

**From:** Matthew Reonas  
**Sent:** Tuesday, September 26, 2017 4:09 PM  
**To:** Johan Forsman (Johan.Forsman@LA.GOV)  
**Subject:** Office of Conservation Response to Comments on Act 425 Form with Checklist

Johan –

The Office of Conservation received your electronic correspondence of September 22, 2017, which included comments on the guidance form with checklist developed by the Office of Conservation in compliance with Act 425 of 2017 Regular Session. The agency sincerely appreciates your efforts to improve this form and finds value in your comments, which have been taken under due consideration. Attached is a detailed response to your specific comments about individual reporting items on the checklist.

It is worthwhile, though, to address directly several of your other concerns here. As to the need for additional time to clarify items and/or comment, the agency has been in correspondence with the leadership of the Capital Area Ground Water Conservation Commission (CAGWCC) since June, providing early draft versions of this checklist as well as copies of correspondence to and from legislative staff regarding clarification of specific items. The opportunity existed throughout that period for productive comment and/or additional requests for clarification, in addition to the extra time provided after completion of a more formal “draft” checklist provided by electronic correspondence on September 1. At this point, the agency intends to finalize the form with checklist and move to publication in the Potpourri section of the *Louisiana Register* to fulfill its obligation. Regarding the request to follow the Administrative Procedure Act, it is very clear that this law does not mandate nor provide for the utilization of the rulemaking process by the Office of Conservation in the development and issuance of the guidance form and checklist on the reporting requirements listed therein.

Please note that under Act 425, the CAGWCC report must be filed by November 1 regardless of whether the Office of Conservation provides a guidance form with checklist or not. The agency in fact has developed a guidance form and checklist and will finalize this document and issue it in sufficient time for the November 1 report.

Your larger question deals with what information is appropriate to report under Act 425, or even capable of being reported by the CAGWCC, with particular reference to the comment that the “check list includes reporting items that (a) are not provided for in Act 425, (b) are not recorded by the CAGWCC, and (c) may have financial impact on the regulated users.” Having carefully evaluated all provisions of Act 425 in consultation with legislative committee staff, it has been determined that the act is broad enough to encompass all potential checklist items included. Act 425 directs that a written report be submitted “detailing the district’s ground water resources and the activities and actions taken with respect to *each of the district’s powers delineated by laws creating the district*” (italics added), and further directs that said report “shall also include *but not be limited to* the amount of water used for residential, commercial or industrial, or agricultural purposes, respectively; actual and projected saltwater intrusion or encroachment; and any current or projected sale of water for use outside the state, including the amount of water so sold and the price paid by each out-of-state user” (italics added).

Of particular interest for this item, R.S. 38:3076.A.8 authorizes the CAGWCC, “To collect data; to make investigations and inspections; to examine properties, papers, books, and records relevant to groundwater use or conservation; . . . to provide for the keeping of records and making of reports by

owners of water wells providing water to users, and users of groundwater within the district.” Additionally, R.S. 38:3076.A.12 authorizes the CAGWCD Board “to establish groundwater use priorities, under conditions supported by research data, which indicate depletion of water subject to this Part,” while R.S. 38:3076.A.22 authorizes the CAGWCD Board, “to expand the district to include adjacent parishes.” As provided by Act 425 and the CAGWCD’s enabling statutory authority detailed in the paragraphs above, reporting such information provided under this item is of substantial interest to the management of the groundwater resources in the CAGWCD.

That being said, the instructions for the guidance form and checklist make ample provision for the CAGWCC to explain or justify its inability to report on items: specifically, “If the District is unable to provide any of the requested information, an explanation or justification must be provided, subject to acceptance or rejection by the Commissioner of Conservation” (original underscore). As noted, the powers of the CAGWCC to collect all manner of data and records from its regulated community are exceedingly broad; however, if no rules or regulations currently exist to compel such collection of data or recordkeeping/reporting, the Board should make note of that in its Act 425 report and possibly consider moving towards the creation of such rules/regulations that would provide the fullest understanding possible of the use of the district’s groundwater resources.

Kind regards,

Matt

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