

MEMORANDUM

TO: Water Resources Commission

FROM: Paul R. Cleary, Director

SUBJECT: Water Resources Commission Meeting
Agenda Item E, August 9, 2002

Request for Adoption of Amendments to Well Construction Rules, OAR Chapter 690, Divisions 205 and 240

I. Issue Statement

The Water Resources Commission is asked to adopt modifications to rules contained in OAR Chapter 690, Divisions 205 and 240 (Well Construction Rules). Proposed amendments to the Well Construction Rules would require start card submittal prior to commencing construction of a well. Additionally, the proposed rules require a start card fee and additional information from landowners constructing a well on their own property. A copy of the final proposed rules is contained in Attachment 1.

II. Background

Beginning in the winter of 1997-98, staff began a comprehensive overhaul of eight divisions of well construction rules ranging in topics from definitions to licensing to specific well construction standards. Over the next two years, staff worked with various Rules Advisory Committees (RAC) and the Commission's Ground Water Advisory Committee (GWAC) in an attempt to reach a consensus on a multitude of organizational, housekeeping, and substantive modifications. After numerous unsuccessful attempts to reach a consensus on rule modifications, staff realized that a comprehensive overhaul was unworkable and began addressing amendments to the Well Construction Rules incrementally.

The first of these incremental modifications to the rules occurred in September 2001 when the Commission adopted amendments to the Well Construction Rules. The main focus of the amendments was to make the rules consistent with new statutes, address new monitoring well technology, make "housekeeping" changes, and make the rules more understandable and useful to the drilling community and the general public.

In the fall of 2001, staff reconvened the RAC to set the stage for further rulemaking, and the RAC continued to meet through the spring of 2002. Attachment 2 provides the names and affiliation of present RAC members. The RAC developed a “laundry list” of remaining topics; divided the topics into two categories, long-term and short-term; and prioritized the topics within those categories. The final proposed rules in Attachment 1 address two issues from the “laundry list” identified by the RAC. Other issues identified by the RAC will be addressed in rulemaking beginning in the fall of 2002.

III. Rulemaking Process

Notice of the rulemaking was published in the *Oregon Bulletin* on June 1, 2002. A hearing draft of the proposed rules was made available for public comment in June 2002. One written comment was received and is provided in Attachment 3. The commenter opposes rule amendments requiring start card submittal prior to commencing construction, alteration, abandonment, or conversion of a well and suggests the Department not change the rule. The proposed rules do not reflect this suggestion as the proposed rule language is consistent with statute and represents the consensus position of the RAC. In addition to the written comment period, two public hearings were held in Salem on June 24, 2002. No testimony was given at either of the two hearings.

Following the close of the comment period on July 8, 2002, staff met with GWAC. GWAC members voted unanimously to recommend that the Commission approve the hearing draft. One minor modification was made to the hearing draft based on internal review of the rules and is shown in Attachment 1.

III. Discussion

The final proposed rules address the timing of start cards submittal and landowner permit requirements. Start cards are the well driller’s notice to the Department’s well inspectors that well construction will commence. Currently, under OAR 690-240-0090 and 690-205-0070, start cards may be submitted no later than the day well construction, alteration, conversion or abandonment begins. As currently worded, this rule language allows a driller to drill a well in the morning and notify the Department that night. The proposed amendments would require start card submittal **before** commencing construction, alteration, abandonment or conversion of wells. In situations where an additional well or wells are needed, the rules allow the constructor to submit start card(s) no later than the day work commences.

Consistent with existing statutes, the final proposed rules require a start card fee for landowners constructing their own wells under a landowner permit. The rules also place limits on the duration of a landowner well construction permit and require additional information from

landowners constructing their own well such as a well design plan. The final proposed rules also clarify the Department's authority to deny a landowner well construction permit under OAR 690-240-0082 and 690-205-0050 when the Department determines that the construction, alteration, conversion, or abandonment of the proposed well is a health threat, health hazard, a source of contamination, or a source of waste of the ground water resource.

IV. Summary

The final proposed rules in Attachment 1 require start card submittal before commencing construction, alteration, abandonment or conversion of wells. The proposed rules also require additional information and start card fees for landowners constructing their own wells under a landowner permit, and new limits have been added on the duration of a landowner well construction permit. The proposed rules also clarify the Department's authority to deny a landowner well construction permit.

V. Alternatives

The Commission may consider the following alternative actions:

1. Adopt the proposed rule amendment to OAR Chapter 690, Division 315 (Attachment 1).
2. Adopt amended final proposed rules.
3. Decline to adopt the final proposed rules.

VI. Director's Recommendation

The Director recommends Alternative 1, that the Commission adopt the proposed rules in Attachment 1.

Attachments:

1. Final Proposed Rules, OAR Chapter 690, Division 205, Water Supply Well Start Card Notice and Landowner Well Construction Permit; and Division 240, Monitoring Well Start Card Notice and Landowner Well Construction Permit
2. Rules Advisory Committee Membership
3. Written Comment Received

Juno Pandian
(503) 378-8455, ext. 262