

NO. 199. AN ACT RELATING TO A GROUNDWATER  
WITHDRAWAL PERMIT PROGRAM.

(S.304)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 10 V.S.A. § 1390 is amended to read:

§ 1390. POLICY

~~It is the policy of the state of Vermont that it shall protect its groundwater resources to maintain high quality drinking water and shall manage its groundwater resources to minimize the risks of groundwater quality deterioration by limiting human activities that present unreasonable risks to the use classifications of groundwater in the vicinities of such activities while balancing the state's groundwater policy with the need to maintain and promote a healthy and prosperous agricultural community~~ The general assembly hereby finds and declares that:

(1) the state should adhere to the policy for management of groundwater of the state as set forth in section 1410 of this title;

(2) in recognition that the groundwater of Vermont is a precious, finite, and invaluable resource upon which there is an ever-increasing demand for present, new, and competing uses; and in further recognition that an adequate supply of groundwater for domestic, farming, dairy processing, and industrial uses is essential to the health, safety, and welfare of the people of Vermont, the withdrawal of groundwater of the state should be regulated in a manner that benefits the people of the state; is compatible with long-range water resource

planning, proper management, and use of the water resources of Vermont; and is consistent with Vermont's policy of managing groundwater as a public resource for the benefit of all Vermonters;

(3) it is the policy of the state that the state shall protect its groundwater resources to maintain high-quality drinking water;

(4) it is the policy of the state that the groundwater resources of the state shall be managed to minimize the risks of groundwater quality deterioration by regulating human activities that present risks to the use of groundwater in the vicinities of such activities while balancing the state's groundwater policy with the need to maintain and promote a healthy and prosperous agricultural community; and

(5) it is the policy of the state that the groundwater resources of the state are held in trust for the public. The state shall manage its groundwater resources in accordance with the policy of this section, the requirements of subchapter 6 of this chapter, and section 1392 of this title for the benefit of citizens who hold and share rights in such waters. The designation of the groundwater resources of the state as a public trust resource shall not be construed to allow a new right of legal action by an individual other than the state of Vermont, except to remedy injury to a particularized interest related to water quantity protected under this subchapter.

Sec. 2. 10 V.S.A. chapter 48, subchapter 6 is added to read:

Subchapter 6. Groundwater Withdrawal Program

§ 1416. DEFINITIONS

As used in this subchapter:

(1) “Farming” means farming as the term is defined in subdivision 6001(22) of this title.

(2) “Groundwater” means water below the land surface, including springs.

(3) “Person” means any individual, partnership, company, corporation, cooperative, association, unincorporated association, joint venture, trust, the state of Vermont or any department, agency, subdivision, or municipality, the United States government or any department, agency, or subdivision, or any other legal or commercial entity.

(4) “Spring” means a groundwater source where groundwater flows naturally to the surface of the earth and is collected with a developed structure that is designed to locate or extract groundwater.

(5) “Surface water” means waters within the meaning of subdivision 1251(13) of this title.

(6) “Water resources” means groundwater or surface water.

(7) “Well” means any hole drilled, driven, bored, excavated, or created by similar method into the earth to locate, monitor, extract, or recharge

groundwater where the water table or potentiometric surface is artificially lowered through pumping.

(8) “Withdraw” or “withdrawal” means the intentional removal by any method or instrument of groundwater from a well, spring, or combination of wells or springs.

§ 1417. EXISTING GROUNDWATER WITHDRAWAL; REPORTING

(a) Beginning September 1, 2009, any person that withdraws more than 20,000 gallons per day, averaged over a calendar month at a single tract of land or place of business shall file a groundwater report with the secretary of natural resources on or before September 1 for the preceding calendar year. The report shall be made on a form prescribed by the secretary and shall include:

(1) the location, capacity, frequency, and rate of the withdrawal;

(2) a description of the use of the water withdrawn; and

(3) where feasible, the distance of each withdrawal from the nearest surface water source and wetland.

(b) The following are exempt from the reporting requirements of this section:

(1) a groundwater withdrawal for fire suppression or other public emergency purposes;

(2) a withdrawal reported to the agency of natural resources under any program that requires the reporting of substantially similar data. The agency of natural resources shall record such withdrawals with the information from

withdrawals reported under this section:

(3) domestic, residential use;

(4) groundwater withdrawal for farming;

(5) dairy processors and milk handlers licensed in accordance with 6

V.S.A. § 2721;

(6) public water systems, as that term is defined in section 1671 of this title; and

(7) closed loop, standing column, or similar non-extractive geothermal heat pumps.

(c) The secretary of natural resources may adopt rules to implement this section, including methods for calculating or estimating the amount of groundwater withdrawn from a well or spring.

#### § 1418. GROUNDWATER WITHDRAWAL PERMIT

(a) On and after July 1, 2010, no person, for commercial or industrial uses, shall make a new or increased groundwater withdrawal of more than 57,600 gallons a day from any well or spring on a single tract of land or at a place of business without first receiving from the secretary of natural resources a groundwater withdrawal permit. The following shall constitute a “new or increased withdrawal”:

(1) The expansion of any existing withdrawal through:

(A) additional withdrawal from one or more new wells or springs; or

(B) an increase in the rate of withdrawal from a well or spring above

the maximum rate set forth in any existing permit issued by the secretary of natural resources under this section; or

(2) For previously unpermitted withdrawals, an increase in the rate of withdrawal after July 1, 2010 from a well or spring on a single tract of land or at a place of business of 25 percent of the baseline withdrawal or an increase of 57,600 gallons of groundwater withdrawn, whichever is smaller.

(3) For the purposes of this subsection, the baseline withdrawal shall be the highest amount withdrawn by a person between 2005 and 2010.

(b) The following are exempt from the permitting requirements of this section:

(1) a groundwater withdrawal for fire suppression or other public emergency purpose;

(2) domestic, residential use;

(3) groundwater withdrawal for farming;

(4) dairy processors and milk handlers licensed in accordance with 6 V.S.A. § 2721;

(5) public water systems, as that term is defined in section 1671 of this title; and

(6) closed loop, standing column, or similar non-extractive geothermal heat pumps.

(c)(1) At least 30 days before filing an application for a permit under this section, the applicant shall hold an informational hearing in the municipality in

which the withdrawal is proposed in order to describe the proposed project and to hear comments regarding the proposed project. Public notice shall be given by posting in the municipal offices of the town in which the withdrawal is proposed and by publishing in a local newspaper at least 10 days before the meeting.

(2) On or before the date of filing with the secretary of natural resources an application for a permit under this section, an applicant for a withdrawal under this section shall notify:

(A) the clerk, legislative body, and any conservation commission in the municipality in which the proposed withdrawal is located;

(B) adjoining municipalities;

(C) the regional planning commission in the region where the proposed withdrawal is located;

(D) all landowners and mobile home park residents within the zone of influence of a groundwater withdrawal or within one quarter mile downstream from a withdrawal from a spring. Notice to the officers of a condominium association shall be deemed sufficient under this subdivision for notice to residents of a condominium; and

(E) any public water systems permitted by the agency of natural resources in the municipality where the proposed withdrawal is located.

(3) The applicant shall publish notice of the application in a newspaper of general circulation in the area in which the withdrawal is proposed and shall

post a copy of the notice in the municipal clerk's office in the municipality in which the withdrawal is located.

(4) On its own motion or on receipt of a written request, the agency shall hold a public meeting in the municipality in which the withdrawal is proposed in order to describe the proposed project and to hear comments regarding the proposed project. Opportunity shall be given all participants at a public meeting to ask questions and comment on all issues involved. The agency shall prepare a responsiveness summary for each public meeting conducted. Public notice shall be given by posting in the municipal offices of the town in which the withdrawal is proposed and by publishing in a local newspaper at least 10 days before the meeting.

(5) No defect in the form or substance of any notice requirements in subdivision (1), (2), (3), or (4) of this subsection shall invalidate an application for a permit under this section provided that reasonable efforts are made to provide adequate posting and notice. An application for a permit under this section shall be invalid when a defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the environmental court, the applicant may reapply and provide new posting and notice.

(d) Application for a permit shall be on a form prepared by the secretary. An application shall, at a minimum, contain the information necessary to make the determinations contained in subsection (e) of this section, and the following:

- (1) the purpose for the withdrawal;
- (2) the location and source of the withdrawal;
- (3) the amount of the proposed withdrawal, including estimates of the projected mean and peak daily, monthly, and annual withdrawals;
- (4) the place of the proposed return flow of withdrawn water;
- (5) the estimated amount of water that will not be returned to the watershed where the proposed withdrawal is located;
- (6) the location, demand on, and yield of existing sources of groundwater and surface water utilized by the applicant; and
- (7) a brief description of the alternative means considered for satisfying the applicant's stated use for water.

(e) The secretary shall not issue a permit for a new or increased groundwater withdrawal unless the secretary determines:

- (1) that the proposed withdrawal is planned in a fashion that provides for efficient use of the water;
- (2) that the proposed withdrawal, in combination with other existing withdrawals, will meet the standards set by the secretary of natural resources in rule for establishing a safe yield in the area of the withdrawal;
- (3) that the proposed withdrawal is consistent with the town or regional plan in which the proposed withdrawal is located, and with any duly adopted state policy to manage groundwater as a shared resource for the benefit of all citizens of the state, including any policies and programs of the state of

Vermont regarding long-range planning, management, allocation, and use of groundwater and surface water in effect at the time the application for the withdrawal is filed;

(4) that the proposed withdrawal will not have an undue adverse effect on existing uses of water dependent on the same water source;

(5) that the proposed withdrawal will not have an undue adverse effect on a public water system permitted by the agency of natural resources;

(6) that the proposed withdrawal will not have an undue adverse effect on significant wetlands under the Vermont wetland rules or on other water resources hydrologically interconnected with the well or spring from which the proposed withdrawal would be made;

(7) that the proposed withdrawal will not violate the Vermont water quality standards; and

(8) any other consideration that the secretary determines necessary for the conservation of water or protection of groundwater quality.

(f) A permit issued under this section shall be valid for the period of time specified in the permit but not for more than 10 years. A permit issued under this section shall include the following:

(1) that groundwater withdrawals from a well or spring for drinking water supplies, farming, or dairy processing shall be given priority over other uses during times of shortage; and

(2) any other condition that the secretary determines necessary for the

conservation of water or protection of groundwater quality.

(g) The secretary may require any person withdrawing groundwater in the state to obtain a permit under this section if the withdrawal is not exempt under subsection (b) of this section and the secretary determines that the withdrawal violates the Vermont water quality standards or has an undue adverse effect on an existing use of groundwater, a public water system permitted by the agency of natural resources, wetlands, or water resources hydrologically interconnected with the well or spring from which the withdrawal occurs. The secretary shall make a determination under this section based on review of the information set forth under subsection (d) of this section that is readily available to the secretary.

(h) A withdrawal permit issued under this section may be transferred upon a change of ownership of the facility or project for which the permit was issued, provided that the new owner applies for an administrative amendment to the permit certifying its agreement to comply with all terms and conditions of the transferred permit and assume all other associated obligations.

(i) The following groundwater withdrawals shall be deemed to comply with the public trust requirements of the state for groundwater management and shall be entitled to a presumption that the withdrawal complies with the public trust requirements of the state:

(1) A groundwater withdrawal permitted under this section;

(2) A groundwater withdrawal for domestic, residential use;

(3) A groundwater withdrawal for public water systems, except for a bottled water facility operating under a source permit issued prior to the effective date of this act, permitted under chapter 56 of this title;

(4) A groundwater withdrawal for a potable water supply permitted under chapter 64 of this title;

(5) A groundwater withdrawal for farming conducted in compliance with the requirements of chapter 215 of Title 6; and

(6) A groundwater withdrawal by a dairy processor or milk handler licensed in accordance with 6 V.S.A. § 2721.

(j) On or before July 1, 2010, the secretary shall adopt rules to implement this section. When rules are adopted by the secretary under this section, section 1415 of this title shall be repealed. The rules adopted under this section shall include:

(1) requirements for the mitigation of an undue adverse effect on drinking water supplies, farming, public water systems, or any other affected use when the secretary determines such an undue adverse effect is likely to occur due to a proposed withdrawal;

(2) requirements for the renewal of permits issued under this section.

(k) Nothing contained in this subchapter shall be construed to alter or modify a right under a deed or contract to access groundwater in this state.

#### § 1419. CIRCUMVENTION

The secretary may require a person to report under section 1417 of this title

or obtain a permit under section 1418 of this title when the secretary, in his or her discretion, determines that a withdrawal, subdivision of land, transfer of property, or other action is intended to circumvent the requirements of this subchapter.

Sec. 3. 10 V.S.A. § 1410 is amended to read:

§ 1410. GROUNDWATER; RIGHT OF ACTION

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(b) Definitions. As used in this section:

(1) “Groundwater” means water below the land surface.

(2) “Surface water” means any water on the land surface.

(3) “Person” means any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, municipality, the state of Vermont, or any agency, department, or subdivision of the state, federal agency, or any other legal or commercial entity.

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(g) For the purposes of this section, a person who obtains and complies with a withdrawal permit issued pursuant to the requirements of section 1418 of this title shall be presumed to be engaged in a reasonable use of groundwater and not to cause unreasonable harm under subsection (b) of this section.

Sec. 4. 6 V.S.A. § 4851 is amended to read:

§ 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

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(g) A farm that is permitted under this section and that withdraws more than 57,600 gallons of groundwater per day averaged over any 30 consecutive-day period shall annually report estimated water use to the secretary of agriculture, food and markets. The secretary of agriculture, food and markets shall share information reported under this subsection with the agency of natural resources.

Sec. 5. 10 V.S.A. § 1675(g) is amended to read:

~~(g)(1) Effective July 1, 2006, a public water system applying for a permit under this section for the bottling of more than 50,000 gallons of drinking water a day from a single source for public distribution and sale shall, in addition to complying with the requirements of this chapter and any rules adopted thereunder, submit to the Vermont state geologist and the department of environmental conservation a geologic cross section and groundwater contour map of an area, the size of which shall be in conformance with appendix A, part 3, subsection 3.3.5.2 of the Vermont water supply rule, surrounding the proposed source.~~

~~(2) The requirements of subdivision (1) of this subsection shall apply to a public water system permitted under this section when the system proposes to expand the bottling of drinking water from a single source such that the total~~

gallons of water bottled from the single source would exceed 50,000 gallons a day. Beginning July 1, 2010, the secretary shall not issue a source permit for a bottled drinking water supply unless, in addition to all other requirements for a source permit:

(1) the permit application contains the information required by subdivisions 1418(d)(4)–(7) of this title;

(2) the secretary finds that considerations in subdivisions 1418(e)(1)–(3) and (6)–(8) of this title have been satisfied;

(3) the permit contains the permit conditions required by subsection (f) of this section; and

(4) the permit applicant complies with the notice requirements of subsection 1418(c) of this title.

(h) A public water system permitted after the effective date of this act that bottles drinking water for public distribution and sale shall obtain from the secretary a source water permit under subsection 1672(b) of this title upon renewal of its operating permit under this section and every 10 years thereafter.

Sec. 6. 10 V.S.A. § 6001d is added to read:

§ 6001d. LARGE VOLUME GROUNDWATER WITHDRAWAL

In addition to all other applicable law, any withdrawal of more than 340,000 gallons of groundwater per day from any well or spring on a single tract of land or at a place of business, independent of the acreage of the tract of land or place of business, shall be a development under this chapter if the withdrawal

requires a permit under section 1418 of this title or is by a bottled water facility regulated under chapter 56 of this title.

Sec. 7. 6 V.S.A. § 2674 is amended to read:

§ 2674. RECORDS AND REPORTS--HANDLERS

(a) On or before March 1 of each year all handlers shall send the secretary a full and accurate report of the amount of business done during the preceding year, together with such other statistical information as he may require.

(b) A milk handler that is licensed under this chapter and that withdraws more than 57,600 gallons of groundwater per day averaged over any 30 consecutive-day period shall annually report estimated water use to the secretary of agriculture, food and markets. The secretary of agriculture, food and markets shall share information reported under this section with the agency of natural resources.

Sec. 8. EFFECTIVE DATE

This act shall take effect upon passage.

Approved: June 9, 2008