

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DATE: 3/22/94

(Filing No. H- 878)

ENERGY & NATURAL RESOURCES

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1328, L.D. 1791, Bill, "An Act to Prohibit the Location of New Groundwater Drinking Water Supply Wells in Close Proximity to Potential Contamination Sources"

Amend the bill by striking out the title and substituting the following:

'An Act to Prevent Damage Claims against the State Due to the Installation of Drinking Water Wells in Areas of Possible Hazardous Substances and Oil Pollution'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 38 MRSA §548, as amended by PL 1991, c. 817, §10, is further amended by adding at the end the following:

If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with oil:

1. Delineated contaminated area. The commissioner or any person responsible for the discharge of the oil is not obligated by this subchapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as a result of the proximity of the area to:

A. A hazardous waste storage, treatment or disposal facility licensed by the department;

COMMITTEE AMENDMENT

R of S.

2 B. An uncontrolled hazardous substance site as defined in
3 section 1362, subsection 3 and listed by the department;

4 C. An oil terminal facility as defined in section 542,
5 subsection 7 licensed by the department;

6 D. A solid waste disposal facility as defined in section
7 1303-C, subsection 30 and licensed by the department; or

8 E. A closed or abandoned municipal solid waste landfill
9 listed by the department; and

10 2. Areas not delineated. If the well is installed in an
11 area other than one described in subsection 1, the obligation
12 under this subchapter of the commissioner or any person
13 responsible for the discharge of oil with regard to replacement
14 or treatment of the well is limited to reimbursement of the
15 expense of installing the well and its proper abandonment. The
16 well owner is responsible in such a case for other expenses of
17 replacing or treating the water supply well, including the cost
18 of any pump or piping installed with the well.

19 For purposes of this section, "viable community public water
20 system" means a community water system as defined in Title 22,
21 section 2660-B that has not indicated an intent to imminently
22 cease providing water to that location.

23 **Sec. 2. 38 MRSA §551, sub-§2, ¶I, as enacted by PL 1991, c.**
24 **817, §11, is amended to read:**

25 I. A 3rd-party damage claim for damages to real estate may
26 not include the devaluation of the real estate associated
27 with the loss of a water supply if the commissioner finds
28 under section 548 that a public or private water supply is
29 available and if that water supply best meets the criteria
30 of that section and the property owner did not agree to be
31 served by that public or private water supply. If a water
32 supply well is installed after October 1, 1994 to serve a
33 location that immediately before the well installation was
34 served by a viable community public water system, and the
35 well is or becomes contaminated with oil:

36 (1) A 3rd party may not recover damages under this
37 subchapter for expenses incurred in treating or
38 replacing the well if the well is installed in an area
39 delineated as contaminated as provided in section 548,
40 subsection 1; and

2 (2) A 3rd-party damage claim under this subchapter
3 with regard to treatment or replacement of the well is
4 limited to reimbursement of the expense of installing
5 the well and its proper abandonment if the well is
6 installed in any other area.

7 For purposes of this paragraph, "viable community public
8 water system" has the same meaning as in section 548.

10 **Sec. 3. 38 MRSA, §568, sub-§2-A is enacted to read:**

12 **2-A. Limitation on clean-up responsibility.**
13 Notwithstanding subsections 1 and 2, if a water supply well is
14 installed after October 1, 1994 to serve a location that
15 immediately before the well installation was served by a viable
16 community public water system, and the well is or becomes
17 contaminated with oil:

18 A. Neither the commissioner nor the responsible party is
19 obligated under this subchapter to reimburse any person for
20 the expense of treating or replacing the well if the well is
21 installed in an area delineated by the department as
22 contaminated as described in section 548, subsection 1; and

23 B. The obligation under this subchapter of the commissioner
24 or any responsible party with regard to replacement or
25 treatment of the well is limited to reimbursement of the
26 expense of installing the well and its proper abandonment if
27 the well is installed in an area other than one described in
28 paragraph A. The well owner is responsible in such a case
29 for other expenses of replacing or treating the water supply
30 well, including the cost of any pump or piping installed
31 with the well.

32 For purposes of this subsection, "viable community public water
33 system" has the same meaning as in section 548.

34 **Sec. 4. 38 MRSA §569-A, sub-§2, ¶H, as enacted by PL 1991,**
35 **c.817, §26, is amended to read:**

36 H. A 3rd-party damage claim for damages to real estate may
37 not include the devaluation of the real estate associated
38 with the loss of a water supply if the commissioner finds
39 under section 568, subsection 2 that a public or private
40 water supply is available and best meets the criteria of
41 that subsection and the property owner did not agree to be
42 served by that public or private water supply. If a water
43 supply well is installed after October 1, 1994 to serve a
44 location that immediately before the well installation was

RAS

2 served by a viable community public water system, and the
3 well is or becomes contaminated with oil:

4 (1) A 3rd party may not recover damages under this
5 subchapter for the expenses of treatment or replacement
6 of the well if the well is installed in an area
7 delineated as contaminated as provided in section 548,
8 subsection 1; and

10 (2) A 3rd-party damage claim under this subchapter
11 with regard to treatment or replacement of the well is
12 limited to reimbursement of the expense of installing
13 the well and its proper abandonment if the well is
14 installed in any other area.

16 For purposes of this paragraph, "viable community public
17 water system" has the same meaning as in section 548.

18 **Sec. 5. 38 MRSA, §569-B, sub-§2, ¶G is enacted to read:**

20 G. A 3rd-party damage claim for damages to real estate may
21 not include the devaluation of the real estate associated
22 with the loss of a water supply if the commissioner finds
23 under section 568, subsection 2 that a public or private
24 water supply is available and best meets the criteria of
25 that subsection and the property owner did not agree to be
26 served by that public or private water supply. If a water
27 supply well is installed after October 1, 1994 to serve a
28 location that immediately before the well installation was
29 served by a viable community public water system, and the
30 well is or becomes contaminated with oil:

32 (1) A 3rd party may not recover damages under this
33 subchapter for expenses incurred in treating or
34 replacing the well if the well is installed in an area
35 delineated as contaminated as provided in section 548,
36 subsection 1; and

38 (2) A 3rd-party damage claim under this subchapter
39 with regard to treatment or replacement of the well is
40 limited to reimbursement of the expense of installing
41 the well and its proper abandonment if the well is
42 installed in any other area.

44 For purposes of this paragraph, "viable community public
45 water system" has the same meaning as in section 548.

48 **Sec. 6. 38 MRSA §1310-F, sub-§2, as amended by PL 1993, c.**
49 **355, §49, is further amended to read:**

2. **Eligibility.** Any municipality that owns, rents or leases a solid waste landfill for which a remediation or closure plan has been adopted is eligible for grants. A municipality that has acted to close its solid waste landfill or to remedy environmental and public health hazards posed by the landfill prior to the adoption of a closure or remediation plan under this subchapter or that closed a landfill or remediated environmental or public health hazards posed by a landfill, is also eligible for reimbursement of closure or remediation costs incurred after February 1, 1976, as long as the closure or remediation actions were in conformance with all applicable laws or rules in effect at the time. Costs incurred by closure or remediation actions taken after the adoption of a closure or remediation plan under this subchapter are eligible for reimbursement only if those actions conform to that plan. Grant payments may not be made to any municipality for any portion of payments to settle civil or criminal judgments against that municipality for damages or injuries caused by the landfill. In addition, for landfills in operation prior to January 1, 1993, grant payments may not be made to a municipality for remediation to mitigate any threat posed by that landfill to structures built, ~~or permitted by the municipality to be built~~ after January 1, 1994 by that municipality, the county in which that municipality is located, a school administrative unit as defined in Title 20-A, section 1, a quasi-municipal corporation as defined in Title 30-A, section 2351 or a special district as defined in Title 30-A, section 5704 that includes any portion of the municipality unless the commissioner determines that the municipality could not have reasonably anticipated these threats. Any interest paid by a municipality prior to reimbursement on a municipal bond issued to raise funds for remediation and closure activities during this period is a cost eligible for reimbursement under this section. The commissioner shall use at least 1/3 of the available funds for municipalities eligible for reimbursement of closure and remediation costs under this subsection until all those municipalities have been reimbursed. A landfill that is privately owned and privately operated is not eligible for reimbursement under this subchapter.

A. The commissioner may act to abate public health, safety and environmental threats at sites identified as uncontrolled hazardous substance sites under section 1362, subsection 3 or at federally declared Superfund sites. Notwithstanding any other provision of this article, the commissioner shall determine the amount of funds expended at such those sites.

B. The commissioner may enter into contracts with the Maine Municipal Bond Bank to manage bonds issued under this

article, as long as the management fee structure does not allow dilution of the bond principal.

Sec. 7. 38 MRSA §1364, sub-§5, as amended by PL 1991, c. 312, §1, is further amended to read:

5. **Mitigation.** The commissioner may take whatever action necessary to abate, clean up or mitigate the threats or hazards posed or potentially posed by an uncontrolled site or to protect the public health, safety or welfare or the environment, including administering or carrying out measures to abate, clean up or mitigate the threats or hazards, and implementing remedies to remove, store, treat, dispose of or otherwise handle hazardous substances located in, on or over an uncontrolled site, including soil and water contaminated by hazardous substances. When the necessary action includes the installation of a public water supply or the extension of mains of an existing water utility, the department's obligation is limited to construction of those works that are necessary to furnish the contaminated or potentially contaminated properties with a supply of water sufficient for existing uses. The department is not obligated to contribute to a water utility's system development charge, nor to provide works or water sources exceeding those required to abate the threats or hazards posed by the uncontrolled site. The department may pay the costs of operation, maintenance and depreciation of the works or water supply for a period not exceeding 20 years if funds are available from Other Special Revenue or proceeds from the sale of bonds. If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with a hazardous substance:

A. Neither the commissioner nor any responsible party is obligated under this subchapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as provided in section 548, subsection 1; and

B. The obligation of the commissioner or any responsible party under this subchapter with regard to replacement or treatment of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well is installed in an area other than one described in paragraph A. The well owner is responsible in such a case for other expenses of replacing or treating the water supply well, including the cost of any pump or piping installed with the well.

Refs.

For purposes of this subsection, "viable community public water system" has the same meaning as in section 548.

Sec. 8. 38 MRSA, §1367-C is enacted to read:

§1367-C. Limit on obligation to replace or treat water supply wells

If a water supply well is installed after October 1, 1994 to serve a location that immediately before the well installation was served by a viable community public water system, and the well is or becomes contaminated with a hazardous substance:

1. **Delineated contaminated area.** Neither the commissioner nor any responsible party is obligated under this subchapter to reimburse any person for the expense of treating or replacing the well if the well is installed in an area delineated by the department as contaminated as provided in section 548, subsection 1; and

2. **Areas not delineated.** The obligation of the commissioner or any responsible party under this subchapter with regard to replacement or treatment of the well is limited to reimbursement of the expense of installing the well and its proper abandonment if the well was installed in an area other than one described in subsection 1. The well owner is responsible in such a case for other expenses of replacing or treating the water supply well, including the cost of any pump or piping installed with the well.

For purposes of this section, "viable community public water system" has the same meaning as in section 548.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

The limitations on certain claims that can be made against the Ground Water Oil Clean-up Fund, the Coastal and Inland Surface Oil Clean-up Fund and the Uncontrolled Hazardous Waste Fund may result in future savings to each of the funds. The amounts can not be determined at this time.'

STATEMENT OF FACT

The amendment replaces the bill. It limits recovery from responsible parties or from the Groundwater Oil Clean-up Fund, the Coastal and Inland Surface Oil Clean-up Fund or the

R. & S.

COMMITTEE AMENDMENT "A" to H.P. 1328, L.D. 1791

2 Uncontrolled Hazardous Waste Site Fund for costs incurred in
3 treating or replacing a contaminated well that serves a location
4 that was connected to a viable community water supply system
5 immediately before the well was installed. If the well was
6 installed in an area delineated by the Department of
7 Environmental Protection as a contaminated area, the Commissioner
8 of Environmental Protection and the responsible parties are not
9 required under the Maine Revised Statutes, Title 38 to reimburse
10 the person for treatment and replacement costs. If the well was
11 installed in any other area, recovery would be limited to the
12 cost of drilling the well and its proper abandonment and would
13 exclude the cost of the pump, the piping and the cost
14 differential between public water and private well water. This
15 does not relieve the commissioner or a responsible party from
16 other clean-up responsibilities imposed by law.

17 The amendment also changes the category of sites for which
18 municipalities are prohibited from receiving landfill remediation
19 grants. Current law excludes grants to remediate threats to any
20 structure built or approved by the municipality. The amendment
21 excludes grants for structures built by the municipality or any
22 local government entity in which the municipality or its
23 residents participates.

24 The amendment also adds a fiscal note to the bill.