How to Prepare Your Case for a Water Well Contractor Administrative Enforcement Action

Process
Local Health Departments (LHDs) that have documented state well construction code noncompliance of a water well drilling contractor or pump installer often contact the Michigan Department of Environmental Quality (DEQ) for guidance. Many well code violations can be resolved locally via phone calls, correction orders or with a meeting with the contractor at the LHD. However, in some instances, the LHD may need assistance from the DEQ to achieve compliance. An administrative enforcement action to revoke or suspend the contractor’s Certificate of Registration can be issued through the DEQ Well Construction Unit (WCU) when the previously mentioned means of obtaining compliance have been unsuccessful.

After an LHD contacts the WCU regarding a noncompliant contractor, and the WCU decides to pursue an administrative enforcement action, the WCU contacts counties where that contractor works to retrieve any additional violation information for infractions not already on file within the past 5 years. The WCU then sends a Notice of Intent to Revoke Certificate of Registration (NOIR) to the contractor to notify them of an unacceptable pattern of noncompliance with Part 127, 1978 PA 368, as amended (Act 368), and the rules. Copies of the NOIR are provided to the LHD.

The NOIR contains the complete list of violations. The contractor has the opportunity to show compliance at an informal conference scheduled by the WCU. LHD staff are expected to attend the informal conference or participate through a conference call and be able to provide clear and concise evidence to verify the allegations.

Preparing Your Case
In drafting the NOIR, the WCU relies on the documentation it receives from LHDs. LHDs preparing a noncompliance case need to be very detailed in the information they submit to the DEQ for review. While phone calls and faxes sent to a driller can provide some useful information, most enforcement documentation MUST be in writing via correction orders. The WCU cannot pursue a case against a contractor based on verbal information.

Correction orders or notices of violation must contain the following key components:
1. Violation description and citation of the regulation violated (statute or rule number).
2. Method of correction.
3. Correction deadline.
4. Consequences for not complying.

It is very important that correction orders contain specific information about the specific well code violations. A correction order stating that “improper grouting” was observed and a repair needs to be made “as soon as possible” is not sufficient and will not be cited in the NOIR. A sample correction order is attached. “Suggested Well Code Enforcement Procedures” outlines the procedures that LHDs should use in sending correction orders to contractors for code enforcement actions. This document can be found on the WCU webpage at www.michigan.gov/deqwaterwellconstruction. Click on “Directory of Operational Memos/Policies/Guidance”.

Attached is an example of a “Summary of Violations” containing the information the WCU would need in order to pursue an administrative enforcement action against a water well drilling contractor. The date the water well was completed, date of violation, code rule number, violation observed, date order letter sent, and compliance status are the minimal items needed for documentation. Depending on the nature of the violation, the WCU may ask for additional information not contained in the attached example. Also, any written correspondence between
the LHD and the contractor or copies of incomplete well logs or well permits should be retained by the LHD in a compliance file specific to the contractor, so that information can be readily reviewed and referenced.

Also attached is a flowchart depicting the entire contractor enforcement process, including both LHD and DEQ procedures.

For further information: Contact Michael Gaber, Chief, Well Construction Unit, Water Bureau, DEQ by phone at 517-241-1374, fax at 517-241-1328, or e-mail at gaberm@michigan.gov.

Attachments
December 21, 2008

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:

- On November 19, 2008, 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 January 15, 2009:

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,

Sanitarian
District Health Department No. 6

DEH:sec
cc: Well owner
     DEQ Well Construction Unit
### Example of Summary of Violations

**Contractor:** Robert Deepholer  
**Reg. No.:** 84-1234

<table>
<thead>
<tr>
<th>Date Well Drilled</th>
<th>Date of Violation</th>
<th>Address</th>
<th>Rule No.</th>
<th>Violation Observed</th>
<th>Date Letter Sent</th>
<th>Correction Due Deadline</th>
<th>Compliance Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/12/2008</td>
<td>1/14/2008</td>
<td>981 Pine Street Jones County White Township Section 8</td>
<td>134</td>
<td>Open annulus observed to a depth of 18’</td>
<td>1/16/2008</td>
<td>2/1/2008</td>
<td>3/1/2008</td>
</tr>
<tr>
<td>11/5/2007</td>
<td>2/1/2008</td>
<td>555 Allegan Street Smith County Black Township Section 33</td>
<td>175</td>
<td>No well log submitted</td>
<td>2/3/2008</td>
<td>2/13/2008</td>
<td>None</td>
</tr>
<tr>
<td>11/5/2007</td>
<td>2/1/2008</td>
<td>555 Allegan Street Smith County Black Township Section 33</td>
<td>175</td>
<td>No well log submitted</td>
<td>2/18/2008</td>
<td>3/1/2008</td>
<td>None</td>
</tr>
<tr>
<td>3/1/2008</td>
<td>3/12/2008</td>
<td>123 Main Street Jones County White Township Section 3</td>
<td>121</td>
<td>Well producing sand</td>
<td>3/14/2008</td>
<td>4/14/2008</td>
<td>None</td>
</tr>
</tbody>
</table>
FLOWCHART FOR WATER WELL CONTRACTOR ENFORCEMENT PROCESS

**WELL CODE VIOLATION**

- Compliance → LHD contacts contractor by phone, letter or order
- Non compliance → No further action

**1st correction order**

- Compliance → 2nd correction order
- Non compliance → DEQ in-house investigation

**2nd correction order**

- Non compliance → Local prosecuting attorney
- Compliance → No further action

**Contact DEQ Well Construction Unit for assistance**

**LHD meeting with contractor (and DEQ upon request)**

- Non compliance → Option
- Compliance → No further action

**DEQ in-house investigation**

- Non compliance → Justified
- Compliance → Option

**Notice of Intent to Revoke Registration issued by DEQ**

**Informal Hearing (a.k.a. Roger’s Conference) at the DEQ. Opportunity for contractor to show compliance**

**Contested Case Hearing (under Administrative Procedure’s Act)**

- Non compliance → DEQ requests
- Compliance → Option

**Notice of Suspension**

**DEQ Director issues final determination and order**

**Notice of Revocation**

**Consent Agreement**

- Compliance → No further action
- Non compliance → Justified

**Option**

- Resolved → DEQ requests
- Unresolved → Option

**Option**

- Compliance → DEQ requests
- Non compliance → Notice of Revocation