



Matt Blunt, Governor • Doyle Childers, Director

# DEPARTMENT OF NATURAL RESOURCES

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DATE:

JUL 16 2007

TO:

James R. Macy, Director  
Field Services Division

FROM:

Daniel R. Schuette, Director  
Division of Environmental Quality

SUBJECT:

Noncompliant Well Policy

The department's Noncompliant Well Policy has been finalized and is attached. As outlined in the policy, the department will allow **existing** noncompliant public wells to be used as long as they produce safe water. This will be handled through a compliance agreement (attached) that will outline the conditions allowing for the usage of the well and that will make the system eligible for a Permit to Dispense Water. If standard monitoring indicates that the well is producing unsafe water, the well owner will be required to take action to come into compliance.

The department is implementing this policy in order to provide a common-sense approach for properly managing public wells that were not constructed in strict accordance with state public water supply well standards but otherwise produce safe water. This policy applies only to noncompliant wells drilled and in use prior to June 15, 2007.

Regional offices may address noncompliant wells in conjunction with EAVs, inspections, investigations, and other normal visits to public water systems, or otherwise implement this policy for these wells in FY 08. During such visits, Regional Office staff can initiate the process by discussing the noncompliant well situation and the new policy for resolving the problem. The Public Drinking Water Branch will work directly with the regional offices on the full process for resolving noncompliant well cases.

If significant violations other than a noncompliant well exist at a water system, regional office staff should handle those violations via the normal compliance process, as outlined in the Compliance Manual.

I look forward to working with you to implement this policy.

SWS:lm

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**Attachments**

**c: Bruce Martin  
Adam Gresham  
Mike Struckhoff  
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Cindy Davies  
Irene Crawford  
Gary Gaines  
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Everett Baker  
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# Non-Compliant Public Drinking Water Wells

## I. STATEMENT OF THE ISSUE

At present there are several hundred non-compliant wells in Missouri that do not meet public drinking water well construction standards, yet are serving water to the public. Non-compliant wells are routinely "discovered" by regional office staff in the course of their day-to-day business. This policy provides a consistent approach for dealing with these situations.

## II. FACTS, HISTORY AND BACKGROUND

### Well Types

There are three primary types of wells for providing drinking water for human consumption defined in Missouri regulations: domestic wells, multi-family wells, and public water system wells<sup>1</sup>. The type of well that is appropriate for a given situation depends on the number of connections the well serves.

Domestic well	3 or less service connections
Multi-family well	4-14 service connections
Public water system well	15 or more connections or 25 people served more than 60 days/year

Different types of wells have different construction standards, all of which are established by the state<sup>2</sup> (the federal Safe Drinking Water Act, which only applies to public water systems, delegates the establishment of public well construction standards to the states). As a general statement, public wells are constructed far more stringently than domestic or multi-family wells in order to provide as much protection to the public as possible from contamination. They typically are drilled deeper, use more casing, and contain more grout than domestic or multi-family wells. Because domestic and multi-family wells are not designed and constructed to stringent public water system well standards, they are not as protective against the threat of contamination and may be inadequate to meet the demands of a higher population or number of connections. Public wells are considerably more expensive to construct than domestic and multi-family wells.

Public water systems are divided into community and non-community systems. Community systems provide water to a group of residences such as a city, subdivision, Mobile Home Park, etc. Non-community systems provide water to non-residential

<sup>1</sup> The definition of a public water system is provided at 10 CSR 60-2.015(2)(P) and the definitions of domestic and multi-family wells are provided at 10 CSR 23-1.030.

<sup>2</sup> General requirements for the construction of community public water systems (including wells) are provided at 10 CSR-3.010, and are further defined in the "Design Guide for Community Water Systems." Construction requirements for non-community public water systems (including wells) are provided at 10 CSR 60-3.010. Construction requirements for domestic and multi-family wells are provided at 10 CSR 23-3.010.

facilities, and are further sub-divided into transient and non-transient systems. Examples of transient non-community systems are convenience stores, restaurants, hotels, rest stops and other facilities that serve public water to different people on a regular basis. Non-transient non-community systems consist of non-residential facilities such as factories, churches, day care operations, etc. that provide water to the same people on a regular basis.

### **What is a Non-Compliant Well?**

All community wells constructed after Oct. 1, 1979 must have been constructed in accordance with public drinking water standards in order to be in compliance. A community well constructed before this date is eligible to be grandfathered, but only if it has been in continuous use. The regulation of non-community water systems came about later than community systems. The date historically used by the Public Drinking Water Branch for grandfathering non-community wells is the effective date of Missouri's Well Construction Rules (July 27, 1987). As with community wells, a non-community well must have been in continuous use to maintain its grandfathered status and be considered in compliance.

Following are categories of "non-compliant" wells:

- (a) A community well that was constructed before October 1, 1979 and has not been in continuous operation providing water for human consumption, or
- (b) A community well that was constructed after October 1, 1979 and was not built to public water supply well standards.
- (c) A non-community well that was constructed before July 27, 1987 and has not been in continuous operation providing water for human consumption, or
- (d) A non-community well that was constructed after July 27, 1987 and was not built to public water supply well standards.

Non-community wells constitute the bulk of non-compliant wells in Missouri.

We find non-compliant wells in a variety of situations and circumstances. A domestic or multi-family well may have been installed deliberately to save money or it may have been done unknowingly. The system served by the well may have begun as a private water supply and, over time, its purpose may have changed or it may have grown into a public water system through additional connections or more people served.

Examples of the kinds of situations we encounter include:

- a small rural church that meets the definition of a public water system but is unaware of the need to install a non-community well;
- a restaurant in a building that was originally a private residence that continues to be

- served by a domestic well;
- a small factory; or
- a business owner who knows that he/she needs a non-community well (e.g., a convenience store, restaurant, etc.) colludes with a well driller to deliberately disregard regulations and install a domestic well. Collusion occurs because both parties benefit economically – the driller because he/she wins a job (that more reputable drillers lost out on) and the business owner gets a domestic well installed for a fraction of the cost of a non-community well.

Many of the non-compliant wells are found in the Southwest Region, particularly the Lake area and in Stone and Taney counties.

The Public Drinking Water Branch (PDWB) cannot issue a Permit to Dispense Water to systems with non-compliant wells, hence the backlog of unresolved permits. There almost certainly are many more non-compliant wells that have not yet been discovered. For instance, there may be several hundred rural churches that meet the definition of a non-transient non-community system that are utilizing domestic wells for their water needs.

### **III. NONCOMPLIANT WELL POLICY**

With this policy, the department is focusing on the safety of the water in the well and whether the non-compliant well was installed in deliberate violation of the regulations. Non-compliant wells will be dealt with individually, with the principle concern being the quality of water in the well. If a well is producing safe water, the well can continue to be used as long as the owner enters into a settlement agreement with the department. Otherwise, the owner must plug the well and install a well that complies with the applicable construction standards.

The settlement agreement will require standard monitoring and will clearly explain all of the conditions for continuing use of the well. This will allow a provisional Permit to Dispense to be issued. Where a business owner has gained a competitive advantage by putting in a non-compliant well, the agreement will also require payment of a penalty representing the economic advantage obtained. The settlement agreement will stipulate that if the well later develops contamination problems, the owner must either install disinfection or plug the well, depending on the severity of the problem. The owner/operator of the well must meet all applicable public drinking water monitoring requirements and comply with all applicable MDNR regulations.

This common-sense method for addressing the large number of non-compliant wells in the state is a pragmatic approach for dealing with the issue that is both protective of public health and an economically reasonable solution for small businesses, churches, etc. Although the preference is to require a proper public well be installed at all of these locations, the unfortunate reality is that this is not feasible, nor is it reasonable. This policy will allow staff to start addressing the very large backlog of systems that do not have a Permit to Dispense.

In effect, this remedy may be considered by some to represent "amnesty." As with any granting of "amnesty," unintended consequences can result. In particular, some may see this policy as a signal to continue drilling the non-compliant wells on the assumption that amnesty will be granted again in the future. It, therefore, is important to make clear to well drillers, water systems and others that this is a one-time only program. Also, recent changes in the DEQ/Wellhead Protection Section that now require well owners to attest to the usage of their well at the time their well is drilled should greatly reduce the number of non-compliant wells that are drilled. **This policy applies only to noncompliant wells drilled and in use prior to the effective date of this policy. Non-compliant wells drilled after the effective date of this policy shall be replaced in strict accordance with regulations.**



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Daniel R. Schuette, Director  
Division of Environmental Quality



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Date