

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda-underwritten by global corporations--includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

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For more on these corporations, search at www.SourceWatch.org.

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

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Groundwater Protection Act

Did you know the trade group for the gas industry was a corporate co-chair in 2011?

Summary

ALEC's model Groundwater Protection Act is designed to further document and ensure the safety of America's drinking water through the prevention, minimization, or mitigation of the movement of chemicals to drinking water supplies derived from ground water aquifers. Key components of the bill include: implementation of a state monitoring program, groundwater contamination assessments based on numerical standards, agricultural chemical management areas, and agricultural chemical management plans.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Short Title.} This act shall be known and may be cited as the **Groundwater Protection Act.**

Section 2. {Legislative findings and declarations.}

The legislature finds and declares:

(A) That the highest and best use of groundwater is for drinking purposes, and therefore groundwater must be adequately protected through feasible prevention, minimization, and mitigation of such water supplies.

(B) That the general health and well being of the people requires that groundwaters used for drinking, including potential sources of drinking water, not only be properly protected but are safe for consumption, subject to reasonable regulation.

(C) That the current legislative authority provides insufficient administrative and regulatory options necessary to protect public health. Such protection can be achieved through minimizing exposure while providing a balanced approach that preserves the social, environmental, and economic benefits of agricultural chemicals for people.

(D) That the rapid increase in laboratory analytical capabilities has resulted in findings of chemicals in drinking water supplies derived from ground water aquifers.

(E) The ability to predict the potential appearance of chemicals in drinking water supplies is based upon certain physical characteristics and behavior in the environment and it is necessary to prevent, minimize, and mitigate the presence of chemicals in groundwater.

(F) That scientific procedures exist that permit the prediction of the potential for movement of chemicals through soils, and the likelihood, with a sufficient level of scientific probability, of their subsequent entry into drinking water supplies. The ability to prevent, minimize, or mitigate the movement of chemicals to groundwater by utilizing available predictive procedures must be supported by scientifically valid soil and groundwater monitoring programs.

(G) That the use of numerical, health-based standards for drinking water is a sound groundwater resource management approach. Numerical standards, in this act, will be used to initiate and provide management recommendations and requirements for groundwater protection programs that minimize, mitigate, and prevent the concentration of chemicals in drinking water supplies derived from groundwater aquifers. Such standards for chemicals should be based on the best available scientific data.

(H) That the purpose of this act is to protect public health by preventing, minimizing, or mitigating the movement of chemicals to drinking water supplies of this state. This will be accomplished through prediction, assessment with regard to the potential impact on public health, subsequent monitoring, and, if necessary, regulatory remediation of chemical presence in groundwater through a program of best management plans, agricultural chemical management plans, public education, and training.

Section 3. {Definitions.} The following words and phrases when used in this act shall have the meaning given to them in this section unless the context clearly indicates otherwise.

(A) "Agricultural chemical" or "chemical." The active ingredient of the pesticide as defined in section (), or a fertilizer as defined in section [cite state code sections].

(B) "Agricultural chemical management area." A designated geographic area that meets

certain criteria that is designated by rule and which includes unique natural or man-made features where there is a significant increase of risk to groundwater from human activities conducted at or near the land surface.

(C) "Agricultural chemical management plan." A mandatory plan adopted by rule after completion of satisfactory monitoring which include chemical activities, procedures, and practices established by the Department of Agriculture in connection with the State University Extension Service, intended to prevent and minimize pollution of groundwater for one or more pollutants. Such a plan includes scope, design criteria, standards, operation and maintenance procedures, practices and restrictions to prevent releases, spills, leaks, or other incidents, and also recommendations for agricultural chemical uses and practices to the extent technically and economically practical. Such plans may be chemical specific.

(D) "Aquifer." A geologic formation, a group of formations, or part of a formation that contains sufficient saturated permeable material to yield significant quantities of groundwater to springs or wells for beneficial uses.

(E) "Best management practices or plans." Voluntary practices, activities, modification of practices, maintenance procedures, or other management practices capable of preventing or minimizing the appearance of agricultural chemicals in groundwater.

(F) "Commission." The [cite appropriate state agency.]

(G) "Confirmatory procedure." A scientific process for the verification of detections of chemicals in sources of drinking water utilizing at least two or more separate water samplings collected at timely intervals of not less than thirty (30) days from the same point of the initial sampling, and analyzed by two different, peer-reviewed and authentic laboratory methodologies.

(H) "Director." The Director of the [leading state pesticide agency].

(I) "Groundwater." Any waters of the state which occur beneath the surface of the earth, in a saturated geological formation of rock or soil, and in sufficient quantities to be of beneficial use.

(J) "Groundwater sampling point." The point where samples from a public or community water supply, private water supply, monitoring well, or other source of drinking water are collected provided that the sampling well or source is reasonably designed to permit sampling, meets state drinking water well code specifications, and is of adequate depth to permit the collection of groundwater samples representative of the source to determine if a duly adopted standard has been exceeded.

(K) "Interim numerical standard." A health-based number that is duly adopted by the state in the absence of a promulgated or non-promulgated federal number, according to procedures provided in this act.

(L) "Monitoring." A program conducted by the [cite appropriate state agency] in cooperation with the State Department of Agriculture and other state or federal agencies for determining whether residues of chemicals are present in sources of groundwater and drinking water in this state. Monitoring includes the use of scientifically valid predictive mechanisms derived from prediction criteria, soil samples analyses, and drinking water sample analyses.

(M) "Non-promulgated federal number." A health advisory, suggesting no adverse-responsible level, or groundwater residue guidance level published by the U.S. Environmental Protection Agency (EPA) that has not been promulgated through a due regulatory process.

(N) "Point source origination." The presence of an agricultural chemical in a drinking water source or groundwater originating from a defined point of entry such as a sink hole, spill, back-siphoning, transportation accident, accidental release, surface runoff, drainage site, or industrial leak.

(O) "Predictive procedure." Any of a number of recognized, scientifically valid processes for predicting the probability of the migration of chemicals through soil with eventual entry into sources of drinking water.

(P) "Promulgated federal number." A maximum contamination level (MCL) as promulgated under the Safe Drinking Water Act, or a National Primary Drinking Water Regulation.

(Q) "Source of drinking water." A current or potential source of water for human consumption derived from an aquifer.

(R) "Standard." The numerical value expressing the concentration of a chemical in sources of drinking water adopted by a specified methodology authorized by this act.

Section 4. {Preliminary research.}

(A) Implementation of program. The Director of Agriculture, in consultation with the Director of the [cite appropriate state agency], shall develop and implement a program to determine, with a reasonable degree of scientific probability, the likelihood of chemicals entering sources of drinking water. In establishing this program, the Director shall:

(1) Review appropriate scientific references and data available to the Director regarding prediction criteria for chemicals used in this state that are either known to be present, or with a reasonable degree of scientific certainty may be present, in drinking water. In conduction with such review, the Director shall consider all relevant factors, including, but not limited to, currently available hydrological, geological, and meteorological data, areas of chemical use in this state while also considering local agricultural practices and

habits.

(2) In cases where either references or data are not available to the Director, the Director shall consult with other state agencies or federal agencies and other viable resources that may have such information or may have access to such information. When available, the state agency shall provide the Director with either references or data summaries that will, to the extent possible, satisfy the need for the prediction criteria.

(B) Contamination assessment. Upon determination by the Director that sufficient information is available to satisfy the prediction criteria, the Director shall conduct, in consultation with the Director of the *[cite appropriate state agency]*, an assessment at the likelihood for a chemical to enter sources of drinking water. In conducting such assessment, the Director shall utilize the predictive procedures that provide the highest degree of scientific certainty that are most appropriate for the State of (insert state) conditions of use.

(C) Monitoring program. For each chemical identified as likely to enter sources of drinking water, the Director, in cooperation with other appropriate agencies, shall establish and commence a monitoring program to assist in defining:

- (1) Whether the chemical has entered a source of drinking water.
- (2) Whether the chemical has a reasonable probability of entering a source of drinking water due to migration through soil and from point-source origination.
- (3) Whether the level of the chemical in sources of drinking water or its rate of migration through soil is increasing or decreasing with respect to the numerical standards established herein.
- (4) The reliability of the predictive procedure.
- (5) Potential best management practices or plans for the chemical or chemicals in question.

Section 5. {Monitoring Program.}

(A) General parameters. The Director of the *[cite appropriate state agency]*, in cooperation with the Director of Agriculture, shall conduct scientifically planned and accepted monitoring programs. The Director shall monitor those areas of the state which have been identified, using either predictive procedures, hydrologic evaluation or other information, as having reasonable likelihood that the appearance of a chemical will increase in frequency and concentration in sources of drinking water and is likely to exceed a duly adopted standard.

(B) Techniques and procedures. Those laboratories conducting analytical and monitoring studies shall utilize good laboratory practices (GLPs) and other scientifically accepted and certified analytical techniques and sampling procedures, hydrologic evaluation, or other information, as having a reasonable likelihood that the appearance of a chemical will increase in frequency and concentration in sources of drinking water and is likely to exceed a duly adopted standard.

(C) Design and scope. Prior to initiation of the monitoring program, the Director of the *[cite appropriate state agency]* shall consult with the Director of Agriculture and other appropriate agencies concerning the design and scope of monitoring requirements imposed in this section. The design and scope of the monitoring requirement should take into account the magnitude and frequency of the detection of the pesticide involved, pattern of pesticide use, soil types involved in detection, its use in vulnerable areas, physical and chemical properties of the pesticide, rainfall patterns, well construction if the pesticide was detected in a well, rates of degradation, reliability and analytical accuracy of the detection, and results of other sponsored monitoring. To the extent feasible, monitoring should be at representative geographical and hydrological areas associated with locations and conditions of concern as determined by the Director.

(D) Independent informational sources. The Director of the *[cite appropriate state agency]* may receive and evaluate information on similar monitoring programs from other interested persons including other state or federal agencies, or independent sources. Information received shall be evaluated based upon the standard procedures, protocols, and confirmatory procedures established under this act. Information found not to be in accord with standard procedures, protocols, and confirmatory procedures, including analyses, shall be deemed for information purposes only.

Section 6. {Establishment of numerical standards.}

(A) Methodology. Prior to initiating any monitoring required under subsection (C) of Section 4 of this act, the Director of Agriculture shall notify the Director of the *[cite appropriate state agency]* of those chemicals for which monitoring will be carried out. Within 90 days after sending such notice, the Director, if necessary, shall initiate a methodology pursuant to the state Administrative Procedures Act *[cite code section]* for the establishment of numerical standards for chemicals in drinking water supplies as follows:

- (1) If a promulgated federal number exists for a chemical, that number shall be the standard.
- (2) If no promulgated federal number has been established, but a non-promulgated federal number has been published, the non-promulgated federal number shall be the standard.
- (3) If no promulgated or non-promulgated federal number exists, the Director shall petition the U.S. Environmental Protection Agency to establish a number as defined in Section 2 (G) of this act for the chemical of interest. If the Director determines that such number cannot be obtained within 30 days, the Director shall develop and adopt an

interim numerical standard following the procedure specified in subsection (A) and (E) of this Section. The interim numerical standard shall be developed as specified in subsection (C) of this Section, and shall be used until a non-promulgated or promulgated federal number, as defined herein, has been established for that chemical.

(B) Subsequent federal numbers. Should a promulgated federal number be issued subsequent to the establishment of the interim numerical standard, the state shall adopt the new federal number as the standard.

(C) Interim standard. Notwithstanding paragraphs (1) and (2) of subsection (A) of this section, the Director, as an option, may adopt an interim standard different than the promulgated or non-promulgated federal number if there is significant new and relevant technical information that is scientifically valid and which was not considered when the original number was established. However, the Director must find, utilizing the methodology pursuant to this section of this act, and with reasonable scientific certainty, that the different interim standard is justified.

(1) In evaluating the evidence for establishing an interim standard different than a number as set forth in this act, the Director shall consider the extent to which the evidence was developed in accordance with scientifically valid protocols, procedure, and recommendations for conduct of the evidence. The Director shall also consider whether the evidence was subjected to peer review, resulted from more than one study, and is consistent with other credible medical or toxicological evidence.

(2) If the Director adopts an interim standard different from an existing promulgated or non-promulgated federal number, such interim numerical standards shall be established according to the methodology of this section of this act and shall be subject to judicial review.

(D) Reporting requirements. In adopting any standard pursuant to this section, the Director shall publish a document for distribution to interested persons, including affected registrants, at least 60 days prior to any hearing on a regulation establishing a standard. Such document shall describe the information and methodology used and the conclusions reached in proposing the standard.

(E) Interagency consultation. In the development of an interim numerical standard different from or in the absence of a promulgated or non-promulgated federal number, the Director of the [cite appropriate state agency] shall consult the U.S. Environmental Protection Agency's Office of Drinking Water and Office of Pesticide Programs regarding the U.S. Environmental Protection Agency's conclusion relative to available toxicological information on the chemical in question and on the methodology used by the U.S. Environmental Protection Agency for establishing non-promulgated federal numbers as defined herein. The Director shall utilize this information to establish an interim numerical standard for drinking water in accordance with a due regulatory rule making process under the Administrative Procedures Act [cite code section] of the State. Any number utilized as an interim numerical standard for drinking water shall be subject to judicial review.

(F) Oncogen assessment. If the scientific data indicate oncogenic potential for a chemical, but the U.S. Environmental Protection Agency, under an oncogen assessment policy, has determined that a numerical risk assessment is not justified or inappropriate, or does not serve as the primary toxicological basis for regulation, the Director shall utilize the methodology prescribed in paragraph (C) of subsection (1) of this Section of this act, adopting the margin of safety used by the federal agency.

(G) Chemical standards. The standard for a chemical shall be based upon a 70 kilogram person drinking two liters of water per day.

Section 7. {Evaluation of monitoring results.}

(A) Data review. The Director of Agriculture, in consultation with the Director of the [cite appropriate state agency] and other appropriate agencies, shall conduct an evaluation of the results of the monitoring program carried out pursuant to Section 5 of this act to make the following determinations:

(1) Whether the actual presence of the chemical in sources of drinking water exceeds the standard established pursuant to Section 6 of this act and the geographical extent of the determined presence of the chemical in sources of drinking water; and

(2) Whether the data collected by monitoring, when reviewed by the Director, indicate a trend that the duly adopted standard will be exceeded. In determining such a trend, the Director shall take into consideration the percentage change in the concentration of chemicals determined at various sites over a reasonable period of time.

(B) Exceedence of standards. When the Director determines that a standard has been exceeded at a groundwater sampling point, or when trends as set forth in paragraph (2) of subsection (A) of this section indicate that the standards will be exceeded, the Director shall determine the significance and notify the registrants of the chemical and other affected persons of such determinations.

(C) Administrative and regulatory remedies. Upon determination by the Director that a standard has been exceeded or a high degree of scientific certainty that such a standard will be exceeded, the Director shall implement appropriate administrative or regulatory remedies, which may include best management practices, and taking all reasonable time estimates into account, under authority provided to prevent, mitigate, or minimize future impact of the chemical in sources of drinking water. Periodic evaluation of the monitoring of the effectiveness of any administrative or regulatory remedies shall be conducted by the Director to determine the necessity to revise, amend, or withdraw any such remedies.

(D) Management recommendations. Nothing in this act shall prevent the Director, in cooperation with the University Extension Service, other cooperating agencies, or interested parties from developing and promoting appropriate best management

practice recommendations.

Section 8. {Agricultural chemical management areas.}

(A) Establishment of criteria. The Director shall, in consultation with appropriate agencies, registrants, and other interested parties, develop specific criteria necessary for identifying agricultural chemical management areas and adopt the criteria by rule.

(B) Area location. The Director shall, in consultation with state geological survey, soil and water conservation districts, and other water planning authorities, identify the location of agricultural chemical management areas, by rule, utilizing maps and other appropriate methods such that affected persons may readily determine areas involved.

(C) Notification of affected parties. The Director shall publish identification of affected areas and notify affected persons, including registrants, providing maps and information that indicate areas, the type of risk of groundwater impact that may occur from activities at or near the surface, and of any recommended best management practice or agricultural chemical management plans for the area.

(D) Establishment of practices and plans. The Director, in consultation with appropriate agencies, registrants, and other interested parties, shall recommend, develop, and promote agricultural best management practices and agricultural chemical management plans for the prevention of agricultural chemical presence in groundwater. In cases where the Director seeks to establish agricultural chemical management plans, he must, by rule, contact and solicit comments from affected persons and other interested parties including registrants.

(E) Education. The Director, in cooperation with the Extension Service, soil and water resource, and other appropriate agencies, shall promote concepts and provide education on how best management practices can be used to avoid unreasonable risk and to minimize chemical presence in drinking water.

Section 9. {Agricultural chemical management plans.} Appropriate administrative or regulatory remedies as determined by the Directors shall be developed in consultation with appropriate agencies and interested parties, including the registrant. These remedies are designed to further prevent or minimize the future impact of agricultural chemicals on groundwater and shall be included in the development of an agricultural chemical management plan. If the need for regulatory action is confirmed, the lead agency responsible, after consultation, will draft and propose the agricultural management plan within 90 days after the determination. The management plan shall include, but need not be limited to:

(A) Identification of practices contributing to chemical presence in groundwater in the impacted area.

(B) Consideration and inclusion of practical management alternatives, including educational programs intended to reduce the detection of the chemical.

(C) Proposed time schedule for the plan.

Section 10. {Education and training programs.}

(A) General parameters. The Director, in conjunction with the State University Extension Service, shall develop and carry out innovative educational and training programs specifically related to the use of agricultural chemicals and groundwater protection.

(B) Review committee. The Director shall establish an educational planning and review committee which includes representatives of industry, to assist in the development and promotion of training programs for groundwater protection.

(C) Content. Pesticide applicator training programs, manuals, and examinations require for applicator training and certification shall include information on groundwater protection, best management practices, and agricultural chemical management plans in defined areas to assure awareness of individual roles in groundwater protection.

Section 11. {Appropriation.} The sum of [insert dollar amount], or as much thereof as may be necessary, is here by appropriated to the department for administrative costs associated with implementing this act.

Section 12. {Severability clause.}

Section 13. {Repealer clause.}

Section 14. {Effective date.}

Were your laws repealed?

ALEC's Sourcebook of American State Legislation 1995

See Center for Media and Democracy' quick summary on next page.

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Center for Media and Democracy's quick summary

From CMD: This "model" legislation would create new delays and burdens in regulating potential groundwater contaminants, which affects Americans' access to clean drinking water for themselves and their families. First, the Act makes it very difficult for the state to pass regulations that exceed the federal Environmental Protection Agency's standards (usually, federal regulations are a floor rather than a ceiling). Second, the state environmental agency regulatory powers are shared with the Department of Agriculture (which in recent years has tended to favor large-scale agricultural production (agri-business and factory farming) rather than environmental protection). Third, the Act curtails state regulatory powers and adds additional burdens, requiring that before the agencies may propose regulating a contaminant they must show it has actually contaminated groundwater or has a high probability of doing so (in contrast to following the "precautionary principle" to put risks to human health first). Under this proposed legislation, in many instances the agencies could not pass more protective regulations themselves, but must appeal to the federal EPA to do so.