

MEMORANDUM

TO: Water Resources Commission

FROM: Paul R. Cleary, Director

SUBJECT: Agenda Item E, May 20, 2004
Water Resources Commission Meeting

Request for Amendment of OAR Chapter 690, Divisions 200, 205, and 240

I. Issue Statement

The Commission is asked to adopt amendments to OAR Chapter 690, Divisions 200, 205, and 240. The proposed rules would implement 2003 Legislative changes; add or modify various definitions; clarify regulation of piezometers; and modify the requirements for submitting a “Geotechnical Hole Report” for certain slope stability geotechnical holes. The final proposed rules are located in Attachment 1.

II. Background

Since its passage in 1981, ORS 537.762(5) has required a \$75 fee to accompany each “Start Card” for new construction or conversion of a well. In 2003, the Oregon Legislative Assembly passed House Bill 2268 (Oregon Laws 2003) which adjusts the fee from \$75 to \$125 and adds a requirement to submit a fee with each “Start Card” for a well deepening. The increased fee allows the continued support of the Department’s statewide well inspection program. The proposed rules would implement HB 2268.

ORS 537.753 requires a bond in the amount of \$4,000 for any person who contracts or offers services to construct, alter, abandon or convert a well; and a \$2,000 bond for a landowner’s permit. In 2003, the Oregon Legislative Assembly passed HB 2210 (Oregon Laws 2003) which increases the well constructor bond to \$10,000 and the bond for a landowner’s permit to \$5,000, effective January 1, 2004. The increased bond better reflects the cost of well repair and abandonment, provides greater resource protection, and greater protection for affected parties should a well be misconstructed. The proposed rules would implement HB 2210.

The proposed rules also make changes based on input from a Well Construction Rules Advisory Committee. In the fall of 2002, the Department re-convened a rules advisory committee (RAC) to assist in reviewing the well construction rules. A list of RAC members is provided in Attachment 3. The RAC met five times from November 2002 through April 2003; and provided input on amendments to OAR Chapter 690, Division 200, 205 and 240.

III. Rulemaking Process

Notice of the public rulemaking was published in the *Oregon Bulletin* and a Hearing Draft of the proposed rules was made available February 1, 2004. One written comment was received during the public comment period and is provided in Attachment 2. In addition, two public hearings were held in Salem on February 24, 2004. No oral testimony was provided.

The Department presented the hearing draft of the rules to the Ground Water Advisory Committee (GWAC) at their January 30, 2004, meeting. Under ORS 536.090, GWAC is to advise the Commission on matters relating to rules for the development, securing, use and protection of ground water. Members of GWAC expressed concern about proposed rules that would allow the use of latitude and longitude in lieu of township, range, section, and $\frac{1}{4}$, $\frac{1}{4}$ section on well reports and geotechnical hole reports. They were concerned that the Department have adequate checks in place to be able to verify the latitude and longitude readings. The technology is available for those checks however the Department is not currently able to implement them. Therefore, the proposed change in the hearing draft of the rules to allow the use of latitude and longitude in lieu of township, range, section, and $\frac{1}{4}$, $\frac{1}{4}$ section has been deleted from the final proposed rules. The Department intends to pursue this option in the future.

The Department presented the final proposed rules to GWAC at their April 16, 2004, meeting. There was discussion about slope stability geotechnical holes and the proposed rule to require an affidavit for such holes when they would also be used for water levels. GWAC recommended changes to the rules to clarify that if a slope stability geotechnical hole is constructed in a manner that would facilitate water level monitoring, then an affidavit would be required. Their recommendation focuses the affidavit requirement on how a well is constructed, rather than the potential uses of the well. GWAC recommended adoption of the final proposed rules with the change described above and as shown in Attachment 4.

IV. Discussion

A. Rule Highlights

Major provisions of the final proposed rules are as follows:

- Increase well constructor bond to \$10,000 and landowner permit bond to \$5,000 (HB 2210);
- Adjust “Start Card” fee to \$125 and adds a requirement that a “Start Card” fee be required for well deepenings (HB 2268);
- Add and modify a few definitions to make the definitions similar in Divisions 200 and 240;
- Modify the requirements for submitting a “Geotechnical Hole Report” for certain slope stability geotechnical holes; and
- Clarify that piezometers are a type of monitoring well.

Based on an internal review of the hearing draft of the rules, the word “borehole” was changed to “excavation” in the definition of “hand dug well” under 690-200-0050(49) and OAR 690-240-0010(38) to be consistent with the wording in the definition of “dug well” under 690-200-0050(40) and 690-240-0010(28).

B. Issues identified in Written Comment:

Comment – Lane County Department of Public Works recommended that the rules allow slope stability geotechnical holes to be used to monitor water levels without having to meet the requirements for a monitoring well.

One should be able to use slope stability geotechnical holes to monitor water levels and not have to meet the administrative requirements for a monitoring well.

Response – The final proposed rules would allow the use of a slope stability geotechnical hole for water level measurements as long as an affidavit signed by an engineer or geologist qualified to perform geotechnical investigations is attached to the Geotechnical Hole Report. The affidavit must have the qualified engineer or geologist’s stamp on it and certify that the slope stability geotechnical hole is on a landslide or a mass-wasting feature.

Comment - Lane County Department of Public Works requested that the rules clarify that a slope stability geotechnical hole is not a monitoring well, piezometer, or water supply well in the definition of "Slope Stability Geotechnical Hole."

Response – The Department clarified the definition as requested.

Comment - Lane County Department of Public Works requested that the following **bolded** text be added to OAR 690-240-0035(9)(b): "slope stability geotechnical holes that are used to obtain ground water levels shall be constructed **to meet the physical requirement for piezometers, as outlined** in the piezometer standards under OAR 690-240-0137."

Response – The entire sentence referenced by the commentor in OAR 690-240-0035(9)(b) was proposed to be deleted in the hearing draft. In subsequent correspondence with the commentor, they indicated that they had not understood that the hearing draft would delete this sentence. With this clarification, they indicated support for the hearing draft.

V. Summary

Based on Legislative changes, recommendations of the Well Construction Rules Advisory Committee, GWAC, and internal review the Department has developed final proposed rules. In addition to legislative changes, the final proposed rules add or modify various definitions; clarify regulation of piezometers; and modify the requirements for submitting a "Geotechnical Hole Report" for certain slope stability geotechnical holes.

VI. Alternatives

The Commission may consider the following alternative actions:

1. Adopt the final proposed rules under OAR Chapter 690, Divisions 200, 205, and 240 as provided in Attachment 1 with the GWAC recommended change provided in Attachment 4.
2. Adopt the final proposed rules under OAR Chapter 690, Divisions 200, 205, and 240 as provided in Attachment 1.
3. Adopt amended final proposed rules.
4. Not adopt the final proposed rules and request that staff further evaluate the issues.

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VII. Director's Recommendation

The Director recommends Alternative 1, that the Commission adopt the final proposed rules under OAR Chapter 690, Divisions 200, 205, and 240 as provided in Attachment 1 with the GWAC recommended change provided in Attachment 4.

Attachments:

1. Final Proposed Rules
2. Written Comment Received
3. RAC Members
4. GWAC Recommended Change to OAR 690-240-0035(9)(c)

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