



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item G, May 30, 2008
Water Resources Commission Meeting

Request for Approval of a Final Order Denying the Oregon Ground Water Association Petition Requesting Commission Adoption of a Proposed Rule Related to Well Alterations

I. Issue Statement

The Commission is asked to deny a petition submitted by the Oregon Ground Water Association (OGWA) to adopt an administrative rule identifying the duties and liabilities of well contractors that perform well alterations. According to Oregon statute [ORS 183.390(1)] and administrative rule [OAR 137-001-0070 (4)(c)], the agency must, within 90 days of the submission of the petition, either deny the petition in writing or initiate rulemaking proceedings. It should be noted that the Department intends to include the subject matter of the OGWA petition in a rulemaking initiative that the Department already has been developing, in consultation with OGWA, since December 2007.

II. Background

The OGWA submitted a petition for rulemaking to the Commission on March 3, 2008. The petition asserts that the Commission has recently altered its historical practice and expressed a policy on well alterations by requiring that entire wells be brought up to current standards when altered or repaired in any manner. The petition states, in part, that previously “The expressed policy and practice was that the obligation and liability of the contractor was only for the work currently performed, i.e. the alteration must be performed in accordance with the current standards.” The petition requests that the Commission engage in rulemaking to clarify that a well contractor is only responsible to meet well construction standards for specific work performed on existing wells. A copy of the petition is included in Attachment 1.

III. Discussion

Oregon statute [ORS 183.390(1)] and administrative rule [OAR 137-001-0070 (4)(c)] state that upon receipt of a petition for rulemaking “the **agency** either shall deny the petition in writing or shall initiate rulemaking proceedings.....” (emphasis added). The Department sought the advice of the Attorney General as to whether the Commission or the Department should respond to the petition. Advice from the Attorney General’s Office is that the Commission should respond, and if the petition is to be denied, that the denial be in the form of a final order approved by the Commission.

The purpose of the well construction standards is to protect ground water resources from contamination, waste, and loss of artesian pressure. In the interest of protecting the ground water resource, the Department's position has been that the licensed well constructor becomes responsible for the entire well when the well constructor alters the casing depth, seal, or depth of an existing well.

On a related, but much more narrow topic, the Department entered into discussion with OGWA in December 2007 concerning rulemaking to clarify well constructor responsibilities on the extension of casings that have been cut off at or below land surface. Casing extensions are one example of a well alteration. The Department is moving forward with the formation of a Rules Advisory Committee to advise on the development of rules clarifying responsibility for the extension of casings that do not meet the current standard. The Department intends to broaden the discussion and include the subject matter of the OGWA March 2008 petition in the development of these rules.

IV. Summary

The OGWA submitted a petition for rulemaking to the Commission through their attorney, Schroeder Law Offices, on March 3, 2008. According to Oregon statute [ORS 183.390(1)] and administrative rule [OAR 137-001-0070 (4) (c)], the agency must either deny the petition in writing or initiate rulemaking proceedings within 90 days of the submission of the petition. The Department is taking a comprehensive look at the existing administrative rules relating to the construction of wells. Discussions have included proposed new rules to clarify the responsibility of well constructors. The Department is recommending that the Commission deny the petition for rulemaking submitted by the Oregon Ground Water Association and direct staff to include the subject matter of the petition in the broader review of well construction rules.

V. Alternatives

The Commission may consider the following alternative actions:

1. Deny the petition.
2. Accept the petition and direct the Department to initiate rulemaking proceedings in accordance with ORS 183.390(1) and OAR 137-001-0070 (4) (c).

VI. Recommendation

The Director recommends Alternative 1 that the Commission deny the petition.

Attachment:

1. Oregon Ground Water Association petition related to well alterations.
2. Final draft order denying the petition.