

Summary of Wisconsin's New Groundwater Quantity Legislation, 2003 Wisconsin Act 310

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On Earth Day, April 22, 2004, Governor Doyle signed a new groundwater protection law 2003 Wisconsin Act 310 that expands the State's authority to consider environmental impacts of high capacity wells and institutes a framework for addressing water quantity issues in rapidly growing areas of the state. In addition, the law creates more oversight of well construction activities, institutes a fee system for new construction, and establishes a Groundwater Advisory Committee to recommend strategies for groundwater management and future legislation.

As you have heard and read, this is a "first step" in water quantity management. Significantly, this legislation for the first time recognizes the link between surface water and groundwater, and that all wells can have an impact on groundwater quality and quantity. Negotiations for this law were open and inclusive, thanks to the leadership of the bill's cosponsors, Senator Neil Kedzie and Representative Dwayne Johnsrud. A hallmark of the discussions was that the committee members engaged scientists and technical experts in their decision making. This open discussion will continue as the Department develops administrative rules and programs to implement the legislation. Thus we appreciate this opportunity to communicate to you what this legislation means and how we will use the resources and staffing. It is especially important for all of us to work together in a consistent approach.

What are the details of the legislation?

2003 Wisconsin Act 310 is only 6 pages long, but it contains a significant amount of information and has many implications. * The provisions can be broadly placed into 4 categories: 1) Tracking well construction and water use; 2) Expanded regulation of high capacity wells; 3) Designation of groundwater management areas; and 4) Creation of a Groundwater Advisory Committee.

1) Tracking well construction and water use

The Act requires well owners to obtain approval of a high capacity well (pumping more than 100,000 gallons per day) by the DNR prior to construction, pay a fee of \$500, and submit an annual pumping report to DNR. For any new well that is not a high capacity well the owner must notify DNR of the well location prior to construction and pay a fee of \$50. The fees will directly support the administration of this Act, including tracking well construction, review of high capacity well applications, and collection of groundwater data. In addition, fees will support increased inspections and enforcement of well construction activities, helping to ensure a safe drinking water supply.

The law requires all high capacity well owners to report water use on an annual basis, including ones with existing approvals. Previously, only municipal water supply wells were required to submit pumping reports, along with some high capacity wells that required reporting as part of their approval. The collection of this information will assist in evaluating proposed new wells, monitoring approval conditions, identifying trends, calibrating groundwater flow models, and improving water use estimates, all contributing to better understanding and management of groundwater resources.

2) Expanded regulation of high capacity wells

The Act requires DNR to undertake an environmental review (under ch. NR 150, Wis. Adm. Code), for the following proposed high capacity wells:

- Wells located in a "groundwater protection area" (an area within 1,200 feet of an outstanding or exceptional resource water or any class I, II, or III trout stream).
- Wells that may have a significant environmental impact on a spring with a flow of at least one cubic foot per second for at least 80% of the time.
- Wells where more than 95% of the amount of water withdrawn will be lost from the basin.

* More details can be found at the Wisconsin Legislature website:

Text of Act 310: <http://www.legis.state.wi.us/2003/data/acts/03Act310.pdf>

Legislative Council memo: http://www.legis.state.wi.us/lc/act_memo/2003/act310-ab926.pdf

In these cases, DNR may deny or limit an approval to assure that these wells do not cause significant environmental impact. There are also protections and exceptions for public water utility wells. For example, the DNR must weigh the public health and safety benefits of a proposed well in a groundwater protection area or near a spring if it is to be used for a public water supply. In these cases, the DNR must balance the well's environmental impact and its public health and safety benefits. Some of the criteria that might be used for this "balance test" include provisions for water conservation, appropriate use (drinking water vs. lawn watering or car washing), and long range water supply planning. The DNR must also ensure that a public utility's water supply is not impaired by another high capacity well, maintaining a long-standing requirement from previous statutes.

3) Designation of groundwater management areas

The Act directs the DNR to establish two groundwater management areas in Southeastern Wisconsin and the Lower Fox River Valley. These areas will include Waukesha and Brown Counties, and surrounding cities, villages and towns where the water level of the deep sandstone aquifer has been drawn down more than 150 feet since pre-development. In the Lower Fox River Valley, this could include portions of Outagamie and Calumet Counties, while in Southeastern Wisconsin it could include Kenosha, Racine, Milwaukee, and Ozaukee Counties, and portions of Washington and Walworth Counties.

The intention of the groundwater management area is to encourage a coordinated management strategy among the state, local government units, regional planning commissions, and public and private users of groundwater to address problems caused by over-pumping of the deep aquifer, such as increased levels of radium, arsenic and salinity. The DNR will assist local government units and regional planning commissions in those areas as they undertake research and planning related to groundwater management.

4) Creation of a Groundwater Advisory Committee

The Act establishes a Groundwater Advisory Committee. Members will be appointed by the Governor and Legislature and will represent municipal, environmental, agricultural and industrial interests. The Committee will review the implementation of the Act and recommend further changes in the regulation of high capacity wells.

Specifically, the committee is to make recommendations regarding:

- the regulation of wells in groundwater protection areas, that have a water loss of 95 percent or more, or that have a significant environmental impact on a spring;
- the definition of springs;
- adaptive management approaches;
- the potential for the use of general permits; and
- factors to be considered by the department in determining whether a high capacity well causes significant environmental impact.

The Act also directs the Committee to recommend legislation that addresses the management of groundwater within groundwater management areas and any other areas of the state where a coordinated strategy is needed. The Committee may identify other parts of the state that should be designated as groundwater management areas, and will recommend how and when this designation may be removed.

The Committee is to issue reports to the legislature no later than December 31, 2006 regarding groundwater management areas, and December 31, 2007 regarding its review of the implementation of the new regulations. If the committee fails to submit these reports, the DNR may adopt rules to address management of groundwater in the groundwater management areas.

Implementation

How will this new law affect public water utilities? When will we begin evaluating high capacity well approvals under the new standards? When will we begin requiring notification and collecting fees? Who will be appointed to the Groundwater Advisory Committee? How can public water system owners and operators provide input to the decision-making process? These are all valid questions, some of which we do not know the answers to. Many decisions lie ahead.

First, the Department must work through a separate appropriation process to obtain the necessary staff positions and funding to implement the new programs created by the law. We must write administrative rules to provide further guidance on well notification, water use reporting, groundwater protection areas, and designation of the groundwater management areas. This will provide another key opportunity for you to participate in the developing program. We must create and implement an electronic data system for tracking new well construction and collecting fees. The earliest we anticipate any of the new provisions to take effect is January 2005.

Because this law is a first step, it will be important to direct the yearly fees (estimated at roughly \$1 million) to the most important work. The plan for the future is as follows:

1. *track notifications and fees*

- We are investigating the most efficient and cost effective way to collect fees and information about new well construction. We will provide ample notification of when this provision becomes applicable. Note that this provision applies to domestic, privately owned wells in addition to public water supply, irrigation, agricultural and commercial wells.

2. *issue individual approvals*

- We will have to complete more complex individual approvals for a limited number of well applications (we estimate 6 – 12 per year). We anticipate that the vast majority of high capacity well applications will not have to undergo environmental review.

3. *collect groundwater data*

- Reporting requirements for high capacity wells will be expanded, including those with existing approvals. Additionally, we will have better information on all wells because of prior notification requirements. Improving data collection is critical to this expanded management approach. It is our intention to make the reporting process as simple and user-friendly as possible.

4. *complete well construction inspections*

- We will expand our inspection and surveillance of private well construction activities. This will help ensure safe drinking water supplies for private well owners as well as public water systems.

5. *help in the establishment of the Groundwater Advisory Committee*

- DNR will be represented on the Committee and will also provide staffing and administrative support. We will work with legislators to assemble teams of scientists and water management experts to advise the Committee in its work. We anticipate that the members of these groups will be identified in the next few months.

We have crossed a major hurdle in the passage of this legislation, with more to follow. In the meantime, we welcome your input and suggestions, and encourage you to stay engaged. Public water systems, through your various organizations, provided leadership and made valuable contributions during the deliberations for this legislation. We hope that you continue to make your concerns and ideas known through your organization leadership. Together we can implement the new provisions of this legislation to protect the groundwater resource and assure a plentiful and safe drinking water supply for current and future generations.