

## MEMORANDUM

Date: September 12, 2007

To: All Regional Directors  
All Regional Office Public Drinking Water Unit Chiefs  
PDWB Section & Unit Chiefs

From: Steve Sturgess, Chief  
Public Drinking Water Branch

Subject: Implementation Guidance for the Noncompliant Well Policy

I have attached, for your reference and use, final guidance documents for implementing the Noncompliant Well Policy. Included are:

- Implementation Guidance
- Information Sheet (handout)
- Suggested Speaking Points
- Noncompliant Well Policy
- Compliance Agreement Template

The Implementation Guidance provides basic instructions for implementing the Noncompliant Well Policy. The Information Sheet is a handout and the Suggested Speaking Points can be used as a guide in your discussions with water system officials. The department's legal staff has reviewed and approved the Compliance Agreement template; note that you will need to insert the system name, county name, and PWS ID # , which can be accomplished by using the "Replace" function in Microsoft Word.

We have fully considered all comments received from regional office and PDW staff and have incorporated those comments as appropriate. In addition to this hardcopy, I will forward the documents to you in electronic format (via email) to facilitate your use. This guidance, which is being incorporated into the department's Compliance Manual, is final and ready to be implemented immediately. Thank you.

## **Noncompliant Well Policy IMPLEMENTATION GUIDANCE**

The Public Drinking Water Branch, with input from Division management and legal counsel, has developed a standard compliance agreement (CA) template for use with the Noncompliant Well Policy. PDWB has also developed an Information Sheet that summarizes the standard conditions of the CA as well as suggested Speaking Points, for use by Regional Office staff in negotiations with water system owners.

### **Implementation Process**

1. Regional office staff, during routine inspections or other visits to water systems with noncompliant wells, should discuss the Noncompliant Well Policy and initiate negotiation of a compliance agreement (CA) with water system owners. In the meeting with the owner, RO staff can use the suggested speaking points and hand out the information sheet (see attached) to explain the process. The owner may read the information sheet at his/her leisure.
2. RO staff, at a later date, should give or mail the compliance agreement template to the owner. The owner may request, and RO staff is authorized, to make minor modifications (such as monitoring periods or frequency) to the CA, but RO staff should discuss with Public Drinking Water Compliance & Enforcement Section before agreeing to significant modifications (if unsure, contact PDWB).
3. If the water system owner concurs with the conditions (or modified conditions) of the CA, Regional Office staff finalizes the CA, obtains necessary signatures (water system owner, Regional Director), and distributes the final CA to all parties.
4. If unable to secure concurrence by the water system owner on the CA, RO staff issues a Notice of Violation to the water system owner and submits an Enforcement Action Request to refer the case to the PDWB Compliance & Enforcement Section.
5. Upon referral of the case, PDWB will provide the water system owner with one last chance to meet and negotiate the compliance agreement before referring the case to the AGO or taking other appropriate enforcement action.
6. PDWB will track compliance with the monitoring required in each CA and initiate appropriate enforcement action in response to violations.

## **Noncompliant Well Policy INFORMATION SHEET**

### **Background**

Missouri law and regulations\* require public water wells to be constructed to higher standards than private wells. This means these wells usually are deeper, wider, have thicker casing and are full-length grouted. The reason for this is to provide greater protection to public water users. Unfortunately, several public water systems, for one reason or another, are using wells that were not constructed to proper standards. By regulation, those wells should be replaced with wells of proper construction.

In spite of their inadequate construction, some noncompliant wells produce safe drinking water. To address the large number of noncompliant wells in Missouri, the Department of Natural Resources (DNR) has adopted a "Noncompliant Well Policy." Under the policy, DNR allows noncompliant wells to be used as long as they produce safe water. This is handled through a compliance agreement that outlines the conditions under which the water system may continue to use the well. The primary requirement is that the well must undergo monitoring that demonstrates the well water is safe. Since the well is a public well, most of this monitoring is required anyway. If the well begins to produce unsafe water, DNR will require the well owner to come into compliance. The policy applies to noncompliant wells constructed and in use prior to June 15, 2007.

### **Conditions**

Under the Noncompliant Well Policy, a public water system may continue to use a well not constructed in accordance with state well standards as long as the system complies with the following conditions, which will be outlined in a compliance agreement the system owner signs:

- A.** In addition to routine monitoring required in Safe Drinking Water Regulations, the water system must conduct the following special monitoring, collecting samples directly from the well, for one year after the effective date of the compliance agreement:
- One special microbiological sample every month;
  - One nitrate/nitrite sample every six months, followed by a confirmation sample if any contaminant is detected above the Maximum Contaminant Level (MCL);
  - One volatile organic chemical sample within the first three months, followed by quarterly samples if any contaminant is detected above the MCL; and
  - One inorganic chemical sample, followed by a confirmation sample if any contaminant is detected above the Maximum Contaminant Level (MCL).
- B.** If any of the following occur within the one-year period, then the water system will need to take one of the actions outlined in the section entitled, "Resolution."
- Two or more fecal coliform-positive or E. coli-positive samples;
  - Three or more total coliform-positive samples;
  - Four or more instances of failure to monitor for microbiological contaminants;
  - One or more confirmed nitrate/nitrite result (average of initial and confirmation samples) exceeding the nitrate/nitrite MCLs;

- Exceedence of the MCL for any volatile organic chemical based on a four quarter annual average;
  - One or more confirmed inorganic chemical result (average of initial and confirmation samples) exceeding any inorganic chemical MCL; or
  - Two or more instances of failure to monitor for any chemical contaminant.
- C. If, at any time, the well violates drinking water standards, DNR will use the criteria in the compliance agreement to reevaluate the continued use of the well and may require an appropriate resolution as described below.

### **Resolution**

If the public water system fails to enter into a compliance agreement or, after entering into an agreement, fails any of the conditions in the agreement, DNR will require the water system to:

- A. Plug the noncompliant well in accordance with state standards (10 CSR 23-3.110) and install a new well that complies with state construction standards; or
- B. Obtain a construction permit from DNR and construct a treatment system that ensures the production of safe drinking water; or
- C. Plug the noncompliant well in accordance with state standards (10 CSR 23-3.110) and connect to a department-approved public water system.

Failure to resolve noncompliant well violations may cause the department to refer the matter to the Missouri Attorney General for legal action.

\* Missouri Safe Drinking Water Act, 640.100 – 640.140 RSMo; Missouri Safe Drinking Water Regulations, 10 CSR 60

**Noncompliant Well Policy**  
**SUGGESTED SPEAKING POINTS**

1. Wells serving public water systems must be constructed in accordance with stringent standards, including size and depth of drill hole; size, length, and type of casing; method used to "grout" or seal the annular space between the casing and the drill hole; construction of the top of the well casing, etc. These standards apply to community wells constructed after 10-1-79 and noncommunity wells constructed after 7-27-87, and are in place to provide maximum protection from contamination to public water users.
2. The state does not have any records indicating that your well was constructed to these standards. Unless you can provide documentation that your well meets proper public well standards, you will be considered in violation of Missouri Safe Drinking Water Law and Regulations.
3. To comply with state law/regulations, you must plug the existing well and construct a new well to state standards; construct an appropriate, department-approved treatment system; or connect to a department-approved public water system.
4. You may also be subject to penalties due to the economic advantage you may have gained over public water systems with properly constructed wells
5. As an alternative, the department has adopted a "Non-Compliant Well Policy" that provides water systems such as yours with an opportunity to come into compliance with Safe Drinking Water requirements, provided your well continues to produce safe drinking water. To take advantage of this opportunity, you must:
  - Collect special samples over the next 12 months, as directed by the department, to prove that the well is producing safe water;
  - Continue to meet all sampling requirements and to produce safe water;
  - Agree to construct a new well, construct a state-approved treatment system, or connect to a department-approved public water system if your well begins to produce unsafe water; and
  - Sign a compliance agreement in which you agree to these requirements.
6. If you take advantage of this opportunity, you will become eligible for a Permit to Dispense Water. The department may also be willing to waive any penalties for past violations.
7. If you decide not to take advantage of this opportunity, the department has no choice but to require you to:
  - Plug the noncompliant well and construct a new well to state standards; or
  - Construct an appropriate, department-approved treatment system; or
  - Plug the noncompliant well and connect to a department-approved water system.The department may also initiate legal action, including appropriate penalties, if necessary, to obtain compliance with these requirements.