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Connecticut's Aquifer Protection Program

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Connecticut's Aquifer Protection Program has likely come to a town near you. As this program governs a wide array of business activities - and affects 83 of the 169 municipalities in Connecticut - business owners, municipal officials and consultants will need to familiarize themselves with the requirements.

Over one million Connecticut residents are supplied with their drinking water by 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 1,000 people. It also requires that land use controls be imposed to minimize the potential for 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.

The first step in the program is the mapping of aquifer protection areas. The Act requires every water company serving 1,000 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. 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. The DEP's approval of a Level A map triggers several new requirements. Each municipality was required by 2004 to appoint an existing board to act as its "aquifer protection agency." Most have chosen their planning and zoning commission for this role.

When Level A mapping confirms the presence of an aquifer protection area boundary in a town, the DEP notifies that town. Within four months after receiving the notice, the planning and zoning commission must delineate the boundaries on its zoning map and publish notice in the newspaper.

Within six months after receiving notice, the town's aquifer protection agency 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.

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. The heart of the DEP's Land Use Regulations is the mandate that all "regulated activities" are prohibited 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.

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. 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. A business may obtain a permit only to add a regulated activity to a facility where a registered activity already occurs; otherwise, an exemption may be obtained if the DEP determines that the regulated activity will not pose a threat to any public supply well.

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.

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