



CR 90-135

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary
Box 7921
Madison, Wisconsin 53707
TELEFAX NO. 608-267-3579
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STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WS-39-90 was duly approved and adopted by this Department on October 25, 1990. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
official seal of the Department at
the Natural Resources Building
the City of Madison, this 5th
day of December, 1990

Bruce B. Braun
Bruce B. Braun, Deputy Secretary

(SEAL)

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3-1-91

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING AND CREATING RULES

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.....
IN THE MATTER OF repealing ss. NR 145.05(1)(d) and
145.06(2)(b); renumbering ss. NR 145.03(11) to (38)
and 145.05(1)(e); renumbering and amending s. NR
145.06(2)(a); amending ss. NR 145.01, 145.02, 145.03,
145.04(6) & (10), 145.05(intro.), (1)(intro.) & (a),
(2)(intro.), (3)(intro.) & (4)(intro.); 145.06(1)(a),
(c)1.(intro.) & c., 2.a. & b., (d), (3)(a)1., (b)2.a.
Table I, (b)5. & 12.b., 145.08(2)(a) & (e), 145.12
(intro.) and 145.13(1)(c); and creating ss. NR 145.03
(11) & (37), 145.05(5) and 145.12 Table VI of the
Wisconsin administrative code pertaining to voluntary
delegation of the well code administration to counties
.....

WS-39-90

Analysis Prepared by the Department of Natural Resources

Authorizing statutes: ss. 162.07(1) and 144.025, Stats.
Statutes interpreted: chs. 144 and 162, Stats.

Chapter NR 145 contains standards for the approval and enforcement of voluntary county well code programs. Currently, counties must issue permits for all new wells constructed in the county if they wish to conduct inspections on existing wells or order the abandonment of unused, unsafe or non-complying wells. The proposed changes would allow counties to select the area or areas of the private water supply program that meet the most pressing needs of the county. For example a county may focus on existing well compliance and not have to issue new well permits.

The second proposed change is to add a new level of possible county involvement, namely to be able to order the proper abandonment of unused, unsafe or non-complying wells and drillholes.

SECTION 1. NR 145.01, 145.02 and 145.03 are amended to read:

NR 145.01 PURPOSE. The purpose of this chapter is to establish standards for county adoption and enforcement of an ordinance for private well location, well construction, well abandonment or pump installation and for department review of county delegation programs. The goal of the county delegation program is to protect Wisconsin's drinking water and groundwater resources by governing access to groundwater through regulating private well location, construction and abandonment and pump installation and well and drillhole abandonment.

(CR 90-135)

NR 145.02 APPLICABILITY. The provisions of this chapter apply to all counties with a department-approved well construction or pump installation ordinance regulating new and existing private water systems, including private wells constructed in special well casing areas, in accordance with ch. NR 112. Drilled, driven point, dug, bored and jetted wells are all regulated under the provisions of this chapter. The provisions of this chapter do not apply to springs, school water systems, or wastewater treatment plant ~~or lift station~~ water systems, high capacity water systems, community water systems and wells, water systems or installations which require written plan approval from the department.

Note: See chs. NR 111 and 112 for wells, water systems and installations that require written plan approval from the department.

NR 145.03 OTHER MUNICIPALITIES. No entity, other than a county authorized under this chapter or a municipality with well abandonment and cross-connection ordinances approved by the department under ch. NR 111, may adopt or enforce an ordinance regulating matters covered by ch. 162, Stats., or by department rules adopted under ch. 162, Stats.

SECTION 2. NR 145.04(6) and (10) are amended to read:

NR 145.04(6) "Contaminant" ~~has the meaning designated in s. NR 109.04(2)~~ means any physical, chemical, biological or radiological substance or matter in water.

(10) "Department district offices" means offices located in:

Northwest District, Box 309, Spooner, WI 54801

North Central District, Box 818, Rhinelander, WI 54501

~~West Central~~ Western District, 1300 West Clairemont Ave., Box 4001, Eau Claire, WI 54702

Lake Michigan District, 1125 North Military Ave., Box 10448, Green Bay, WI 54307

Southeast District, 2300 N. Dr. Martin Luther King Jr. Dr., Box 12436, Milwaukee, WI 53212

Southern District, 3911 Fish Hatchery Rd., Fitchburg, WI 53711

SECTION 3. NR 145.03(11) to (38) are renumbered to be 145.03(12) to (36) and (38) to (40), respectively, and (15), (18), (25), (31), (34), (35) and (39), as renumbered, are amended to read:

NR 145.03(15) "Noncommunity water system" means a public water supply system that ~~is not a community water system. It serves at least fewer than 25 persons per day at least 60 days each year. A noncommunity water system serves a transient population rather than permanent year round residents. This is typically an individual well serving a restaurant, industry, service station, tavern, motel, campground or church year-round residents.~~

Note: Examples of a non-community water system include those serving schools, motels, restaurants, churches, campgrounds and parks.

(18) "Person" means an individual, corporation, company, association, cooperative, trust, institution, partnership, state, public utility, sanitary district, municipality or federal, state or interstate agency.

(25) "Public water system" ~~has the meaning designated in s. NR 112.03~~ means a system for the provision to the public of piped water for human

consumption if a system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year. A public water system is either a "community water system" or a "noncommunity water system." A system includes:

(a) Any collection, treatment, storage and distribution facilities under control of the operator of a system and used primarily in connection with a system, and

(b) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with a system.

(31) "Special well casing depth area" means an area ~~in which established~~ by the department ~~requires~~ requiring a greater depth of protective well casing pipe and stringent well construction methods because ~~well histories show that the vertical zone of contamination extends to a greater depth than the casing requirements of s. NR 112.08(2).~~

Note: A list of special well casing depth areas is available from the Department of Natural Resources, 101 South Webster Street, P.O. Box 7921, Madison, WI 53707-7921.

(34) "Water system" means the water ~~collection~~ supply, storage, treatment facilities and all structures, and piping ~~and appurtenances~~ by which water is provided for any purpose.

(35) "Well" ~~has the meaning designated in s. 162.02(6), Stats~~ means any drillhole or other excavation or opening constructed for the purpose of obtaining groundwater.

(39) "Well location inspector" means a county employe trained by the department to inspect the location of a private well in relation to ch. NR 112 locational distances, to observe the above grade casing height, to observe

whether there is a cap or a seal on the upper terminus of the well ~~and to locate unused, unabandoned wells.~~

SECTION 4. NR 145.03(11) and (37) are created to read:

NR 145.03(11) "Drillhole" means an excavation, opening or driven point well deeper than it is wide that extends more than 10 feet below the ground surface.

(a) "Heat exchange drillhole" means a drillhole used for closed loop heat exchange purposes.

(b) "Lower drillhole" means that part of a drillhole below the vertical zone of contamination or below the well casing pipe.

(c) "Upper enlarged drillhole" means a drillhole, larger in diameter than the well casing pipe.

(37) "Well and drillhole abandonment inspector" means a county employe trained by the department to locate and inspect wells and drillholes in relation to ch. NR 112 abandonment standards.

SECTION 5. NR 145.05(intro.), (1)(intro.) and (a) are amended to read:

NR 145.05 DELEGATION LEVELS. (intro.) Upon the approval of the department, a county may receive authorization to administer ch. NR 112 at level 5 and at one or more of the other 4 levels. ~~Counties may be authorized to administer: level 1; levels 1 and 2; levels 1 and 3; levels 1 to 3; or levels 1 to 4. Department authorization of level 4 shall be predicated on a county's successful administration of levels 1 to 3 for a minimum one year period. For the first 18 months following ch. NR 145 implementation, the department may only authorize delegation authority for level 1. Counties who intend to administer level 2 and/or level 3 within 18 months of ch. NR 145~~

~~implementation may include an 18 month delayed effective date for delegation levels 2 and/or 3 in the county's private water system ordinance. The delegation levels involve the inspection of private water systems, including private well construction and the issuance of permits for private well location or pump installation.~~ The department may authorize county delegation programs which the department determines to be substantially equivalent to those described in this section. At each delegation level, the county shall investigate complaints and take enforcement actions related to their authorized delegation level. The 4 5 delegation levels are:

(1) LEVEL 1 - PRIVATE WELL LOCATION. Under Level 1 delegation ~~it is a county's responsibility to~~ a county shall:

(a) Issue permits authorizing the location of new and replacement private wells, including drilled, driven point, dug, bored or jetted wells, or the reconstruction or rehabilitation of existing private ~~and noncommunity~~ wells.

SECTION 6. NR 145.05(1)(d) is repealed.

SECTION 7. NR 145.05(1)(e) is renumbered (1)(d) and a note following (1)(d) is created to read:

Note: Counties authorized under level 1 prior to the effective date of this code revision ...[revisor insert date] are authorized to conduct both level 1 and level 5 responsibilities.

SECTION 8. NR 145.05(2)(intro.), (3)(intro.) and (4)(intro.) are amended to read:

NR 145.05(2) LEVEL 2 - WELL LOCATION AND PUMP INSTALLATION PERMITS.

(intro.) Under level 2 ~~it is a county's responsibility to operate a program for level 1 and to~~ delegation a county shall:

(3) LEVEL 3 - EXISTING PRIVATE WATER SYSTEMS. (intro.) ~~Level 3 delegation includes level 1 responsibilities plus a program for inspecting existing private water systems.~~ Under level 3 ~~it is a county's responsibility to~~ delegation a county shall:

(4) LEVEL 4 - PRIVATE WELL CONSTRUCTION. (intro.) ~~Level~~ Under level 4 includes the responsibilities of levels 1 to 3 and the following responsibilities delegation a county shall:

SECTION 9. NR 145.05(5) is created to read:

NR 145.05(5) LEVEL 5 - WELL AND DRILLHOLE ABANDONMENT. Under level 5 delegation a county shall require the abandonment of wells and drillholes in accordance with standards established in s. NR 112.26. A county with level 5 delegation may also require the abandonment of a well, as defined in this chapter, with water exceeding a primary drinking water standard listed in ch. NR 109 or a state health advisory limit issued by the department, after consultation with and approval by the department.

SECTION 10. NR 145.06(1)(a), (c)1.(intro.) and c., 2.a. and b. and (d) are amended to read:

NR 145.06(1)(a) Adoption of ordinance. Each county authorized by the department to administer and enforce ch. NR 112 under any delegation level shall adopt a private water systems ordinance, no less stringent nor more stringent than ch. 162, Stats., and department rules adopted under ch. 162, Stats. ~~The ordinance shall establish a well location permit system or pump~~

~~installation permit system or both.~~ The ordinance shall be commensurate with the level or levels of the county's delegated authority. The ordinance shall apply to the entire county and shall include cities, towns, villages and sanitary districts in the county.

(1)(c)1.(intro.) The county ordinance shall ~~to the extent of~~ be consistent with the county's authorized delegation level:

1.c. Require the abandonment of ~~private wells if the well is unused, noncomplying or bacteriologically unsafe~~ or drillholes in accordance with standards established in ch. NR 112. A county may require the abandonment of a well with water exceeding a primary drinking water standard listed in ch. NR 109, or ~~other chemical compounds for which a state health advisory limits have been~~ limit issued including inorganic and organic compounds by the department, after consultation with and approval by the department.

2.a. Enter property to inspect private water systems during reasonable hours. To administer and enforce the county ordinance, the administrator or county inspectors may enter any building or property for the purpose of inspecting the private water system and may request the owner or operator to produce ~~the~~ any private well location or pump installation permit required by the county ordinance. No person may interfere with the administrator or county inspectors in the performance of their duties. Any person interfering is subject to penalty as provided in the county ordinance. If consent to enter property for inspection purposes is denied, the administrator may obtain a special inspection warrant under ss. 66.122 and 66.123, Stats.

b. Order any person owning, operating or installing a private water system to abandon, modify, repair or replace the private water system in a complying, safe and sanitary condition if the system is ~~found to be unused, noncomplying~~

~~or bacteriologically unsafe~~ not in compliance with the standards established in s. NR 112.26.

(d) Conflicting ordinances. Any county or municipal ordinance relating to private water systems other than an ordinance adopted under par. (a) or approved by the department under ch. NR 111 may not be enforced.

SECTION 11. NR 145.06(2)(a) is renumbered (2) and amended to read:

NR 145.06(2) COUNTY QUALIFICATIONS. A county is required to provide an adequate number of staff trained at a level designated by the department to assure adequate administration and enforcement of ch. NR 112 before the department may delegate level 1, 2, 3, ~~4~~ or 5.

SECTION 12. NR 145.06(2)(b) is repealed.

SECTION 13. NR 145.06(3)(a)1., (b)2.a. Table I, 5. and 12.b. are amended to read:

NR 145.06(3)(a)1. To be eligible for appointment as administrator of the private water systems ordinance, a person shall be knowledgeable about the principles and practices of private well construction and abandonment and pump installation. The department recommends that the administrator take the examination and attend the training sessions commensurate with the level or levels of authorized county delegation.

(b)2.a. Table I

Table I

Delegation Authority	Permits, Forms, Correspondence	Timeframe	
		7 days	30 days
Level 1	Well Location Permit Application	Yes	
	Field Inspection Forms		Yes
	Corrective, Enforcement Letters and Orders (Well Location and Abandonment)	Yes	
Level 2	New and Existing Pump Installation Permits	Yes	
	Field Inspection Forms	Yes	
	Corrective, Enforcement Letters and Orders (Noncomplying Pump Installations)	Yes	
Level 3	Well and Pump Installation Field Inspection Forms	Yes	
	Corrective, Enforcement Letters and Orders (Non-Complying Well and Pump Installations)		Yes
	All Follow-up Letters Involving Noncommunity Water Systems	Yes	
	Correspondence pertaining to well water samples with chemical or radiological contaminants exceeding drinking water standards.		Yes
	Correspondence pertaining to confirmed unsafe water samples		Yes
	Inventory Information and Sample Results Form for Noncommunity Water Systems	Yes	
	Drinking Water Analyses, Except Bacti, from County or Private Laboratories		Yes
Level 4	Well Construction Field Inspection Form	Yes	
	Corrective, Enforcement Letters and Orders (Noncomplying Well Constructions)	Yes	
Level 5	<u>Field Inspection Forms</u>		<u>Yes</u>
	<u>Corrective Enforcement Letters and Orders for Well Abandonment</u>	<u>Yes</u>	

(b)5. ~~Require the abandonment of wells not in service, or that will be taken out of service, if the well is unused, noncomplying or bacteriologically unsafe or drillholes in accordance with standards~~

established in ch. NR 112. A county may require the abandonment of a well with water exceeding a primary drinking water standard listed in ch. NR 109, ~~or other chemical compounds for which state health advisory limits have been issued including inorganic and organic compounds~~ a state health advisory limit issued by the department, after consultation with and approval by the department.

12.b. Private wells, except noncommunity, having a level of contamination exceeding a primary drinking water standard specified in ch. NR 109 or ~~inorganic or organic compounds exceeding a state health advisory limits~~ limit issued by the department in 2 separate samples submitted to a laboratory certified or registered under s. 144.95, Stats., and ch. NR 149, or the state laboratory of hygiene.

SECTION 14. NR 145.08 (2)(a) and (e) are amended to read:

NR 145.08(2)(a) Any county employe conducting inspections is required to attend initial training sessions and pass an examination related to the delegation level at which her or his county is authorized. Examinations and training will relate to ch. NR 112 requirements, the technical aspects of well location, pump installation, existing private water systems and private well construction and water quality. Only county personnel who have attended the initial training sessions and successfully passed the department's examination for her or his county delegation level or levels and has not violated the provisions of sub. (2)(b), (c) and (d) may conduct private water system inspections. Counties shall consult with the department for temporary exceptions to the training session and examination requirements for county inspectors. Inspectors shall be titled as follows: Level 1 - Well location inspector; Level 2 - Pump installation inspector; Level 3 - Private water

systems inspector; ~~and~~ Level 4 - Well construction inspector; and Level 5 - well and drillhole abandonment inspector.

(e) All inspectors shall be trained to adequately conduct inspections commensurate with a county's authorized delegation level for levels 1 to 3 and 5. In counties with delegation level 4, one or more inspectors shall be trained to do level 4 inspections and shall be the only inspectors conducting level 4 inspections.

Note: The department recommends that counties authorized for delegation level 2, 3 or 4 employ registered sanitarians to perform pump installation inspections.

SECTION 15. NR 145.12(intro.) is amended to read:

NR 145.12 PERFORMANCE STANDARDS. (intro.) Tables ~~II-V~~ II to VI contain performance standards for delegation levels 1 to 4 5. These standards are established as levels to guide county efforts and to provide a means for the department to evaluate the effectiveness of county programs. Failure to meet the minimum standards, as determined in the department audit, is cause for the department to place a county on probationary status or to revoke a county's program authority. In the event the county determines it cannot meet the minimum standards, this information shall be conveyed to the department at the earliest possible time. In addition to the performance standards contained in Tables II to ~~V~~ VI, the department may consider any other activity, in review of a county's program, the department determines to be an indication of a county's ability to administer and enforce the private water system ordinance and program.

SECTION 16. NR 145.12 Table VI is created to read:

Table VI
PERFORMANCE STANDARDS
DELEGATION LEVEL 5
WELL AND DRILLHOLE ABANDONMENT

Activity	Excellent	Satisfactory	Minimum
Follow-up on Well and Drillhole Abandonment (Corrective, Enforcement Letters and Orders)	80	70	60

SECTION 17. NR 145.13(1)(c) is amended to read:

NR 145.13(1)(c) Granting a variance to ch. NR 112.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on October 25, 1990

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin

December 4, 1990

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By

Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)

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DEC 7 1990

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State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

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December 4, 1990

Mr. Gary L. Poulson
Assistant Revisor of Statutes
119 Martin Luther King, Jr., Blvd.

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DEC 7 1990

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Bureau

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WS-39-90. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Urban Affairs, Environmental Resources, Utilities and Elections pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


C. D. Besadny
Secretary

Enc.