



**DEWITT
ROSS & STEVENS**^{SC}
L A W F I R M

MEMORANDUM

TO: The GAC

FROM: Ron Kuehn

DATE: October 29, 2007

RE: The Question of Redefining A Groundwater Protection Area (GPA)

I. CURRENT LAW.

Act 310, Laws of 2003, defines a “groundwater protection area” (“GPA”) to mean an area within 1,200 feet of any of the following:

- (i) An outstanding resource water (*see* Section 281.15).
- (ii) An exceptional resource water (*see* Section 281.15).
- (iii) The Class I, II, or III trout stream (as identified by the Wisconsin DNR).

II. PROBLEM WITH THE CURRENT LAW DEFINING A GROUNDWATER PROTECTION AREA.

This 1,200 foot standard, for measuring the dimension of a groundwater protection area, has neither resulted in inadequate protection of the surface waters identified in the Statute, nor the waters protected by the GPA standard appear to be inappropriate.

III. DISCUSSION.

During the course of the GAC’s analysis of the operation of Act 310, we learned the following:

- That the 1,200 foot limit, while providing significant protection to the surface waters affected by the limit, has no basis in science. In fact, it appears to be working very well. Nonetheless, there is no evidence that the 1,200 foot limit isn’t working. In fact, it appears to be working very well. Furthermore, it should be noted that the 1,200 foot limit was the result of a consensus agreement by all affected interest groups and the

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Wisconsin Legislature agreed to as recently as 2003 when the law was passed.

- That only about 12 applications for a high capacity well approvals within the 1,200 foot limit, adjacent to GPA water, were sought by applicants since the existing groundwater protection law (Act 310) was enacted. The Wisconsin DNR, by applying quite rationale standards for testing the impacts of these wells, has determined that seven of the wells should be approved. Five wells were not approved.
- That there is no evidence that any wells were sought by applicants, or permitted by the DNR, immediately adjacent to, but just beyond, the 1,200 foot limit. There was a fear that there would be a frustration of the law by applicants who are denied approvals within the limit resulting in those applicants seeking approvals, for example, at the 1,210 foot limit. There is no evidence whatsoever of that.
- There was no evidence provided to the GAC, during the course of its nearly two-year deliberations, that any well that has been approved by the Wisconsin DNR, since the enactment of Act 310, either inside or beyond the 1,200 foot limit is having a significant impact on any surface water of the State of Wisconsin that either protected by the law or not protected by the law.

IV. RECOMMENDATION.

In view of all of the above, and especially in view of the charge given by the statute to the GAC to determine if the law is working, we determine that it is. We, therefore, recommend that the 1,200 foot limit provision of the law be retained. We further recommend that the waters protected by the GPA designation need not be expanded.