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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



C. HEIDI GREETHER  
DIRECTOR

VIA E-MAIL

TO: Members of the Michigan Legislature  
FROM: C. Heidi Grether, Director *HDG*  
DATE: February 27, 2018  
SUBJECT: Report on the Aquifer Protection Revolving Fund and Recommendations for Modifications to Part 317, Aquifer Protection and Dispute Resolution

In accordance with Section 31711 of Part 317, Aquifer Protection and Dispute Resolution, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, attached is the Department of Environmental Quality's (DEQ) report on the Aquifer Protection Revolving Fund and recommendations for modifications to Part 317 for April 2, 2015, to April 1, 2017.

If you need further information, please contact James Milne, Supervisor, Great Lakes Shorelands Unit, Water Resources Division, at 517-284-5559; or you may contact me at 517-284-6700.

Attachment

cc/att: Ellen Jeffries, Director, Senate Fiscal Agency  
Mary Ann Cleary, Director, House Fiscal Agency  
Al Pscholka, Director, State Budget Office  
Darin Ackerman, Governor's Office  
Angela Ayers, Governor's Office  
Josh Sefton, Senate Fiscal Agency  
Austin Scott, House Fiscal Agency  
Jacques McNeely, State Budget Office  
Jennifer Harrison, State Budget Office  
Amy Epkey, Administration Deputy Director, DEQ  
Susan Leeming, External Relations Deputy Director, DEQ  
Michael McClellan, Environment Deputy Director, DEQ  
Sarah M. Howes, Legislative Liaison, DEQ  
Teresa Seidel, DEQ  
Lois Marinangeli, DEQ  
Diana Klemans, DEQ  
James Milne, DEQ  
Jill Van Dyke, DEQ

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY  
 AQUIFER PROTECTION AND DISPUTE RESOLUTION REPORT  
 APRIL 2, 2015, TO APRIL 1, 2017

Overview

Part 317, Aquifer Protection and Dispute Resolution, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, created the Aquifer Protection and Dispute Resolution Program as a way to resolve disputes between owners of small-quantity wells and owners of high-capacity wells without resorting to civil litigation. The directors of the Michigan Department of Agriculture and Rural Development (MDARD; for agricultural high-capacity wells) and the Michigan Department of Environmental Quality (MDEQ; for all other high-capacity wells) have the authority to declare a groundwater dispute if the small-quantity and high-capacity well owners are unable to resolve the dispute on their own. That authority includes the ability to require the provision of an adequate supply of potable water and restricting the operation of the high-capacity well. To date, the directors of MDARD and MDEQ have not had to declare a groundwater dispute because the small-quantity and high-capacity well owners have been able to resolve their disputes on their own.

Program Costs:

The MDEQ incurred the following costs related to implementation of the program between April 2, 2015, and April 1, 2017:

|  |          |
|--|----------|
| Salary   | \$22,404 |
| Fringe Expense   | \$ 8,259 |
| Travel   | \$ 0     |
| Department of Technology, Management<br>and Budget; Information Technology Charges | \$34,117 |
| Total  | \$64,780 |

Groundwater Dispute Complaints:

|                                |          |
|--------------------------------|----------|
| Resolved Complaints:           | 2        |
| Invalid Complaints:            | 0        |
| Complaints Pending Resolution: | <u>6</u> |
| Total                          | 8        |

Complaints Received by County:

|                |   |
|----------------|---|
| Gratiot County | 2 |
| Midland County | 1 |
| Saginaw County | 3 |
| Tuscola County | 1 |
| Wayne County   | 1 |

A total of seven of the eight complaints received involved high-capacity agricultural wells. These complaints were forwarded to the MDARD for investigation. The MDEQ covered MDARD staff costs pursuant to an interdepartmental Memorandum of Understanding. The MDEQ assisted the MDARD in the complaint evaluations by providing hydrogeological data analyses and two-dimensional computer modeling studies.

Recommended Statute Modifications:

The aquifer dispute resolution process is an effective way to resolve aquifer use conflicts at lower costs while avoiding exacerbating the already overloaded court dockets. The following recommended modifications would improve the overall effectiveness of Part 317:

1. Eliminate Opt-Out Option

Repeal the option for high-capacity well owners under MDEQ jurisdiction to opt out of the aquifer dispute resolution process in Subsection 31702(3) of Part 317. If the high-capacity well owner opts out of the dispute resolution process, the only recourse available to impacted small-capacity well owners is to pursue civil litigation.

High-capacity well owners under the MDARD's jurisdiction do not have the option to opt out of the Part 317 aquifer dispute resolution program. The MDEQ received only one complaint during this reporting period that is under its jurisdiction. The high-capacity well owner involved in this complaint did not opt out of the Part 317 aquifer dispute resolution program.

2. Repeal Exemption

Repeal the exemption for dewatering wells in Subsection 31709(a) of Part 317. High-capacity wells for gravel mining, quarries, and construction dewatering have been responsible for impacts to many small-capacity wells statewide. Small-capacity well owners impacted by the operation of high-capacity dewatering wells have no recourse other than to pursue civil litigation if the high-capacity well owner does not voluntarily address the small-capacity well owner's concerns.

The MDEQ received one complaint under its jurisdiction during this reporting period where the high-capacity well was used for dewatering and, thus, exempt from Part 317. The impacted small-capacity well owner informed MDEQ staff that the high-capacity well owner agreed to pay for a replacement well.