

## **MEMORANDUM**

**TO:** Water Resources Commission

**FROM:** Paul R. Cleary, Director

**SUBJECT:** Agenda Item I, March 12, 2004  
Water Resources Commission Meeting

### **Request for Adoption of Rule to Establish Special Area Well Construction Standards, OAR Chapter 690, Division 200**

#### **I. Issue Statement**

The United States Department of Energy (USDOE) and Oregon Office of Energy (OOE) have identified a contaminated ground water aquifer in the Goose Lake Basin. In order to ensure the safe development of ground water from the aquifer, OOE requested that the Department initiate rulemaking to establish special area well construction standards. The attached final proposed rules would establish the standards and boundary recommended by OOE (Attachment 1).

#### **II. Background**

Uranium ore was processed from 1958 to 1974 at a site located immediately north of the town of Lakeview, in Lake County. The milling operation produced tailings containing high levels of contamination. In 1989 USDOE completed a project to remove contaminated materials from the surface of the process site. However, ground water in the area remains contaminated and USDOE has determined that water quality below the mill site is unfit for human consumption.

USDOE is working with OOE and local governments to ensure the safe development of the aquifer and to prevent human consumption of the contaminated ground water. To this end, the town of Lakeview and Lake County adopted ordinances creating restricted ground water use overlay zones. In these zones, all proposed residential, commercial or industrial development requiring potable water must either connect to the town's municipal water system or develop a well in compliance with well construction standards administered by the Department. Under the Commission's authority to adopt rules to ensure the safe development of the ground water resource, the Department has developed final proposed rules establishing special area well construction standards as recommended by OOE. The proposed rule in Attachment 1 requires continuous casing and sealing to a depth of 250 feet below land surface on any new, altered, deepened, or converted well within the designated geographic area.

### **III. Rulemaking Process**

Notice of the rulemaking was published in the *Oregon Bulletin* and provided to interested parties on September 1, 2003. In addition to the opportunity to provide written comment, a public rulemaking hearing was held in Lakeview on October 13, 2003.

Two written comments were received and are provided in Attachment 2. One commentor opposes the geographic extent of the proposed special area rule and suggests the Department exclude his property from the proposed area. This commentor provided similar testimony at the public rulemaking hearing. The area covered by the proposed rule is based on the Institutional Control Boundary established by OOE and consistent with OOE's recommendation. Staff do not recommend modification of the proposed rule.

The second written comment was provided by the Department of Environmental Quality (DEQ). DEQ expressed concern that the proposed geographic extent of the proposed rule was inadequate and that the proposed well construction requirements were overly protective. However, in subsequent correspondence DEQ indicated its support of the proposed rule as a good first step in identifying ground water concerns in the area. Adoption of the proposed rule does not preclude DEQ, or other agencies, from providing additional information that could be used to modify this special area construction standard at a future date. Specifically, OAR 690-200-0028(8) provides for modification of the rule when additional information and analysis are provided from other agencies, including DEQ.

In addition to the commentors mentioned above, two individuals testified at the public rulemaking hearing in favor of the proposed rule.

Following the close of the comment period, staff met with the Commission's Ground Water Advisory Committee (GWAC) which advises the Commission on rules for the development and protection of ground water (ORS 536.090). There was considerable discussion among GWAC members with some expressing concern about the USDOE study and the proposed rule. Concerns expressed included whether the federal government would be continuing to monitor the contamination in the area; what would happen to landowners who after constructing wells according to the proposed rule, learn from future studies that the contamination has migrated into the lower aquifers and their wells are contaminated; and how the Institutional Control Boundary was determined and the method and monitoring used to determine the level and depth of the ground water contamination. There was also discussion among the members about the liability associated with adopting the proposed rule. Members were concerned that the federal government would leave the State of Oregon or the Department responsible for site cleanup by adopting the proposed rule. David Stewart-Smith, Office of Energy, appeared before GWAC and addressed many of GWAC's concerns. Mr. Stewart-Smith also discussed the study

performed by USDOE, the recommended boundary, and well construction (depth) requirements. Ultimately, GWAC voted to recommend the Commission adopt the proposed rule.

#### **IV. Summary**

The proposed rule in Attachment 1 requires continuous casing and sealing to a depth of 250 feet below land surface on any new, altered, deepened, or converted well within the designated geographic area. The special area standards are intended to prevent commingling of contaminated and uncontaminated aquifers and to ensure safe development of the ground water resource.

#### **V. Alternatives**

The Commission may consider the following alternatives:

1. Adopt the final proposed rule in Attachment 1.
2. Adopt modified final proposed rule.
3. Not adopt the proposed rule and request that the Department further evaluate the issue.

#### **VI. Recommendation**

The Director and staff recommend Alternative 1 that the Commission adopt the final proposed rule in Attachment 1.

Attachments:

1. Final Proposed Rule, OAR 690-200-0028, Special Area Standards for the Lakeview Area
2. Written Comments on Proposed Rule
3. Subsequent Correspondence from Department of Environmental Quality

Juno Pandian  
503-986-0852