Volume 30, Number 9
Pages 751–1038
May 2, 2005

SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."

ROBIN CARNAHAN

SECRETARY OF STATE

MISSOURI REGISTER

The *Missouri Register* is published semi-monthly by

SECRETARY OF STATE

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ISSN 0149-2942, USPS 320-630; periodical postage paid at Jefferson City, MO
Subscription fee: $56.00 per year

POSTMASTER: Send change of address notices and undelivered copies to:

MISSOURI REGISTER
Office of the Secretary of State
Administrative Rules Division
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MISSOURI REGISTER

May 2, 2005 Vol. 30 No. 9 **Pages 751–1038**

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due

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The rules are codified in the *Code of State Regulations* in this system—

Title	***Code of State Regulations***	**Division**	**Chapter**	**Rule**
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 23—*[Division of Geology and Land Survey]* *Geological Survey and Resource Assessment Division*
Chapter 3—Well Construction Code

EMERGENCY AMENDMENT

10 CSR 23-3.100 Sensitive Areas. The division is amending the division title, adding a new section (7) and one new form; also updating the forms that follow this rule in the *Code of State Regulations*.

PURPOSE: This amendment requires more stringent well drilling standards be utilized in areas where groundwater is contaminated with perchloroethylene (PCE) or its degradation products in the New Haven, Franklin County, vicinity.

*EMERGENCY STATEMENT: The Department of Natural Resources' Well Installation Board (WIB) has determined that an emergency amendment is necessary to implement appropriate and enforceable well drilling standards in the New Haven, Franklin County, area due to groundwater contamination. Perchloroethylene (PCE), a suspected human carcinogen, has contaminated groundwater in and south of New Haven at concentrations that pose a threat to human health. An unincorporated area south of the city of New Haven is not served by a public water supply and is undergoing rapid residential housing development. New houses built in this area need private water wells to supply a permanent source of water. Utilizing normal well installation guidelines will result in these wells becoming contaminated, exposing the well users to PCE contamination. In addition, using normal well installation guidelines may provide a conduit for PCE contamination to enter deeper portions of the groundwater aquifer. The deeper portions of the aquifer provide the water supply for the city of New Haven. The WIB finds that an immediate danger to the health of New Haven area residents exists due to the potential exposure of residents to PCE-contaminated drinking water. The WIB finds that this emergency amendment is necessary to implement appropriate well installation guidelines to minimize risks to private water well users and the groundwater aquifer that serves as the source of public water for the city of New Haven. The WIB also finds that this emergency amendment is necessary to preserve a compelling government interest in protecting Missouri's groundwater resources. The scope of this emergency amendment is limited to circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The WIB believes that the emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed March 21, 2005, effective April 1, 2005, expires September 27, 2005.*

(7) Special Area 3. Portions of Franklin County within and south of the city of New Haven shall be listed as Special Area 3 (Figures 7B and 7C included herein) due to the contamination of portions of the aquifer by one (1) or more of the following chemicals of concern: tetrachloroethylene (PCE), trichloroethylene (TCE), PCE degradation products and TCE degradation products or other contaminants of the National Public Drinking Water Regulations (NPDWR). In this area it is necessary to utilize more stringent well construction standards for new wells that are drilled into the aquifer and to limit the deepening of existing upper aquifer wells.

(A) The division shall be consulted before constructing a new well in Special Area 3. The division will provide specific guidance on well drilling protocol and construction specifications on a case-by-case basis. The division must provide approval for all new wells prior to construction.

(B) Before deepening a well in Special Area 3, groundwater sampling and analysis for the chemicals of concern must be conducted and the data submitted within sixty (60) days of the sampling event by the well installation contractor to the division. The division must provide approval for the deepening of all new wells in Special Area 3. Wells that have been sampled and analyzed and are contaminated with chemicals of concern exceeding maximum contaminant levels (MCLs) and/or action levels (ALs) shall not be deepened.

(C) In addition to specific instructions that are provided by the division pursuant to 10 CSR 23-3.100(7)(A) and (B), the following must be performed at all new wells installed in Special Area 3:

1. All drilling-derived fluid and solid materials shall be containerized and sampled before disposal in an appropriate location based on analytical results.

2. All new and deepened old wells in Special Area 3 shall be constructed with a sampling port or tap within ten feet (10') of the wellhead. Water must be purged from the sampling port prior to collection of a sample.

3. After proper well development, water from all new wells located in Special Area 3 shall be sampled and analyzed for the chemicals of concern, as determined by the division. Qualified and properly trained persons must complete sample collection. In order to document sampling has occurred, a copy of the chain of custody form shall be submitted by the pump installation contractor to the division within sixty (60) days of pump installation.

4. The data report from all analyses shall be made available by the pump installation contractor to the division and the well owner within sixty (60) days of the sampling event.

(D) At any well being drilled, per division guidance, in which PCE and/or TCE is encountered in a pure-product phase, also known as Dense Non-Aqueous Phase Liquid (DNAPL), drilling shall cease and the division shall be notified immediately. The division will determine further action.

(E) Properly constructed new wells that, upon sampling and analysis, are contaminated at levels exceeding MCLs or ALs shall:

1. Be plugged full-length with high solids bentonite grout per 10 CSR 23-3.110; or

2. Install a water treatment system that is designed to properly treat the chemical(s) of concern. The well shall not be used for human consumption until sampling and analysis demonstrates that the water treatment system reduces contaminant levels below MCLs and/or ALs for all chemicals of concern. The division shall be provided a copy of the post-treatment analytical data by the pump contractor within sixty (60) days of the sampling event.

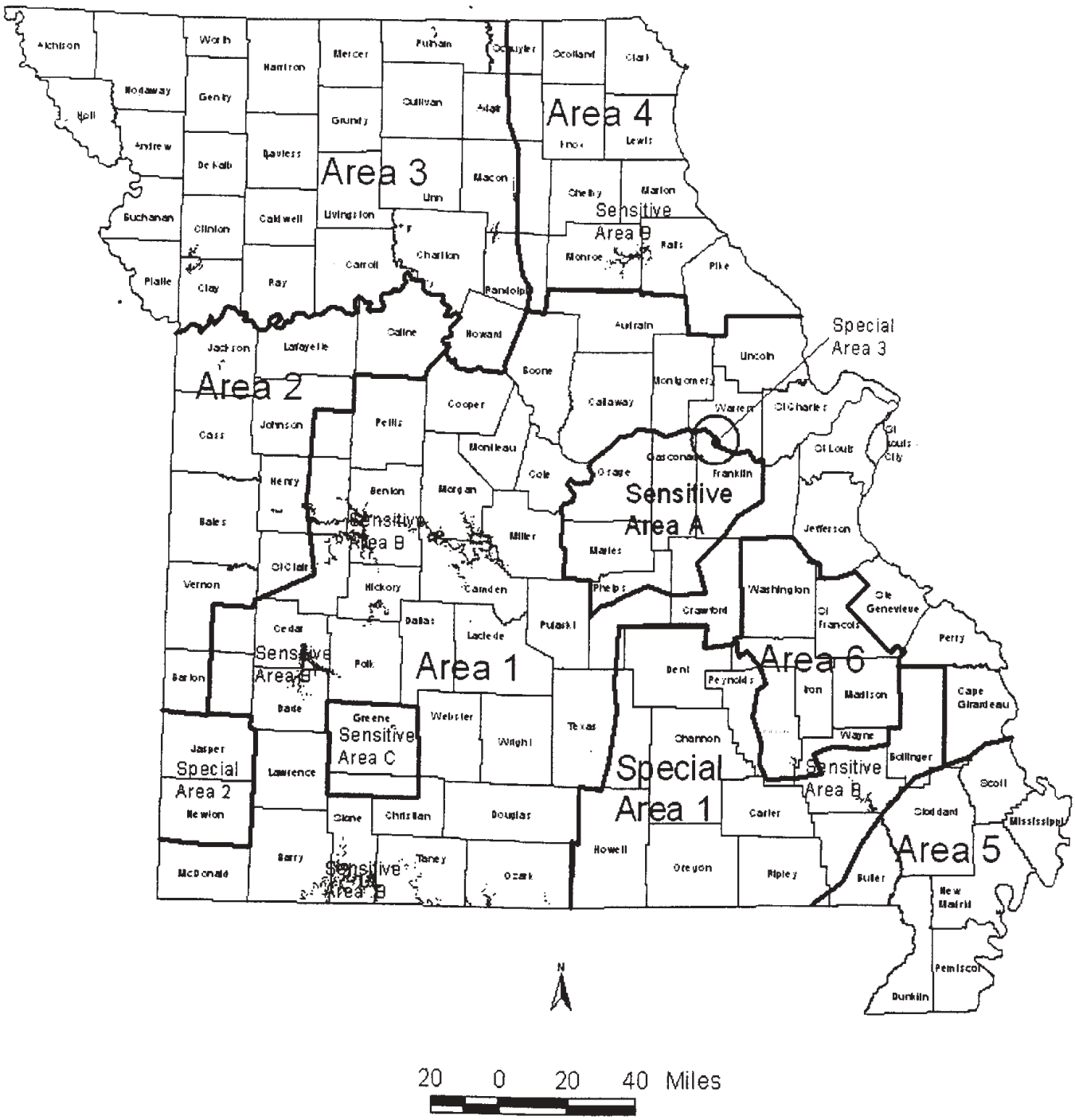

Figure 1. Map showing drilling areas for private well construction regulations. Areas are enlarged in maps on the following pages.

Area 1, Special Areas 2 and 3 and Sensitive Areas A, B, and C

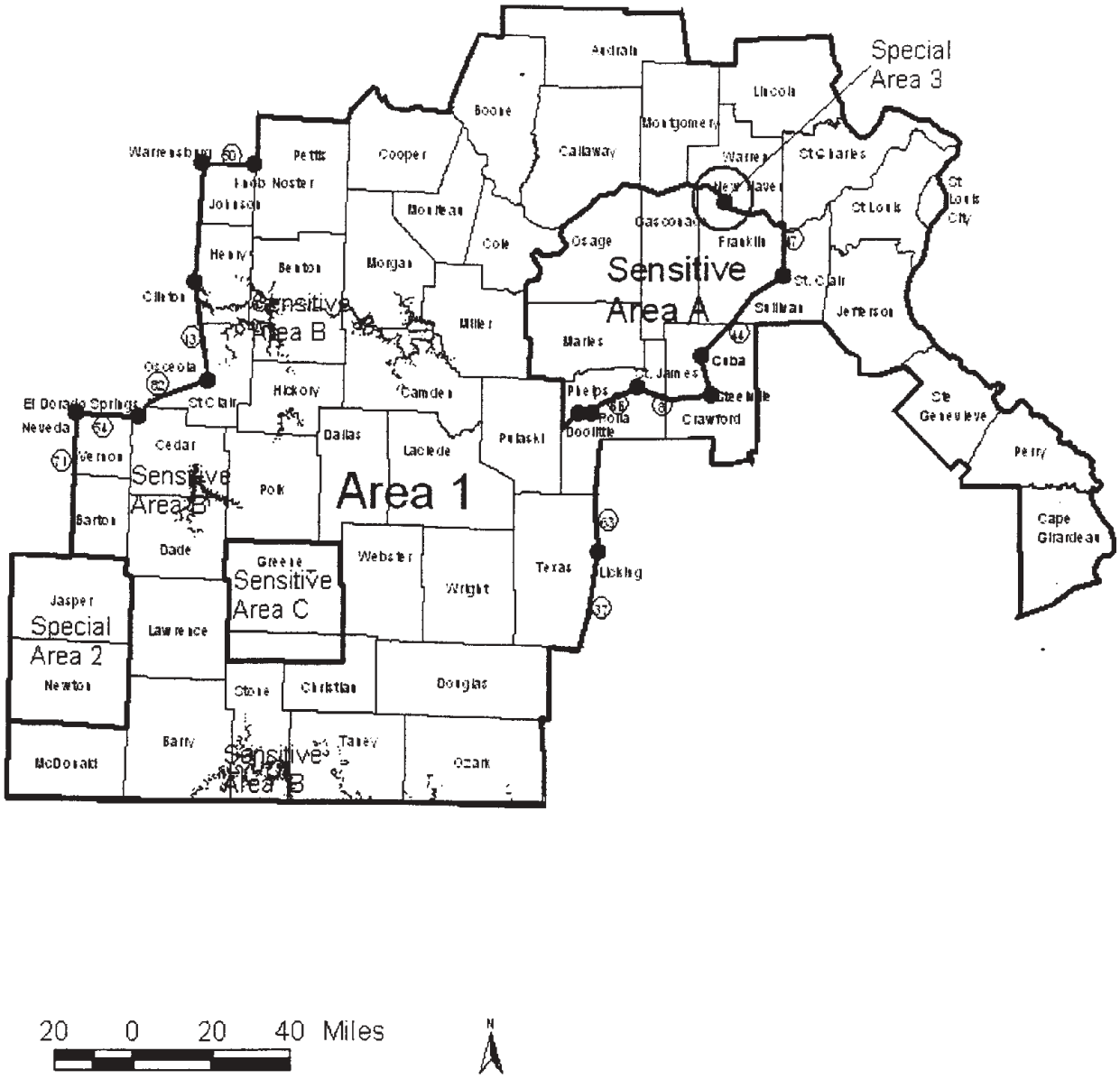

Figure 7B. Area 1, Special Areas 2 and 3, Sensitive Areas A, B, and C map.

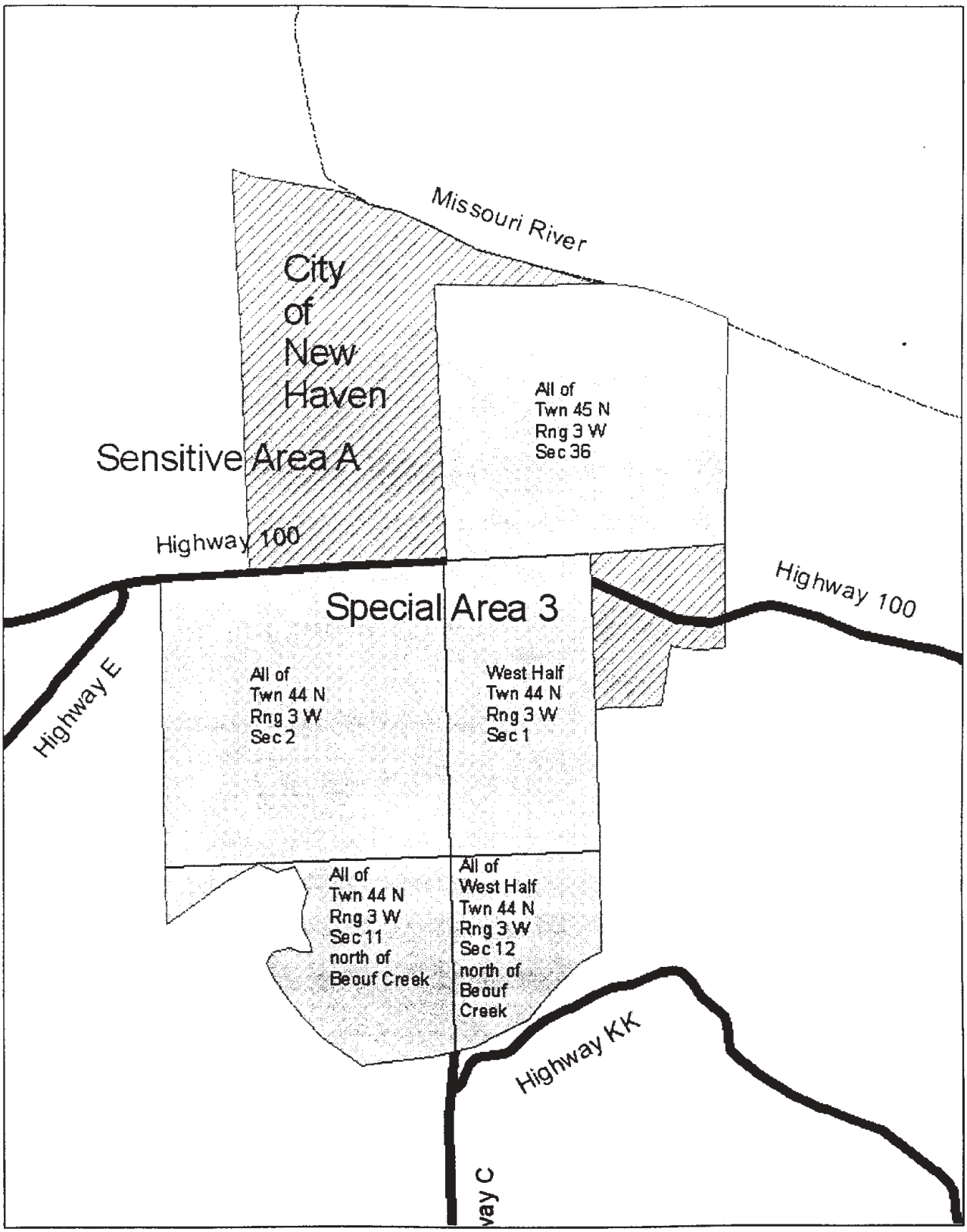

Figure 7C. Special Area 3 and Sensitive Area A

AUTHORITY: sections 256.606 and 256.626, RSMo 2000. Original rule filed April 2, 1987, effective July 27, 1987. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed March 21, 2005, effective April 1, 2005, expires Sept. 27, 2005.*

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 23—*[Division of Geology and Land Survey] Geological Survey and Resource Assessment Division*
Chapter 5—Heat Pump Construction Code

EMERGENCY AMENDMENT

10 CSR 23-5.050 Construction Standards for Closed-Loop Heat Pump Wells. The division is amending the division title, sections (6) and (8) and adding a new section (12).

PURPOSE: This amendment requires more stringent heat pump well drilling standards be utilized in areas where groundwater is contaminated with perchloroethylene (PCE) or its degradation products in the New Haven, Franklin County, vicinity.

EMERGENCY STATEMENT: The Department of Natural Resources' Well Installation Board (WIB) has determined that an emergency amendment is necessary to implement appropriate and enforceable heat pump well drilling standards in the New Haven, Franklin County, area due to groundwater contamination. Perchloroethylene (PCE), a suspected human carcinogen, has contaminated groundwater in and south of New Haven at concentrations that pose a threat to human health. Using normal heat pump well installation guidelines may provide a conduit for PCE contamination to enter deeper portions of the groundwater aquifer. The deeper portions of the aquifer provide the water supply for the city of New Haven. The WIB finds that an immediate danger to the health of New Haven area residents exists due to the potential exposure of residents to PCE-contaminated drinking water. The WIB finds that this emergency amendment is necessary to implement appropriate heat pump well installation guidelines to minimize risks to the groundwater aquifer that serves as the source of public water for the city of New Haven. The WIB also finds that this emergency amendment is necessary to preserve a compelling government interest in protecting Missouri's groundwater resources. The scope of this emergency amendment is limited to circumstances creating the emergency and complies with the protections extended in the ***Missouri*** *and* ***United States Constitutions****. The WIB believes that the emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed March 21, 2005, effective April 1, 2005, expires September 27, 2005.*

(6) Hole Depth. Closed-loop heat pump wells must not be deeper than two hundred feet (200'). A variance must be obtained in advance, from the division, to drill a heat pump well deeper than two hundred feet (200'). A heat pump well drilled in Area C (see 10 CSR 23-3.100(3)) that is less than two hundred feet (200') deep and cuts the Northview Formation must have a thirty-foot (30') grout plug set starting at ten feet (10') below the bottom of the Northview Formation. A map will be provided by the division showing the depth the grout plug must start. Follow the grouting requirement set out in 10 CSR 23-5.050(8) for grouting the interval above the Northview Formation. **A heat pump well drilled in Special Area 3 shall not be deeper than one hundred fifty feet (150'). At any heat pump well being drilled, per division guidance, in which perchloroethylene (PCE) and/or trichloroethylene (TCE) is encountered in a pure-product phase, also known as Dense Non-Aqueous Phase Liquid (DNAPL), drilling shall cease and the division shall be notified immediately. The division will determine further action.**

(8) Grouting Depth of Vertical Heat Pump Wells. Grouting the annulus of a heat pump well is very important and must be completed immediately after the well is drilled due to cave-in potential in the uncased hole. Full-length grout is recommended and may be required (see section (5)) to prevent surface contamination from entering the drinking water aquifer through the borehole. The grout required for heat pump wells greater than two hundred feet (200') in depth must be determined by the division in advance. A variance form will be issued setting the grouting requirements. If the heat pump borehole is not grouted full-length, hole size requirements stated in section (5) must be followed and nonslurry bentonite plugs must be placed into the borehole. A plug (first plug) must be placed about forty feet (40') above the total depth of the borehole. This plug must be composed of bentonite chips or pellets utilizing at least one (1) bag of bentonite resulting in at least a five foot (5') plug. Every forty feet (40') of borehole that exists above the first plug must have a plug set as described in this section. A near surface plug consisting of bentonite granules or powder must be set from a point ten feet (10') below the bottom of the trench, that connects the closed-loop to the heat pump machine, to the base of the trench. All bentonite plugs must be hydrated immediately after emplacement if they are in the unsaturated zone. All clean fill material placed between the bentonite plugs must be chlorinated. **Heat pump wells in the Special Area 3 must be grouted full length with thermal grout, placed from the bottom of the borehole up to ground surface.**

(12) Heat Pump Wells in Special Area 3. Portions of Franklin County within and south of the city of New Haven are listed as Special Area 3 (Figures 7B and 7C, 10 CSR 23-3.100(7)) due to the contamination of portions of the aquifer by one (1) or more of the following chemicals of concern: tetrachloroethylene (PCE), trichloroethylene (TCE), PCE degradation products and TCE degradation products or other contaminants of the National Public Drinking Water Regulations (NPDWR). In this area it is necessary to utilize more stringent construction standards for new heat pump wells that are drilled into the aquifer. In Special Area 3 a qualified and properly trained individual shall collect all groundwater samples for analysis of chemicals of concern.

(A) The division shall be consulted before constructing a new heat pump well in Special Area 3. The division will provide specific guidance on heat pump well drilling protocol and construction specifications on a case-by-case basis. The division must provide approval for all new heat pump wells prior to construction.

(B) All drilling-derived fluid and solid materials shall be containerized and sampled before disposal in an appropriate location based on analytical results.

(C) At any heat pump well being drilled, per division guidance, in which PCE and/or TCE is encountered in a pure-product phase, also known as Dense Non-Aqueous Phase Liquid (DNAPL), drilling shall cease and the division shall be notified immediately. The division will determine further action.

AUTHORITY: sections 256.606 and 256.626, RSMo 2000. Emergency rule filed Nov. 16, 1993, effective Dec. 11, 1993, expired April 9, 1994. Original filed Aug. 17, 1993, effective March 10, 1994. Amended: Filed Nov. 1, 1995, effective June 30, 1996. Amended: Filed Dec. 16, 2002, effective June 30, 2003. Emergency amendment filed March 21,2005, effective April 1, 2005, expires Sept. 27, 2005.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program

EMERGENCY AMENDMENT

13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services. The division is adding subsection (20)(D).

PURPOSE: This amendment provides for the calculation of nursing facility Medicaid per diem rates effective for dates of service beginning April 1, 2005 to revise the rebase provisions to update the databank and to provide for a minimum utilization adjustment of eighty-five percent (85%) for the administration and capital cost components.

*EMERGENCY STATEMENT: The Department of Social Services, Division of Medical Services by rule and regulation must define the reasonable costs, manner, extent, quantity, quality, charges and fees of medical assistance. The Department of Social Services must implement state law 208.225, RSMo, which requires the state to recalculate its Medicaid payments to nursing homes and provide payment rate increases over a three (3)-year period. For the fiscal year that ends June 30, 2005, the state's budget included $42.5 million to fund those increases. The actual cost of implementing the payment rate increases, however, is approximately $58.4 million. The division must take proactive action to create an efficient and sustainable Medicaid program. This emergency amendment provides for the recalculation of nursing facility Medicaid per diem rates effective for dates of service beginning April 1, 2005 to revise the rebase provisions to update the databank and to provide for a minimum utilization adjustment of eighty-five percent (85%) for the administration and capital cost components. These adjustments to calculation of nursing facility Medicaid per diem rates are necessary to ensure that payments for such nursing facility per diem rates are in line with the funds appropriated for that purpose. If the funds appropriated for the payment of medical assistance benefits at any time become insufficient to pay the full amount of the payment, no payment will be made through the Medicaid claims processing system. The Division of Medical Services is attempting to find a solution to this funding issue within the means that taxpayers, through the General Assembly, have given the division. There are a total of four hundred ninety-eight (498) nursing facilities currently enrolled in Missouri Medicaid. Of the total, one hundred six (106) nursing facilities have no rate reduction or a one (1) or two (2) cent net increase in their per day rate; one hundred sixty-three (163) facilities have a rate reduction of less than one dollar ($1.00) to their per day rate; one hundred fifty-seven (157) facilities have a rate reduction of between one dollar ($1.00) and one dollar ninety-nine cents ($1.99) in their per day rate; fifty (50) facilities have a rate reduction of between two dollars ($2.00) and two dollars ninety-nine cents ($2.99) in their per day rate; eighteen (18) facilities have a rate reduction between three dollars ($3.00) and three dollars ninety-nine cents ($3.99) in their per day rate; and four (4) facilities exceed rate reductions of four dollars ($4.00) per day. The continued availability of payment for mandatory nursing facility services to approximately twenty-five thousand (25,000) senior Missourians will ensure quality-nursing facility services continue to be provided to Medicaid patients in nursing facilities. This emergency amendment, that reduces payments to some nursing facility providers with an occupancy of less than eighty-five percent (85%), will ensure continued payment at the end of State Fiscal Year 2005 for nursing facility services. This emergency amendment must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to Medicaid patients in nursing facilities at the end of State Fiscal Year 2005. As a result, the Division of Medical Services finds an immediate danger to public health, safety and/or welfare and a compelling governmental interest, which requires emergency action. The Missouri Medical Assistance program has a compelling government interest in providing continued cash flow for nursing facility services. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. Interested persons and parties were informed by news release and on the Division of Medical Services website that comments regarding recalculation of nursing facility Medicaid per diem rates would be accepted in writing until March 17, 2005. This emergency amendment was filed March 21, 2005, effective April 1, 2005, expires September 27, 2005.*

(20) Rebasing of Nursing Facility Rates.

(D) Effective for dates of service beginning April 1, 2005, the rebased rates for SFY 2005 shall be calculated as follows:

1. The audited 2001 cost report data shall continue to be used to develop the databank and to determine each nursing facility's rebased rate. The audited 2001 cost report data; the licensed beds data; and the bed equivalencies data used to determine each nursing facility's final rate paid for dates of services effective July 1, 2004 shall be deemed final. This finalized data will be used as the base to calculate the rates effective April 1, 2005. The following items have been revised for the April 1, 2005 rate calculation:

A. A new databank shall be developed using the audited 2001 cost report data set forth above in paragraph (20)(D)1. for nursing facilities enrolled in the Medicaid program as of March 15, 2005 in accordance with subsection (4)(S).

B. The administration and capital cost components shall be adjusted for minimum utilization at eighty-five percent (85%) occupancy, rather than as set forth in paragraphs (20)(A)6.–7.

*AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 2000. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed March 21, 2005, effective April 1, 2005, expires Sept. 27, 2005. A proposed amendment covering this same material appears in this issue of the **Missouri Register**.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program

EMERGENCY AMENDMENT

13 CSR 70-10.080 Prospective Reimbursement Plan for HIV Nursing Facility Services. The division is adding subsection (20)(C).

PURPOSE: This amendment provides for the calculation of HIV nursing facility Medicaid per diem rates effective for dates of service beginning April 1, 2005 to revise the rebase provisions to update the databank and to provide for a minimum utilization adjustment of eighty-five percent (85%) for the administration and capital cost components.

EMERGENCY STATEMENT: The Department of Social Services, Division of Medical Services by rule and regulation must define the reasonable costs, manner, extent, quantity, quality, charges and fees of medical assistance. The Department of Social Services must implement state law 208.225, RSMo, which requires the state to recalculate its Medicaid payments to nursing homes and provide payment rate increases over a three (3)-year period. For the fiscal year that ends June 30, 2005, the state's budget included $42.5 million to fund those increases. The actual cost of implementing the payment rate increases, however, is approximately $58.4 million. The division must take proactive action to create an efficient and sustainable Medicaid program. This emergency amendment provides for the recalculation of nursing facility Medicaid per diem rates effective for

*dates of service beginning April 1, 2005 to revise the rebase provisions to update the databank and to provide for a minimum utilization adjustment of eighty-five percent (85%) for the administration and capital cost components. These adjustments to calculation of nursing facility Medicaid per diem rates are necessary to ensure that payments for such nursing facility per diem rates are in line with the funds appropriated for that purpose. If the funds appropriated for the payment of medical assistance benefits at any time become insufficient to pay the full amount of the payment, no payment will be made through the Medicaid claims processing system. The Division of Medical Services is attempting to find a solution to this funding issue within the means that taxpayers, through the General Assembly, have given the division. There is one (1) HIV nursing facility currently enrolled in Missouri Medicaid. There is no change in its per day rate because its occupancy rate is currently over eighty-five percent (85%). The continued availability of payment for mandatory nursing facility services to approximately sixteen (16) people will ensure quality-nursing facility services continue to be provided to Medicaid patients in the HIV nursing facility. This emergency amendment, that reduces payments to some nursing facility providers with an occupancy of less than eighty-five percent (85%), will ensure continued payment at the end of State Fiscal Year 2005 for nursing facility services. This emergency amendment must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to Medicaid patients in nursing facilities at the end of State Fiscal Year 2005. As a result, the Division of Medical Services finds an immediate danger to public health, safety and/or welfare and a compelling governmental interest, which requires emergency action. The Missouri Medical Assistance program has a compelling government interest in providing continued cash flow for nursing facility services. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. Interested persons and parties were informed by news release and on the Division of Medical Services website that comments regarding recalculation of HIV nursing facility Medicaid per diem rates would be accepted in writing until March 17, 2005. This emergency amendment was filed March 21, 2005, effective April 1, 2005, expires September 27, 2005.*

(20) Rebasing of HIV Nursing Facility Rates.

(C) Effective for dates of service beginning April 1, 2005, the rebased rates for SFY 2005 shall be calculated as follows:

1. The audited 2001 cost report data shall continue to be used to develop the databank and to determine each nursing facility's rebased rate. The audited 2001 cost report data; the licensed beds data; and the bed equivalencies data used to determine each nursing facility's final rate paid for dates of services effective July 1, 2004 shall be deemed final. This finalized data will be used as the base to calculate the rates effective April 1, 2005. The following items have been revised for the April 1, 2005 rate calculation:

A. A new databank shall be developed using the audited 2001 cost report data set forth above in paragraph (20)(C)1. for nursing facilities enrolled in the Medicaid program as of March 15, 2005 in accordance with subsection (4)(S).

B. The administration and capital cost components shall be adjusted for minimum utilization at eighty-five percent (85%) occupancy, rather than as set forth in paragraphs (20)(A)6.–7.

*AUTHORITY: sections 208.153 and 208.201, RSMo 2000. Original rule filed Aug. 1, 1995, effective March 30, 1996. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed March 21, 2005, effective April 1, 2005, expires Sept. 27, 2005. A proposed amendment covering this same material appears in this issue of the **Missouri Register**.*