

REPORT TO LEGISLATURE

NR 812, Wis. Adm. Code

Board Order No. DG-16-16
Clearinghouse Rule No. CR 18-095

Basis and Purpose of the Proposed Rule

Chapter NR 812 rule revisions are proposed to correct and clarify errors and unclear language, streamline processes and requirements, update construction standards, and be consistent with federal and state law, while maintaining the protection of groundwater and public health. Revisions to Subchapter II update the construction standards by incorporating current drilling techniques, equipment and technology, and by establishing performance-based standards which will allow the rule to apply to future approaches. Proposed revisions to specific construction methods related to use of mud and cuttings for an annular space seal and to well casing depth in limestone are intended to address water quality concerns and decrease risks of unsafe drinking water or impacts to groundwater quality.

Summary of Public Comments

The DNR received seven written comments on the EIA during the EIA comment period in October 2018. During the January 2019 public comment period for the draft rule, 35 people submitted more than 270 written comments and four people spoke at the public hearing. Five issues received the most comments; see attached NR 812 Revision Public Comments and DNR Responses.

Modifications Made in Response to Public Comments

- **Casing Depth in Limestone and Dolomite:** in response to public concerns, code language was changed to allow 40 feet of casing in limestone or dolomite when the depth to the top of the limestone or dolomite is equal to or greater than 20 feet below the ground surface, and to require 60 feet of casing when the depth to the top of the limestone or dolomite is less than 20 feet below the ground surface.
- **Mud and Cuttings:** in response to public comments, language was clarified to allow drilling mud and cuttings for upper enlarged drillholes that are 20 feet or less in depth in both unconsolidated and consolidated formation and to maintain the ability for drillers to use mud and cuttings in situations where full-length grouting is not required.
- **Flowing Wells:** improvements were made in the language regarding flowing wells, including when double casing is required and confirming that PVC casing will be allowed for flowing wells.
- **Thermoplastic (PVC) Casing:** changes were made regarding thermoplastic casing, including allowing its use in flowing well situations, and how to protect above-ground thermoplastic casing from UV sunlight damage. In addition, code language was changed to ensure that screened wells with thermoplastic casing have equipment inserted into the casing to allow for well development.
- **Grouting:** several grouting-related improvements were made to address allowable equipment for grout consistency and allowable mud weight for upper enlarged boreholes.
- **General Comments on Language:** numerous changes were made throughout the Board Order to address comments pointing out unclear or inconsistent language. In addition, one obsolete figure was deleted, and one table was amended.
- **Well Location and Separation Distances:** several changes were made to the section dealing with well location to clarify language and to address concerns about a large separation distance for recycling facilities.
- **Sampling:** numerous changes were made to the new sampling subchapter. Changes were made to provide consistency in water quality requirements, delete unnecessary steps in sampling, and to provide consistency with other WDNR programs, partner agencies, and private laboratories.

Germane Modifications

On May 22, 2019, the Natural Resources Board (Board) adopted Board Order DG-16-16 and directed department staff to prepare a new Statement of Scope to address 3 issues raised by the Wisconsin Water Well Association (WWWA). Board Order DG-16-16 was approved by the Governor on October 3, 2019 and submitted for legislative review on October 7, 2019. While the rule was under review by the Governor's office and legislative committees, department staff met with representatives of the WWWW and reached agreement

to resolve 2 issues – well casing depth in limestone and regulation of flowing wells – by language modifications in the current rulemaking process. On October 24, 2019, the department recalled DG-16-16 from the legislature, as authorized under s. 227.19(4)(b)3m., Stats., to make germane modifications to address the 2 issues. Typographical errors for a cross-referenced code in the definition of "landfill" were also identified as needing correction.

On January 22, 2020, the Board approved the following germane modifications to the original approved Board Order DG-16-16:

1. Flowing wells - modify portions of NR 812.13, 812.14 and 812.15 to:
 - eliminate requirements that driller anticipate a flowing well situation,
 - allow driller to attempt to correct uncontrolled flow,
 - require driller to construct new replacement well according to specific standards if flow cannot be contained to the interior of the well casing, and
 - insert cross-reference to grouting requirements for flowing wells.
2. Well casing depth in limestone – modify portions of NR 812.13, 812.14 and 812.43 to:
 - allow water quality information to be considered in variance requests for casing depth in bedrock, and
 - expand grouting options to be consistent with flowing well requirements.
3. Landfill definition – modify NR 812.07(56) to correct typographical errors in cross-referenced code

The Wisconsin Water Well Association (WWWA) spoke in favor of the germane modifications. The third issue - PVC well casing - will be addressed in a new Statement of Scope #DG-25-19, which was published on December 9, 2019.

Appearances at the Public Hearing

Appeared and spoke:

- Jefferey J. Beiriger, representing the Wisconsin Well Water Association. Registered both in support, and in opposition ("in part").
- Butch Eucker, Pump Installer, representing self. Registered as interest may appear.
- Terry L. Marshall, Marshall Well Drilling Corp., and past president of the Wisconsin Well Water Association, representing self. Registered both in support and in opposition.
- D. J. Firkus, representing self. Did not register a position.

Registered, but did not speak:

- Carsyn Ames, representing Wisconsin Geological and Natural History Survey (Samples Coordinator). Registered "information only."
- Frank Fetter, representing self. Registered in support.

Changes to Rule Analysis and Fiscal Estimate

5. Plain Language Analysis:

- Changed language in Bullet 6 (Subchapter II), sub-bullet 5 to reflect change in language relating to casing depth in limestone and dolomite from the original draft specifying 60 feet regardless of depth to limestone/dolomite, to 60 feet when depth to limestone is less than 20 feet.

7. Comparison with Similar Rules in Adjacent States (Illinois, Iowa, Michigan and Minnesota):

- d. Well Construction: Casing Depth (second bullet): was modified to reflect the post-public comment changes in the rule that would still allow some casing to 40 feet in limestone and dolomite.

10. Effect on Small Business (initial regulatory flexibility analysis):

- Due to updated economic analysis data from public comments, the total estimated economic impact of the proposed rule revision was revised downward from \$698,926 to \$632,122 per year.

Changes to the Economic Impact analysis (EIA):

See attached NR 812 Revision Public Comments and DNR Responses for more information.

- **Average estimated cost per well increased, but overall cost reduced due to lower number of wells affected.** Estimate of Implementation and Compliance to Businesses, Local government Units and Individuals was changed from \$698,926 to \$632,122.
- **Mud and cuttings overall cost increased.** Changed from an average annual cost of \$487,445 to a maximum annual cost of \$527,790. This was further broken down by expressing the average annual

cost increase of a well as a range between the two cost estimates, between \$822/well and \$890/well. The higher estimate was used in the appropriate sections elsewhere in the EIA.

- **Casing depth in limestone and dolomite: average cost per well increased, but overall cost decreased.** Changed from an average annual cost of \$211,481 (\$889/well) to \$104,332 (\$1,023/well), due to public comments and the revision of code language that would continue to allow some wells to be cased to a minimum of 40 feet instead of 60 feet, which would reduce the number of affected wells from 3% to 1%. This was expressed in Attachment A as a range of annual cost increases between \$90,637 (\$889/well), and \$104,332 (\$1,023/well). The higher estimate was used in the appropriate sections elsewhere in the EIA.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style, and placement in Administrative Code and clarity, grammar, punctuation and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for those discussed below.

- Comment 2.m. "shall not" should be changed to "may not." Language was changed in a way that correction was no longer needed.
- Comment 5.l., which recommended changing "of ch. NR 812 Appendix" to "in the Appendix." This language was retained at the request of the Legislative Reference Bureau, as it allows for a hyperlink in the online code and for ease of document navigation.
- Comment 5.n., which pointed out a lack of consistency in hyphenating words with the prefix "non." The term "non-community water system" will be left with the hyphen for consistency with ch. NR 809, with which the term is cross-referenced. In all other cases, the prefix "non" will not be hyphenated.

Final Regulatory Flexibility Analysis

The primary businesses impacted by the rule are drillers and pump installers operating as small businesses. Wisconsin has approximately 260 licensed drillers and 1240 licensed pump installers doing business in the state. The total economic impact of the proposed rule revision is estimated to be \$632,122 per year.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.