural rules for the hearing, including the imposition of reasonable time limits for the presentations of the Applicants, opponents, and the general public deemed appropriate, fair, and reasonably calculated to afford full consideration of the issues pertaining to the application.

(F) Extension or Modification of Time Limits

For good cause shown, the Selectboard may extend or modify any of the deadlines or timelines above so as to reasonably accommodate the demonstrated needs of the Applicant, intervenors, opponents, the public, or the Board, so long as such extension or modification does not materially prejudice the substantial rights or interests of any person or aquifer-dependent industry applicant.

(G) Selectboard's Decision

Upon the adjournment of the public hearing the Selectboard shall schedule a public session of the Board, to occur not later than thirty (30) days from the final adjournment of the public hearing, to deliberate and render a decision.

The Selectboard's decision may be:

- (1) To approve the application;
- (2) To deny the application; or
- (3) To approve the application conditionally, with conditions or stipulations upon the satisfactory completion of which the application will be finally approved, provided however, any approval (conditional or unconditional) shall require the Board's determination that the Applicant has satisfied all of the performance standards set forth below, and shall further be subject to any alert levels and action levels as determined in the section immediately following.
- (4) Any approval shall specify that it is only for a daily extraction total not exceeding the maximum daily quantity set forth in the application, nor exceeding the specified aggregate monthly and annual total calculated thereby, and any increase in such daily totals or aggregate monthly and annual totals shall require further application and review in accordance with this Ordinance.
- (5) The Board shall issue a written decision with findings of fact and rulings and conclusions not later than thirty (30) days from the date on which it votes at a public session to approve, deny, or approve with conditions, and a copy of such written decision shall thereupon promptly be provided to the Applicant, and otherwise be available publicly.

(H) Action and Alert Levels

Any approval issued hereunder must contain action level(s), to be based on the best hydrogeologic monitoring analysis and modeling available at the time of approval. Permit holders under this Ordinance must share all hydrogeologic monitoring data, analysis, and modeling of water extraction activities with the Town of Rumford, both before and after the issuance of a permit.

The action levels shall, where possible, define hydrogeologic standards at two levels: "alert" and "action."

- (1) "Alert levels" shall be those hydrogeologic conditions as indicated by monitoring data and visual observation from monitoring wells, stream gauges, and lake and pond gages which indicate a developing or impending adverse effect on the aquifer from which the water is, or is to be, extracted, or affected surface water bodies in the vicinity. Upon reaching an alert level the Board, through its designated technical representative, shall require the Applicant to provide more frequent and intensive monitoring activities than may be originally contemplated by the application or any original approval thereof.
- (2) "Action levels" shall be those hydrogeologic conditions as indicated by monitoring data and visual observation from monitoring wells, stream gauges, and lake and pond gauges which indicate that an adverse effect on the aquifer from which the water is, or is to be, extracted, or affected surface water bodies in the vicinity, or which establishes an imminent threat to private water wells in the vicinity. Upon reaching an action level the Board, upon advice of its designated technical representative, shall order all pumping and extraction activities to be reduced or ceased until such time as the Board deems that hydrogeologic conditions creating the descent to action levels have been or will be rectified, and that any threat or risk of harm to the aquifer, surface water bodies, and/or private wells has abated.
- (3) The setting of "alert levels" and "action levels" with respect to a given water extraction activity will normally be developed and refined through the ongoing monitoring regime specified in this Ordinance or any permit issued hereunder. The Board reserves the right, as such monitoring data becomes available for evaluation and correlation, to impose, amend or revise alert and action levels, after notice to any applicant or permit holder, with an opportunity to be heard, as an addendum/addenda to any permit. Notwithstanding the foregoing, in the event existing monitoring data or monitoring data developed during any pre-extraction test phase, or other established hydrogeologic conditions developed or existing prior to the undertaking of sustained extraction activities under any permit issued hereunder, adequately support the establishment of pre-pumping alert levels or action levels the Board may impose them, either as part of any original permit, or as an amendment to any issued permit – with opportunity for notice and hearing for the permit holder – and in such case where an action level is reached prior to pumping or the commencement of sustained extraction activities, then in such case no pumping or extraction shall commence in the first place until such time as the Board deems that hydrogeologic conditions safe for extraction have been or will be restored.

Section V – Performance Standards

No approval shall be granted any application until and unless the reviewing authority shall have affirmatively found that each of the following performance standards has been or will be met, the burden of establishing and demonstrating compliance with which is solely the Applicant's. The Applicant must also demonstrate to the reviewing authority that it possesses the expertise and financial resources to provide continuing adherence to these standards.

- (A) The quantity of water to be taken from a ground water source will not substantially lower the water table beyond the property lines, cause unreasonable impacts to ground water flow patterns, or cause unreasonable ground subsidence beyond the property lines.

- (B) Any proposed use shall not cause unreasonable adverse diminution in water quality or quantity of the aquifer or surrounding surface/ground water. This includes any impacts to the upwelling of a natural spring, ground water source, aquifer recharge area, or wetlands.
- (C) Safe and healthful conditions shall be maintained at all times within and about the proposed use and structures.
- (D) The proposed use shall require preparation of a stormwater management plan prepared and stamped by a professional engineer registered in the State of Maine detailing with both construction and long-term controls.
- (E) The proposed extraction site is not within the ground water recharge area of contribution of a community, non-transient public water supply, as defined under Maine Drinking Water Program rules, unless notice is given to the operator thereof and the Selectboard has considered any information supplied by the operator and finds that no unreasonable adverse effect on a public water supply will result under current and expected future demands on such community, non-transient public water supply.
- (F) The operator shall make operating records of the quantity of water extracted, stored, and removed from the site available to the Selectboard or a designee upon request.
- (G) Nothing in this procedure, and no decision by the Selectboard, shall be deemed to create ground water rights other than those rights which the Applicant may have under Maine law.
- (H) Any permit issued by the Selectboard shall state the maximum daily, monthly, and annual quantity of ground water that may be extracted, which amount shall not exceed the amount specified by the Applicant in its application. The maximum daily, monthly, and annual ground water extraction limit shall be an amount determined by the Selectboard to be consistent with this Ordinance, and based on the evidence presented at the Selectboard's public hearing.

Section VII – Independent Expert Assistance

If the reviewing authority reasonably determines it requires independent expert assistance to assist it in its preliminary review of the application, or in evaluating the substance of the application at a public hearing, or in developing appropriate conditions of approval, or with respect of any ongoing monitoring regime, or impact on Town infrastructure under this Ordinance, it may engage the services of such expert assistance, to serve as the reviewing authority's own expert. To the extent the projected or estimated cost of such assistance exceeds the existing town appropriation for such assistance, if any, the Applicant shall be required to pay to the Town, in advance of the scheduling of any public hearing, a sum equal to said projected or estimated cost, the failure of which payment shall excuse the reviewing authority from scheduling any public hearing until such payment is made in full. With respect to such costs and expenses anticipated to continue beyond any initial approval of extraction, such as services related to any monitoring regime, or assessment of infrastructure impacts, requirements for

payment of such shall be inserted in any approval as an ongoing condition of that approval.

Section VIII – Concurrent Jurisdiction

As applicable, and subject to the provisions of this Ordinance, jurisdiction of the Selectboard under this Ordinance is concurrent with such jurisdiction as may be vested in the Rumford Planning Board, the Rumford Board of Appeals, and the Rumford Code Enforcement Office, and is not intended to divest them of existing jurisdiction as applicable, but rather establishes and imposes additional requirements and procedures as set forth herein. Moreover, this Ordinance is not meant to replace or supplant the requirements and authority granted the Town in the Wellhead Protection for the Ellis River and Scotties Brook Aquifers Ordinance. However, should any conflict arise between this Ordinance and the Wellhead Protection Ordinance, the provisions of this Ordinance control.

Section IX – Enforcement

This Ordinance may be enforced by the municipal officers of the Town of Rumford, or at their direction, by the Rumford Code Enforcement Officer, pursuant to 30-A M.R.S. § 4452, the fines and penalties set forth therein to apply hereto.

The Selectboard may suspend or revoke any permit issued hereunder if it determines, after notice and hearing, that it was issued in error or upon incomplete or false information, or that the Applicant has failed to comply with any conditions of approval.

Any appeal of any denial, suspension, or revocation of a permit shall be to the Maine Superior Court pursuant to Maine Rule of Civil Procedure 80B.

Section X – Severability

Should any section or provisions of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not invalidate or affect the enforcement of any other section or provision of this Ordinance.

Section XI – Effective Date

This Ordinance and any amendments thereto shall become effective immediately upon adoption and enactment by vote of the legislative body of the Town of Rumford at Town Meeting.