ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER W3

WATER AND WELLS ACT

Showing the Law as at 15 December 2014

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises and consolidates—

Act 3/2007, in force 27 December 2010
Act 7/2013, in force 1 October 2013

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WATER AND WELLS ACT

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WATER AND WELLS ACT

Definitions

1. (1) In this Act—

"adverse effect" means impairment of or damage to;

"aquifer" means an underground water-bearing formation;

"authorised water analyst" means—

(a) any water laboratory technician or technologist employed as such by the Government of Anguilla; or

(b) a person, whether or not in Anguilla, who is authorised as a water analyst in writing by the Minister or by the Minister responsible for Health;

"contravene" includes fail to comply with;

"groundwater" means brackish or salt water—

(a) in an aquifer; and

(b) in a pond to the extent that the removal of the water from the pond would occasion the seepage or flow of water from an aquifer into the pond;

"groundwater environment" means the components of the earth related to groundwater including but not limited to the land, all organic and inorganic matter and the interacting natural systems;

"Minister" means the member of Executive Council responsible for groundwater and wells;

"Ministry" means the Ministry presided over by the Minister;

"Permanent Secretary" means the Permanent Secretary of the Ministry;

"prescribed" means prescribed by regulation under section 8;

"technical officer utilities" means an officer appointed under section 2(2) and includes any person authorised to act on his behalf;

"well" means an opening in the ground, whether drilled, bored or excavated, naturally occurring or altered from its natural state, that is used or intended to be used for—

(a) the abstraction of groundwater for any purpose;

(b) recharging an aquifer;

(c) obtaining data on groundwater;

(d) the disposal of wastewater;

(e) the disposal of storm water; or

(f) a prescribed purpose;

and includes any related equipment, buildings, structures and appurtenances.

(2) The power to designate, appoint or authorise a person under this Act or the regulations may be by the person's name, title or office, and when the designation, appointment or authorisation is by title or office, the designation, appointment or authorisation applies to every person while he or she holds that title or office.

Duties and responsibilities of Minister

2. (1) The Minister is responsible for the due administration and enforcement of this Act and the regulations.

(2) The Governor may appoint or designate a public officer in the Ministry to carry out the duties and exercise the powers of a technical officer utilities in relation to the provisions of this Act and the regulations.

(Act 7/2013, s. 2)

Vesting groundwater rights

3. The property in and the right to abstract and use groundwater are vested in the Crown.

Groundwater Resources Management Plan

4. (1) After complying with subsections (2), (3) and (4), the Minister may by regulation establish a Groundwater Resources Management Plan setting out policies for the conservation of groundwater to ensure the sustainability of the yield of groundwater for abstraction purposes and to protect the quality of the groundwater.

(2) The Minister shall—

(a) cause a Proposed Groundwater Resources Management Plan to be prepared;

(b) make available free of charge a reasonable number of copies of the Proposed Groundwater Resources Management Plan; and

(c) publish a notice in a newspaper of general circulation in Anguilla—

(i) indicating where copies of the Proposed Groundwater Resources Management Plan can be obtained, and

(ii) inviting representations in writing on the proposed plan to be made to a person specified in the notice not later than a date specified in the notice.

(3) The Minister may cause a public hearing on the Proposed Groundwater Resources Management Plan to be held and may give such notice of the public hearing as he or she considers appropriate.

(4) The Minister—

(a) shall consider the representations made in response to the notice referred to in paragraph (2)(c) and at the public hearing, if any; and

(b) may direct that amendments be made to the Proposed Groundwater Resources Management Plan, as he or she considers appropriate.

(5) Subsections (2) to (4) apply, with such modifications as circumstances require, to the amendment or replacement of a Groundwater Resources Management Plan established by regulation under subsection (1).

Entry and inspection of places

5. (1) When a technical officer utilities has reasonable grounds to believe—

(a) that there is evidence in a place that—

(i) this Act or the regulations or the terms and conditions of a licence or permit have been, are being or are about to be contravened, or

(ii) an order under section 6 or 10 or an order under the regulations has been, is being or is about to be contravened,

whether or not the person has or could have been charged or convicted in respect of the contravention; or

(b) that an adverse effect on the groundwater environment, human health, property or public safety in regard to a matter regulated under this Act has been, is being or is likely to be caused in a place;

the technical officer utilities may enter the place and inspect it.

(2) In exercising his or her powers under subsection (1), the technical officer utilities—

(a) may enlist the assistance of any other person, including a police officer, whom he or she considers necessary;

(b) shall, if it is practicable in the circumstances, give reasonable notice of his or her intention to enter the place to the occupant or, if there is no occupant, to the owner; and

(c) shall, when leaving a place from which the occupier is absent or that is unoccupied, leave the place as secure as he or she found it.

(3) If requested, the technical officer utilities shall immediately produce a document duly authenticated by the Permanent Secretary evidencing his or her designation.

(4) A technical officer utilities making an inspection under this section may—

(a) at any reasonable hour enter the place that is the subject of the inspection;

(b) require the production of any books, records or other documents that are relevant to the purpose of the inspection and examine them, make copies of them or remove them temporarily for the purpose of making copies;

(c) make reasonable oral or written inquiries of any person who the technical officer utilities believes on reasonable grounds may have information relevant to the subject-matter of the inspection;

(d) inspect, and take samples of, anything in the place relevant to the inspection;

(e) perform tests or take photographs or record digital images in respect of the place; and

(f) seize and detain anything that is or may be evidence of a contravention of this Act or the regulations.

(5) When the books, records or other documents are, or are believed to be, kept by means of a computer, the technical officer utilities—

(a) may have access to, and inspect and check the operation of, the computer and any associated apparatus;

(b) may require that any person who is in charge of, or is knowledgeable in the operation of, the computer or apparatus to assist him or her in such manner as he or she may reasonably require; and

(c) may require that records kept by means of the computer be produced in a form that may be removed from the place.

(6) When a technical officer utilities removes any books, records or other documents under paragraph (4)(b), he or she shall—

(a) give to the person from whom the items were taken a receipt for them; and

(b) without delay return them to the person from whom they were taken when they have served the purposes for which they were taken.

(7) If the Magistrate is satisfied, on information on oath, that there are reasonable grounds to believe—

(a) that there is evidence in a place that—

(i) this Act or the regulations or the terms and conditions of a licence or permit have been, are being or are about to be contravened, or

(ii) an order under section 6 or 10 or an order under the regulations has been, is being or is about to be contravened,

whether or not the person has or could have been charged or convicted in respect of the contravention; or

(b) that an adverse effect on the groundwater environment, human health, property or public safety in regard to a matter regulated under this Act has been, is being or is likely to be caused in a place; and

(c) that—

(i) a technical officer utilities has been refused entry to the place,

(ii) no request has been made to enter the place, but entry is likely to be refused,

(iii) notice of the intent to enter the place would likely defeat the object of the entry,

(iv) the entry is urgent, or

(v) it was not possible to give reasonable notice to the occupant or the place is unoccupied, and it was not possible to give reasonable notice to the owner,

the Magistrate may by warrant under his or her hand authorise the technical officer utilities to enter the place, if need be by force, and inspect it in accordance with this section.

Orders by technical officer utilities

6. (1) When the technical officer utilities has reasonable grounds to believe that a person—

(a) has contravened, is contravening or is about to contravene this Act, the regulations or the terms and conditions of a licence or permit, whether or not the person has or could have been charged or convicted in respect of the contravention; or

(b) has caused, is causing or is likely to cause or has permitted an adverse effect on the groundwater environment, human health, property or public safety in regard to a matter regulated under this Act or is the owner or occupier or person in control of property on which an adverse effect on the groundwater environment, human health, property or public safety in regard to a matter regulated under this Act has occurred, is occurring or is likely to occur,

the technical officer utilities may issue a written order under this section directed to that person.

(2) The order shall set out—

(a) the name of the person to whom it is directed;

(b) particulars of the contravention or of the adverse effect; and

(c) particulars of the measures to be taken by the person under the order and when those measures are to be taken.

(3) An order shall be given to the person to whom it is directed—

(a) if the person is an individual—

(i) personally, or

(ii) by leaving it with an adult person at the person's home;

(b) if the person is a corporation, by giving the notice personally to a director or officer of the corporation;

(c) by leaving it during normal business hours with an adult person in charge of the person's place of business;

(d) by registered mail addressed to the person's last known address;

(e) by publishing it in a newspaper of general circulation in Anguilla; or

(g) as prescribed.

(4) An order may include, but is not limited to, provisions for the following—

(a) ordering measures to be taken to effect compliance with this Act, the regulations or the terms and conditions of a licence or permit;

(b) ordering measures to be taken to lessen or remove an adverse effect or the risk of the adverse effect on the groundwater environment, human health, property or public safety, including an order of reclamation;

(c) ordering that a specified thing cease to be done;

(d) requiring the work specified in the order to be done.

(5) When the delay necessary to put an order under this section in writing will or is likely to increase substantially the adverse effect or the risk of an adverse effect on the groundwater environment, human health, property or public safety in regard to a matter regulated under this Act, the technical officer utilities may issue the order orally.

(6) As soon as is reasonably possible after issuing an oral order under subsection (5), the technical officer utilities shall give a written version of the order to the person to whom it is directed.

(7) If, in the course of an inspection under this Act, the technical officer utilities is of the opinion that a condition of emergency exists due to the existence of an adverse effect or the risk of the adverse effect on the groundwater environment, human health, property or public safety in regard to a matter regulated under this Act, he or she may forthwith take any steps he or she considers appropriate to lessen or remove the adverse effect or the risk of the adverse effect.

(8) The technical officer utilities may extend the time specified for measures to be taken under an order under this section.

When order not carried out; recovery of costs

7. (1) If a person to whom an order is directed under section 6 fails to carry out the order, the technical officer utilities or a person appointed by him or her may enter the place and carry out the order.

(2) The expenses incurred by reason of the technical officer utilities carrying out an order or for taking steps to remedy the emergency condition under section 6(7) constitute a civil debt owing to the Government by the person to whom the order is directed.

Regulations

8. The Governor in Council may make regulations respecting wells and the abstraction of groundwater and seawater and more particularly regulations—

(a) prescribing anything that may be prescribed by regulation;

(b) regulating and prohibiting the drilling, alteration, maintenance, protection and reclamation of wells and exempting persons or wells from the regulations;

(c) regulating and prohibiting the abstraction of groundwater and seawater, including the measurement of groundwater and seawater that is abstracted;

(d) establishing charges and royalties for the abstraction of groundwater or seawater, or any class or classes of groundwater or seawater, and providing for their payment and for the imposition of penalties for late payment;

(e) respecting all aspects of the application for and issuance, refusal, suspension, cancellation, amendment, replacement, transfer and production of, and property in, licences or permits or renewals of licences or permits;

(f) prescribing forms for the purpose of the regulations or providing that a form may be as required or approved by a specified person;

(g) defining terms for the purposes of the regulations;

(h) authorising exemption from or the variation, waiving or mitigation of the application of any of the provisions of the regulations in particular cases, respecting the circumstances under which the exemption, variation, waiver or mitigation may be granted and respecting the conditions to which an exemption, variation, waiver or mitigation is subject;

(i) prescribing or determining the amount of a fee for application for or issuance of a licence or permit or for the amendment, replacement or transfer of a licence or permit or for renewal of a licence or permit;

(j) prescribing or determining the amount of fees for the collection and testing of samples of groundwater or other substances or materials;

(k) establishing offences and providing for defences generally or in relation to a particular offence;

(l) prescribing rates for the sale of groundwater or seawater abstracted by the Government for users or classes of users;

(m) providing for the giving of notice;

(n) respecting the appeal of orders under section 6 or decisions under the regulations—

(i) to refuse to issue or renew, or to suspend or cancel, a licence or permit,

(ii) to impose a term or condition on a licence or permit,

(iii) to amend, vary, add to, delete or replace a term or condition in a licence or permit, or

(iv) on any other matter,

to a court, person or other body, whether the body is constituted for the purpose of hearing appeals from orders under section 6 and from decisions under the regulations or for another purpose, and providing for any matter in relation to the appeal including the time for giving notice of the appeal, service of the notice of appeal, the staying of the order or decision appealed against, the right of the person appealing or making the order or decision to make representations in relation to the appeal and the effect of the appeal;

(o) prescribing the amount of the fee for making an appeal.

Obstruction

9. No person shall obstruct, molest, hinder or interfere with a technical officer utilities or any person whose assistance has been enlisted by the technical officer utilities in the exercise of a duty imposed, or a power conferred, on the technical officer utilities by this Act or the regulations.

Offences and penalties

10. (1) Any person who contravenes section 9 or the regulations or an order under section 6 or the regulations that is final is guilty of an offence and is liable on conviction—

(a) to a fine of $2,000, in the case of a first offence; and

(b) to a fine of $5,000 or to imprisonment for 30 days or to both, in the case of a second or subsequent offence.

(2) When a person is convicted of an offence under subsection (1), in addition to any other penalty that may be imposed under this Act, the Magistrate may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects—

(a) requiring the person to comply with this Act, the regulations or the order for the contravention of which he or she was convicted;

(b) prohibiting the offender from doing anything that may result in the continuation or repetition of the offence;

(c) directing the offender to take any action the court considers appropriate to remedy or prevent any harm that results or may result from the act or omission that constituted the offence;

(d) directing the offender to post a bond or pay money into court in an amount that will ensure compliance with any order made pursuant to this section;

(e) directing the offender to pay the costs referred to in section 7.

(3) An order under paragraph (2)(e) has the effect of a judgment for a civil debt.

Liability of directors, officers and agents

11. When a corporation commits an offence under this Act or the regulations, any director, officer or agent of the corporation who directed, authorised, assented to, acquiesced in or participated in, the commission of the offence is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted for or convicted of the offence.

Evidence by certificate

12. (1) In any proceeding under this Act—

(a) an authorised water analyst's certificate of the results of an analysis of water purporting to be signed by the analyst; or

(b) a certificate purporting to be signed by a technical officer utilities stating that on a specified day or during a specified period a person named in the certificate was or was not the holder of a licence or permit or that a licence or permit was suspended or cancelled,

shall be admitted in evidence as *prima facie* proof of the contents of the certificate, without proof of the signature or official character of the person signing the certificate.

(2) A licence or permit and any notice issued with respect to it purporting to be signed by the technical officer utilities is admissible in evidence without proof of the signature or official character of the person signing it.

Notice of evidence by certificate

13. (1) No certificate referred to in section 12(1)(a) or (b) may be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate.

(2) The party against whom a certificate is produced may, with the leave of the court, require the attendance of the water analyst or technical officer utilities for the purpose of cross-examination.

Citation

14. This Act may be cited as the Water and Wells Act, Revised Statutes of Anguilla, Chapter W3.

Validation

15. (1) Any licence for the abstraction of groundwater or permit to drill a well issued by the Government of Anguilla before 27 December 2010 is declared to have been validly issued and anything done by the Government pursuant to the licence or permit that would have been valid had the licence or permit been validly issued is declared to have been lawfully done.

(2) Notwithstanding anything in subsection (1), a licence for the abstraction of groundwater or a permit to drill a well issued by the Government of Anguilla before 27 December 2010 is subject to an Interim Groundwater Resources Management Plan under section 16(2), if any, and a Groundwater Resources Management Plan under section 4, if any, and to the regulations under section 8 or 16.

Transitional regulations

16. (1) The Governor in Council may make transitional provisions respecting licences for the abstraction of groundwater or for permits to drill a well issued by the Government of Anguilla before 27 December 2010.

(2) Notwithstanding sections 4(2), (3) and (4), the Governor in Council may by regulation establish an Interim Groundwater Resources Management Plan until a Groundwater Resources Management Plan is established under section 4.