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An Act To Prevent Contamination of Drinking Water Supplies

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §4452, sub-§5, ¶S, as amended by PL 2007, c. 112, §5, is further amended to read:

S. Local ordinances and ordinance provisions regarding storm water, including, but not limited to, ordinances and ordinance provisions regulating nonstorm water discharges, construction site runoff and postconstruction storm water management, enacted as required by the federal Clean Water Act and federal regulations and by state permits and rules; and

Sec. 2. 30-A MRSA §4452, sub-§5, ¶T, as enacted by PL 2007, c. 112, §6, is amended to read:

T. Laws pertaining to limitations on construction and excavation near burial sites and established cemeteries in Title 13, section 1371-A and local ordinances and regulations adopted by municipalities in accordance with this section and section 3001 regarding those limitations; and

Sec. 3. 30-A MRSA §4452, sub-§5, ¶U is enacted to read:

U. Laws pertaining to wellhead protection in Title 38, chapter 13-D.

Sec. 4. 30-A MRSA §4452, sub-§7, as amended by PL 1997, c. 296, §8, is further amended to read:

7. Natural resources protection laws. A code enforcement officer, authorized by a municipality to represent that municipality in District Court and certified by the State Planning Office under section 4453 as familiar with court procedures, may enforce the provisions of the natural resources protection laws, Title 38, section 420-C; Title 38, chapter 3, subchapter ~~H~~1, article 5-A; and Title 38, ~~section 420-C~~chapter 13-D, by instituting injunctive proceedings or by seeking civil penalties in accordance with Title 38, section 349, subsection 2.

Sec. 5. 38 MRSA §563-C, as amended by PL 2005, c. 561, §6, is repealed.

Sec. 6. 38 MRSA §568-A, sub-§1, ¶J, as enacted by PL 2001, c. 302, §2, is amended to read:

J. An applicant is not eligible for coverage for any underground oil storage facility installed in violation of the provisions of ~~section 563-C~~chapter 13-D.

Sec. 7. 38 MRSA §568-A, sub-§1, ¶K, as enacted by PL 2001, c. 302, §2, is amended to read:

K. An applicant whose facility is subject to the provisions of ~~section 563-C~~chapter 13-D is not eligible for coverage for costs related to providing treatment or temporary or permanent water supply replacement and 3rd-party damage claim costs related to an oil discharge at a facility installed after September 30, 2001 and affecting that property's drinking water supply system.

Sec. 8. 38 MRSA c. 13-D is enacted to read:

CHAPTER 13-D

WELLHEAD PROTECTION

§ 1391. Declaration of policy

The Legislature finds and declares it to be the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens, to establish a coordinated statewide program to protect drinking water wells from contamination by oil or hazardous waste. The Legislature further finds that spills of oil and hazardous wastes pose a significant risk to groundwater quality and that the handling of those substances near drinking water wells should be restricted to reduce the risk of contamination.

§ 1392. Definitions.

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Aboveground oil storage facility. "Aboveground oil storage facility" has the meaning set out in section 562-A, subsection 1-A.

2. Community drinking water well. "Community drinking water well" means a public drinking water well that supplies a community water system as defined under Title 22, section 2660-B, subsection 2.

3. Double-walled tank. "Double-walled tank" has the meaning set out in section 562-A, subsection 7.

4. Hazardous waste. "Hazardous waste" means any substance identified as hazardous waste by the board pursuant to section 1319-O.

5. Oil. "Oil" has the same meaning as in section 562-A, subsection 15. "Oil" does not include liquefied natural gas or other liquefied petroleum that is a gas at ambient temperatures.

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

7. Public drinking water well. "Public drinking water well" means a drinking water supply well for a public water system as defined in Title 22, section 2601, subsection 8.

8. Under construction. "Under construction" as used in section 1393, subsection 2, paragraph A means a determination by the commissioner that substantial amount of money or effort has been expended toward completion of a facility. The test of substantiality involves an assessment of the amount of money or effort expended in relation to the amount required to complete the facility.

9. Underground oil storage facility. "Underground oil storage facility" has the meaning set out in section 562-A, subsection 21.

10. Wellhead protection zone. "Wellhead protection zone" means:

A. In the case of a public drinking water well, the greater of:

(1) The source water protection area if mapped by the Department of Health and Human Services as described under Title 30-A, section 2001, subsection 20-A; and

(2) The area within 1,000 feet of the wellhead; and

B. In the case of a private drinking water well, the area within 300 feet of the wellhead.

§ 1393. Prohibited facilities in wellhead protection zones

1. Prohibition. A person may not install an underground oil storage facility in a wellhead protection zone. After September 30, 2008, a person may not install in a wellhead protection zone:

A. An aboveground oil storage facility;

B. An automobile graveyard as defined in Title 30-A, section 3752, subsection 1 or an automobile recycling business as defined in Title 30-A, section 3752, subsection 1-A;

C. An automobile body shop or other commercial automobile maintenance and repair facility;

D. A dry cleaning facility that uses perchloroethylene;

E. A metal finishing or plating facility; or

F. A commercial hazardous waste facility as defined under section 1303-C, subsection 4.

2. Exceptions. Subsection 1 does not apply to:

A. A facility in existence or under construction on the effective date of the prohibition;

B. The replacement or expansion of an underground oil storage facility in existence on September 30, 2001 or other types of facilities in existence on September 30, 2008 as long as the replacement or expansion occurs on the same property and the facility meets all applicable requirements of law;

C. The conversion of an aboveground oil storage facility in existence on September 30, 2001 to an underground oil storage facility or vice versa, as long as the conversion occurs on the same property and the facility to be converted meets all applicable requirements of law;

D. An oil storage facility used solely to store heating oil for consumption on the premises; or

E. A well located on the same property as the facility and serving only users of that property.

This subsection may not be interpreted to allow the conversion or expansion of an underground oil storage tank or underground oil storage facility subject to the abandonment requirement under section 566-A.

§ 1394. Requirements for oil storage in a wellhead protection zone

1. Registration of aboveground tanks. Effective July 1, 2009, a person may not store oil in an aboveground oil storage facility located in a wellhead protection zone or over a sand and gravel aquifer mapped by the Department of Conservation, Bureau of Geology and Natural Areas, Maine Geological Survey unless the facility is registered with the commissioner in the same manner as required of underground oil storage facilities under section 563, subsections 2 to 5. This requirement does not apply to facilities that are used solely to store heating oil for consumption on the premises and that consist of an individual tank with a tank capacity of 660 gallons or less or multiple tanks with an aggregate tank capacity of 1,320 gallons or less.

2. Installation requirements for aboveground heating oil tanks. The installation of aboveground heating oil tanks is governed by this subsection.

A. Effective October 1, 2008, a person may not install an aboveground oil storage facility in a wellhead protection zone unless the facility is used solely to store heating oil for consumption on the premises and meets the requirements of Title 32, chapter 33, subchapter 3.

B. Effective July 1, 2009, a person may not install an aboveground oil storage facility in the wellhead protection zone of a community drinking water well unless the facility meets the requirements of paragraph A and each aboveground oil storage tank at the facility meets the requirements of this paragraph.

(1) The tank must be a double-walled tank or other type of tank approved by the commissioner.

(2) The tank must meet the testing requirements of a nationally recognized, independent testing authority.

(3) The tank must be installed by a journeyman or master oil burner technician licensed by the Oil and Solid Fuel Board under Title 32, section 2401-B or, in the case of an outside tank serving manufactured housing, by any person licensed by the Oil and Solid Fuel Board under Title 32, section 2401 to install such tanks.

This paragraph applies only to aboveground oil storage facilities that consist of an individual tank with a tank capacity of 660 gallons or less or multiple tanks with an aggregate tank capacity of 1,320 gallons or less.

3. Financial assistance for upgrading tanks. The commissioner may disburse money from the Ground Water Oil Clean-up Fund to retrofit, repair or replace aboveground oil storage tanks or aboveground oil storage facilities in a wellhead protection zone when the commissioner determines that action is necessary to abate an imminent threat to the well. Disbursements must be made in the manner provided under section 569-A, subsection 8, paragraphs M and N and are subject to the annual disbursement limitations of those paragraphs.

§ 1395. Variances

In the case of a community drinking water well, a private drinking water well or a well that supplies drinking water to a school, the commissioner may grant a variance from the prohibition of section 1393 if the applicant demonstrates that no hydrogeologic connection exists between the proposed facility and the water supply at issue. In the case of a public drinking water well other than one supplying drinking water to schools, the commissioner may grant a variance if the commissioner determines that the engineering and monitoring measures proposed by the applicant exceed regulatory requirements and will effectively minimize the likelihood of drinking water contamination due to the discharge of oil or hazardous waste. In considering whether to grant a variance, the commissioner may consider the importance of the groundwater resource, the hydrogeology of the site and other relevant factors.

The commissioner shall provide public notice and an opportunity for public comment on each variance request.

The commissioner may deny a variance request or approve the request with or without conditions. The decision must be in writing with findings sufficient to explain the basis of the decision. The decision may be appealed to the board under section 341-D, subsection 4, paragraph A.

§ 1396. Enjoinder; eligibility for coverage of oil clean-up costs

The commissioner may enjoin the operation of any facility described under section 1393, subsection 1 installed in violation of this chapter. Clean-up costs and 3rd-party damages resulting from discharges of oil from an aboveground or underground oil storage facility installed in violation of section 1393 are not eligible for coverage under the Ground Water Oil Clean-up Fund.

§ 1397. Municipal authority

This chapter may not be construed to prevent a municipality from imposing siting restrictions more stringent than the prohibitions in this chapter or in rules adopted by the board.

Sec. 9. Rules. The Board of Environmental Protection shall adopt rules that restrict the siting of the facilities listed in the Maine Revised Statutes, Title 38, section 1393, subsection 1 within sand and gravel aquifers mapped by the Department of Conservation, Bureau of Geology and Natural Areas, Maine Geological Survey. The rules must provide for variance from the restrictions in appropriate instances, including when engineering and monitoring that exceed regulatory requirements are determined to effectively reduce the risk of oil and hazardous waste discharges, and must be otherwise consistent with the rules for siting underground oil storage tanks adopted pursuant to Public Law 2001, chapter 302, section 3. Rules adopted under this section are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

SUMMARY

The bill restricts certain types of development near drinking water wells to prevent contamination by oil and hazardous matter. The bill gives municipal code enforcement officers the authority to enforce the restrictions.