

Title 43

NATURAL RESOURCES

Part VI. Water Resources Management

Subpart 1. Ground Water Management

Chapter 1. General Provisions

§101. Applicability

A. The rules and regulations of this Subpart shall be applicable to the commissioner's jurisdiction regarding:

1. areas of ground water concern;
2. ground water emergencies; and
3. management of the state's ground water resources.

B. The rules shall not alter or change the right of the commissioner to call a hearing for the purpose of taking action with respect to any matter within the commissioner's jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1212 (June 2004), LR 35:249 (February 2009).

§103. Definitions

A. The words defined herein shall have the following meanings when used in these Rules and Regulations for this Subpart. All other words used and not defined shall have their usual meanings unless specifically defined in Title 38 of the Louisiana Revised Statutes.

Aquifer—a ground water bearing stratum of permeable rock, sand, or gravel.

Area of Ground Water Concern—an area in which, under current usage and normal environmental conditions, sustainability of an aquifer is not being maintained due to either movement of a salt water front, water level decline, or subsidence, resulting in unacceptable environmental, economic, social, or health impacts, or causing a serious adverse impact to an aquifer, considering the areal and temporal extent of all such impacts.

Beneficial Use—the technologically feasible use of ground water for domestic, municipal, industrial, agricultural, recreational, or therapeutic purposes or any other advantageous purpose.

Commission—Ground Water Resources Commission authorized by R.S. 38:3097.4.

Commissioner—Commissioner of Conservation.

Critical Area of Ground Water Concern—an area of ground water concern, in which the commissioner finds that

the sustainability of the aquifer cannot be maintained without withdrawal restrictions.

Critical Ground Water Area—an area in which, under current usage and normal environmental conditions, sustainability of an aquifer is not being maintained due to either movement of a salt water front or water level decline, or subsidence, resulting in unacceptable environmental, economic, social, or health impacts, or causing a serious adverse impact to an aquifer, considering the areal and temporal extent of all such impacts.

Domestic Well—a well used exclusively to supply the household needs of the owner lessee or his family. Uses may include drinking, cooking, washing, sanitary purposes, lawn and garden watering and caring for pets. *Domestic wells* shall also include wells used on private farms and ranches for the feeding and caring of pets and watering of lawns, excluding livestock, crops, and ponds.

Drilling Rig Supply Well—a water well used only for the duration of the oil and gas drilling operation at the drilling location where sited for the immediate needs of drilling rig operations.

Ground Water—water suitable for any beneficial purpose percolating below the earth's surface which contains less than 10,000 mg/l total dissolved solids, including water suitable for domestic use or supply for a domestic water system.

Ground Water Emergency—an unanticipated occurrence as a result of a natural force or a man-made act which causes a ground water source to become immediately unavailable for beneficial use for the foreseeable future or drought conditions determined by the commissioner to warrant the temporary use of drought relief wells to assure the sustained production of agricultural products in the state.

Large Volume Well—a well with an 8 inch or greater diameter screen size or a well that by itself or used in conjunction with another well or group of wells on the same lease or within the same unit and screened in the same aquifer for the purposes of providing ground water for hydraulic fracturing for natural gas production and that alone or in conjunction with the other well or wells is determined by the Office of Conservation to be capable of producing 1,500 gallons per minute.

Owner—the person registered as owner of a water well with the Office of Conservation, and if there is none registered for a specific well or proposed well then the owner shall be one of the following: the legal owner of the property on which the well or hole is located, a person

holding a long-term lease on the property on which the well or hole is located, or a person who otherwise has the legal right to drill and operate a water well on the property of another where the well or hole is located.

Person—any natural person, corporation, association, partnership, receiver, tutor, curator, executor, administrator, fiduciary, or representative of any kind, or any governmental entity.

Replacement Well—a well located within 1,000 feet of the original well and within the same property boundary as the original well, installed within the same aquifer over an equivalent interval with an equivalent pumping rate, and used for the same purpose as the original well.

Spacing—the distance a water well may be located in relation to an existing or proposed water well, regardless of property boundaries.

Sustainability—the development and use of ground water in a manner that can be maintained for the present and future time without causing unacceptable environmental, economic, social, or health consequences.

User—any person who is making any beneficial use of ground water from a well or wells owned or operated by such person.

Well or Water Well—any well drilled or constructed for the principal purpose of producing ground water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1212 (June 2004), LR 35:249 (February 2009).

§105. Enforceability of Subpart 1—Ground Water Management

A. All provisions of this Subpart are enforced pursuant to Louisiana's Ground Water Management Law, R.S. 38:3097.1, et seq. Violation of any statute, regulation, rule, or order issued or promulgated pursuant to these laws may result in the issuance of an order requiring compliance and the imposition of a civil penalty consistent with R.S. 38:3097.3(E).

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 35:250 (February 2009).

Chapter 3. Area of Ground Water Concern Application Procedure

§301. Who May Apply—Applicant

A. Any owner of a well that is significantly and adversely affected as a result of the movement of salt water front, water level decline, or subsidence in or from the aquifer drawn on by such well shall have the right to file an application to request the commissioner to declare that an

area underlain by such aquifer(s) is a an area of ground water concern.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1212 (June 2004), LR 35:250 (February 2009).

§303. Notice of Intent to File an Application

A. The applicant shall have published a notice of intent to file an application for an area of ground water concern designation in the official parish journal of each parish affected by the proposed application. Such notice shall include:

1. name, address, and telephone number of the applicant;
2. a brief description of the subject matter of the proposed application;
3. a brief description of location including parish(es), section(s), township(s), range(s), and a map, which shall be sufficiently clear to readily identify the location of the proposed area;
4. a statement that, if the area is designated an area of ground water concern, incentives to reduce groundwater use may be implemented, and if the commissioner designates a critical area of groundwater concern, ground water use may be restricted;
5. a statement indicating where the application can be viewed; and
6. a statement that all comments should be sent to:

Commissioner of Conservation
Post Office Box 94275
Baton Rouge, LA 70804-9275
ATTN: Director, Environmental Division

B. A Notice of Intent to file an application for the removal or modification of an area of ground water concern designation shall be published in the official parish journal of each parish affected by the proposed application. Such notice shall include:

1. name, address, and telephone number of the applicant;
2. a brief description of the subject matter of the proposed application;
3. a brief description of location including parish(es), section(s), township(s), range(s), and a map, which shall be sufficiently clear to readily identify the location of the proposed area;
4. a statement that, if the area of ground water concern designation is removed or modified, current restrictions or incentives, if any, shall be rescinded or modified;
5. a statement indicating where the application can be viewed; and

6. a statement that all comments should be sent to:

Commissioner of Conservation
Post Office Box 94275
Baton Rouge, LA 70804-9275
ATTN: Director, Environmental Division

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1213 (June 2004), LR 35:250 (February 2009).

§305. Application Content

A. An application for an area of ground water concern designation or for the removal or a modification of an area of ground water concern designation shall be filed with the commissioner of conservation at the above address no sooner than 30 days and no later than 60 days after publication of the notice of intent. Five copies of the application shall be filed, and must include:

1. the name, address, telephone number, and signature of the applicant;

2. a statement identifying the applicant's interest which is or may be affected by the subject matter of the application;

3. identification of the source of ground water (aquifer) to which the application applies;

4. identification of the proposed area of ground water concern or area proposed to be modified or removed from an area of ground water concern designation, including but not limited to:

a. its location [section(s), township(s), range(s) and parish(es)];

b. a map clearly identifying the boundaries of the subject area of the application, such as but not limited to:

i. U.S. Geological Survey topographic map(s) of appropriate scale (1:24,000, 1:62,500, 1:100,000); or

ii. LA-DOTD Louisiana parish map(s) outlining the perimeter of the area; or

iii. a digital map submitted in vector and/or raster formats, including the supporting metadata;

5. statement of facts and evidence supporting one of the following claims:

a. that taking no action would likely negatively impact ground water resources in the aquifer, if the application is pursuant to §307.A;

b. that alleviation of stress to the aquifer has occurred; if the application is pursuant to §307.B;

6. the applicant may also submit a proposal to preserve and manage the ground water resources in the area of ground water concern; and

7. the proof of publication of notice of intent to apply to the commissioner.

B. Direct Action by the Commissioner for Critical Ground Water Area Hearing

1. The commissioner may initiate a hearing to consider action with respect to a specific ground water area.

2. The commissioner shall notify the public pursuant to §303 and §501.A prior to issuing an order.

3. The information presented by the commissioner at the hearing shall include but not be limited to information pursuant to §305.A and §307.

C. Application for Groundwater Emergency Hearing

1. Notwithstanding the provisions of Subsections A and B hereof, the commissioner may initiate action in response to an application of an interested party or upon the commissioner's own motion in response to a ground water emergency other than those emergencies related to drought conditions requiring the temporary use of drought relief wells.

2. Subsequent to adoption of a proposed emergency order that shall include designation of an area of ground water concern and/or adoption of an emergency management plan for an affected aquifer, the commissioner shall promptly schedule a public hearing pursuant to §501.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1213 (June 2004), LR 35:250 (February 2009).

§307. Criteria for a Critical Ground Water Designation

A. Application for designation of an area of ground water concern shall contain a statement of facts and supporting evidence substantiating that under current usage and normal environmental conditions, sustainability of an aquifer is not being maintained resulting in unacceptable environmental, economic, social, or health impacts, or causing a serious adverse impact to an aquifer, considering the areal and temporal extent of all such impacts caused by at least one of the following criteria:

1. water level decline; and/or

2. movement of a saltwater front; and/or

3. subsidence in or from the aquifer caused by overall withdrawals.

B. If the applicant is applying for modification or removal of an area of ground water concern designation, the application must contain a statement of facts and supporting evidence substantiating the alleviation of the original cause of designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1213 (June 2004), LR 35:251 (February 2009).

§309. Review of an Area of Ground Water Concern Application

A. Within 30 days of receipt of an application pursuant to §305.A, the commissioner shall notify the applicant whether the application is administratively complete.

B. If the commissioner determines an application is incomplete, the applicant shall be notified in writing of the information needed to make such application administratively complete.

C. The applicant shall have 180 days to respond to a request by the commissioner for more information.

D. The commissioner may reject and return any application determined to be:

1. without merit or frivolous; or
2. incomplete after the applicant's response to the commissioner's request for more information, unless the remaining information required by the commissioner is minor in its nature.

E. Using available data, an analysis shall be made by the commissioner to determine if the area under consideration meets the criteria to be either:

1. designated an area of ground water concern or a critical area of ground water concern; or
2. modified or removed from an area of ground water concern or a critical area of ground water concern designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1214 (June 2004), LR 35:251 (February 2009).

§311. Recordkeeping

A. The commissioner shall compile and maintain at the Office of Conservation a record of all public documents relating to any application, hearing, or decision filed with or by the commissioner.

B. The commissioner shall make records available for public inspection free of charge and provide copies at a reasonable cost during all normal business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Conservation, Office of Conservation, LR 30:1214 (June 2004).

Chapter 5. Hearings

§501. Notice of Hearings

A. An area of ground water concern preliminary hearing pursuant to §305.A or §305.B.

1. Upon determination that an application is administratively complete and if the commissioner deems it necessary, a preliminary public hearing may be scheduled at a location determined by the commissioner in the locality of the area affected by the application.

2. Notice of the preliminary hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection.

3. Such notice shall be published in the official state journal and in the official parish journal of each parish affected by the application at least 30 calendar days before the date of such hearing.

4. The commissioner shall send a copy of the notice or similar notification to the applicant, any person requesting notice, and local, state and federal agencies that the commissioner determines may have an interest in the decision relating to the application.

B. An area of ground water concern hearing pursuant to §305.C and §505.B.

1. Should the commissioner determine that a preliminary hearing is not necessary, a draft order shall be issued, pursuant to R.S. 38:3097.6.A and a hearing shall be scheduled, pursuant to this Subsection.

2. The commissioner shall notify the public of any hearing initiated by the commissioner as a result of an action, a minimum of 15 days prior to the hearing.

3. Hearings initiated by the commissioner shall be held in the locality of those affected by the draft order.

4. Notice of the hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection.

5. Such notice shall be published in the official state journal and in the official parish journal of each parish affected by the commissioner's petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1214 (June 2004), LR 35:251 (February 2009).

§503. Rules of Conduct

A. Hearings scheduled pursuant to this subpart shall be fact-finding in nature and cross-examination of the witnesses shall be limited to the commissioner and staff.

1. The commissioner, or a designee, shall serve as presiding officer, and shall have the discretion to establish reasonable limits upon the time allowed for statements.

2. The applicant may first present all relative information supporting their proposal followed by testimony and/or evidence from local, state and federal agencies and others.

3. All interested parties shall be permitted to appear and present testimony, either in person or by their representatives.

4. All hearings shall be recorded verbatim.

5. Copies of the transcript shall be available for public inspection at the Office of Conservation.

6. The testimony and all evidence received shall be made part of the administrative record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1214 (June 2004).

§505. Decision of the Commissioner

A. Following hearings held pursuant to §305.C or §501.A, the commissioner shall issue a written decision in the form of a draft order based on scientifically sound data gathered from the application, the participants in the public hearing, and any other relevant information. The draft order shall contain a statement of findings, and shall include but shall not be limited to:

1. the designation of the area of ground water concern or critical area of ground water concern boundaries; and

2. the recommended plan to preserve and manage the ground water resources of the area of ground water concern or critical area of ground water concern pursuant to R.S. 38:3097.6.(B).

B. The commissioner shall make the draft order and proposed plan to preserve and manage ground water resources of the proposed area of ground water concern or critical area of ground water concern available to the applicant, participants in the original application hearing and any other persons requesting a copy thereof. The commissioner in accordance with §501.B shall initiate hearings on the draft order and proposed management controls in the locality of those affected by the commissioner's draft order.

C. Final Order. The commissioner shall adopt the final order and plan to preserve and manage ground water resources after completion of the procedures found at §501.B. The final order shall be made a part of the permanent records of the commissioner in accordance with §311 and shall be made available to the public upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:1215 (June 2004), LR 35:251 (February 2009).

§507. Right of Appeal

A. Orders of the commissioner may be appealed only to the Nineteenth Judicial District Court as provided by law, consistent with the requirements of R.S. 38:3097.4.D(1), and 3097.5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1215 (June 2004), amended LR 35:251 (February 2009).

Chapter 7. Water Well Notification Requirements in Non-Critical Ground Water Areas

§701. Applicability

A. All new water wells, pursuant to Subsections B and C of this Section, are required to be installed by a licensed water-well drilling contractor, pursuant to LAC 46:LXXXIX, and registered through the Department of Transportation and Development (DOTD) pursuant to LAC 56:I et seq. within 30 days after completion.

B. All new water wells except those types specifically listed in §701.C and D require a water well notification form be submitted to the commissioner by the owner of the well at least 60 days prior to installation.

C. All new water wells of the following types require a water well notification form be submitted to the commissioner by the owner of the well no later than 60 days after installation:

1. domestic well;
2. replacement well:

a. in order to be classified as a replacement well, the well must meet the definition of replacement well provided in §103 of this Subpart;

3. drilling rig supply well:

a. in order to be classified as a drilling rig supply well, the well must meet the definition drilling rig supply well provided in §103 of this Subpart.

4. drought relief well:

a. use of the drought relief well type must be approved by the commissioner, pursuant to R.S. 38:3097.3(C)(9) prior to installation, and

5. all other wells the commissioner exempts for just cause:

a. there shall be no just cause exemptions granted for large volume wells;

b. the commissioner shall base exemptions on, but not be limited to:

- i. proximity to other wells;
- ii. beneficial use; or

NATURAL RESOURCES

iii. latest scientific data.

D. The commissioner may grant certain wells an exception from the notification requirements of §701.B for just cause. There shall be no just cause exceptions granted for large volume wells.

1. Just cause exceptions must be requested in writing, demonstrate the existence of extenuating circumstances not otherwise contemplated in this subpart, which justify the granting of such an exception and show that such an exception will not have an impermissibly negative impact on the state's ground water resources. Additionally a just cause exception must be approved by the commissioner based upon the considerations listed in Paragraph 2.a below.

2. All just cause exception requests must be submitted prior to drilling, unless this is made impossible by an event that can neither be reasonably anticipated nor reasonably controlled.

a. The commissioner shall base just cause exceptions on, but not be limited to:

i. the completeness of data provided in the notification submitted;

ii. whether the proposed well location is in an area of agency restrictions or other permitting requirements or restrictions;

iii. the proximity of the proposed well location to any documented ground water related issues; and

iv. the potential interference with nearby wells that may be caused by the proposed well.

E. If an expected change in well use or type of either a drought relief well or drilling rig-supply well is to a use or type that would normally have required an initial notification be submitted at least 60 days prior to installation pursuant to Subsection B of this Section, then notice of such a change must be provided to the Office of Conservation 60 days prior to the date of implementing the change in well use or type.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1215 (June 2004), amended LR 35:252 (February 2009).

§703. Notification Requirements

A. Pursuant to R.S. 38:3097.3.C(4)(a), the commissioner is authorized to collect the following information on the water well notification form:

1. date drilled or estimated date to be drilled;
2. name of driller;
3. current ownership;
4. projected location of the well in longitude and latitude;
5. depth;
6. casing size; and

7. other information reasonably required by the commissioner.

B. The following information is required by the commissioner on the water well notification form:

1. purpose of form, including but not limited to:
 - a. prior notification, pursuant to §701.B;
 - b. post notification, pursuant to §701.C;
 - c. information change; or
 - d. cancellation of notification because well was not drilled.
2. well information, including but not limited to:
 - a. owner's well number;
 - b. well use;
 - c. aquifer screened; and
 - d. estimated pumping rate;
3. well location, including but not limited to:
 - a. parish; and
 - b. longitude and latitude; or
 - c. if longitude and latitude is unavailable:
 - i. a map with the well location marked; or
 - ii. a hand drawn map that includes enough detail so that someone unfamiliar with the area can find the well;
4. drilling contractor, including but not limited to:
 - a. driller's contact information;
 - b. driller's license number; and
 - c. third party or consultant's contact information;
5. owner's signature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1215 (June 2004), amended LR 35:252 (February 2009).

§705. Notification Review Process

A. The commissioner shall review the submitted information, pursuant to §701.B, within 30 days.

1. The commissioner may:
 - a. issue an order placing restrictions on the well; or
 - b. request further reasonable information; or
 - c. take no action.
2. Should the commissioner request additional reasonable information for new wells, pursuant to §705.A.1, the commissioner shall have an additional 30 days from the date the information is received to review the water well notification form.

B. For a large volume well or a well within a critical area of ground water concern, the commissioner may, within 30 days after receiving prior notification, pursuant to §701.B, issue to the owner an order fixing:

1. allowable production;
2. spacing; and
3. metering.

C. For all other wells not in a critical area of ground water concern, the commissioner may issue an order to the owner within 30 days of receiving prior notification, pursuant to §701.B, which may only fix spacing of the well.

D. Upon receipt of written confirmation from the Office of Conservation stating that, following its review of a water well notification form submitted pursuant to §701.B, no restrictions will be placed on the well nor more information requested, or in the event that restrictions are placed on the well, the owner does not object to said restrictions; then that owner need not wait the full 60 days mentioned in §701.B, but instead may immediately begin drilling the proposed well in a location and manner consistent with the water well notification form as well as any restrictions placed on the well by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1216 (June 2004), amended LR 35:252 (February 2009).

§707. Right of Appeal

A. Within 30 days of the date of the correspondence regarding Paragraphs 1 and 2 of this Subsection, the applicant may appeal to the Ground Water Resources Commission to determine one of the following:

1. the reasonableness of the commissioner's request, pursuant to Section §705.A; or
2. the justification for the commissioner's well restriction order, pursuant to Section §705.B and C.

B. The appeal shall be addressed to:

Ground Water Resources Commission
Post Office Box 94275
Baton Rouge, LA 70804-9275
ATTN: Chairperson, Ground Water Resources Commission

C. The commission may make a determination within 45 days from the date of the appeal, pursuant to R.S. 38:3097.3.C(4)(b)(iii), regarding the reasonableness of the commissioner's request, pursuant to Subsection A.1 of this Section.

D. The commission may review the appeal of an applicant, pursuant to Subsection A.2 of this Section, and may make a determination regarding the commissioner's well restriction order.

1. The commission may reject the commissioner's order and require the commissioner to reconsider such order.
2. An order that has been returned to the commissioner twice shall be considered a final decision.

E. A final decision of the commissioner may be appealed only to the Nineteenth Judicial District Court as provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:1216 (June 2004).