

SUGGESTED WELL CONSTRUCTION CODE ENFORCEMENT PROCEDURES

The following procedures are intended to (1) assist local health departments (LHDs) with conducting enforcement actions involving water well construction and pump installation code violations; (2) provide guidance to achieve statewide standardization of enforcement actions; (3) help ensure that enforcement actions are reasonable, consistent, and timely; and (4) assist local agencies with meeting the Minimum Program Requirements (MPRs) under the Department of Environmental Quality (DEQ), Local Health Department Operations Contracts.

These procedures augment enforcement tools authorized in some counties by local ordinances, such as appearance tickets and civil monetary penalties.

Legal Authority

Part 127, Water Supply and Sewer Systems, of the Public Health Code (PHC), 1978 PA 368, as amended and administrative rules promulgated thereunder, referred to as the *Groundwater Quality Control Rules (State Well Code)*, give the LHDs legal authority to enforce the State Well Code. Although Part 127 of the PHC gives enforcement authority to both the state and local agencies, the MPRs require the LHDs to enforce the State Well Code.

Section 333.12708 of the PHC states that the state or LHD may enter and inspect, at reasonable hours, an installation on public or private property for the development or abandonment of ground water supplies. A similar provision authorizing the LHDs to inspect and investigate, is found in Section 333.2446 of the PHC. Local prosecuting attorneys and the attorney general are given responsibility for prosecution of violators under Sections 333.12715 and 333.1299 of the PHC.

Section 333.12709 of the PHC states that when the state or LHD determines that there are reasonable grounds to believe there has been a violation of sections 12701 to 12715 or a rule or the construction code promulgated under section 12714, the state or LHD shall investigate the violation. If it is established that a violation has been committed, the LHD shall order the responsible person to make proper corrections.

Other statutory provisions related to inspection/enforcement activities are found within Parts 22 and 24 of the PHC (See Appendix 5). Sections 333.2241 to 333.2247 within Part 22 and Sections 333.2446, 333.2455, and 333.2461 through 333.2465 are particularly applicable. These provisions extend enforcement authority beyond the provisions listed in Part 127 that are found in the State Well Code booklet.

The Department of Environmental Quality (DEQ) has the statutory responsibility for issuing the registration certificates for water well drillers and pump installers (Contractors). Administrative actions relating to revocation or suspension of registrations are the responsibility of the DEQ.

Primary Enforcement Procedures

When a State Well Code violation is discovered, it is recommended that the person responsible for committing the violation be contacted via telephone. Oftentimes a telephone contact is all that is necessary to get the responsible person to correct the violation. Some individuals respond more favorably to a personal contact, such as a telephone call or face-to-face meeting.

For State Well Code violations involving site specific issues, it is beneficial to meet the responsible person at the site to discuss the violation. This approach gives the sanitarian an opportunity to explain the violation and discuss correction options while taking site conditions into consideration. If the responsible person is a Contractor, the property owner should be included in the discussion, particularly if the corrections will result in extensive excavation, major alteration, or further expense.

Documentation of the violation is important. A sample follow-up letter is attached (Appendix 1). Copies of this letter should be sent to the homeowner and the DEQ, WCU, to be entered in the Contractor's file.

When correction is obtained, a brief follow-up letter or file memo should be prepared confirming the correction with copies sent to the water well owner, Contractor, the WCU, and other involved parties.

Secondary Enforcement Procedures

If the responsible person fails to make the necessary corrections after the initial contact, a correction order should be sent, pursuant to Section 333.12709 of the PHC. The suggested format for a correction order is found in the DEQ, Drinking Water and Radiological Protection Division, Policy/Procedure 03-010 (dated January 1, 1999) and in Appendix 2. In cases where the violation involves a person drilling a water well without being registered, the initial telephone contact or meeting is not necessary and a correction order should be sent as the first step. A copy of a sample correction order for unregistered Contractors is found in Appendix 3.

Correction orders should be mailed certified, return receipt requested, or personally delivered, to help ensure receipt by the Contractor. A duplicate order may also be sent by regular mail (unless the certified letter was personally delivered) since some people refuse to accept a certified letter. The proof-of-service form in Appendix 4 should be completed by the secretarial or clerical staff person who actually mails the letter. Mailing a letter via regular mail (which is not returned to the sender as undeliverable) along with a completed proof-of-delivery form, is generally accepted by administrative hearing officers as proof of delivery, in lieu of a certified letter that has been refused by the addressee.

Establishing correction deadlines

Give the responsible person a reasonable deadline for correcting the violation. For most State Well Code violations between 5 and 30 days are appropriate depending on the severity of the violation. Special circumstances, such as seasonal load limits on roads and access to property, should be taken into consideration. Being consistent is important – do not give a Contractor 5 days to correct a violation if you gave another Contractor 30 days to correct the same type of violation.

If the Contractor does not respond to the correction order, the WCU should be contacted for advice. The following actions may be taken depending on the nature of the violation and other circumstances:

1. Meet with the contractor, the LHD, and the DEQ representative.
2. Seek prosecution through the local prosecuting attorney or corporate counsel for violation of a correction order issued by the DEQ or the LHD as per Sections 333.12715 and 333.2261 of the PHC.
3. Pursue injunctive action to restrain, prevent, or correct an activity or condition which the LHD believes adversely affects public health, pursuant to the provisions of Section 333.2255 of the PHC.
4. The DEQ may initiate administrative action to revoke or suspend the registration certificate pursuant to the provisions of R 325.1707a.

Administrative Procedures

Where a Contractor has demonstrated a pattern of noncompliance, or a serious matter which threatens public health has occurred, further enforcement action, such as suspension, revocation, or denial of registration certificate renewal, may be necessary. The DEQ will initiate such action in cooperation with the LHD.

Administrative proceedings against the Contractor's registration certificate must be conducted in accordance with the Administrative Procedures Act (APA), 1969 PA 306, as amended. The initial step in this process is the preparation of a "Notice of Intent to Revoke Certificate of Registration...(Notice of Intent)." It is recommended that the LHDs prepare a draft Notice of Intent and submit it to the DEQ for review. This will speed up the enforcement process significantly.

Issuance of a Notice of Intent informs the Contractor of the DEQ's intent to take administrative action against their certificate of registration. It offers an opportunity to attend an informal conference (also referred to as a "Rogers" conference) to demonstrate compliance with the State Well Code. A sample Notice of Intent is available from the WCU upon request.

The matter may be settled at the informal conference through a Consent Agreement with provisions for correction of violations, suspension of the certificate of registration, probationary periods, monetary penalties, or other options agreeable to both parties. The informal conference may also reveal that the Contractor was not responsible for the violation or condition. In such cases, the administrative actions are terminated.

If the matter is not resolved at the informal conference, a "Notice of Formal Hearing" is issued and a formal hearing offered to the Contractor in accordance with the APA. Refer to the APA for more details.

Questions regarding enforcement of the State Well Code should be directed to the Well Construction Unit, Ground Water Supply Section, Drinking Water and Radiological Protection Division, Michigan Department of Environmental Quality at 517-241-1374 or 517-241-1389.

6/2002 - WCU

SAMPLE FOLLOW-UP LETTER

Date

Mr. John Rockwell, WD#84-3000
Rockwell Drilling Company
P. O. Box 360
Smalltown, Michigan 49999

Dear Mr. Rockwell:

This is to confirm our telephone conversation of January 30, 2000, regarding the water supply your firm installed at the J. R. Ewing residence, 6430 13th Avenue, Smalltown, Michigan 49999. It was noted during a recent inspection that a sampling tap was not installed in accordance with Rule 158 of the State Well Code. During our telephone conversation you stated that corrections would be made within the next week.

Please contact our office upon completion of the corrections so that a reinspection can be performed.

Sincerely,

Sanitarian
Local Health Department

S:sec

cc: Water well owner
Well Construction Unit, DEQ

SAMPLE CORRECTION ORDER

SEND VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Date

Mr. Robert J. Deepholer, WD#84-3001
Deepholer Well Drilling
Route #2, P. O. Box 1083
Lake Mead, Michigan 48625

Dear Mr. Deepholer:

District Health Department No. 6 (DHD No.6) has reasonable grounds to believe there has been a violation of Part 127, Water Supply and Sewer Systems, of the Public Health Code (PHC), 1978 PA 368 (State Well Code), as amended, or the rules, regulations, or construction code. Pursuant to Section 12714 of the PHC, a review of our files and field activities disclosed the following deficiencies:

- In November 1999, your firm completed a water well installation at the Barney Fife residence, 12461 Mayville Road, Green City, Michigan, Section 21, T.26N. R.10W. Augusta Township, Blake County. The buried suction line extending from the water well into the basement was not installed in an outer protective casing (concentric piping) as required by R 325.1654, Rule 154. This condition could result in contaminants being drawn into the water system.

Pursuant to Section 12709 of the PHC you are hereby **ordered** to do the following no later than February 15, 2000:

1. Return to the Fife residence and install concentric piping with the annular space pressurized as per R 325.1654, Rule 154.
2. Notify the DHD No.6 at 517-491-5126 upon completion of the corrections so that DHD No.6 staff can perform a follow-up inspection.

You are further advised that pursuant to Section 12715 of the State Well Code any person who is convicted of the violation of any provision of the act or any rule, regulation, or construction code adopted under the act, or any order of the director of the health department, is guilty of a misdemeanor.

Sincerely,

Director of Environmental Health
District Health Department No. 6

DEH:sec
cc: Well owner
Well Construction Unit, DEQ

**SAMPLE CORRECTION ORDER
UNREGISTERED CONTRACTOR**

SEND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Date

Mr. Bart Simpson
505 South 14th Street
South Marine, Michigan 48039

Dear Mr. Simpson:

It has been reported to the County Health Department (CHD) that you have been installing water wells in the South Marine area of Clark County.

Section 12704 of Part 127, Water Supply and Sewer Systems, of the Public Health Code, 1978 PA 368 (State Well Code), as amended, states that any person or firm engaging in the business of water well drilling or pump installation must be registered with the Department of Environmental Quality (DEQ). According to the DEQ, you are not registered in accordance with this statute. Therefore, you are not authorized to operate as a water well driller or pump installer and obviously any work performed is in violation of the State Well Code.

Accordingly, you are hereby **ordered** to immediately discontinue all activities in the water well drilling, well repair, pump installation, or pump repair field.

You are further advised that pursuant to Section 12715 of the State Well Code, any person who is convicted of violating any provision of the State Well Code or any rule, regulation, or construction code adopted under the State Well Code or any order issued by the health department is guilty of a misdemeanor.

Please notify our office at 810-451-8689 to discuss your intentions in the water well field and what actions you plan to take to meet the legal requirements of the State Well Code. Your prompt attention to this matter will be expected.

Sincerely,

Director of Environmental Health
County Health Department

DEH:sec

cc: Local Prosecuting Attorney
Well Construction Unit, DEQ

PROOF OF SERVICE

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

(NAME), being duly sworn, deposes and says that on (DATE), (s)he served a true copy of (TITLE OF DOCUMENT) upon (NAME OF CONTRACTOR AND TITLE OF BUSINESS) by depositing two (2) copies in the United States Post Office in the city of Lansing, Michigan, enclosed in envelopes bearing postage fully prepaid, with one (1) copy sent certified, return-receipt requested, and the second copy sent by regular mail, with both envelopes plainly addressed as follows:

(NAME AND ADDRESS OF CONTRACTOR)

(NAME-AS ABOVE)

Subscribed and sworn before me, this _____ day
of _____, 20_____, a Notary Public in
and for _____ County, Michigan.

My commission expires _____