

**STATE OF MAINE
119TH LEGISLATURE
FIRST REGULAR SESSION**

**Final Report of the
Task Force to Study the Improvement
of Public Water Supply Protection**

January 2000

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Senator John W. Benoit**

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Executive Summary

The protection of public water supplies is a complex issue and the mechanisms to effect protection are widespread and far-reaching. The Task Force to Study the Improvement of Public Water Supply Protection recognizes that this report and the accompanying legislation are the first steps in ensuring more protection for public drinking water supplies and provide a framework for further action.

The Task Force to Study the Improvement of Public Water Supply Protection makes three priority recommendations to improve the protection of public water supplies:

1. There should be a higher degree of protection around source water areas, or areas that support public drinking water supplies. This goal is integrated into proposed legislation that establishes a Public Drinking Water Supply Protection Act under the laws administered by the Department of Environmental Protection. The scope of the Act is to: allow the state, municipalities or public water systems to identify significant public water supplies; strive for a higher degree of protection around source water areas, or areas that are used as public drinking water supplies; and to allow state, municipalities, or water systems to pursue watershed or wellhead protection activities around significant public water supplies. In addition, the overriding mandate of this Act is to ensure public health.
2. The regulation and protection of public drinking water supplies needs to be better coordinated. The Task Force recommends that Maine's Drinking Water Program, currently located within the Department of Human Services, be moved to the Department of Environmental Protection.
3. Education efforts, targeted at municipal officials and the general public, are needed to stress the importance of protecting public drinking water supplies.

Public drinking water supplies are threatened under three scenarios. The Task Force makes the following recommendations to address these categories of threats and to ensure their protection.

- An existing public water supply may become threatened by a new source of contamination.

Existing notice requirements for municipalities should be expanded to give water suppliers notice of projects proposed within their source water supply areas. Municipalities would be responsible for giving notice on those areas that the Drinking Water Program has delineated and given them information on.

- A new water supply source is proposed near an existing source of contamination.

The Drinking Water Program's ability to deny an application for a new public water supply source based on the presence of existing threats is strengthened.

- An existing water supply source is threatened by an existing source of contamination.

By moving the Drinking Water Program to the Department of Environmental protection, the linkages between existing water supplies and existing or proposed threats is strengthened.

The Department of Environmental Protection is charged with establishing a task force to examine the current regulatory framework for above ground storage tanks.

The Task Force hopes that these recommendations will enhance public water supply protection and that further efforts to protect public water supplies can be developed in the future.

I. Introduction

Several incidents of contaminated drinking water supplies in Maine have raised awareness of the need to protect sources of drinking water. Chapter 80 Resolves established a 19-member task force to study the improvement of public water supply protection. The study resulted from LD 1550, *Resolve to Establish a Task Force to Study the Improvement of Public Water Supply Protection*. This bill, proposed by the Department of Human Services and sponsored by Rep. Scott Cowger, grew out of a departmental Work Group to recommend improvements in the protection of public water supply wellheads. This group met between July and November 1998, but was not able to finish their work before cloture for the 119th Legislature. The Work Group suggested a number of options to address greater protection of drinking water supplies although no definite conclusions were reached (see the appendix). This study was proposed by the Department as a way to continue those discussions.

Members of the task force included six Legislators; a representative from each of the following Departments: Human Services, Conservation, Environmental Protection, Inland Fisheries and Wildlife and Transportation; and eight public members representing consumer-owned water utilities, investor-owned water utilities, the petroleum industry, municipalities, business owners, and the real estate industry. A list of members is included in the appendix.

The Task Force to Study the Improvement of Public Water Supply Protection met 8 times over the interim to hear presentations on water supply issues, develop a problem statement, develop and rank ways to address those problems, and to develop recommended legislation.

II. Identification of the Problem

Task Force members articulated the problem with water supply protection as follows:

- A. Some municipalities don't have a vested interest in protecting water supplies because their source of drinking water may be in another town. A town may not have jurisdiction over its water supply. A water utility through its customers or the State, bears the cost of contamination or destruction of their water supply, not necessarily a town making siting decisions.
- B. There are lots of regulations over water supplies, but no overlying framework to integrate them. The existing laws need improvement, integration and upgrading. There are generally three scenarios under which water supplies are threatened: existing supply → new source of contamination; new water supply → existing contamination; existing water supply → existing source of contamination.
- C. Local resources are sometimes lacking to implement existing regulations.
- D. Towns need more technical assistance to include protection of drinking water in their comprehensive plans as a means to plan for and regulate incompatible growth and protect their water supplies.
- E. Water utilities need to protect their water supply sources but they have little authority over land use and other decisions that affect them.

III. Potential Solutions

The Task Force, using the options developed by the 1998 Wellhead Protection/Water Supply Protection Work Group as a starting point, brainstormed the following options as potential solutions:

A. Review of Siting Decisions—State Level

1. Natural Resource Protection Act (NRPA) -- Include wellhead protection areas and surface water supplies as protected natural areas, giving drinking water supplies specific legal status. Development and other activities in delineated areas would require a permit from DEP.
2. Site Location of Development Law -- Require siting decisions near or on wellhead protection/source water supplies to have a site location of development review and permit.
3. Appeal procedure—Appeal local siting decisions affecting wellhead protection/source water supplies to the Board of Environmental Protection or another state entity.
4. Give wellhead protection/source water supplies the absolute highest priority for protection in siting decisions.

B. Review of Siting Decisions—Municipal Level

1. Create and foster local aquifer protection ordinances to regulate at the local level.
2. Establish a shoreland zoning –type program for wellhead protection/source water supplies. This would consist of a statewide model ordinance with minimum requirements.
3. Require that wellhead protection/source water supplies are addressed and protected in comprehensive plans.
4. Require local governments to respond to source water protection assessments with protective action.

C. Create incentives for the establishment of regional commissions to oversee and protect water supplies.

D. Regulatory Options

1. Integrate all public drinking water and water supply protection programs in one agency.
2. Upgrade and update the drinking water protection laws. Fix inadequate pieces of law.
3. Require a Hazardous Analysis Critical Control Points (HACCP) program for small public water supplies.

4. Strengthen requirements on storage of over 275 gallons of petroleum or hazardous chemicals.
5. Review the current framework for regulating above ground oil storage tanks—are the resources there, are the right agencies in charge?

E. Water Utilities

1. Give local water utilities veto authority over local land use decisions that affect their water supplies and resources.
2. Amend PUC requirements so that water utilities can capitalize land acquisition funds through their rate structure and be proactive in protecting their wellhead or water supply areas.
3. Allow water utilities to identify and protect future water supplies.

F. Surface water intakes

1. Redefine surface water intakes protection zones to give water-based activities a greater setback distance.
2. IF&W share responsibility for regulating surface water uses near surface water intakes (motor vehicles, snowmobiles, ATVs)

G. Education efforts

1. Educate public about actions that threaten water supplies
2. Educate municipal officials, code enforcement officers, planning boards about water supply protection.

H. Better phosphorous control and management of agricultural practices.

IV. Task Force Priorities and Recommendations

Members of the Task Force were then asked to prioritize solutions from the list above for the Task Force to evaluate. Each member was given seven choices out of the 20 solutions. The following is a list of those proposals Task Force members felt were of higher priority followed by discussion and recommendations. Some of these priority items overlap or address the same issue and those recommendations are combined.

The remainder of the Task Force meetings was spent fleshing out the ideas behind these proposals to more fully understand them. A listing of the solutions that were not high priority is included in the appendix.

1. Education efforts for both the public and municipal officials

- Link with Maine Municipal Association to present programs on water supply protection as part of their ongoing conferences and training sessions.
- Make use of the federally required Consumer Confidence Report mailed by each water utility to their consumers to educate users about water supply protection.
- Provide General Fund money to the DEP to fund outreach and education through both regional programs and education in the schools.
- Base work in this area on learning results—specify your target audience, goals and curriculum.
- Video/Television needs to be used either through infomercials or regionally specific programs.

Note—The 1998 Work Group outlined their thinking on an education initiative and an outline of their proposal is included in the appendix. This Task Force supports that two-phase proposal.

Recommendation:

The Task Force recommends funding a project position under the Land and Water Resources Council to develop an education strategy for public water supply protection aimed at municipal officials and the general public. With the help of a consultant, this person would develop and evaluate the message and tools for various audiences and would work with an advisory group to develop recommendations and a budget to implement this proposal as phase I. In the second phase of this initiative, a full-time staff person would be hired in the Department of Environmental Protection dedicated to doing outreach and education efforts for drinking water protection. This person also would help coordinate efforts between agencies

2. Require municipalities to address and protect wellhead protection/source water supplies in their comprehensive plans.

- Create incentives for towns to adopt protection programs for their drinking water supplies.
- Develop model ordinances and education programs.
- Create incentives for municipalities to integrate Source Water Protection plans into their comprehensive planning.
 - Require towns to adopt these plans.

Recommendation:

Include a goal statement within a newly created “Public Water Supply Protection Act” that articulates the importance of protecting public drinking water supplies. The purpose of the Act is to:

- Allow the state, municipalities or public water systems to identify significant public water supplies.
- Strive for a higher degree of protection around source water areas, or areas that are used as public drinking water supplies.
- Allow state, municipalities, or water systems to pursue watershed or wellhead protection activities around significant public water supplies.

In addition, the overriding mandate of this Act is to ensure public health.

Three members of the Task Force abstained from this vote.

3. Natural Resource Protection Act (NRPA) -- Include wellhead protection areas and surface water supplies as protected natural areas, giving drinking water supplies specific legal status. Development and other activities in delineated areas would require a permit from DEP.

- Concern over time, administrative burden, cost to administer
- Need to delineate activities that would be regulated under this proposal.

Note—A group of task force members met to work through this option. Their findings are included in the appendix. Recommendations are found under number 4.

4. Establish a shoreland zoning-type program for well head protection/source water supplies. This would consist of a statewide model ordinance with minimum requirements.

In this model, the state develops a model ordinance with minimum benchmarks. Towns must adopt at least the minimum requirements but can tailor the ordinance to meet their needs or strengthen protection measures. If a municipality does not adopt their own ordinance, the state will impose the minimum.

- This program allows local control with some state oversight.
- Ordinance could be related to source water assessments
- Proactive action
- This would cost municipalities to enforce, draft, and defend ordinances and to protect the delineated areas. This would have to be balanced against the cost of replacement for water supplies.
- This approach allows for protection across municipal boundaries.

The Department of Human Services, Drinking Water Program, has done the delineation of source water supplies. All supplies that serve more than 250 people have been delineated. However, because bedrock aquifers are so difficult to delineate, those wells have only a circle drawn around them, depending on the size of the system.

Recommendation:

Regulating land use is a complex and contentious issue. Task Force members agreed on the following goal: **There should be a higher degree of protection around source water areas, or areas that support public drinking water supplies.** The Task Force did not come to consensus on a way to address land use around drinking water sources. They discussed options three and four above as well as the proposal to develop a higher classification rating for wellhead protection areas or surface water intakes. Their concern is aimed mostly at community water systems and nontransient noncommunity systems (schools, offices).

5. Amend PUC requirements so that water utilities can capitalize land acquisition funds through their rate structure and be proactive in protecting their wellhead or water supply areas.

Consumer-owned utilities can establish a water supply protection fund pursuant to 35-A MRSA §6113. However, they are limited to 15% of annual revenues or \$100,000. A contingency reserve account must be funded first. It was pointed out that large utilities are the ones that use this most often, and that this assumes excess revenue. A revolving loan program administered through DHS with federal funds, offering 3% loans to water utilities to purchase land for wellhead protection did not receive enough proposals to disburse all their funds.

- Compensates for taking land for protection purposes
- Investor-owned utilities can't participate in this provision
- Only a few utilities have been through the rate-making process since this was instituted (1993). Only about 5 to 10 utilities have used this.
- This mechanism can be used to defray the local costs of regulating source water areas.
- A sliding scale for capping this fund may make sense based on revenues or size of source water protection area.

- Should we consider a bond issue?
- Look at the Land For Maine’s Future Board language

The Task Force discussed this issue but did not come to consensus on how to proceed. It appears that smaller water districts are constrained by the \$100,000 cap. The Portland Water District uses this extensively.

6. Appeal local siting decisions for wellhead protection/source water supplies to the Board of Environmental Protection or another state entity.

Currently water utilities can appeal local land use decisions to the Zoning Board of Appeals or the Superior Court. However, they must participate at the Planning Board or ZBA stage. Problems-- may not have gotten notice of the proposed activity or the project may be out of their municipality.

- Two options: “enhanced status quo” or appeal to the BEP (or state).
- The group seemed to want to have a water supplier get notice of proposed projects that affect their wellhead protection area or source water supply watersheds.

Recommendation:

The Task Force recommends that the existing public notice requirements for proposed land use projects at the municipal and state level be extended to water suppliers. They would be given notice of proposed projects that are within their source water protection areas, areas closely linked to their wells or surface water intakes. Source water protection areas have been delineated for water supplies that serve over 250 people. The Drinking Water Program must work with municipalities to provide and periodically update them with this information.

7. Give wellhead protection/source water supplies the absolute highest priority for protection in siting decisions.

Protection of water supplies is spelled out to some extent in siting laws.

- The standards should be to not degrade drinking water supplies rather than the current standards in some areas of “does not exceed drinking water standards.”
- Surface water supplies should be subject to the same “anti-degradation” standard.
- There is a major disconnect between the Drinking Water Program at DHS and the DEP.
- Goals should be to improve existing water quality, prevent degradation of water supplies and to identify and protect future drinking water sources.

The other recommendations (1,3,4,6) of this Task Force fit into this goal, this is more of a mission statement.

8. Create and foster local aquifer protection ordinances to regulate at the local level

- Communities need to be stimulated to use model ordinances and have not often used them on their own.
- Water utilities recommend municipalities have more requirements for they find they need minimum standards. Water utilities are willing to help with some of the technical assistance costs.
- Barriers to model ordinances are lack of technical assistance, enforcement, development pressure and the potential to lose revenue.
- Municipalities feel that if public water supplies are a state resource, then the state should regulate and enforce requirements for this resource.

There are no specific recommendations for this proposed solution.

9. Combine Agencies Dealing With Water Supply Protection and Regulation

- Rep. Cowger and Dave Lennett of the Department of Environmental Protection both submitted written materials for the task force to review on how this would be beneficial for the agencies.
- Discussion focused on the need for the various agencies to have coordinated goals. For example, DEP recently tried to eliminate several overboard discharges by constructing septic systems in an area adjacent to a public water supply.
- After considerable debate about the structure this should take, it was recommended to hire a consultant to suggest a structure to integrate drinking water programs into one agency and coordinate its protection and regulation. Public health must be the first priority of this restructuring.

Recommendation:

Combine source water protection and the administration of the Safe Drinking Water Act in DEP. The Task Force agreed that the goal of this merger is the integration of regulations within one agency to protect drinking water resources and ensure public health.

The Task Force recommends that a consultant be hired to integrate these functions into DEP's structure. This consultant should have input from an advisory group that includes the regulated community. Members of this task force should receive copies of the consultant's final recommendations.

The Division of Health Engineering consists of four programs: Drinking Water, Plumbing Control, Radiation Control and the Eating and Lodging Program. The consultant will review the Plumbing Control Program and make recommendations on whether they should be moved to accomplish the overall goal of the Task Force. The consultant will report back to the Department of Environmental

Note-two members of the Task Force abstained from this vote.

The Task Force made two additional recommendations to be included in the proposed legislation:

1. Strengthen the language in statute to allow the Drinking Water Program to deny approval of applications for new water supplies when threats to the quality of that water exist in the vicinity of the new source.
2. The Department of Environmental Protection should convene a task force that includes stakeholders to review the current framework for regulating above ground oil storage tanks. This task force should evaluate whether:
 - o The resources to properly regulate above ground tanks exists,
 - o The right agencies are in charge, and
 - o The requirements concerning above ground tanks are adequate.

Task force members should include the State Fire Marshall's Office, the Oil and Solid Fuel Board, DEP and the regulated community. This task force should report back to the Legislature no later than January 2, 2002.

Chapter 80
H.P. 1103 - L.D. 1550

Resolve, to Establish a Task Force to Study the Improvement of Public Water Supply Protection

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

Whereas, public water supply protection is a voluntary activity wherein the water supplier has limited power to protect its own resources; and

Whereas, contamination with bacteria, nitrates, hydrocarbon and fuel products and pesticides and other toxic chemicals remains a common concern for public water suppliers in Maine despite existing programs; and

Whereas, the Governor has made the protection of public water supplies a priority in plans for providing safe water to the citizens of the State; and

Whereas, recent events have demonstrated the susceptibility of public water supply wells to unexpected contamination; and

Whereas, a study of public water supply protection must be initiated promptly in order that the study may be completed and a report submitted in time for the next legislative session; and

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

Sec. 1. Task force established. Resolved: That the Public Water Supply Protection Task Force, referred to in this resolve as the "task force," is established to study the improvement of public water supply protection; and be it further

Sec. 2. Membership. Resolved: That the task force consists of 19 members appointed as follows:

1. Six Legislators, 3 of whom must be Senators, appointed by the President of the Senate and 3 of whom must be members of the House of Representatives, appointed by the Speaker of the House;
2. One member representing the Department of Human Services, appointed by the Commissioner of Human Services;
3. One member representing the Department of Environmental Protection, appointed by the Commissioner of Environmental Protection;
4. One member representing the Department of Conservation, appointed by the Commissioner of Conservation;
5. One member representing the Department of Inland Fisheries and Wildlife, appointed by the Commissioner of Inland Fisheries and Wildlife;
6. One member representing the Department of Transportation, appointed by the Commissioner of Transportation; and
7. Eight public members appointed by the Governor representing consumer-owned water utilities, investor-owned water utilities, the petroleum industry, municipalities, business owners and the real estate industry; and be it further

Sec. 3. Chairs. Resolved: That the first named Senate member is the Senate chair of the task force and the first named House of Representatives member is the House chair of the task force; and be it further

Sec. 4. Appointments; meetings. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The Executive Director of the Legislative Council

must be notified by all appointing authorities once the selections have been made. Within 15 days after the completion of the appointment of all members, the Chair of the Legislative Council shall call and convene the first meeting of the task force; and be it further

Sec. 5. Duties. Resolved: That the task force shall:

1. Review existing protections for public water supplies including any regulations pursuant thereto;
2. Evaluate fuel handling problems that lead to groundwater contamination from fuel and fuel additives, including methyl tertiary-butyl ether or "MTBE"; and
3. Identify steps to improve protection of public water supply wells and intakes from the following threats:
 - A. New septic system installations;
 - B. Petroleum storage facilities;
 - C. Facilities handling or storing in excess of 10 gallons of hazardous materials;
 - D. Facilities handling or selling pesticides;
 - E. The spreading of sludge or other residuals; and
 - F. Surface water uses posing threats to drinking water quality; and be it further

Sec. 6. Staff. Resolved: That the Department of Environmental Protection and the Department of Human Services shall provide necessary staffing services to the task force. Upon request of the chairs of the task force, the Office of Policy and Legal Analysis shall provide additional staffing assistance to the task force; and be it further

Sec. 7. Reimbursement. Resolved: That the task force members who are Legislators are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, for each day's attendance at meetings of the task force and reimbursement for travel and other necessary expenses upon application to the Legislative Council; and be it further

Sec. 8. Report. Resolved: That the task force shall submit its report, together with any necessary implementing legislation, to the Joint Standing Committee on Natural Resources by January 14, 2000; and be it further

Sec. 9. Appropriation. Resolved: That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

1999-00

LEGISLATURE

Public Water Supply Protection Task Force

Personal Services	\$2,640
All Other	2,400

Provides funds for the per diem and expenses of legislative members of the Public Water Supply Protection Task Force.

LEGISLATURE

TOTAL	<u>\$5,040</u>
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Emergency clause. In view of the emergency cited in the preamble, this resolve takes effect when approved.

Effective June 17, 1999.

Members

Task Force to Study the Improvement of Public Water Supply Protection

Legislators:

Senator Neria R. Douglass (Co-chair)
Senator Jill Goldthwait
Senator John W. Benoit
Rep. Scott Cowger (Co-chair)
Rep. Ronald F. Collins
Rep. Thomas Bull

Department of Human Services

David Braley

Department of Environmental Protection

Dave Lennett

Department of Conservation

Tom Weddle

Department of Inland Fisheries and Wildlife

Steve Timpano

Department of Transportation

Christine Olson

Public Members

Lowell T. Sherwood Jr. Real Estate Industry
Gary Brown Municipal official
Normand Labbe Municipal official
Richard Knowlton Investor-owned water utility
John Clark Houlton Water Company
Patricia Aho Maine Petroleum Association
Phillippe Boissoneault Consumer-owned water utility
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November 4, 1999

To: Task Force to Protect Public Water Supplies
From: Philip W. Haines, Dr.P.H., Deputy Director, Bureau of Health
Subject: Review of Wellhead Protection/Water Supply Protection Work Group

Background: Upon receipt of the results of the Study of MTBE in Public and Private Water Supplies, Governor King announced a five-point plan of action. One of those five points was the creation of a Work Group to recommend improvements in the protection of Wellheads of Public Water Supplies. This group met from July through November of 1998, and wrestled with a number of issues concerning protection of Public Water supplies. Although considerable progress was made, the Legislative Cloture date overtook the work group, and legislation was submitted to create the current Task Force to address these issues in a more formal fashion, and with Legislative support.

First Steps: Initial meetings began with a review of the current voluntary, and sometimes fragmented, programs and laws in place to protect water supplies. A number of discussion points were raised:

- Protection of wellheads can be achieved by protecting the resource (controlling activities in the wellhead zone) or by controlling threats (e.g., regulation of petroleum storage).
- Existing laws approach this from both the resource protection and threat control viewpoints
- Many land use decisions are made at the local level, but there are no uniform standards for water supply protection for municipalities to administer, nor any uniform requirement that water supplies be protected.
- Municipalities were represented as feeling scapegoated by the proposition that they were not giving adequate voice or protection to public water suppliers in land use decisions.
- A number of “options” were presented and discussed, with other options being added as we went along. A list of those options is attached.

Final thoughts: Although no definite conclusions were reached, some thoughts were reasonably well developed by the end of the group’s deliberations:

- It is essential to develop a set of statewide standards for wellhead protection, even if these are to be applied at the local level
- A number of threats/sources are already highly regulated (e.g., petroleum storage).
- There is not a uniform or complete set of protections for public water supplies.

- Water supplies (wells or lakes) are not necessarily located in the same town(s) where the water is consumed, so any local approach must consider cross-border needs.
- Local awareness varies greatly from one municipality to the next.
- Considerable discussion was given to protecting Public Water Supplies under the Natural Resources Protection Act (NRPA), though this approach was viewed as problematic by some at DEP. Whether to develop detailed standards in law, or by rule, is an issue, and will not be an easy task in either case.
- Any regulatory approach must be supported by a considerable public education effort for both public and private water supplies.

I can provide more detail on many of these points, if you desire. I have the group's list of "pros and cons" for options A through G, if you desire those.

These notes distill MANY HOURS of laborious discussion and debate into a few pages. Thus, they can not do justice to the Work Group's diligent efforts. However, they may give you a sense of the breadth of the options considered, and the thought processes which took place.

/ph

Options considered by 1998 Work Group

Option A: “Shoreland Zone type option: This would be a state standardized and mandated LOCAL law, providing protections for wellhead areas at the local level, but with minimum state standards, much like the current shoreland zoning law.

Option B: Site Law review: Amend the existing Site Law, administered by DEP, to include projects in wellhead zones.

Option C: Review Authority for Water Systems: Grant authority to public water systems to review projects in the wellhead zone, including possible authority to deny such projects.

Option D: A State Appeal Board option: This would allow water districts to appeal land use decisions viewed as threatening to the supply to a state review authority.

Option E: Response to SWP Assessments: A state requirement that local governments respond to state Source Water Protection assessments with protective measures.

Option F: Public Education: Educate the public about actions which threaten water supplies, either public or private.

Option G: No action

Option H: Special authority to water utilities:

Option I: Regulate sources of contamination/threat:

Option J: Building Block option: fix those pieces of law which are inadequate.

Option K: Land/Development acquisition option: Water utilities acquire control of their wellhead protection areas.

Option L: NRPA option: Wellhead areas, or ground water in general, are protected as Natural Resources under the Natural Resources Protection Act. DEP action would be required any time this resource was to be impacted. This concept could apply to surface supplies used for public drinking water, as well.

TASK FORCE TO PROTECT PUBLIC WATER SUPPLIES

Notes from Discussion about NRPA

December 6, 1999

Prepared by David Van Wie, DEP

Purpose: To discuss whether/how public drinking water supplies might be considered a “protected resource” under the Natural Resource Protection Act (38 MRSA Section 480 A-Z), and

To discuss a “model ordinance” similar to the shoreland zoning ordinance.

What exactly are we talking about: a “protected resource”?

Designated zones around water sources for:

1. Community systems
2. Non-community, non-transient systems (schools, office buildings, etc.)
3. High value aquifers, such as islands, certain sand & gravel with high concentration of individual wells, areas targeted for future public water supplies, etc. A town or other entity might have to apply to the state to have an area so designated, voluntarily putting that area under stricter regulation.

Do we need a change in classification for groundwater or other surface waters?

Maybe. All groundwater is GPA. What we need is a stronger “anti-degradation policy” set in law. We need a lower risk threshold (higher protection) for all groundwater and surface water supplies.

What activities or risks are we most concerned about?

Handling & storage of petroleum and hazardous materials, and septic systems. These are already regulated outside of NRPA, but the “bar” isn’t high enough. For example, the DWP often doesn’t hear about a new septic in a sensitive area until the home is already under construction. Tough to say no at that point.

Other risks, such as stormwater infiltration, sludge spreading, pesticides, etc. are perceived by some to be high risks, but there are no data pointing to them as priorities compared to the other two above.

What about a “model ordinance” program a la shoreland zoning.

Limitations of that model are varying local politics, concern about unfunded mandate, spotty enforcement, need to retrain planning board people, and DEP's policy of enforcing through the towns rather than directly.

What about enforcement?

A difference between the drinking water issue and shoreland zoning is that for public water supplies, the system owner has a strong natural interest to monitor compliance and seek enforcement administratively or in court. For a high value aquifer, a local body applying for "standing" could participate in enforcement.

What options do we have for reducing risk to these drinking water resources?

1. Use the existing SWAP to demonstrate antidegradation, with no additional enforcement.
2. For hazardous material handling and storage and septic systems, use a state law or model ordinance to prohibit new systems, or set certain standards. Allow a process for complaints/appeal to state for enforcement if local implementation is lacking.
3. New state law requiring implementation of SWAP.

Note: if we prohibit **new** septic or fuel storage/handling systems in certain zones, we need to consider how to reduce risks from existing systems. We discussed some type of conditional license for existing systems, with a funding program (state or private) for removal when practical alternatives exist (similar to the state Overboard Discharge removal program).

Conclusion:

NRPA should not be the *primary* tool for achieving higher levels of protection for drinking water supplies. A blanket non-degradation policy with some teeth is needed, which would apply to and strengthen a number of existing laws & programs including SWAP, oil/haz rules, NRPA, site law and others.

Other suggestions not considered of highest priority by the Task Force

10. Upgrade and update the drinking water protection laws. Fix inadequate pieces of law.
11. Site Location of Development Law -- Require siting decisions near or on wellhead protection/source water supplies to have a site location of development review and permit.
12. Require local governments to respond to source water protection assessments with protective action.
13. Give local water utilities veto authority over local land use decisions that affect their water supplies and resources.
14. Redefine surface water intake protection zones to give water-based activities a greater setback distance.
15. Create incentives for the establishment of regional commissions to oversee and protect water supplies.
16. Strengthen requirements on storage of over 275 gallons of petroleum or hazardous chemicals that are sited in wellhead protection areas and near surface water supplies.
17. Review the current framework for regulating above ground oil storage tanks—are the resources there, are the right agencies in charge?
18. Allow water utilities to identify and protect future water supplies.
19. IF&W share responsibility for regulating surface water uses near surface water intakes (motor vehicles, snowmobiles, ATVs)
20. Better Phosphorous control and management of agricultural practices.

Drinking Water Protection Task Force
Expansion of Proposal for Public Education
12/4/98

Notes from meeting with Ted Lavery (EPA), Phil Boissonneaultt (Portland Water District), Paula Thomson (Maine Rural Water), Linda Lockhart (MMA), Bob Brandenstein (Town of Buxton), Beth Della Valle (SPO), Paul Hunt/Dave Bois (DHS), John Hopeck (DEP)

1. Education (more than just our group, also the Five Point Plan folks) must be a primary function of the agencies (DEP, DHS, SPO)

Need:

- a. teeth to get everyone to work together,
- b. evaluation of coordination effort,
- c. Commissioners must be behind it,
- d. sustained effort,
- e. conceptual program before implementation

2. What we've listed in our proposal as existing education efforts is only a starting point.

The conceptual proposal must recognize that people are doing education now.

Existing efforts on:

- a. general water quality at DEP: Mary Ellen (works with schools, not a dedicated position), Barb, Bill LaFlamme(NPS)
- b. public health at DHS: Drinking water (no Education staff)
- c. CPIP/CEO/Flood Plain/Watersheds at SPO: Coordination (Paul)
- d. municipal officials and general public at SPO/MMA/RPCs, USM

3. Need to designate a Lead Agency with a dedicated employee, program in place, and resources to undertake the public education effort

Need two pieces (coordination/program director, someone to physically do education)

Need to publicize what we have now, need someone who sees it as their defined job, who is available to make site visits to audiences on request or at our initiation/back-up resource for agencies

Should engage Land and Water Resources Council (LWRC) to assure that Commissioners realize coordination between agencies must happen

4. Strategy

Option I

Phase I Coordinator (LWRC) plus some resources for special studies=>product is strategy and evaluation process

Phase II Coordinator and funds for a person to do implementation/education (and maybe grants)

SPO lead (see conditions laid out in #1 above)

Option 2

same as Option #1 but use consultant to gather information/identify messages/evaluate success of messages

then go to coordinator/strategy/implementation including cost estimate/identify permanent lead agency/coordinator

draw on existing resources to oversee consultant (LWRC)

5. Cost Estimate

for part time project person and funds for special studies => prepare strategy

Year 1: study committee using above report, prepare report to legislature

Year 2 action/appropriation for implementation strategy

person -	\$50,000
consultant -	\$100,000
expenses -	\$10,000
total-	\$160,000