

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of the Environment
(DLS Control No. 14-202)**

Overview and Legal and Fiscal Impact

These regulations repeal the existing regulations on well construction and replace them with updated provisions. Many of the replacement regulations are identical or very similar to the existing well construction regulations.

The regulations present no legal issues of concern.

The regulations result in a minimal increase in local health department fee revenues and a likely minimal increase in local health department workloads; State operations and finances are not materially affected.

Regulations of COMAR Affected

Department of the Environment:

Regulation of Water Supply, Sewage Disposal, and Solid Waste: Well Construction:
COMAR 26.04.04.01-.39

Legal Analysis

Background

Section 10-133(b) of the State Government Article requires that a review and evaluation of agency regulations be undertaken every eight years. Over the past four years the department has been working to update well construction regulations in order to provide public protection during construction, installation, and deconstruction of wells in the State. Existing regulations are out-of-date and do not address new practices and technology. These regulations are based on current practices and technology, and clarify construction requirements.

Summary of Regulations

The regulations update existing well construction provisions under COMAR 26.04.04.01-.13 with a new chapter. More specifically the revised chapter:

- alters existing definitions and establishes new definitions under Regulation .02;

- requires that the Approving Authority submit an application for a test well for a public water supply system or a public well to the Department of Health and Mental Hygiene for review before the well construction permit under Regulation .03D(2);
- adds additional application criteria that must be met in order for the Approving Authority to approve the application under Regulation .04A(2);
- adds requirements for the regulation of geothermal wells throughout the chapter;
- repeals out-of-date siting requirements under existing subsection .05B(2);
- increases the validation period for a well construction permit from 6 months to 12 months under paragraph .05G(2)(b);
- restricts the list of potential individuals involved in an emergency procedure to obtain a well construction permit, a verbal authorization to construct a well, a transfer of a well construction permit, a permit invalidation, or pertaining to responsibilities for a permittee from master well driller, well driver, or well digger to master well driller only under Regulations .06, .07, .08, .09, and .10;
- adds requirements for the regulation of hydrofracturing of wells throughout the chapter, and specifically under Regulation .28;
- requires that permission be obtained from the department to deepen a well that is governed by a water appropriation and use permit under Section .11E;
- requires that the Department of Health and Mental Hygiene, rather than the department, approve a request to convert a test well to a water supply well for use on a dairy farm under subsection .12A(4);
- increases the number of days within which a test well must be sealed after completion from 60 days to 180 days under Section .12D;
- adds notification requirements for well construction activities under Regulation .14;
- repeals the exemption from yield requirements for irrigation wells under subsection .16E(5);
- repeals the option for gravel pack to connect aquifers if the well driller has written approval from the department under subsection .18B(2);
- repeals the exemption from the minimum yield requirement for driven, jetted, and jetted-driven wells under Section .26B;
- authorizes the department, rather than the Department of Natural Resources, to require a yield test for nondomestic wells under Regulation .27;

- repeals requirements for the following grouting methods: interior method two plug, interior method upper plug, interior method capped casing, and grout displacement method;
- authorizes, rather than requires, that the Approving Authority issue a Certificate of Potability if a well meets specified criteria under Section .30B;
- establishes criteria that a well must meet in order to obtain a Certificate of Potability under Section .30B;
- establishes coliform bacteria requirements for the issuance of an Interim Certificate of Potability under Section .30G;
- repeals the authorization for a master well driller to supervise the sealing of an abandoned well under subsection .34G(2);
- establishes notification requirements for the sealing of specified wells under Section .34H;
- authorizes the department to approve a variance to the distance requirements for all wells and to the construction standards for replacement wells under Regulation .37; and
- repeals the service requirements for a complaint, order, notice of hearing, or other instrument issued by the department or Approving Authority.

Legal Issue

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites § 9-1305.1 of the Environment Article as legal authority for these regulations. Section 9-1305.1 requires the department to adopt regulations to require that, when the department tests water from a well that is used for domestic purposes, specified information be provided to the person making the request and to any other person for whose benefit the test is requested.

Additionally, § 9-1305 of the Environment Article requires the department to adopt regulations for the construction of wells, and specifies that the rules may recognize a variation in the primary use or construction of wells. Section 9-1306 requires that a person have a permit to drill a well issued by the department prior to drilling a well in the State. Section 9-1307 lists application requirements for a permit to drill a well, and authorizes the department to require that specified samples be submitted to the department as a condition to issuing a permit to drill a well. Section 9-1308 lists requirements for the final report that the well driller must file with the department on completion of drilling a well. Section 9-1309 requires that the owner of a well maintain the well in accordance with the department's regulations, and that the owner of a well take specified actions when abandoning an existing well or test hole. Lastly, § 9-1311 makes the

violation of Title 9, Subtitle 13 of the Environment Article a misdemeanor and lists the penalties if the person is convicted. Section 9-1311 also makes a person guilty of a misdemeanor if the person knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Title 9, Subtitle 13 of the Environment Article.

This authority is correct and complete. These regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The Department of Legislative Services has notified the department regarding several technical and other corrections. The department has agreed to remove a provision that would have deemed any well that was constructed prior to April 1, 1969 and not in use to be abandoned. The department has agreed that this provision may have resulted in the abandonment of wells constructed before April 1, 1969 that are otherwise safe and fit for use.

The department has also submitted the following technical corrections:

- adding § 9-1305 of the Environment Article as additional statutory authority;
- fixing punctuation errors in Regulations .02B(37), .17A(3)(d), .20E(g)(i), .21D(1)(b), .24C(2), .28L(2), .30A(4), .30D(2), .34A(3), .34E, .34E(1), .37;
- for consistency with COMAR 26.04.01, altering the definition for “public well” under Regulation .02B(38) to mean a well that is used to supply water to a public water system rather than a public water supply system and makes conforming changes throughout the regulations;
- fixing typographical errors in Regulations .04D, .05B, .30J(7), and .34(I)(2);
- adding the conjunction “and” between Regulation .13A(1) and (2);
- changing “inch” to “inches” in Regulation .21D(1)(c);
- adding clarifying language to Regulation .26G(3);
- fixing tabulation errors in Regulations .03 and .26J(3);
- fixing a punctuation error in Regulation .23B(2)(g) and altering the lead-in language of paragraph (g) to make the subparagraphs requirements rather than alternatives;
- fixing an incorrect internal cross reference in Regulation .34(I)(2) from “§ D” to “§ E”; and
- changing “20” to “20 feet” in Regulation .36B(5)(a) for consistency with the rest of the regulations.

Fiscal Analysis

The regulations result in a minimal increase in local health department fee revenues and a likely minimal increase in local health department workloads; State operations and finances are not materially affected.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have no fiscal impact on State or local agencies. The Department of Legislative Services disagrees with this assessment in part. While the economic impact assessment accompanying the regulations characterizes the impact on local governments as “none,” the department’s own description of the impact does briefly mention the impact the regulations may have on local health departments but does not proceed to describe that impact. However, the department’s description of the economic impact of the regulations does discuss the likelihood that additional wells may be drilled in parts of the State where wells are not currently able to be drilled. Thus, local revenues increase to the extent that additional well drilling permit fees are paid by well drillers to a local health department. Additionally, it should be noted that, while likely minimal, local health department well drilling related reviews and other activities may increase.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs with this assessment. The department indicates that the regulations likely have a small positive impact on the well drilling industry, as well as other industries, including developers, homebuilders, and associated trade groups.

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