

Environmental Conservation

ARTICLE 55 SOLE SOURCE AQUIFER PROTECTION

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§ 55-0101. Declaration of policy.

It is declared to be the public policy of this state to provide funds for the preparation and implementation of groundwater watershed protection plans in order to maintain existing water quality in special groundwater protection areas within federally designated sole source aquifer areas contained within counties having a population of one million or more and to further the implementation of nonpoint source controls for the protection of the potable supply underlying the entire recharge area.

§ 55-0103. Legislative findings.

The legislature finds that:

1. The scientific evidence of groundwater contamination is mounting;
2. Such contamination, once it occurs, is often irreversible;
3. Within this area subject to sole source aquifer designation, due to their particular rate of recharge and associated hydrogeological conditions, certain groundwater recharge watershed areas are particularly critical for the maintenance of large volumes of high quality groundwater for long periods of time;
4. In the face of mounting cases of groundwater contamination from toxic organic compounds, nutrients, salts and other pollutants, the state needs a program for the designation, protection and management of special groundwater protection areas;
5. It is desirable to maintain natural vegetative and hydrogeologic conditions in special groundwater protection areas;
6. Prevention of the contamination of high quality groundwater and the protection of special groundwater protection areas costs substantially less than measures to mitigate harm following contamination; and
7. There is a demonstrated need to protect, preserve and enhance the land and water resources of special groundwater protection areas through a new program which combines the capabilities and resources of the local, state and federal governments and the private sector.
8. Some of the nonpoint source control strategies developed for the special groundwater protection areas can be used to minimize further

contamination in developed deep aquifer recharge areas.

§ 55-0105. Purpose.

It is the purpose of this article to:

1. Establish procedures for the designation of special groundwater protection areas within designated sole source aquifer areas contained within counties having a population of one million or more;
2. Acknowledge the variations in hydrogeology, water quality, and land uses within designated areas, and the existence of certain areas which are of vital importance in maintaining water quality in the designated sole source aquifer area;
3. Assure that such vital areas within designated sole source aquifer areas are protected and managed in such a way as to maintain or improve existing water quality;
4. Establish procedures for the development and implementation of a site-specific comprehensive management plan for each designated special groundwater protection area;
5. Initiate the implementation of a portion of the state groundwater management program using the Long Island sole source aquifer region as a model for future state-wide application; and
6. Establish guidelines for federal-state cooperation in the planning, funding and implementation of special groundwater protection area plans.

§ 55-0107. Definitions.

Unless the context otherwise requires, the definitions in this section shall govern the construction of the following terms as used in this article:

1. "Plan" shall mean the comprehensive management plan established pursuant to section 55-0115 of this article.
2. "Recharge" shall mean the downward movement of water to the water table through the soil overlying an aquifer.
3. "Special groundwater protection area" shall mean recharge watershed area within a designated sole source area contained within counties having a population of one million or more which is particularly important for the maintenance of large volumes of high quality groundwater for long periods of time.
4. "Watershed" shall mean an area where water drains into a specific basin or reservoir, or, for groundwater, a region where water is abundantly recharged to the subsurface groundwater reservoir.

§ 55-0109. Special groundwater protection areas; nomination.

1. Any municipality or person may nominate a special groundwater protection area within a federally designated sole source aquifer contained within counties having a population of one million or more.
2. Such a nomination petition shall be sent to the commissioner and shall include the following information:
 - (a) whether the special groundwater protection area is a recharge zone for groundwater with a present or future water supply potential;
 - (b) whether the special groundwater protection area is largely undeveloped with tracts of natural vegetation, or natural geological conditions;
 - (c) whether the groundwater which is recharged through the special groundwater protection area is of high quality;

(d) whether the hydrogeologic conditions are such that development could lead to degradation of water quality;

(e) whether portions of the groundwater within the sole source aquifer area are already contaminated with toxic organics, nutrients, salts or other pollutants so as to warrant special protection for areas which recharge high quality groundwater;

(f) whether maintenance of existing high quality in the groundwater recharged through the special groundwater protection area would have significant economic, social, ecological, recreational or aesthetic benefits for the sole source aquifer area; and

(g) whether degradation of such groundwater would have significant economic, social, ecological, recreational and aesthetic costs for the area.

3. The nomination petition shall also identify:

(a) the preliminary boundaries of the special groundwater protection area or areas;

(b) a brief outline of the plan of work;

(c) a tentative membership list for any advisory committees; and

(d) a reasonable budget request for the project.

§ 55-0111. Special groundwater protection areas; designation.

1. The commissioner shall review all petitions of nomination for special groundwater protection areas. If a petition complies with all the requirements of section 55-0109 of this article, the commissioner shall certify such compliance and approve the petition. The commissioner shall determine within thirty days of receipt of the petition, the completeness of the petition and respond to the petitioner of his findings. The commissioner shall have ninety days from the date of receipt to certify in writing to the petitioner that a petition has been approved, approved with modifications, or disapproved. If a petition is disapproved, the commissioner shall include in the notification to the petitioner the reasons for disapproval and allow the petitioner to resubmit the petition. Any petition resubmission shall reinstate the review process. If the commissioner does not respond to the petitioner within the time prescribed, the petition shall be considered to be approved.

2. Once a petition has been officially approved, the designated planning entity shall be eligible for such funds to develop the plan and comply with all the requirements of this article for a period not to exceed three years.

§ 55-0113. Special groundwater protection areas; Long Island designation.

1. Nine areas shall be designated for the purposes of this article as special groundwater protection areas. They are identified as follows:

(a) the North Hills area of the town of North Hempstead, Nassau county;

(b) the area of the Northeastern villages of the town of Oyster Bay, Nassau county;

(c) the Woodbury road-West Pulaski road area, town of Huntington, Suffolk county;

(d) the West Hills area of the town of Huntington, Suffolk county;

(e) the Oak Brush Plains of the towns of Babylon and Huntington, Suffolk county;

- (f) the Setauket Pine Barrens, town of Brookhaven, Suffolk county;
- (g) the Central Pine Barrens of the towns of Brookhaven, Riverhead and Southampton, Suffolk county;
- (h) the South Fork Morainal Forest of the towns of Southampton and East Hampton, Suffolk county; and
- (i) the Hither Hills area of the town of East Hampton, Suffolk county.

2. Such areas identified for Long Island in this section shall be addressed concurrently as a single planning project in order to insure consistency and uniformity in the development of a management plan that recognizes the regional importance of the special groundwater protection areas.

3. The preliminary boundaries of the special groundwater protection areas designated in subdivision one of this section shall be those identified in the state groundwater management plan except for said areas designated in paragraphs (a) and (b) of subdivision one of this section which shall be the same as those areas adopted by the Nassau County Board of Health pursuant to article ten of the Nassau County Public Health Ordinance on December twelfth, nineteen hundred eighty-four. Final boundaries shall be determined on the basis of information developed in accordance with the requirements of section 55-0115 of this article.

4. Other areas not identified in this section can be petitioned for according to the guidelines set forth in section 55-0109 of this article.

5. The Long Island regional planning board is designated as the planning entity for the nine special groundwater protection areas herein identified on Long Island, and is authorized to carry out the planning work specified in this article.

6. An advisory group to be known as the "special groundwater protection area advisory council" shall be established. The voting membership shall consist of representatives of the following organizations: one member from the Nassau county department of health; one member from the Nassau county department of public works; one member from the Nassau county planning commission; two members from the Suffolk county department of health services; one member from the New York state department of environmental conservation; one member from the New York state department of health; two members from the New York state legislative commission on water resource needs of Long Island; two members from conservation organizations having property or other interests in one or more of the special groundwater protection areas; and a member from each town which contains part or all of a special groundwater protection area. The special groundwater protection area advisory council shall serve as an advisory group to the Long Island regional planning board and shall assist in the development, review, and implementation of the management plan.

7. The Long Island regional planning board shall submit an outline of the plan of work designed to complete the requirements of sections 55-0115 and 55-0117 of this article, acceptable to the commissioner and a budget request, therefor.

8. No municipality located within a special groundwater protection area designated in paragraph (a) of subdivision one of this section shall use public funds to acquire land within such special groundwater protection area being used as a recreational facility or open space at the time of proposed acquisition unless such land is being offered for sale or a change of use for such land is proposed by the owner thereof.

§ 55-0115. Comprehensive management plan; contents.

The designated planning entity shall prepare the plan for the special groundwater protection area. The plan shall be designed to ensure the non-degradation of the high quality of groundwater recharged within the special groundwater protection area. Where local plans already exist which effectuate the goals of this article, such local plans shall be evaluated and incorporated as is appropriate into the work of the planning entity. Such plan shall include but not be limited to:

1. A determination of the quality of the existing groundwater recharged through said special groundwater protection area, the natural recharge capabilities of the special groundwater protection area watershed and the dependence of any natural ecosystems in the special groundwater protection area on the water quality and natural recharge capabilities of said area;

2. An identification of all known existing and potential point and non-point sources of groundwater degradation;

3. Development of specific watershed rules and regulations pursuant to section eleven hundred of the public health law, which are designed to accomplish the purposes of this article;

4. A map showing the detailed boundary of the special groundwater protection area or areas as well as a precise written description of such boundaries;

5. A resource assessment which determines the amount and type of human development and activity which the ecosystem can sustain while still maintaining existing ground and surface water quality and protecting unique ecological features;

6. The identification and proposal of limits on federal, state and local government financially assisted activities and projects which, directly or indirectly, may contribute, in any way whatsoever, to any degradation of such groundwater or any loss of natural surface and subsurface infiltration or purification capability of the special groundwater protection area watershed;

7. Development of a comprehensive statement of land use management as it pertains to the maintenance and enhancement of groundwater quality and quantity;

8. Proposal of limits on land uses that might have an adverse impact on water quality and/or recharge capabilities in the special groundwater protection area;

9. Consideration and proposal of specific techniques, including, but not limited to: clustering, large lot zoning, purchase, exchange or donation of conservation easements or development rights, and other innovative measures sufficient to achieve the objectives of this section;

10. Designation of specific areas within special groundwater protection areas suitable and appropriate for public acquisition; and

11. A program for local governmental implementation of the comprehensive management plan described in this subdivision in a manner that will insure the continued, uniform, consistent protection of this area in accord with the purposes of this article.

§ 55-0117. Comprehensive management plan; approval.

1. The planning entity shall:

(a) consult with appropriate officials of any local, state or federal agency which has jurisdiction over lands and waters within the area;

(b) consult with the officials of any municipality which has

jurisdiction over lands and waters within areas designated or proposed as special groundwater protection areas;

(c) consult with interested professional, scientific and citizens' organizations;

(d) consult with citizen's advisory committees;

(e) transmit any draft and final plan to all affected municipalities for review and comment; and

(f) conduct public hearings at places within the area, and at such other places as may be appropriate, for the purpose of providing interested persons with an opportunity to express their views with respect to matters covered by the plan.

2. The plan shall be submitted to the commissioner. The plan shall be accompanied by a transmittal letter in which the planning entity certifies that:

(a) the plan when implemented will achieve its stated water quality objectives and protect the ecological values of the special groundwater protection area which are significant for maintenance of water quality;

(b) the plan requires the exercise of land use and zoning responsibilities to the greatest extent practicable to regulate the use of land and water resources in a manner consistent with the purposes of this article;

(c) the planning entity has afforded adequate opportunity, including public hearings, for public governmental involvement in the preparation and review of the plan, and whether such review and comment thereon were considered in the plan; and

(d) the extent to which adequate assurances have been received from appropriate local officials that the recommended implementation program identified in the plan will be initiated within a reasonable time after the date of approval of the plan and such program will insure effective implementation of the local aspects of the plan.

3. The commissioner shall review the plan and within ninety days certify that the plan conforms with all applicable state laws, official rules and regulations, state water resource management plans, and where submitted, the nominating petition as defined in section 55-0109 of this article. As part of the review and certification process, the commissioner shall also certify the boundaries.

4. If the commissioner finds that the plan is still not in compliance with applicable state law, official rules and regulations, and state water resource management plans, after a second review, he shall withhold approval of all outstanding planning entity claims for reimbursement pending satisfactory revision of the plan.

5. Upon certification of the plan and the boundaries, the identified area or areas are officially adopted by the commissioner as special groundwater protection areas.

6. Upon adoption of the boundaries by the planning entity, the special groundwater protection areas shall be designated as critical environmental areas as defined by regulations pursuant to section 8-0113 of this chapter and an environmental impact statement shall be prepared pursuant to section 8-0109 of this chapter for any action found to have a significant impact upon such areas. Such statement shall meet the requirements of the most detailed environmental impact statement required by section 8-0109 of this chapter or by any rule or regulation promulgated pursuant to such section. Upon certification of the plan by the commissioner, such statement shall include a detailed statement of the effects of any proposed action on, and its consistency with, the comprehensive management plan of the special groundwater protection area program, as implemented by the commissioner pursuant to this article.

§ 55-0119. Local land use regulation within a special groundwater protection area.

Any land use regulation enacted by any town or village located within a special groundwater protection area which includes a definition of "open space" must consider the impact of such definition on the water quality and/or recharge capabilities of the area. Any such definition of "open space" may also consider other purposes of open space, including, but not limited to, protection of habitat, farmland, forest, air quality, view shed protection and recreation. Provided however, that any definition of open space that allows for or includes recreational uses, must provide clear guidance as to which recreational uses, improvements or facilities serve the purpose of protecting water quality and/or recharge capabilities. "Land use regulation" shall mean an ordinance or local law enacted by a municipality with responsibility for zoning and includes any zoning, subdivision, special use permit or site plan regulation or any other regulation which prescribes the appropriate use of property, or scale, location and intensity of development.