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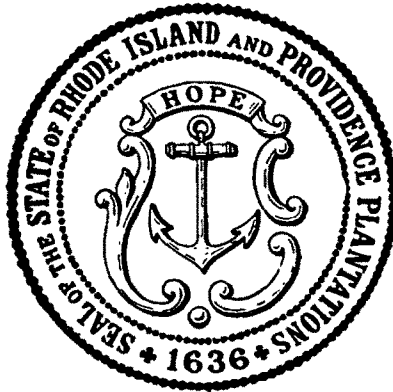
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RHODE ISLAND OIL AND GAS UPDATE



By: Mark Patrick McGuire¹

The repeal of Rhode Island General Law 46-13.2-6 during the Rhode Island General Assembly's 2012 session does not seriously affect fossil fuel exploration and extraction in the state. First, there are no fossil fuel resources in the State of Rhode Island, and no extraction operations are currently active or likely to become active in the future. Second, even if future operations occur, there are statutes and regulations in place that enforce pollution control of drinking water wells, as 46-13.2-6 was a redundant control on pollution of these wells. Third, the Rhode Island General Assembly never meant for the statute to protect drinking water wells from pollution as a result of fossil fuel extraction operations, as the entire statutory scheme was borrowed from Connecticut.

Representative Helio Melo (D-District 64, East Providence), introduced the bill, H 7323Aaa, on February 1, 2012. The General Assembly passed and then enacted the bill on June 15, 2012.² Labeled "State – appropriations for support for fiscal year ending June 30th 2013 and various amendments to the general laws for implementation of budget provisions," the 358-page bill was passed to cut the state budget for the coming fiscal year. Article 17 of the 23-article bill ("Article 17"), labeled "Relating to Department of Environmental Management," deals directly with the Rhode Island Department of Environmental Management's ("RIDEM") budget.

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2. R.I. GEN. LAWS § 46-13.2-6, *repealed* by 2012 R.I. Pub. Laws ch. 241, art. 17, § 3.

Nicole Poepping, legislative liaison at RIDEM, explained that Article 17 was specifically drafted by RIDEM to cut the agency's budget by consolidation.³ Two statutes previously regulated drinking water well drilling—section 46-13.2 of the RI General Laws, Drilling of Drinking Water Wells, and plumbing codes under Rhode Island building regulations. Prior to the amendments and repeal of much of section 46-13.2, well drillers had to register under both statutes. By streamlining the regulations, the building regulators will now govern registration for all drinking water well drilling, taking this responsibility away from RIDEM and saving the agency money.⁴

RIDEM first began attempts to streamline the registration process for drinking water wells in 2000. That year, representatives Robert Watson (R-District 30, East Greenwich, West Greenwich) and Bruce Long (R-District 74, Jamestown, Middletown) introduced the bill, H 7743.⁵ Introduced on February 3, 2000, the bill specifically called for the same 46-13.2 amendments and repeals of Article 17 of H 7323Aaa in 2012. It took over a decade for this consolidation to occur, and RIDEM plans further consolidation of regulatory schemes for the future.⁶

This change affects fossil fuel extraction and exploration issues, as section 46-13.2-6, which dealt specifically with oil, gas, and mining operations, was repealed as part of the amendment of 46-13.2 in H 7323Aaa. This statute, titled "Wells constructed for oil, gas, brine, or mining," explained,

Drilling, excavating, and pumping associated with the oil, gas, or brine well industries, and the construction, quarrying, and mining industries, and the disposal of any materials shall be subject to this chapter only insofar as they relate to the pollution and depletion of underground water resources.⁷

With the repeal, the General Assembly eliminated a seemingly important law for fossil fuel extraction and pollution control. Therefore, What does the repeal of the statute mean for the future?

The General Assembly passed 46-13.2 in 1987 to regulate the drilling of drinking water wells. Included in this statute was section 46-13.2-6. According to Sue Kiernan, Deputy Chief of the Water Resources Division of RIDEM and author of Article 17 of H 7323Aaa, 46-13.2-6 was originally included in the section dealing with the drilling of drinking water wells because of the potential of pollution of

3. Telephone Interview with Nicole Poepping, Legislative Liaison, R.I. Dep't of Env'tl. Mgmt. (Aug. 30, 2012).

4. *Id.*

5. H.R. 7743, 2000 Leg., Gen. Assemb., Reg. Sess. (R.I. 2000).

6. Telephone Interview with Sue Kiernan, Deputy Chief of Water Res. Div., R.I. Dep't of Env'tl. Mgmt. (Aug. 30, 2012) [hereinafter Kiernan Interview].

7. R.I. GEN. LAWS § 46-13.2-6.

these wells from drilling associated with oil, gas, and mining operations.⁸

Today, Rhode Island does not have any fossil fuel resources.⁹ In the past, coal mines were active in Cranston and Portsmouth.¹⁰ The Portsmouth mines opened in 1808 and closed in 1912, yielding over a million tons of anthracite.¹¹ The Cranston mine, on the site of today's Garden City Shopping Center, opened in the mid-19th century and closed in 1959, yielding many thousands of tons of graphite.¹² However, even these operations were rather insignificant on a national scale, as Rhode Island coal was generally known to be of low quality.¹³ Since the closing of the Cranston mine, no large-scale fossil fuel operations have existed in the state.

Not once since the 1987 passage of the statute has any drilling, excavating and pumping associated with the oil, gas, or brine well industries, or construction, quarrying, and mining industries polluted drinking water in such a way to come under section 42-13.2-6.¹⁴ This is because no fossil fuel operations have occurred in Rhode Island since 1959. The repeal of the statute, therefore, will have no effect on Rhode Island fossil fuel extraction industries, as none currently exist in the state, and likely, none will exist in the future.

The repeal of the statute will also not affect fossil fuel exploration and extraction in the state because other statutes and regulations now exist that serve the same function as 46-13.2-6.¹⁵ While 46-13.2 was originally intended to be the only law protecting drinking water wells, other statutes and regulations were passed that now serve the same function.

As stated above, the repeal of 46-13.2 was for consolidation purposes. Rhode Island's groundwater protection regulations cover pollution of aquifers. Drinking water wells are drilled to capture water from aquifers. Therefore, even if drilling, excavating, and pumping associated with the oil, gas, or brine well industries or construction, quarrying, and mining industries existed, drinking water wells and aq-

8. Kiernan Interview, *supra* note 6.

9. *Rhode Island Energy Facts*, INST. FOR ENERGY RESEARCH, <http://www.instituteforenergyresearch.org/state-regs/pdf/Rhode%20Island.pdf> (last visited Sept. 10, 2012).

10. Norman Kahn, *The Mining of Coal in Bristol, Rhode Island: Potential Methodology, Impacts, and Evaluation of Community Response*, UNIV. OF R.I. DIGITAL COMMONS, 1 (1978), http://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1111&context=ma_etds.

11. *Id.*

12. *Id.*

13. *Id.* "A 1915 government report on national coal deposits reported that 'In the final conflagration, Rhode Island coal will be the last thing to take fire.'" *Id.*

14. Kiernan Interview, *supra* note 6.

15. *Id.*

uifers are protected from pollution under the state groundwater protection statutes and regulations.¹⁶

Lastly, the repeal of the statute will not affect fossil fuel exploration and extraction in Rhode Island because the Rhode Island General Assembly never expected the statute to affect fossil fuel exploration and extraction in the first place, as the whole regulatory scheme under 46-13.2 was borrowed from Connecticut.

When asked where the Rhode Island statute came from, Sue Kiernan posited that the provision was borrowed from nearby states' water well drilling regulatory schemes.¹⁷ This is exactly what the Rhode Island General Assembly did in passing this statute in 1987. In 1969, Connecticut passed title 25, chapter 482, section 25-126 through 25-137.¹⁸ This statute is identical to Rhode Island's 46-13.2.

Title 25, chapter 482, section 25-131(b) of the Connecticut Code is indistinguishable from Rhode Island's 46-13.2-6.¹⁹ Similar to the Rhode Island version, the purpose of the section is to regulate drinking water well drilling. Connecticut was the only other state to have a similarly worded regulatory scheme when Rhode Island passed 46-13.2 in 1987. Because of this, Rhode Island must have borrowed the statute from Connecticut. This leaves the question, however, Why did Connecticut include the section dealing with oil, gas, and mining industry pollution?

Today, it is understood that Connecticut does not have fossil fuel reserves.²⁰ However, in 1969 the limits of Connecticut's fossil fuel resources were likely unknown. Around that time, their neighbors', Massachusetts, and Rhode Island's, fossil fuel extraction possibilities were being researched. In the 1970s, Boston College conducted a study on coal deposits in the Narragansett Basin, the area in Rhode Island and Massachusetts that drains into the Narragansett Bay.²¹ After the study, however, no coal mining operations commenced. It is likely that in 1969, Connecticut too did not fully understand the extent, or lack thereof, of fossil fuel resources located in the state. Because of this unknown, Connecticut likely included section 25-131(b) in their drinking water well protection statutory scheme to protect

16. *Id.*

17. *Id.*

18. Act of July 1, 1969, Conn. Pub. L. No. 659, § 1 (codified as Conn. Gen. Stat. Ann. § 25-126 to -137 (West 2008)).

19. CONN. GEN. STAT. ANN. § 25-131(b) (West 2008) ("Drilling, excavating and pumping associated with the oil, gas or brine well industries and the construction, quarrying and mining industries and the disposal of any materials shall be subject to this chapter only insofar as they relate to the pollution and depletion of underground water resources.").

20. *Connecticut Energy Facts*, INST. FOR ENERGY RESEARCH, <http://www.institute forenergyresearch.org/state-regs/pdf/Connecticut.pdf> (last visited Sept. 10, 2012).

21. Kahn, *supra* note 10, at 1.

drinking water wells from potential future pollution from fossil fuel operations.

By the time Rhode Island passed the same statute, it had been over a decade since any action on fossil fuel exploration and extraction occurred in the state. It is unclear why Rhode Island chose to include the wording in section 46-13.2-6. However, two inferences are possible. First, Rhode Island had yet to conclude that no drilling, excavating, and pumping associated with the oil, gas, or brine well industries or construction, quarrying, and mining industries would occur in the future. This is unlikely. The more likely inference is that Rhode Island did not expect that this activity would occur and simply borrowed the full Connecticut drinking water well regulatory scheme without regard to the eventual use of that one section. RIDEM's Sue Kiernan explained that it is commonplace for states to borrow entire statutory schemes from other jurisdictions without editing them to reflect small differences in the two jurisdictions.²²

Like Rhode Island, New Hampshire borrowed the Connecticut drinking water well drilling scheme in full, including the language from Connecticut's section 25-131(b) dealing with oil, gas, and mining industries.²³ Also like Rhode Island, New Hampshire does not have any fossil fuel resources.²⁴ Passed in 1989, it seems likely that New Hampshire too passed the entire scheme without regard to the eventual use of that one section. As Sue Kiernan explained, this type of legislative borrowing is commonplace.

Because of this borrowing and the likelihood that Rhode Island never intended to have 46-13.2-6 used to protect drinking water wells from pollution due to the knowledge of the lack of fossil fuel resources in the state, the repeal of the statute does not seriously affect Rhode Island fossil fuel exploration and extraction. Further, the fact that another state without fossil fuel resources, New Hampshire, passed the same statute two years later shows that use of Connecticut's comprehensive drinking water well regulation scheme was the goal, and small irrelevant sections, like 46-13.2-6 in Rhode Island, were simply overlooked.

The 2012 wholesale amendment of Rhode Island General Law 46-13.2 was done for consolidation and budgetary purposes. Section 46-13.2-6 was eliminated in this comprehensive amendment process because it had long become superfluous. While the amendment of the whole drinking water well drilling scheme will save the state money, the repeal of 46-13.2-6 will have no effect. Because there are no fossil fuel resources in the State of Rhode Island, other statutes and regula-

22. Kiernan Interview, *supra* note 6.

23. N.H. REV. STAT. ANN. § 482-B:11 (2001).

24. *New Hampshire Energy Facts*, INST. FOR ENERGY RESEARCH, <http://www.instituteforenergyresearch.org/state-regs/pdf/New%20Hampshire.pdf> (last visited Sept. 10, 2012).

tions are in place that enforce pollution control of drinking water wells, and the borrowed statute was likely never meant to protect drinking water wells from pollution as a result of fossil fuel extraction operations. Therefore, the repeal of 46-13.2-6 will not seriously affect fossil fuel exploration and extraction in the state.