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Frequently Asked Questions: Local Regulation of Private Drinking Water Wells

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Introduction

In 2006 the General Assembly enacted legislation directing the Environmental Management Commission (EMC) to adopt rules "governing the permitting and inspection by local health departments of private drinking water wells. . . . ."[1] In addition, the legislation directed the Commission for Public Health to adopt rules governing the sampling and testing of water from private drinking water wells.[2] The EMC and the Commission for Public Health finalized the rules, and they are expected to go into effect July 1, 2008.[3]

Before the legislation was enacted, approximately thirty-five counties had local board of health rules or ordinances in place governing private drinking water wells.[4] After the legislation was enacted, many of the remaining counties adopted local laws governing private drinking water wells, in large part because the Department of Environment and Natural Resources (DENR) offered a financial incentive to begin the process of getting local well programs in place.[5]

Once the state regulations go into effect in July, they will be applicable statewide. Environmental health specialists in local health departments will be responsible for enforcing the state's requirements in their respective jurisdictions. One critical decision that each county will need to make is whether it wants to adopt a local well rule or ordinance that supplements the state regulations. In a question and answer format, this bulletin will review the scope of the new state regulations and the authority of local governments to adopt more stringent local laws. The following questions are addressed:

1. To what types of wells do the new state regulations apply?
2. What state laws applied to private drinking water wells before the new legislation?

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1. S.L. 2006-202, sec. 2 (adding new subsection (7) to G.S. 87-87).
2. S.L. 2006-202, sec. 4 (adding new G.S. 87-97(i)).
3. 22 N.C. Register 1691–94 (Apr. 1, 2008) (amending 15A NCAC 2C).
4. Pat Stith, *Clean Wells Left to Chance*, News & Observer, Mar. 26, 2006 ("Thirty-five counties have some sort of construction oversight or well-testing program, but only 14 require even minimal tests. In the other 65 counties, well drillers are on the honor system when it comes to construction standards.").
5. The incentive money was included in the 2006 and 2007 appropriations acts. *See* S.L. 2006-66 (providing over $800,000 to the Department of Environment and Natural Resources for distribution to counties "for technical support and enforcement assistance . . . as [counties] enforce statewide private water supply well construction standards"); S.L. 2007-323 (providing an additional $300,000 for distribution to county well programs).

3. Did local governments previously have authority to adopt local laws governing private drinking water wells?
4. May a local government continue to enforce its local well ordinance or board of health rule or adopt a new ordinance or rule after the state regulations governing private drinking water wells go into effect?
5. If a board of health adopts a local board of health rule governing the inspection and permitting of private drinking water wells and is subsequently sued by a property owner or other individual, will the state provide for legal representation and pay settlements and judgments?
6. What is the difference between adopting a local well ordinance and adopting a board of health rule?
7. When is a local provision "more stringent" than a provision in the EMC rules?
8. What process should a board of health follow if it wants to retain or adopt local well rules?

Question 1. To what types of wells do the new state regulations apply?

Chapter 87 of the North Carolina General Statutes [hereinafter G.S.] imposes standards on the construction, operation, maintenance, and abandonment of wells. A "well" is defined as "any excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed

- for the purpose of locating, testing or withdrawing groundwater or for evaluating, testing, developing, draining, or recharging any groundwater reservoirs or aquifer, or
- that may control, divert, or otherwise cause the movement of water from or to any aquifer."[6]

This definition is broad enough to encompass many types of wells that are used in the state, including drinking water supply wells, monitoring wells, and injection wells.

The 2006 legislation and the new regulations require local health departments to manage the inspection and permitting process for a subset of wells, "private drinking water wells," which are defined as "any excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed to *obtain groundwater for human consumption*" and that serves or is proposed to serve

- fourteen or fewer service connections or
- twenty-four or fewer individuals.

The term also includes any "well that supplies drinking water to a transient noncommunity water system as defined in 40 Code of Federal Regulations § 141.2 (July 1, 2003 Edition)," which encompasses wells at locations such as campgrounds and rest areas.

Question 2. What state laws applied to private drinking water wells before the new legislation?

The state laws in Article 7 of G.S. Chapter 87, which have been in place for many years, govern the construction, operation, repair, and abandonment of wells. The EMC has also adopted detailed

6. G.S. 87-85.

regulations implementing the statutory requirements found in Chapter 87, often referred to as the "2C rules" because they are found in Title 15A, Chapter 2C of the North Carolina Administrative Code.[7] A smaller subset of wells—those serving certain establishments regulated under state law, such as restaurants, hotels, summer camps, and local jails[8]—are subject to different regulations adopted by the Commission for Public Health.[9]

While all of these laws were in place regulating how wells should be constructed, operated, repaired, and abandoned, state law required only a few categories of wells to be inspected and permitted by state or local officials. Wells associated with regulated establishments, such as restaurants, were inspected in conjunction with the issuance of the establishment's operations permit. In addition, the EMC is authorized to issue permits for a small subset of wells: (1) those with a designed capacity of 100,000 gallons per day or greater and (2) those in certain geographical areas identified by the EMC.[10]

Question 3. Did local governments previously have authority to adopt local laws governing private drinking water wells?

Yes. Some local governments concluded that more oversight of well construction, operation, repair, and abandonment was necessary and therefore adopted local well ordinances or board of health rules. These local laws typically established local permitting systems and imposed additional substantive requirements or restrictions on the well construction process.

Cities and counties may adopt ordinances governing private drinking water wells because the state has delegated local governments the general authority to adopt ordinances necessary to protect the "health, safety, or welfare of its citizens and the peace and dignity" of the city or county.[11]

Local boards of health may cite two sources of authority for the adoption of local public health rules governing private drinking water wells. First, the public health chapter of the North Carolina General Statutes (Chapter 130A) grants boards of health the general authority to adopt rules necessary to protect the public's health. The law provides that a local board may even adopt rules that are *more stringent* than those adopted by the Commission for Public Health or the Environmental Management Commission when, in the board's opinion, a more stringent rule is required to protect the public health.[12] Second, boards of health have specific authority in Article 7 of G.S. Chapter 87, which governs well construction, to "adopt by reference rules adopted by the Environmental Management Commission pursuant to this Article and may adopt more stringent rules when necessary to protect the public health."[13]

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7. 15A NCAC 02C.
8. Establishments regulated pursuant to 15A NCAC 18A.
9. 15A NCAC 18C; 15A NCAC 18A .1700.
10. The EMC is authorized to hold public hearings to identify geographical areas where requiring prior permission for well construction is "reasonably necessary to protect the groundwater resources and the public welfare, safety and health. . . ." G.S. 87-88(a). To date, the EMC has not identified any geographical areas requiring permits pursuant to this provision. The EMC also has the authority to identify "capacity use areas" and regulate the use of groundwater in those areas. G.S. 143-215.13.
11. G.S. 153A-121 (counties); 160A-174 (cities); s*ee also* A. Fleming Bell, II, *The Police Power, in* County and Municipal Government in North Carolina, at 2 (UNC School of Government 2007).
12. G.S. 130A-39 (a)-(b).
13. G.S. 87-96(c).

Question 4. May a local government continue to enforce its local well ordinance or board of health rule or adopt a new ordinance or rule after the state regulations governing private drinking water wells go into effect?

The existence of a state law can sometimes preempt—or override—the authority of local governments to adopt local laws in the same substantive field. State law can either expressly or impliedly preempt local laws. An example of express preemption is the clear prohibition on local board of health rules related to the grading, operating, and permitting of food and lodging facilities.[14] State law can *impliedly* preempt local laws if the state has created a regulatory scheme that is so "complete and integrated" that there is no room left for additional regulation—as is the case, for example, with local regulation of swine farms.[15] In the context of wells, the preemption analysis varies depending on both the content and timing of the local laws.

Well Construction and Permitting Rules

One could argue that the state has impliedly preempted local laws governing wells because there is a relatively rich body of state statutes and regulations on the subject. But, in the case of private drinking water well construction and permitting, it appears that the state has expressly chosen *not* to preempt local laws. One state statute in particular explicitly recognizes and appears to allow for the coexistence of some local and state laws in this field. The statute, G.S. 87-96, provides:

- "The provisions of any law, rule, or local ordinance which establish standards affording greater protection to groundwater resources or public health, safety, or welfare shall prevail within the jurisdiction to which they apply, over the provisions of this Article and rules adopted pursuant to this Article."[16]
- "A local board of health may adopt by reference rules adopted by the Environmental Management Commission pursuant to this Article, and may adopt more stringent rules when necessary to protect the public health."[17]

Thus it appears that local governments may regulate the same subjects governed by the private drinking water well construction and permitting rules adopted by the EMC if the local laws are "more stringent" than the state rules or afford "greater protection to groundwater resources or public health, safety, or welfare." But before assuming that a local well ordinance or rule can continue to be enforced, the local government must carefully examine the new state regulations and evaluate which local provisions are, in fact, more stringent.

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14. G.S. 130A-39(b).

15. Craig v. Chatham, 356 N.C. 40, 44–46, 565 S.E.2d 172, 175–76 (2002) ("The enactment and operation of a general, statewide law does not necessarily prevent a county from regulating in the same field. However, preemption issues arise when it is shown that the legislature intended to implement statewide regulation in the area, to the exclusion of local regulation.") Note that the court in *Craig v. Chatham* recognized that even when the state has established a complete and integrated regulatory scheme in a field (such as swine farms), local boards of health retain some authority to establish local rules if they believe more stringent regulations are necessary to protect the public health.

16. G.S. 87-96(a).

17. G.S. 87-96(c).

Drinking Water Testing Rules

The Commission for Public Health, rather than the EMC, is responsible for adopting rules related to sampling and testing of water from private drinking water wells.[18] Under the law, the preemption analysis related to the Commission for Public Health's rules is quite different. The law provides:

> "Rules relating to public health, wells, or groundwater adopted by the Commission for Public Health shall prevail over this Article, rules adopted pursuant to this Article, and rules adopted by a local board of health pursuant to subjection (c) of this section." [19]

Thus a local board of health may *not* adopt local rules that establish testing or sampling requirements that are more stringent than those adopted by the Commission for Public Health.[20] In other words, while the EMC's rules establish a floor upon which more stringent protections may be built, the Commission for Public Health's rules establish a ceiling.

Grandfather Clause (Pre-July 1, 1989)

The state law establishes what is commonly referred to as a "grandfather clause" for local laws that were in effect as of July 1, 1989. The statute provides: "This Article shall not be construed to repeal any law or rule in effect as of July 1, 1989." Therefore, any local government that had a law in place prior to that date will need to conduct an entirely different kind of preemption analysis when evaluating how to proceed with local enforcement after July 1, 2008.

Question 5. If a board of health adopts a local board of health rule governing the inspection and permitting of private drinking water wells and is subsequently sued by a property owner or other individual, will the state provide for legal representation and pay settlements and judgments?

No. If a board of health wishes to have local rules governing inspection and permitting of private drinking water wells, it must adopt the state rules by reference and then add any more stringent provisions it determines are necessary to protect the public health.[21] Once it does so, the entire body of law (i.e., the state rules and the local additions) is considered local law. In such cases

- the local environmental health specialist (EHS) is not acting as an authorized agent of the state,
- the Attorney General's office will not provide for legal representation in litigation related to enforcement of the local laws, and
- the state will not pay any settlements or judgments stemming from such litigation.

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18. G.S. 87-97(i).
19. G.S. 87-96(b).
20. If, however, a local government had an ordinance or rule in place prior to July 1, 1989, that is effectively more stringent than the Commission's new testing rules, the pre-1989 law would remain enforceable. *Id.*
21. See Questions 7 & 8 for further discussion.

Background

In some fields of public health, local health department staff members who are enforcing state rules are considered authorized agents of the state.[22] For example, if an EHS employed by a county complies with specific training requirements and passes a certain test,[23] he or she may be "authorized" to enforce statewide sanitation regulations governing restaurants. The authorized agent (i.e., the local EHS) is allowed to enforce the state rules, which includes inspecting restaurants; issuing, suspending, or revoking a restaurant's permit; and issuing a sanitation grade to a restaurant.[24]

If a restaurant owner challenges an action taken by the EHS, either by filing an appeal with the Office of Administrative Hearings or by suing the EHS, the county, or others, the state may provide representation and pay some or all of any settlement or judgment. State law provides:

> Any local health department sanitarian enforcing rules of the Commission for Public Health or of the Environmental Management Commission under the supervision of the Department of Environment and Natural Resources pursuant to G.S. 130A-4 shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the sanitarian in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Public Health or of the Environmental Management Commission.[25]

If, instead of enforcing a state law, an EHS is enforcing a *local* law or policy or is acting outside the scope of his or her agency, it is highly unlikely that the state will provide representation or pay any part of a civil judgment.[26]

Controversy surrounding state and local responsibility for litigation-related costs typically arises in the context of enforcing laws related to on-site wastewater (i.e., septic system) permitting and inspection programs. State law sets out detailed requirements governing the permitting of on-site wastewater systems.[27] State law also specifically authorizes local boards of health to adopt local rules governing permitting and inspection of on-site wastewater systems. In such cases, the local board of health must

- adopt the state rules by reference "with any more stringent modifications or additions deemed necessary by the local board of health to protect the public health;[28] and
- ask the Department of Environment and Natural Resources (DENR) to review its proposed rules.[29]

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22. G.S. 130A-4(d) ("The local health department shall utilize local staff authorized by the Department of Environment and Natural Resources to enforce" the rules of the Commission for Public Health and The Environmental Management Commission.).
23. 15A NCAC 01O .0101–.0103.
24. 15A NCAC 18A .2601–.2645.
25. G.S. 143-300.8.
26. *See* Cates v. N.C. Dept. of Justice, 346 N.C. 781 (1997) (holding that a specialist who conducted a preliminary soil evaluation was not entitled to representation by the Attorney General because the evaluation was not provided for in the state rules).
27. G.S. 130A, Article 11; Article 15A NCAC 18A .1935–.1970.
28. G.S. 130A-335(c)(2).
29. G.S. 130A-335(c)(1).

DENR may approve of the local rules if it finds that the local rules are "at least as stringent" as the state rules and "sufficient and necessary to safeguard the public health."[30] DENR retains the authority to revoke its approval of local rules if it later concludes that they are "not as stringent as [the state rules], are not sufficient and necessary to safeguard the public health, or are not being enforced."[31]

When a local board of health decides to adopt local on-site rules and follows through with the process outlined above,[32] the state's position historically has been that the entire body of rules—including those state rules that are adopted by reference—are considered local rules. In such cases, the state's position is that the EHS is not acting as an "authorized agent of the state" with respect to *any* of the on-site rules, even those that are "adopted by reference" from the state. Therefore, when those local rules are challenged, the state does not provide legal representation and does not pay any portion of the settlement or judgment.[33]

At this time, it appears that the state will take the same general approach with respect to local rules governing the permitting and inspection of private drinking water wells. Thus, if a jurisdiction wishes to enforce more stringent local private drinking water well rules, it should adopt the state rules by reference and add any more stringent provisions it considers necessary to protect the public health. Note that the law does *not* require review and approval of local well rules by DENR.

Once the local rules are in place, the EHS will not be acting as an agent of the state,[34] the Attorney General's office will not provide representation in legal challenges based on the rules, and the state will not pay any judgment or settlement that arises from such litigation. Given the potential liability exposure, a local board of health should consult with the county or health department attorney prior to moving forward with local rules.

Question 6. What is the difference between adopting a local well ordinance and adopting a board of health rule?

Ordinances are adopted by local elected officials, such as boards of county commissioners and city councils. Board of health rules are adopted by appointed bodies called local boards of health. City and county ordinances and board of health rules are all laws and they can all be enforced through the imposition of civil and criminal penalties. But when deciding what form a local well law should take, officials should be aware of a few key differences between these types of local laws.

Jurisdiction

A board of health rule applies throughout its jurisdiction,[35] including within all municipalities.[36] The jurisdiction of city and county ordinances, on the other hand, is generally more limited. With

30. G.S. 130A-335(c)(3).
31. G.S. 130A-335(d).
32. Only three counties, Guilford, Orange, and Wake, currently enforce local on-site wastewater rules.
33. For further discussion of the liability issues related to on-site wastewater permitting and inspection, see Aimee N. Wall, "Environmental Health Specialist Liability: What Will Happen if a Specialist Is Sued for Negligence?" *Health Law Bulletin* No. 86 (May 2007), *available at* www.ncphlaw.unc.edu.
34. If an EHS is enforcing local private drinking water well rules, the EHS will not be considered an agent of the state and thus DENR will not require the EHS to be "authorized" in private drinking water well rules as provided in 15A NCAC .01O (administrative code provision to be amended in 2008 to incorporate private drinking water wells).
35. A board of health may govern a single county or multiple counties.
36. G.S. 130A-39(c).

some exceptions, a county ordinance typically governs only the unincorporated areas of a county.[37] A municipality within that county may, however, adopt a resolution empowering the county to enforce its ordinance within the municipality.[38] A city ordinance will govern within the city limits and may also extend to city property and rights-of-way outside the city limits.[39]

Scope of Authority

Cities and counties have the relatively expansive authority to adopt ordinances necessary to protect and promote the "health, safety, and welfare of [their] citizens and the peace and dignity of the [city/county], and may define and abate nuisances."[40]

Local boards of health, by comparison, are charged with "the responsibility to protect and promote the public health [and] have the authority to adopt rules necessary for that purpose."[41] In addition, local boards of health are specifically authorized by state well laws to "adopt by reference rules adopted by the Environmental Management Commission pursuant to this Article, and may adopt more stringent rules when necessary to protect the public health." [42]

Thus the authority of boards of health is more narrowly confined to protecting the public health. This limitation presents a challenge for local boards that attempt to draft rules that address concerns other than health. For example, a board of health rule should not include exceptions that are based on economic factors rather than health factors.[43]

"Local Health Need"

In a 2002 case, the North Carolina Supreme Court stated that, in a field of law heavily regulated by the state, a local board of health lacked the authority to "superimpose additional regulations without specific reasons clearly applicable to a local health need."[44] The court further explained that the board of health failed to "provide any rationale or basis for making the restrictions in Chatham County more rigorous than those applicable to and followed by the rest of the state."[45] Based on the language in this decision, a board of health may need to consider adopting private drinking water well rules only if the rules address local health needs.

Enforcement

There are three options available to enforce an ordinance: civil monetary fines, criminal penalties, and equitable relief, such as an injunction.[46] Only two options are available to enforce a board of health

37. G.S. 153A-122.
38. *Id.*
39. G.S. 160A-176.
40. G.S. 153A-121 (counties); 160A-174 (cities).
41. G.S. 130A-39(a).
42. G.S. 87-86(c).
43. *See* Roanoke Rapids v. Peedin, 124 N.C. App. 578, 478 S.E.2d 528 (1996); see *also* Aimee N. Wall, "The Rulemaking Authority of North Carolina Local Boards of Health," *Health Law Bulletin* No. 81 (Nov. 2003), *available at* www.ncphlaw.unc.edu.
44. Craig v. County of Chatham, 356 N.C. 40, 51–52, 565 S.E.2d 172, 179 (2002).
45. *Id.*
46. G.S. 14-4 (criminal remedies); 153A-123 (other remedies available to counties); 160A-175 (other remedies available to cities).

rule: criminal penalties and equitable relief.[47] The board is not authorized to impose civil fines for violations of board of health rules.

Question 7. When is a local provision more stringent than a provision in the EMC rules?

As discussed above, if a local government elects to adopt a local law regulating private drinking water wells, the local law must be "more stringent" than the state law and "provide greater protection to groundwater resources or public health, safety, or welfare"[48] In addition, state law provides that any more stringent board of health rule must be "necessary to protect the public health." While these important statutory clauses are not expressly defined in the state law or in relevant court decisions, a common sense interpretation would suggest that the local provision build upon or increase the regulatory requirements already imposed by the state laws. In the context of ordinances, state statutes also refer to local authority to adopt ordinances that require "a higher standard of conduct or condition."[49]

It may be useful to simplify this concept and consider it in terms of building blocks. The state laws establish a foundation of building blocks that impose certain requirements and establish certain protections. The local government does not have the authority to remove any part of the foundation by reducing those requirements or eroding those protections. The local government does, however, have the authority to build the structure up higher by imposing more requirements or establishing greater protections. With respect to areas that are not regulated by the state, no foundation has been built and therefore the local government is free to build its own structure within the limits of its own lawmaking authority.

Examples

More stringent. The state regulations governing well construction require the water supply source for most wells to be at least twenty feet below land surface.[50] Under certain circumstances, the state regulations would permit wells to draw on water supplies that are less than twenty feet below the surface and in other situations, the state regulations require wells to draw on water supplies that are at least thirty-five feet below the surface.[51] A county may conclude that, based upon characteristics specific to the county or region, all wells should be required to draw on water supplies that are at least thirty-five feet below the surface. This type of local law would likely be considered more stringent than the state regulations in certain circumstances.

Less stringent. The state regulations provide that a well construction permit is valid for a period of five years.[52] A county may conclude that it wants to provide property owners with more time to

47. G.S. 130A-18 (injunctions); 130A-25 (misdemeanor).

48. G.S. 87-96.

49. This language is taken from G.S. 160A-174(b) ("The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition."). While this language may be found in the statutes governing the authority of cities to adopt ordinances, it applies equally to counties. State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

50. 15A NCAC 02C .0107.

51. 15A NCAC 02C .0116 (less than 20 feet); 02C .0117 (35 feet or more).

52. 15A NCAC 02C .0304(c).

construct their wells and may extend the period from five to seven years. This type of local law would likely be considered less stringent than the state regulations.

Outside the scope. State law does not require permits for all irrigation wells.[53] Rather, it establishes a permitting system for private drinking water wells, which are wells intended to "obtain groundwater for human consumption." Therefore, a county could adopt a rule or ordinance requiring permits for all newly constructed irrigation wells, as long as the definition of "irrigation well" in the local law does not overlap with the state definition of "private drinking water well." Such a local rule would be outside the scope of the state rules governing permitting of private drinking water wells. Note that in adopting local permitting requirements, the local government should not erode or undermine the state regulations governing construction, operation, maintenance, and abandonment of those wells. If the *only* rule adopted by a local board of health is outside the scope of the state rules (such as a local rule requiring permits for irrigation wells), the board does *not* need to adopt the state rules by reference and does *not* lose the potential for representation by and financial support from the state in the event of a lawsuit related to the state private drinking water well regulations (as discussed in Question 5).

When considering a local ordinance or rule provision, a local governments will need to evaluate the provision carefully, compare it to the state law, and decide whether it considers the provision to be more stringent or to provide greater protection to groundwater or public health than the state law. For each local provision adopted, it would be wise to prepare a clear explanation of the local law that includes an explanation as to why the provision is more stringent or provides greater protection. In addition, for a provision adopted by a local board of health, the board should explain why the more stringent provision is necessary to (1) protect the public health and (2) address a local health need.[54]

Question 8. What process should a board of health follow if it wants to retain or adopt local well rules?

Once the state rules go into effect in July 2008, there is the potential for tremendous confusion in those jurisdictions that have a local well rule or ordinance.[55] Do the state rules apply? Are some or all of the provisions of the local laws still in effect because they are more stringent? Which laws will govern the construction of a new well? The public, the drillers, and the EHS's charged with enforcing the law will likely all have similar questions and concerns.

The burden is on the local government to minimize the confusion. In those jurisdictions that have local well rules, the board of health will need to take one of the following steps:

- Option 1: If a jurisdiction does *not* want to have local rules after July 1, 2008, the board may adopt a sunset provision that automatically repeals local rules immediately before the effective date of the state rules. Alternatively, the board could take action to simply repeal the rules

53. See Question 1 for the full definition of "private drinking water well." Note that the EMC retains some authority to require permits in some situations, but it has not exercised this authority to date. See Note 10.

54. See Question 6 for a discussion of the origins of the "local health need" requirement.

55. Note that if a jurisdiction currently does *not* have local rules and does *not* want to have local rules, the board of health does *not* need to take any action. Once the state rules go into effect in July 2008, the specialists authorized by DENR will be empowered to enforce the state rules as agents of the state.

on June 30, 2008. Once the local rules have been repealed, the board does *not* need to take additional action in order to have the state rules apply within the jurisdiction. The board does not, for example, need to adopt the state rules by reference.

- Option 2: If a jurisdiction *wants* to have local rules after July 1, 2008, the board should still repeal the previous version of the local rules. It may then adopt the state rules by reference and adopt those more stringent requirements deemed necessary to protect the public health and address a local health need.

For any of the above actions, the board of health will need to follow the general rulemaking procedures outlined in G.S. 130A-39. Specifically, not less than 10 days before the adoption, amendment, or repeal of the local rule, a copy of the proposal must be made available at the office of each county clerk within the board's jurisdiction and a notice must be published in a newspaper having general circulation within the jurisdiction. The notice must provide a general description of the subjects and issues involved, the proposed effective date, and a statement explaining that copies of the proposal are available at the local health department.

Conclusion

After July 1, 2008, local governments will continue to have the authority to adopt local laws governing private drinking water wells, irrigation wells, and other types of wells. Once the new state private drinking water well regulations are in effect, however, the scope of local government authority changes, as does the relationship between the state and the local health departments enforcing those state regulations. Local governments will need to carefully consider the new state law regime and evaluate how best to proceed with regulation of wells at the local level.

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