

# Regulation 61-44

## Individual Residential Well and Irrigation Well Permitting

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**Statutory Authority:**

S.C. Code Sections 48-1-10 et seq. and 44-55-10 et seq.

**Regulation History as Published in State Register**

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## **A. PURPOSE AND SCOPE.**

1. This regulation, promulgated pursuant to the authority of the Pollution Control Act, Section 48-1-10 et seq., and the Safe Drinking Water Act, Section 44-55-10 et seq., 1976 S.C. Code of Laws, establishes a system and rules for managing and protecting the quality of South Carolina's groundwater, drinking water, and for protection of public health.

2. The South Carolina Department of Health and Environmental Control has concluded that the improper installation of individual residential wells and irrigation wells are endangering public health and the quality of groundwater in this state and therefore finds the need for regulation to govern installation of such wells.

## **B. DEFINITIONS.**

The definition of any word or phrase employed in this regulation shall be the same as given in the Well Standards, R.61-71, Pollution Control Act, 48-1-10 et seq., and the Safe Drinking Water Act, Section 44-55-10 et seq., 1976 S.C. Code of Laws. Words or phrases which are not defined in the Acts or Regulations are defined as follows:

1. Agent- a person acting on behalf of an owner, subject to the control of the owner, who acts in such a manner as to affect the legal relationships of the owner with third parties.

2. General Permit - a permit for the construction of individual residential wells or irrigation wells issued under this regulation authorizing a category of well construction activities within the state.

3. Human Consumption - water used for drinking, bathing, cooking, dishwashing and maintaining oral hygiene, or other similar uses.

4. Individual Residential Well - a potable water well intended to produce water for human consumption at a single residence or family.

5. Irrigation Well - a well intended to produce water for uses other than human consumption, to include, but not be limited to, lawn and landscape watering and agricultural uses.

6. Owner - a property owner where the well is to be constructed.

7. Replacement Well - a well being constructed to take the place of an existing individual residential well or irrigation well that is being taken out of service.

8. Residence - legal residence; the permanent, fixed place of abode which a person intends to be his residence and to which he intends to return.

9. Well driller - an individual, corporation, partnership, association, political subdivision, or public agency of this State who is licensed with the S.C. Department of Labor, Licensing, and Regulation for constructing wells and is in immediate supervision of, and responsible for, the construction, development, drilling, testing, maintenance, repair, or abandonment of any well as defined by this regulation. This term shall include owners constructing or abandoning wells on their own property for their own personal use only, except that such owners are not required to be licensed by the Department of Labor, Licensing, and Regulation for constructing wells and are not subject to the bonding requirements of subsection (C)(4) of this regulation.

## C. GENERAL.

1. Individual residential wells and irrigation wells shall be constructed or abandoned by well drillers who are licensed for such purposes by the S.C. Department of Labor, Licensing, and Regulation. The licensing required by the subsection does not apply to owners constructing or abandoning wells on their own property for their own personal use only.

2. All individual residential wells and irrigation wells shall be constructed or abandoned in accordance with this regulation, Regulation 61-71, Well Standards, and all other applicable laws, regulations, and standards.

3. The Department must conduct necessary inspections, to the maximum extent as resources allow, to ensure compliance with the provisions of this regulation. The owner shall grant access to the well construction site to the Department at reasonable times for the purpose of conducting such inspections. The inspection program will primarily be conducted by Department personnel located in the District Environmental Quality Control offices. Inspections shall be conducted at the time of construction when possible. The purpose of inspections is to determine compliance with the Well Standards R.61-71 and this regulation. The inspections shall include, at a minimum, determining: 1) proof of coverage under the general permit, 2) compliance with siting requirements, 3) the presence or absence of an adequate grout seal and compliance with other critical construction standards outlined in R.61-71, and 4) eventual timely submittal of the well record form. Violations of the cited regulations noted during the inspection shall result in enforcement action in accordance with established Department procedures. The Department shall develop an inspection manual which outlines the complete inspection process for Department personnel in accordance with the requirements of this regulation and the Well Standards R.61-71. Interested parties may provide input into development and annual updating of the inspection manual. After one year's training and experience, each district well inspector shall conduct a minimum of 200 inspections annually of individual residential or irrigation wells with a Department goal to inspect a majority of wells constructed under this regulation. Owners shall be provided a copy of the Department's inspection results.

4. The Department shall prepare an annual report detailing activities funded by individual residential well and irrigation well fees including the number of wells issued coverage under the general permit, number of inspections, inspection results, fees collected, and number of enforcement actions. This report shall be submitted to the South Carolina Legislature and the South Carolina Groundwater Association and be available for the general public.

5. Each well driller must meet bonding requirements as established by the Department of Labor, Licensing, and Regulation. The Department shall have full access to a well driller's bond to correct a violation of this regulation and/or Regulation 61-71, Well Standards, where, as part of a Department enforcement action, a well driller is unwilling or unable to take required corrective actions. The bonding provisions required by the subsection does not apply to owners constructing or abandoning wells on their own property for their own personal use only.

6. Irrigation wells shall not be permitted at a residence unless another source of potable water serving the residence is proposed or exists.

7. The Department is authorized to develop a "General Permit" for individual residential well and irrigation well activities.

8. This regulation will become effective 60 days after Legislative approval.

#### **D. NOTICE OF INTENT, PERMIT, AND APPROVAL.**

1. It shall be unlawful to construct an individual residential well, an irrigation well, or a replacement well unless conditions of the general permit issued by the Department have been satisfied for the construction of the proposed well.

2. It shall be the responsibility of the well driller to ensure that coverage under this general permit to construct an individual residential well, irrigation well, or replacement well is obtained from the Department prior to construction of the well.

3. It shall be the responsibility of the well driller to ensure that all wells permitted under this regulation are located and constructed in accordance with all applicable regulations.

4. A Notice of Intent (NOI) form provided by the Department, as specified in the general permit, must be submitted to the Department with true and accurate information necessary for determining the location of, and proper construction of, individual residential wells, replacement wells, and irrigation wells. The NOI may be submitted by the owner, agent, or well driller. This information shall include, but may not be limited to, owner name, address, and telephone number, address of the property on which the well is to be installed, proposed date of installation, proposed well location, if the proposed well is a new well or replacement well, and name and license number of the licensed well driller constructing the well. If any information provided on the NOI changes at the time of well construction, the well driller must contact the Department and provide the correct information.

5. Upon receipt of a completed NOI, the Department shall accomplish its review and have either the approval, review comments, or denial transmitted to the applicant within 48 hours. The 48 hour period is calculated from the time and date of receipt of the Notice of Intent excluding weekends and legal state holidays. If notice is not given to the applicant by the end of the 48 hour period, coverage under the general permit for individual residential wells and irrigation wells will be considered approved. The well driller shall also give the Department 48 hours prior notice of well installation with the exact date, time, and location of well installation. This notice can be concurrent with the NOI review period. The Department shall deny coverage under the general permit when the proposed well would violate Regulation 61-71, Well Standards, the Pollution Control Act, Section 48-1-10 et seq., the Safe Drinking Water Act, Section 44-55-10 et seq., 1976 S.C. Code of Laws, or licensing requirements established by the S.C. Department of Labor, Licensing, and Regulation. Nothing in this regulation shall be used to limit construction of individual residential wells or irrigation wells that are constructed in accordance with the applicable regulations cited above. The Department inspectors will utilize available resources, such as Department records of permits for onsite wastewater systems and subdivision application approvals, to help determine compliance with the NOI provisions in this regulation.

6. Coverage under a general permit issued pursuant to this regulation shall not guarantee that a well will yield water that is of adequate quality and/or quantity for the purposes intended.

7. The well driller shall have a copy of the Notice of Intent before initiating construction of an irrigation well or individual residential well and shall keep a copy of the Notice of Intent on the drilling site at all times.

#### **E. EMERGENCY WELL REPLACEMENT.**

A well driller may replace an existing individual residential well immediately when an emergency exists. An emergency is deemed to exist when an existing individual residential well has suddenly been rendered useless or the water quality is not fit for human consumption and a replacement well is needed to provide

a potable water supply. The Notice of Intent and associated fee shall be submitted within 24 hours of well construction.

#### **F. GENERAL PERMIT FEE.**

1. Each well driller, owner, or agent applying for a general permit to construct a new or replacement individual residential well or irrigation well shall pay to the Department a fee in accordance with Regulation 61-30, Environmental Protection Fees.

2. Upon notification of the Department, no permit fee shall be assessed to a well driller, owner, or agent who has replaced, within one year of installation, an unserviceable or otherwise unsatisfactory individual residential well or irrigation well if the unserviceable or unsatisfactory well is properly abandoned.

3. The fee collected must be returned to the Department for the sole purpose of developing and implementing the Individual Residential Well and Irrigation Well Program, including proposed well construction review, compliance inspections, technical assistance, enforcement, and for providing bacteriological analytical services for new individual residential wells.

#### **G. REFERENCE.**

The definitions and standards established by Regulation 61-71, Well Standards, are herein adopted by reference.

#### **H. ENFORCEMENT.**

For the purpose of enforcing this regulation, an employee or duly authorized representative of the Department may enter at reasonable times the site of well construction on the property of an owner where a permit has been obtained pursuant to this regulation. The Department, upon receipt of information that a constructed individual residential well or irrigation well may present an unacceptable risk to health of the persons using the well or to the groundwaters of the State, or is in violation of any other applicable statutes or regulations, will initiate enforcement action against the well driller.

#### **I. VIOLATIONS; PENALTIES.**

1. Violations of this regulation shall be subject to penalties as provided in Sections 48-1-320, 44-55-90 and 48-1-330 of the 1976 S.C. Code of Laws.

2. Whenever the Department finds that a well driller is in violation of a permit, regulation, standard, or requirement under this regulation, the Department, after written notice of violation, may issue an order requiring the well driller to comply with the permit, regulation, standard, or requirement, or may request the Attorney General to commence an action under this subsection in the appropriate court. The Department may also assess civil penalties as provided in this section for violations of the provisions of this regulation including any order, permit, regulation, or standard.

3. A well driller who fails to take appropriate corrective action, after receiving written notice of violation of a provision of this regulation, is liable for civil penalties or criminal prosecution.

4. A well driller who fails to notify the Department per Section D.5, or fails to obtain coverage under the general permit, after receiving written notice of violation of a provision of this regulation, is liable for civil penalties.

5. The Department shall have full access to a well driller's bond required by the Department of Labor, Licensing, and Regulation to correct a violation of this regulation and/or Regulation 61-71, Well Standards, where, as part of a Department enforcement action, a well driller is unwilling or unable to take required corrective actions.

**J. SEVERABILITY.**

Should any section, paragraph, sentence, clause, phrase, or other part of this regulation be declared invalid for any reason, the remainder shall not be affected thereby.