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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on ... Environment and Natural
Resources (SC-ENR)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... **HR** ... **bills and resolutions** (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Environment and Natural Resources

Clearinghouse Rule 06-121

Relating to annual reporting of groundwater pumping information from high capacity wells, designation of groundwater management areas, environmental review of high capacity well applications for impacts on groundwater protection areas and springs and evaluation of wells with greater than 95% water loss.

Submitted by Department of Natural Resources.

April 09, 2007 Referred to Committee on Environment and Natural Resources.

May 1, 2007 **PUBLIC HEARING HELD**

Present: (5) Senators Miller, Jauch, Wirsch, Kedzie and Schultz.

Absent: (0) None.

Appearances For

- Mark Putra, Madison — Wisconsin Department of Natural Resources
- Ron Kuehn, Madison — Groundwater Advisory Council

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- Jordan Lamb, Madison — WI State Cranberry Growers; WI Potato & Vegetable Growers; WI Pork Association; WI Cattleman's Association

Registrations Against

- None.

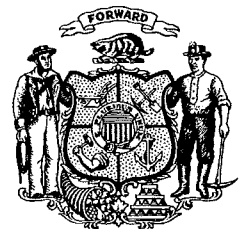
Registrations for Information Only

- None.

June 12, 2007 No action taken.



Elizabeth Bier
Committee Clerk



**Before the Senate Committee on
Environment and Natural Resources
May 1, 2007
Testimony by Mark F. Putra
Department of Natural Resources
Regarding Clearinghouse Rule 06-121, Ch. NR 820**

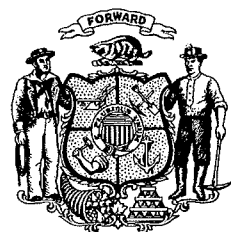
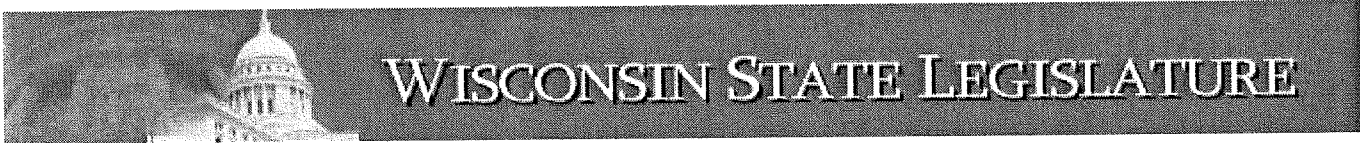
I am testifying today on behalf of the Department of Natural Resources in support of Clearinghouse Rule 06-121, Proposed Chapter NR 820.

2003 Wisconsin Act 310, enacted in April 2004, expanded the Department's authority over high capacity wells to include consideration of impacts to certain sensitive water resources, required annual reporting of groundwater pumping from high capacity wells and directed the department to designate two groundwater management areas. The proposed rule implements the provisions of 2003 Wisconsin Act 310.

Under the proposed code, all owners of high capacity wells will be required to submit annual pumping reports, consisting of monthly pumping information, to the department. The rule also establishes the areal extent of two groundwater management areas, one in the southeast part of the state and another in the northeast part of the state. The two areas include the entire area of each city, village and town in which the level of the underlying groundwater has dropped by at least 150 feet due to groundwater pumping as specified by Act 310.

Ch. NR 820 establishes processes and criteria to guide the review of proposed high capacity wells that are located near springs or within a groundwater protection area, defined as areas within 1,200' of a trout stream, outstanding resource water or exceptional resource water. Applicants for high capacity wells near springs or in groundwater protection areas will be required to submit information demonstrating that the proposed well will not result in significant adverse environmental impacts to the nearby water resource. The department will review all high capacity wells proposed in such locations to assess the extent of environmental impacts related to the proposed well. The rule includes screening criteria that will be used to determine the necessary level of environmental review for these wells. If it is determined that a proposed well could result in a significant adverse environmental impact, the applicant may be required to submit additional environmental information and the department will prepare an environmental assessment prior to approving or denying the proposed well. The code specifies that all approvals for high capacity wells within groundwater protection areas or near springs must include conditions to ensure that construction and operation of the well will not result in significant adverse environmental impacts

The rule before you was developed in consultation with the Groundwater Advisory Committee, a diverse advisory body appointed by the governor and legislative leaders. The Groundwater Advisory Committee, whose members represent industrial, agricultural, municipal and environmental and well drilling interests has endorsed the rule as a sound approach and effective first step in implementing Act 310.



**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. DG-37-06

Legislative Council Rules Clearinghouse Number 06-121

Subject of Rules Annual reporting of groundwater pumping information from high capacity wells, designations of groundwater management areas, environmental review of high capacity well applications for impacts on groundwater protection areas and springs and evaluation of wells with greater than 95% water loss.

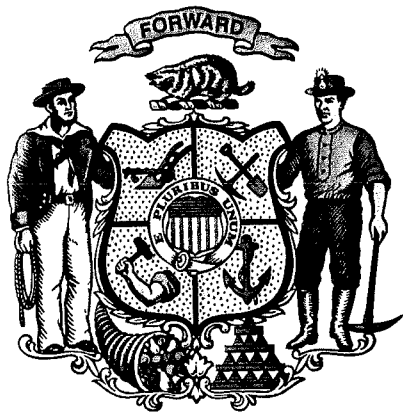
Date of Transmittal to Presiding Officers April 9, 2007

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner



Fiscal Estimate — 2007 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number Ch. NR 820

Subject
 Proposed Ch. NR 820, Groundwater Quantity Protection

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs
 Indeterminate

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

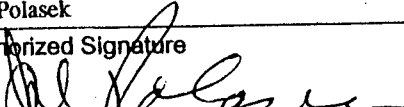
Assumptions Used in Arriving at Fiscal Estimate

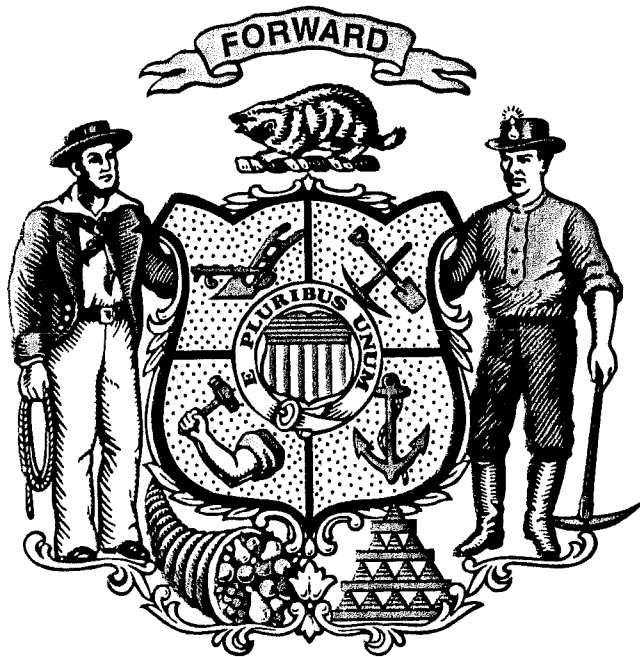
2003 Wisconsin Act 310, enacted in April 2004, substantially expands the Department's authority over proposed high capacity wells. Act 310: authorizes the Department to include consideration of impacts to certain sensitive water resources; requires annual reporting of groundwater pumping from high capacity wells; and directs the Department to designate two groundwater management areas. The proposed rule implements those provisions of 2003 Wisconsin Act 310.

The proposed rule does not create any processes or requirements that were not contemplated and evaluated at the time that Act 310 was enacted. The fiscal impacts associated with Act 310 were recognized by the Legislature; there are no additional state or local government fiscal impacts associated with this proposed rule.

Long-Range Fiscal Implications

None

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 02/14/2007



REPORT TO LEGISLATURE

NR 820, Wis. Adm. Code

Annual reporting of groundwater pumping information from high capacity wells,
designation of groundwater management areas, environmental review of high capacity well
applications for impacts on groundwater protection areas and springs and
evaluation of wells with greater than 95% water loss

Board Order No. DG-37-06
Clearinghouse Rule No. 06-121

Basis and Purpose of the Proposed Rule

2003 Wisconsin Act 310 expanded the state's scope of authority over high capacity wells to include factors in addition to impacts on nearby municipal water supplies. Specifically, the law requires consideration of impacts to certain sensitive water resources and impacts from wells with high water loss prior to issuance of an approval to construct a high capacity well.

Act 310 also recognized that there are areas of the state that have experienced substantial lowering of groundwater levels since settlement and that these areas would benefit from a comprehensive regional groundwater management approach. Act 310 created the concept of groundwater management areas to facilitate comprehensive groundwater management and planning in these areas and directed the department to define the extent of groundwater management areas through administrative rules.

The proposed rule addresses two primary issues. First, it creates a mechanism by which the department will evaluate proposed high capacity wells to determine whether the well will have a significant adverse environmental impact on springs, trout streams, outstanding resource waters and exceptional resource waters in addition to impacts on municipal water supplies. Second, the rule defines the extent of groundwater management areas as directed in 2003 Wisconsin Act 310.

The proposed rule designates the boundaries of two separate groundwater management areas (GMA). The Southeast Wisconsin GMA includes all of Kenosha, Milwaukee, Ozaukee, Racine and Waukesha Counties and portions of Walworth and Washington Counties. The Northeast Wisconsin GMA is comprised of all of Brown County and portions of Calumet and Outagamie Counties. Pursuant to Act 310, the extent of the two GMAs corresponds to the areas in which groundwater withdrawals have resulted in a lowering of the level of groundwater by at least 150 feet from the projected pre-settlement levels as determined through groundwater modeling of the two areas.

The department recognizes that the rule does not fully develop details related to planning and regulatory issues in GMAs. Act 310 created the Groundwater Advisory Committee to consider these issues and make recommendations to the Legislature concerning full implementation of the GMA concept. The Groundwater Advisory Committee submitted its first report to the legislature in December 2006 and the department is deferring development of the detailed GMA framework pending subsequent direction from the Legislature in response to the Groundwater Advisory Committee's recommendations.

The proposed rule establishes review processes for evaluation of applications for high capacity well approvals for wells that are located in groundwater protection areas (i.e., within 1,200' of a trout stream, outstanding resource water or exceptional resource water) are near a spring or involve high water loss. Under the proposed rule, all applications for wells near springs or within a groundwater protection area will be reviewed to assess impacts to the spring or surface waters. The rule includes screening criteria to help identify which of these proposed high capacity wells are unlikely to result in significant adverse environmental impacts and therefore can be approved without preparing a formal environmental assessment. Generally, these wells will be high capacity wells that are designed to pump a relatively small volume of water in comparison to the flow or volume of the nearby water body. In those cases where the department determines that significant adverse environmental impacts could result, the

applicant may be required to submit supplemental information to facilitate the department's final review and preparation of an environmental assessment. Approvals for high capacity wells near a spring or within a groundwater protection area must include specific conditions pertaining to well construction and operation to ensure protection of the water resources. Proposed wells involving high water loss will require preparation of an environmental assessment prior to issuance of an approval and such approvals must also include conditions to ensure that significant environmental impacts do not result.

Finally, the rule requires that all owners of high capacity wells record pumpage data on a monthly basis and report this information to the department on an annual frequency. Individual reports will be required for wells with large pump capacities while properties with multiple lower capacity wells will be permitted to submit composite reports.

Summary of Public Comments

The department conducted five public hearings around the state concerning proposed ch. NR 820 in December 2006. The hearings were held in Menomonie, Green Bay, Waukesha, Madison and Stevens Point and were attended by a total of approximately 50 people. In addition to input received at the hearings, the department received substantial comments by e-mail and U.S. Mail. The most common concerns expressed related to the limited extent of groundwater protection areas, the nature and application of screening criteria and the appropriate level of environmental review. A summary of the comments received and the department's responses is attached.

Modifications Made

The department did modify the proposed rule in response to many of the comments; however, in many cases the department could not modify the rule as suggested due to statutory limitations. The department also modified the rule, or explained why changes were not made, in response to comments from the Legislative Council Rules Clearinghouse.

Appearances at the Public Hearing

December 13, 2006 – Menomonie

In support:

Neil Koch, N7238 520nd Street, Menomonie, WI 54731

In opposition – none

As interest may appear:

Kevin Olson, Ken Olson Well, Inc., 4121 Lark Avenue, Eau Claire, WI
Robert Heise, St. Croix Co. Land & Water Conservation Dept., N4769 430th St., Menomonie, WI
Bill Kowalski, 3200 East Avenue South, La Crosse, WI 54602
Susan Wojtkiewicz, 1701 W. Knapp Street, Rice Lake, WI 54868

December 15, 2006 – Green Bay

In support – none

In opposition – none

As interest may appear:

Jacob Koivisto, 1681 Langlade Avenue, Green Bay, WI 54304
Amy Callis, Calumet Co. Land & Water Cons. Dept., 206 Court Street, Chilton, WI 53014
Mark Metcalf, Wis. Public Service Corporation, 700 N. Adams Street, Green Bay, WI 54307

Doug Snyder, Baxter & Woodman, Inc., 256 S. Pine Street, Burlington, WI 53121

December 18, 2006 – Waukesha

In support:

Steve Barber, 22115 Ridge Road, Waukesha, WI 53181

In opposition:

Brian Wolf, 4818 41st Street, Kenosha, WI 53144

Janet Pace, W270 N195 Arrowhead Trails, Waukesha, WI 53188

As interest may appear:

Carol M. Nichols, 588 8th Street, Fond du Lac, WI 54935

Charles W. Nichols, 588 8th Street, Fond du Lac, WI 54935

December 19, 2006 – Fitchburg

In support – none

In opposition – none

As interest may appear:

Paul Didier, 1019 Rooster Run, Middleton, WI 53562

Dan Trudell, Huron Lake Association, 10708 S. Huron Road, Plainfield, WI 54966

Michael Engleson, River Alliance of Wisconsin, 306 E. Wilson Street, #2W, Madison, WI 53703

December 20, 2006 – Stevens Point

In support:

Russell Bouck, P.O. Box 56, Amherst Junction, WI 54407

Justin Barrick, 2132 Jefferson Street, Stevens Point, WI 54440

Paul Roberts, P.O. Box 490, Plover, WI 54467

Nancy Turyk, 6813 Madley Road, Amherst, WI 54406

Donald and Karen Bredow, Long Lake District, W11404 Long Lake Road, Plainfield, WI 54966

Michael Hinrichs, Friends of the Tomorrow River, 192 South Street, Amherst, WI 54406

In opposition:

Lynn Markham, 302 Georgia Street North, Stevens Point, WI 54481

Kathy Powell, 2130 County J North, Custer, WI 54423

Cris Van Houten, Huron Lake Association, N6038 North Huron Road, Plainfield, WI 54966

George J. Kraft, 8640 Old Amish Road, Amherst, WI 54406

Wendy Billington, W10774 S. Huron Road, Plainfield, WI 54966

Jacob Adams, County Road R, Stevens Point, WI 54481

Connor Adams, 4127 County Road R, Stevens Point, WI 54481

Troy Adams, 4127 County Road R, Stevens Point, WI 54481

Barb Feltz, 4127 County Road R, Stevens Point, WI 54481

Donald A. Walczak, N5958 N. Huron Road, Plainfield, WI 54966

Jo Seiser, 616A 4th Avenue, Stevens Point, WI 54481

As interest may appear:

Andy Jacowski, 9801 County Road D, Almond, WI 54909
Audrey Jacowski, 9801 County Road D, Almond, WI 54909
Patrick Harrington, N9615 Mary Drive, Appleton, WI 54915
Dick Berndt, 3024 Blue Heron Lane, Stevens Point, WI 54481
Myron Soik, 6213 County HH, Stevens Point, WI 54481
Jeff Laskowski, 5924 Highway J, Plover, WI 54467
Ken M. Blomberg, WI Rural Water Association, 350 Waterway, Plover, WI 54467
Dennis Clear, W11360 Aniwa Lane, Plainfield, WI 54966
Linda Clear, W11360 Aniwa Lane, Plainfield, WI 54966
Bob Zoromski, 2026 Ellis Road, Custer, WI 54423
Barry Jacowski, 10597 County Road D, Almond, WI 54909
Marvin Hopp, 2410 Plover Springs Drive, Plover, WI 54467
Tony Catlin, W4511 Shagbark Lane, Waupaca, WI 54981
Myron Shaw, 9250 Shaw Drive, Amherst Junction, WI

Changes to Rule Analysis and Fiscal Estimate

The words "high capacity" are no longer used to define well in the analysis. The fiscal estimate is unchanged.

Response to Legislative Council Rules Clearinghouse Report

See the response to comments no. 96 to 115 in the attachment.

Final Regulatory Flexibility Analysis

High capacity wells are owned by a wide range of entities including individuals, municipalities, other units of government, large corporations and small businesses. The review and approval processes specified in the proposed rule for high capacity well applications submitted by small businesses are the same as those for applications submitted by any other applicant. While the proposed rule creates a screening process to identify those wells that will be subject to more comprehensive evaluation, the criteria are related to the characteristics of the proposed well rather than the nature of the owner. The potential impacts on small businesses will be the same as the impacts experienced by other applicants.

The department anticipates a very small percentage of high capacity well applications will require an extensive environmental review and there is a reasonable likelihood that only a few of those will be on behalf of a small business. The department believes that this proposed rule will not have a significant impact on a substantial number of small businesses.

A. Compliance/Reporting Requirements. Any entity, including small businesses, proposing to construct a high capacity well must receive approval from the Department prior to beginning construction. If the proposed well is located in a groundwater protection area, near a spring, or involves an activity with high water loss additional information must be submitted with the application. The proposal may also be subject to an extensive environmental review, including preparation of an environmental assessment to determine whether placement of the well would cause significant adverse environmental impact. The environmental review will result in a longer review period and may result in increased review and approval costs, potential alteration of well construction and operation plans, or in some cases, approval being denied for the construction of high capacity wells. However, these requirements are necessary to ensure protection of springs, trout streams and other valuable surface water resources.

All high capacity well owners are also required to annually report the amount of water that is pumped from their wells. Methods of recording the annual pumpage will vary dependent on the pumping capacity of the well rather than the nature of the owner. Larger wells may be required to be equipped with more sophisticated metering devices because these wells are responsible for the majority of the groundwater withdrawn on a statewide basis, while estimates of water use may suffice for smaller wells.

B. Compliance/Reporting Deadlines and Schedules. The only specified deadline or reporting requirement pertains to submittal of annual pumping information. Pumpage reports for a given calendar year are to be submitted to the department no later than the first day of March in the subsequent year. These requirements apply to all owners of high capacity wells.

C. Possible Simplification of Compliance and Reporting Requirements. No simplification of the requirements are recommended. The annual pumpage reporting requirement should not prove to be an undue burden to well owners. While the department will provide alternate means of estimating pumpage from wells with lower pumping capacity, no reasonable alternatives are available specifically for small business owners which would still provide the necessary information regarding water use. The potential extensive environmental review process is necessary to determine the extent of environmental impacts that could occur as a result of the construction and operation of proposed high capacity wells near springs or within groundwater protection areas. The informational requirements specified in the code represent the minimum information needed by the department to make a preliminary assessment of the possible impacts. Simplification or elimination of any of these requirements would interfere with the department's ability to effectively evaluate the potential environmental consequences of high capacity wells proposed to be constructed near sensitive water resources.

D. Use of Performance Standards in lieu of Design/Operational Standards. The proposed rule does not impose design or operational standards to regulate high capacity wells. Rather, all high capacity wells will be reviewed and regulated to minimize impacts to sensitive water resources. While the approval screening criteria are quantitative in nature they do not constitute design or operational standards. Further, as mentioned previously, the pumping capacity of the proposed well relative to the size of the potentially affected water resource is the important factor, not the nature of the applicant.

E. Potential Exemptions for Small Business. Small businesses should comply with all of the requirements of the proposed code. The annual pumpage reporting requirement is needed to facilitate more effective management of the State's groundwater resources and the consideration of potential surface water impacts as a result of high capacity well construction and operation is necessary whether the owner is a small business or not.