

# REAL ESTATE TITLE INSURANCE & ENVIRONMENTAL LAW

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## ENVIRONMENTAL LAW

### AQUIFER PROTECTION: COMING TO A TOWN NEAR YOU

DEP regulations add another layer to land use controls

By **JOSEPH P. WILLIAMS**

**C**onnecticut's Aquifer Protection Program is likely coming to a town near you. As this program governs a wide array of business activities—and affects 83 of the 169 municipalities in Connecticut—attorneys, business owners, municipal officials and consultants will need to familiarize themselves with the new requirements.

Over one million Connecticut residents are supplied with their drinking water by groundwater from aquifers, underground sand and gravel deposits that can yield a usable amount of water. The Aquifer Protection Act was enacted by the state legislature in 1988 and 1989 to protect major public water supply wells that are fed by aquifers.

The Act requires the Department of Environmental Protection (DEP) to oversee the mapping of aquifer protection areas around well fields that serve more than 1000 people. It also requires that land use controls be imposed in these areas to minimize the potential for

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contamination of the well fields.

The DEP adopted Aquifer Protection Area Land Use Regulations in February 2004. That event triggered a

series of steps now underway that will result in municipal regulation of certain land uses in aquifer protection areas.

#### **Mapping Of Protected Areas**

The first step in the program is the mapping of aquifer protection areas. The Act requires every water company serving 1000 or more persons to map the critical portions of the aquifer providing water to its well fields. There are 120 such well fields in Connecticut. The accompanying aquifer protection areas comprise only about two percent of the state's land area, but they occur in 83 of its towns. All mapping must be completed by June 1, 2008.

Preliminary (or Level B) maps have been completed for all the well fields. The more detailed, final (Level A) mapping is underway. As of late March, Level A mapping has begun for 77 well fields, and 21 of those have been approved by DEP. The DEP's approval of a Level A map triggers several new requirements for the affected town.

Each municipality is required to appoint an existing board to act as its "aquifer protection agency" by May 2, 2004 (three months from the adoption of the DEP's land use regulations). To date, 65 of the 83 towns have

done so. The vast majority have chosen their planning and zoning commission for this new role.

When Level A mapping confirms the presence of an aquifer protection area boundary in a town, the DEP will notify that town. Within four months after receiving the notice, the planning and zoning commission for that town must delineate the aquifer protection area boundaries on its zoning map and publish notice of the delineation in the newspaper. So far two towns (Guilford and Stonington) have accomplished this task.

Within six months after receiving notice that an aquifer protection area is located within its town, the aquifer protection agency for that town must adopt land use regulations governing the area. The local regulations must be approved by the DEP before taking effect and must be consistent with the DEP's land use regulations, but can establish a *greater* level of protection than the DEP regulations. DEP issued a model municipal regulation on June 1, 2005.

Once municipal regulations are adopted, no regulated activity may be conducted within an aquifer protection area without authorization from the town's aquifer protection agency or, in limited instances, the DEP. The Act provides a right of appeal by an aggrieved person as well as enforcement provisions similar to the inland wetlands act.

As noted above, a local aquifer protection agency must adopt land use regulations consistent with the DEP regulations. The heart of the DEP's Land Use Regulations is the mandate that all "*regulated activities*" are prohib-

*ited in aquifer protection areas unless they are:* (1) a preexisting regulated activity that has been properly registered; (2) a regulated activity which has received a permit pursuant to the regulations; or (3) an otherwise regulated activity that has been granted an exemption by the Commissioner.

### Regulated Activities

The key definition in the regulations is that of a "regulated activity," which is defined by listing 28 categories of business activities. These include: underground storage of oil or petroleum, vehicle repair or maintenance, dry-cleaning, furniture stripping, storage, treatment or disposal of hazardous waste, photographic finishing, production of metal products, and handling or disposal of solid waste. Several activities are specified as *not* constituting regulated activities, including activities conducted at a residence without compensation, those involving small amounts of hazardous materials, and agriculture. A business may obtain an exemption for a regulated activity if the DEP determines that the activity will not pose a threat to any public supply well.

A regulated activity must be registered—and therefore is grandfathered—if, before February 2, 2004 or the date that an aquifer protection area is designated on the town zoning map (whichever occurs later), the regulated activity: (1) was substantially commenced; (2) was in active operation within the past five years; or (3) received a municipal building permit. Satisfying one of these factors is crucial to securing the right to conduct a regulated activity. Along

with information about the facility and regulated activity, a registrant must certify compliance with detailed best management practices set forth in the regulations.

Unless a regulated activity satisfies the criteria for a registration, it is prohibited in an aquifer protection area without a permit. However, a permit may be issued only to *add* a regulated activity to a facility where a registered regulated activity *already* occurs. No permit can be issued for an entirely new activity.

An application for a permit must contain the same information as a registration, along with additional certifications, plans for managing hazardous materials and storm water, and environmental compliance information for the preceding five years. An applicant also must demonstrate that several other criteria have been met, including that it has a good compliance record.

As more Level A maps are completed over the next several months, an increasing number of property owners and business operators will fall under the jurisdiction of the program. Potentially affected parties—and their lawyers and consultants—should watch closely the development of municipal regulation of aquifer protection areas to determine its impact on them. ■