

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2010-0082, State of New Hampshire v. Hess Corporation & a., the court on March 22, 2011, issued the following order:

On the State's motion for clarification or reconsideration, the court modifies the slip opinion issued on January 28, 2011, as follows: The last paragraph on page 12 of the slip opinion, which continues onto page 13 and which begins with the words "Second, the trial court should determine whether the defendants can meet their burden of proving . . . ," is deleted and the following paragraph is inserted in its place:

Second, the trial court should determine whether the defendants can meet their burden of proving that the State's allegations of injury to private wells are speculative in nature. See Quapaw Tribe of Oklahoma, 653 F. Supp. 2d at 1179. By this, we mean that the defendants must put forth evidence that shows that MTBE contamination is unlikely in the private water supply in a given area or region. To refute any such evidence, the State could point to the presence of gas stations in a given area that sold gasoline containing MTBE, or rely upon the 2007 U.S. Geological Survey, which indicated areas in the State with high incidences of MTBE contamination. We intend this requirement to prevent the State from being given a blank check to investigate and test for alleged MTBE contamination in areas of New Hampshire where the State has provided little evidence of an actual risk of contamination.

In all other respects, the motion is denied.

Slip opinion modified;
reconsideration denied.

Duggan and Hicks, JJ., concurred; Horton, J., retired, specially assigned under RSA 490:3, concurred.

**Eileen Fox,
Clerk**

Distribution:

Clerk, Merrimack County Superior Court, 03-C-0550

Honorable Peter H. Fauver

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