

**ARIZONA DEPARTMENT OF WATER RESOURCES
SUBSTANTIVE POLICY STATEMENT**

**GRACE PERIOD FOR REGISTRATION OF MONITOR WELLS DRILLED AS PART
OF A CERCLA REMEDIAL ACTION ON A CERCLA SITE**

**NOTICES OF INTENT TO DRILL MUST BE FILED WITH THE DEPARTMENT
BEFORE DRILLING BEGINS**

Department personnel have noticed with increasing concern that numerous Notices of Intention to Drill ("N.O.I.s") are being filed with the Department after commencement of drilling monitor wells on CERCLA sites. Although Arizona Revised Statute ("A.R.S.") § 45-454.01(A)(1) allows drilling of wells to begin on CERCLA sites as part of a CERCLA remedial action before receiving a drill card from the Department, this statute also states that exempted wells *remain subject to A.R.S. § 45-596*, which requires that before any well not requiring a permit is drilled or deepened, an N.O.I. must be filed with the Department. Therefore, *before drilling commences* on a CERCLA-exempt well, it first must be registered by filing an N.O.I. with the Department of Water Resources. In order to help well drillers to comply with this law, the Department is creating a grace period for registration of monitor/piezometer wells that were drilled on CERCLA sites before an N.O.I. was filed. This grace period is explained at the end of this policy statement.

**THE DEPARTMENT RECOMMENDS OBTAINING A DRILL CARD BEFORE
DRILLING**

Although filing the N.O.I. before drilling any well is required by law, A.R.S. § 45-454.01(A)(1) does grant a limited exception regarding N.O.I.s for CERCLA wells in that "authorization to drill need [not] be obtained before drilling." In other words, a driller may file an N.O.I. and immediately commence drilling a well as part of a cleanup effort on a CERCLA site *before* receiving the actual drill card from the Department. However, postponing commencement of drilling until the drill card is issued allows the Department to work with the driller in case a variance request or special well construction requirements are necessary. Waiting for the drill card thus avoids the risk of non-complying wells being drilled before the Department has had a chance to review the construction plans.

First, all N.O.I.s for wells drilled in CERCLA sites are routed through the Department's Hydrology Division in order to assure compliance with the Department's Well Construction and Licensing Rules, found in Arizona Administrative Code ("A.A.C.") R12-15-801 *et seq.*, and specifically A.A.C. R12-15-811, Minimum Well Construction Requirements. If "extraordinary or unusual conditions" exist, and the applicant clearly demonstrates to the Department in writing either *before or during drilling* that a variance "will not adversely affect other water users or the local aquifers," a well drilling contractor or owner may obtain a variance from the Department's

well construction rules. A.A.C. R12-15-820. In fact, the Department *requires* applicants to either amend the construction plans reflected in the N.O.I. or file a written request for a variance if the Department finds that a proposed well will not comply with the minimum construction requirements.

Once a non-complying well is drilled, however, Department policy does not allow a variance from the minimum construction requirements. Rather, the Department requires the well owner and driller to take any necessary action to protect the aquifer(s) from contamination. Depending upon the nature and extent of the deviation from minimum construction requirements, the Department may require the well to be modified or perhaps abandoned.

A second consideration is that special well construction requirements may be imposed by the Department pursuant to A.A.C. R12-15-821. Under this rule, if the Department determines that the minimum well construction requirements do not provide adequate protection, it may require that additional steps be taken to protect the aquifer or other water users. The Department may impose special requirements after a CERCLA well is drilled if drilling occurred prior to receipt of the drill card and the Department would have imposed special construction requirements had it reviewed the construction design prior to completion of the well.

Because a variance request will not be considered after a well is drilled, and may not be granted even if a request is timely filed, and because the Department may find it necessary in its review of the N.O.I. to impose special well construction requirements, commencement of drilling before authorization is granted should not be undertaken lightly. The prudent course of action is to await issuance of the drill card before drilling, particularly if there is a planned deviation from usual well construction standards or the site conditions indicate a need for special aquifer protection.

DEPARTMENT POLICY REGARDING FILING OF UNTIMELY NOTICES OF INTENT TO DRILL

Wells drilled without first filing an N.O.I. with the Department violate A.R.S. § 45-596 and may subject the driller and well owner to possible enforcement action. However, the Department wants to encourage registration of wells already drilled on CERCLA sites. It has therefore established a grace period for registration of CERCLA monitor/piezometer wells drilled without first filing an N.O.I. This grace period is effective immediately and will last through December 29, 2000. It applies only to monitor/piezometer wells drilled before **December 30, 1999**, that otherwise meet the requirements for CERCLA exemption under A.R.S. § 45-454.01. If a Notice of Intent, along with the Log of Wells, Well Driller's Report and Completion Report, are filed with the Department by 5:00 p.m. on Friday, December 29, 2000, the Department will issue a registration number and will not pursue an enforcement action against either the driller or the well owner for failure to register the well before drilling.

The Department will still require compliance with the Minimum Well Construction Requirements. A.A.C. R12-15-811. Additionally, any special well construction requirements deemed necessary pursuant to A.A.C. R12-15-821 will be enforced, and after-the-fact variances will not be considered. Wells that do not comply with these requirements must be repaired, or the driller and/or owner will be subject to enforcement action.

EFFECTIVE DATE:
Immediately



Rita P. Pearson
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