State of Wisconsin
Department of Natural Resources

NOTICE TO PRESIDING OFFICERS

OF PROPOSED RULEMAKING

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. DG-52-98

Legislative Council Rules Clearinghouse Number 98-151

Subject of Rules Water systems capacity for community and nontransient noncommunity water systems

Date of Transmittal to Presiding Officers February 9, 1999

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LC/5, 101 South Webster

266-1959

REPORT TO LEGISLATURE

NR 809, subch. VIII, Wis. Adm. Code
Water system capacity for community and
nontransient noncommunity water systems

Board Order No. DG-52-98
Clearinghouse Rule No. 98-151

Statement of Need

The proposed rule modification will allow the State to implement a program for review of the technical, financial and managerial capacity at new nontransient noncommunity and community water systems. The rule is necessitated by the 1996 amendments to the Safe Drinking Water Act. Failure to adopt the federal requirements will result in a loss of 20% of the Safe Drinking Water Loan funds appropriation. The Wisconsin appropriation is approximately $8 to $10 million annually. In addition, s. 281.17(9), Stats., authorizes the Department to require this demonstration by water system owners.

The rule would impact new water systems for schools, mobile home parks, municipal water systems, subdivisions and businesses with 25 or more employes on-site. It would require a review of the technical, financial and managerial capacity of the water system prior to construction of the water systems. The intent of the federal requirement is to assure that new systems will have the capacity to meet Safe Drinking Water Act requirements and will not become a compliance problem which could threaten the health of water consumers. The term capacity refers to the capability of a water system to comply with construction standards, have reliable water sources, have the infrastructure maintenance and assure that there are qualified operators. Financial capacity is the ability to meet current and future capital and operating costs. Managerial capacity is the personnel expertise required to administer overall system operations. The proposed rule proposes a screening process by which the Department would review and approve system capacity evaluations prior to construction of the system.

The proposed rules are no more stringent than the federal rules.

Modifications as a Result of Public Hearings

Section NR 809.932 was modified the clarify that the proposed rule does not apply to extensions or additions to current water systems.

Appearances at the Public Hearings and Their Position

November 13, 1999 – Wausau – no appearances

November 18, 1999 – Madison

In support:

Greg Taylor, Environmental Specialist, Alliant Energy, W. Washington Avenue, Madison, WI

In opposition – none
As interest may appear – none

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

The expected financial impacts of the proposed rule changes to small businesses are negligible as it does not require additional monitoring or increase construction requirements. The requirements in the proposed rule are mandated by federal regulations.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 809, subch. VIII relating to water system capacity for community and non-transient non-community water systems

DG-52-98

Analysis Prepared by Department of Natural Resources

Statutory authority: 281.17 (8), Stats., 281.17 (9), Stats. and 280.11, Stats.
Statutes interpreted: 281.17 (8), Stats., 281.17 (9), Stats. and 280.11, Stats.

The 1996 Amendments to the Safe Drinking Water Act established a Drinking Water State Revolving Fund. The proposed changes to Chapter NR 809 are required by the Amendments to assure our administrative rules are consistent with federal regulations and to maintain eligibility for a full allotment from the Drinking Water State Revolving Fund.

SECTION 1. NR 809, subch. VIII is created to read:

NR 809
Subchapter VIII -
Water System Capacity

NR 809.931 SYSTEM CAPACITY. All new community and non-transient non-community water systems constructed after September 1, 1999, shall develop and maintain adequate financial, managerial and technical capacity to meet the requirements of this chapter and 42 USC 300f to 300j-26.

Note: 42 USC 300f to 300j-26 is entitled the federal safe drinking water act

NR 809.932 NEW SYSTEM CAPACITY EVALUATION. (1) No new community or non-transient non-community water system may be constructed after September 1, 1999, unless the owner of the proposed water system first demonstrates to the satisfaction of the department that the water system shall have and shall maintain adequate financial, managerial and technical capacity to meet the requirements of this chapter and the requirements of 42 USC 300f to 300j-26. Additions to water systems constructed prior to September 1, 1999, are exempt from this requirement.

Note: 42 USC 300f to 300j-26 is entitled the federal safe drinking water act

(2) To demonstrate its financial, managerial and technical capacity to the department, before beginning construction of a water system, the owner of a proposed community or non-transient non-community water system shall submit to the department a system capacity evaluation that includes all of the following:

(a) A written description of the water system design that includes all of the following:

1. For groundwater systems, the proposed well construction and the name of the water bearing formation.

2. For surface water systems, the name of the source water body and the intake length and intake location.

3. The proposed pumping capacity.

4. The proposed water treatment.

5. The proposed water storage volume.

6. The proposed length and diameter of water mains.

7. The proposed pressure range within the water system.

8. The proposed location of any pressure reducing valves or pressure booster stations.

9. A map or plat showing the proposed water system.

(b) An evaluation of the potential for the water quality to exceed any of the primary or secondary standards of this chapter. For groundwater systems, this evaluation shall be based on a review of water quality information available from nearby existing wells or on the results of water quality monitoring from a test well. For surface water systems, this evaluation shall be based on water quality monitoring from the surface water.

(c) The anticipated average and maximum daily water use for the proposed water system.

(d) For groundwater systems, a site assessment that includes all of the following:

1. The separation distances between the well and potential sources of contamination within the proposed wellhead protection area.

2. Any violation of the applicable separation distances contained in chs. NR 811 and 812.

3. The proximity of the well to any wetlands.

4. The location of the well in relation to the 100 year flood elevation.

(e) For surface water systems, a source water assessment that includes the identification of potential sources of contamination in relation to the intake and the susceptibility of the water system to contamination.

(f) The anticipated number of industrial, commercial and residential water services.

(g) The initial and projected customer population and service area.

(h) Information for the identification, location and contact of the water system designer including the name, address, and telephone number of the system designer and designer's firm.

(i) The status of all department permits and approvals related to the construction of the water system.

(j) Information for the identification, location and contact of the water system owner including the name, address and telephone number of the water system owner and the extent of the owner's responsibility for the water system.

(k) Information for the identification, location and contact of the water system manager including the name, address and telephone number of the system manager.

(L) Information for the identification, location and contact of the water system operator including the name, address and telephone number of the designated or certified water system operator. If an operator has not been selected prior to submitting the capacity evaluation a timetable for hiring an operator shall be included as part of the capacity evaluation in lieu of the information for the identification, location and contact of the water system operator. The water system may not be placed into operation until the department is provided with the information for the identification, location and contact of the water system operator required in this paragraph.

(m) A proposed water quality monitoring plan that includes monitoring for all of the following:

1. Total coliform bacteria.

2. Corrosion products, including lead and copper and associated water quality parameters.

3. Chemicals to be added to the water.

4. Other water quality monitoring required by the department as part of the construction plan approval.

(n) A description of the operational procedures required by chs. NR 809 and 811 and PSC 185 related to wellhead protection, well abandonment, cross-connection control, operational reporting, meter testing, hydrant and valve exercising and operator certification.

(o) A description of the rate or fee mechanism for other-than-municipal water systems. Other-than-municipal water system has the meaning contained in s. NR 811.02 (19).

Note: Sec. NR 811.02 (19) states that " Other-than-municipal water system" means a community water system that is not a municipal water system.

(p) A copy of the public service commission certificate authorizing the construction and operation, and estimating rates, for municipal water systems regulated by the public service commission. Municipal water system has the meaning contained in s. NR 811.02 (16).

Note: Sec. NR 811.02 (16) states that " Municipal water system" means a community water system owned by a city, village, county, town, town sanitary district, utility district, public inland lake and rehabilitation district, municipal water district, or a federal, state, county, or municipal owned institution for congregate care or correction, or a privately owned water utility serving the foregoing.

(q) A description of the method of payment for the construction and operation of the water system for non-transient non-community water systems.

(r) A statement from the water system owner on the financial capacity of the water system to meet the requirements of this chapter.

(3) The capacity evaluation shall be submitted on a form provided by the department or in a format approved by the department.

Note: Capacity evaluation forms may be obtained from the department bureau of drinking water and groundwater at no charge by writing to Bureau of Drinking Water and Groundwater, Box 7921, Madison, WI, 53707, or by calling (608) 266-6699.

(4) The information in sub. (2)(a) to (e) shall be prepared by a professional engineer for municipal water systems and by a professional engineer or licensed well driller for other-than-municipal or non-transient non-community water systems.

(5) The department may waive the requirement for the owner to supply information on well construction, well location, water quality monitoring, and operational procedures listed in sub. (2)(a) to (n) for non-community water systems provided that the owner acknowledges conformance to the requirements for well construction, well location, water quality monitoring, and water system operation contained in this chapter and ch. NR 812.

(6) A single engineering or design report may be submitted to satisfy the requirements of s. NR 811.13(3)(3m) and the capacity evaluation required by sub. (2).

NR 809.933 DEPARTMENT APPROVAL OF SYSTEM CAPACITY. (1) The construction of any new non-transient non-community or community water system may not commence without department approval of the system capacity evaluation demonstrating technical, financial and managerial capacity required in s. NR 809.932.

(2) The department may deny approval of the system capacity evaluation for any of the following reasons:

(a) The water system design does not conform to the applicable design and location standards, or approved variances to the standards, contained in chs. NR 811 and 812 and Comm 82.

(b) The water system operational procedures do not meet the applicable requirements of ch. PSC 185 or of this chapter and ch. NR 811 related to wellhead protection, well abandonment, cross-connection control, operational reporting, meter testing, hydrant and valve exercising and operator certification.

(c) The water system monitoring plan does not conform to the applicable monitoring requirements of this chapter, approved variances to the requirements of this chapter, or to monitoring requirements established as part of the department construction approval under chs. NR 811 and 812.

(d) The system capacity evaluation is incomplete.

(e) The information provided does not demonstrate adequate financial capacity to meet the requirements of this chapter.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on January 27, 1999.

The rule 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 _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

Judith B. Robson
Wisconsin State Senator

October 31, 2000

Representative John Lehman
Room 303 West
State Capitol

Dear Representative Lehman:

Thank you for your recent letter requesting review of administrative rules NR 809 and NR 811 by the Joint Committee for Review of Administrative Rules. You asked if the committee could take action so that small well associations could obtain relief from the financial burden imposed on them through these regulations.

I am afraid the answer is no. Non-municipal drinking water systems are governed by state and federal clean water standards because of the federal Safe Drinking Water Act (SDWA). The SDWA sets water quality standards and requires non-municipal wells to meet those standards. The inclusion of these systems is not a matter of discretion that can be changed by either state law or through the state administrative code. Instead, this is a matter that will require federal action.

I therefore respectfully suggest that the Spring Green Well Association take up its complaint with Congressman Paul Ryan and/or with Senator Herb Kohl and Senator Russ Feingold. Small well associations will obtain the relief they seek only through congressional action.

Moreover, even if it were permissible to grandfather some wells that were in existence prior to the initial enactment of the SDWA, that action could not be undertaken by the Joint Committee for Review of Administrative Rules. The JCRAR does not have authority to write administrative rules. Therefore, the committee could not add to the DNR administrative code a definition of "existing" that would exempt some wells from the requirements of the code. Such an action would have to be done either by the agency in a revision to the code or, more likely, by an act of the Legislature.

For both these reasons, I must respectfully decline your request for action by the JCRAR.

Sincerely,

Senator Judith B. Robson
15th Senate District

JBR:da

15 South, State Capitol, Post Office Box 7882, Madison, WI 53707-7882 • Telephone (608) 266-2253
District Address: 2411 East Ridge Road, Beloit, WI 53511
Toll-free 1-800-334-1468 • E-Mail: sen.robson@legis.state.wi.us

State Representative
John Lehman

October 13, 2000

Senator Judy Robson
Co-Chair
Joint Committee for Review
of Administrative Rules
15 South – State Capitol
Madison, WI 53708

Representative Glenn Grothman
Co-Chair
Joint Committee for Review
of Administrative Rules
15 North – State Capitol
Madison, WI 53708

Dear Senator Robson & Representative Grothman:

I am writing to request the Committee's review of Administrative Rules NR 809 and NR 811 to determine if small well associations can obtain relief from the financial burden imposed on them through these state regulations.

In 1974 Congress passed the Safe Drinking Water Act. Under the federal law, the Environmental Protection Agency (EPA) requires owners of noncommunity water systems to meet state and federal drinking water standards.

Wisconsin's Department of Natural Resources (DNR) oversees the construction and operation of public water systems primarily under Administrative Codes NR 809 and NR 811.

On July 19, 2000 I received a letter from my constituent, Mr. Paul Sandvick, a member of the Spring Green Well Association located in Mount Pleasant. A copy of this letter is enclosed for your review. Briefly, Mr. Sandvick expressed concerns about the DNR's well compliance testing requirements and the impact the state and federal mandates for testing have had on the Spring Green Well Association.

State Capitol:
P.O. Box 8952
Madison, WI 53708
(608) 266-0634
Fax: 266-7038
E-Mail:
Rep.LehmanJ@legis.state.wi.us
Legislative Hotline:
1-800-362-9472

Home:
2421 James Boulavard
Racine, WI 53403
(414) 632-3330

Numerous letters and e-mails on the issues of testing compliance and system repair have passed between Mr. Sandvick and DNR representatives Don Swailes and Marianna Sucht. I have enclosed only those documents that most concisely describe the problem. However, I would be happy to provide you with copies of all correspondence should the committee feel this information would be beneficial.

Mr. Sandvick feels because of the small number of persons the Spring Green Well Association serves and because the Association was operating before passage of the Federal Safe Drinking Water Act, they should be granted "grandfather status" exempting them from the testing standards required under NR 809 and repair standards required under NR 811.

The Department objects to the Spring Green Well Association's request stating this is a public health issue and testing compliance and system repair standards must be adhered to. The DNR acknowledges the federal law has imposed financial burdens on many small well associations throughout the state. Don Swailes, Leader of the DNR's Safe Drinking Water Team, indicated they are working with Wisconsin's Congressional members in an effort to educate them about the problems these small systems have encountered since the passage of the Safe Drinking Water Act nearly 30 years ago.

I would appreciate the Committee's comments with regard to a possible change in the language of NR 809 and NR 811 to help relieve the financial burden these rules have placed on small well associations throughout Wisconsin.

Thank you for your consideration. If you have questions or if I may provide you with further information, please don't hesitate to let me know.

Sincerely,

John Lehman

State Representative John Lehman
62nd Assembly District

JL:jms

cc: Mr. Paul Sandvick, Spring Green Well Association
Mr. Don Swailes, DNR Safe Water Drinking Team

Enclosures:
1) July 19, 2000 letter from Paul Sandvick to Representative John Lehman
2) August 8, 2000 letter from Rep. Lehman to DNR Representatives Don Swailes and Marianna Sucht
3) September 5, 2000 letter from Swailes & Sucht to Rep. Lehman (copy was sent to Mr. Sandvick)
4) October 4, 2000 letter of response from Mr. Sanvick to September 5th DNR letter

From: Paul and Diane Sandvick [sandvick@wi.net]
Sent: Wednesday, July 19, 2000 9:49 PM
To: Rep.LehmanJ
Subject: DNR and Well Compliance Testing

COPY

Dear Represenntative Lehman,

I live in the Spring Green subdivision in Mt. Pleasant (along County Hwy C) in the 62nd assembly district. I am writing on behalf of my neighborhood well owners' association and am requesting your help with regard to our community well versus DNR well compliance testing requirements. I'm specifically contacting you because of your membership on several committees dealing with natural resources as well as being our representative in the state assembly.

Here is our problem. There are only eight homes being served by our community well but it is being treated by the DNR as though it were a municipal water system for testing purposes. We have been forced for quite a few years to submit to the corresponding compliance testing. This has not only become excessively time consuming for a group without any staff but is also becoming increasingly expensive for us as the number of required tests increases. The cost estimate for meeting the test requirements this year is $2000 - $2500, or about $300 per household. This is putting quite a strain on our well association budget because it exhausts funds that would otherwise be used for other substantial maintenance and repair costs associated with the upkeep of this well.

The time consuming aspect should not be minimized. For example, water samples often must be collected according to a specific timetable and then shipped by Federal Express to ensure sample freshness. This has frequently meant that the person in charge of samples must take time off of work to coordinate with the FedEx shipping schedule.

At one point some years ago I was told that the cutoff for coming under DNR jurisdiction was 25 persons on a well. I don't know whether this holds true today.

My first question is this. Shouldn't this well be grandfathered and therefore exempt from any mandatory compliance testing? The Declaration of Trust for this well was filed with Racine County on December 5, 1974, and serves lots 76-84 according to that document. Originally, and for many years thereafter, water testing was not required.

If the well is indeed grandfathered, then how do we go about officially extricating ourselves from the DNR's mandatory test requirements?

As a practical matter the well association agrees with the need for a certain amount of voluntary testing, particularly microbial testing, and undoubtedly would continue to do this as necessary.

The following questions assume that the well is not grandfathered. How can we get the DNR to reduce the required number of tests to a reasonable level and specifically, to restrict them to microbial tests only? Would this require legislation and, if so, could you initiate it?

Test requirements should differentiate between small community wells such as ours and larger municipal wells. Currently, even the language of the test reports from DNR reads as though they are addressing municipal water systems rather than a little neighborhood well that is restricted to serving eight houses.

I am speaking only for our own well association. However, our situation is not unique within the subdivision. Other well systems here are of similar age and size and must be faced with comparable testing requirements.

Thank you in advance for your help in this matter. It will be greatly appreciated.

Sincerely,

Spring Green Well Association
Paul E. Sandvick
1318 Scott Drive
Racine, WI 53406
Phone: (262) 886-4041
e-mail: sandvick@wi.net <mailto:sandvick@wi.net>

State Representative
John Lehman

COPY

August 8, 2000

Mr. Don Swailes
Department of Natural Resources
101 S. Webster Street – DG/2
Madison, WI 53702

Ms. Marianna Sucht
Dept. of Natural Resources
9531 Rayne Road #4
Sturtevant, WI 53177

Dear Mr. Swailes & Ms. Sucht:

I am writing with regard to my constituent, Mr. Paul Sandvick's, questions pertaining to the Department's administrative rule relating to well testing. First, let me thank you both for your timely and thorough responses to Mr. Sandvick's concerns.

It is my understanding from reviewing the correspondence between you and Mr. Sandvick the Spring Green Well Association's request to have their well "grandfathered" cannot be granted under the current administrative rule. It also appears the Department would be willing to revise the Association's 2000 monitoring schedule by moving the Synthetic Organic Chemical (SOC) requirement to year 2001 and the Volatile Organic Chemical (VOC) requirement to year 2002, leaving the Inorganic Chemical (IOC) and lead and copper (L&C) for this year.

Your suggestion to look at the possibility of drilling an additional well does not seem to be a good option for the Association. The City of Racine and Town of Mount Pleasant have done a recent survey regarding extending water to the Spring Green subdivision. Although the response to the survey has not been positive, this could potentially change within the next year or two. The Association hesitates to spend the $7,000 - $9,000 on a new well if city water will be provided to them in the near future.

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1-800-362-9472

Home:
2421 James Boulavard
Racine, WI 53403
(414) 632-3330

Another concern the Association expressed is with a proposed rule mandating the total upgrade of their well should one of the existing parts fail.

My questions to you are the following:

1) Is it possible to amend the administrative code to include a definition of "existing" that might be broad enough to exempt the Association from future compliance? If this is not possible, would there be any other exemption option available to the Spring Green Well Association?

2) It is my understanding there is either a federal or state rule relating to upgrading existing wells. Under this regulation, if part of a well fails the entire system must be replaced. Is this a correct interpretation of the rule? If yes, is there a way to "protect" the Spring Green Well Association from the rule mandating a total upgrade of their system should one part fail?

3) Will the Association be given some leniency in their monitoring schedule?

Again, I want to thank you for all the help you have provided Mr. Sandvick and the Spring Green Well Association to date. I am eager to work with you to find a way to assist these folks and look forward to your response to my questions. If you need additional information from me or would like to meet to discuss possible solutions to this problem, please don't hesitate to let me know.

Sincerely,

State Representative John Lehman
62nd Assembly District

JL:jms

cc: George Meyer – Secretary, Department of Natural Resources
Paul Sandvick – Spring Green Well Association

WISCONSIN
DEPT. OF NATURAL RESOURCES

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY 608-267-6897

September 5, 2000

SEP 18 2000

COPY

Honorable John Lehman
State Capitol
P.O. Box 8952
Madison, WI 53708

Subject: Spring Green Well Association

Dear Representative Lehman:

Thank you for your inquiry on behalf of the Spring Green Well Association. We have repeated your questions and provided answers in italics below each question.

1) Is it possible to amend the administrative code to include a definition of "existing" that might be broad enough to exempt the Association from future compliance? If this is not possible, would there be any other exemption option available to the Spring Green Well Association?

Our Codes do not contain a definition of "existing" by design. Approximately 90% of all current water systems "existed" before the Safe Drinking Water Act (SDWA) passed in 1974, Congress certainly intended the requirements of the act to apply to systems in existence at that time as well as any new systems that were created after 1974. As such, an implicit objective of our Safe Drinking Water Code (NR 809) is to encompass existing systems and require that they be upgraded to meet the most recent public health based requirements of the federal Safe Drinking Water Act. We cannot exempt the Spring Green Well Association from future compliance with the amended SDWA. It is possible for the Association to obtain a variance from compliance with a maximum contaminant level or a specific treatment technique but not, unfortunately, from compliance with monitoring and reporting requirements of the SDWA.

2) It is my understanding there is either a federal or state rule relating to upgrading existing wells. Under this regulation, if part of the well fails the entire system must be replaced. Is this a correct interpretation of the rule? If yes, is there a way to "protect" the Spring Green Well Association from the rule mandating a total upgrade of their system should one part fail?

The requirement you are referring to is a State requirement found in Chapter NR 811 (Requirements for the Operation and Design of Community Water Systems). Section NR 811.01 states in part ". . . The standards for design and construction shall be considered minimum standards to which existing facilities shall be upgraded when improvements are undertaken at those facilities. These standards may be imposed on a case-by-case basis to existing facilities when the department determines that potential health risk exists."

Your interpretation of the rule that ". . if a part of the well fails the entire system must be replaced" is a bit oversimplified but essentially correct. While the department can require upgrades at any time for

protection of public health, it is our policy not to require upgrading as a result of normal maintenance work. On the other hand, replacement of major system components such as a well pump, pressure tank, treatment equipment, or pumphouses would generally result in the requirement for upgrading those and any interrelated facilities that do not comply with the current requirements. We should stress however, that the decision to require upgrading is made on a case by case basis and there are instances where replacement of individual components would not result in a complete system upgrade.

There is no specific allowance to exempt any water system from compliance with requirements to upgrade the system if needed. We do however, consider many factors when determining whether a system must upgrade. As mentioned above, routine maintenance does not generally require upgrade. We have waived upgrade requirements in situations where the system can prove that within some short time period (1 to 5 years generally) they will be connected to a municipal water system and their wells abandoned. In other cases where financial hardship is a consideration, we have extended compliance periods to spread costs over time and accommodate system users ability to fund the upgrades. Generally these sorts of considerations require the system owners to enter into a legally binding compliance agreement which includes provisions for immediate compliance should the system fail to live up to it's end of the agreement.

3) Will the Association be given some leniency in their monitoring schedule?

The department has previously allowed some systems to extend synthetic organic monitoring into the following year and we believe we can do that in the case of the Spring Green system. Beyond that, we do not have a significant amount of flexibility to reduce monitoring. The department has expended significant efforts over the past 10 years to implement a well vulnerability/susceptibility program in the State that allows us to take advantage of the minimum sampling frequencies allowed under federal regulations. Through these efforts, we have saved the States water systems well over $20 million while maintaining a very high level of public health protection.

I hope these answers meet your needs but if questions remain, please feel free to contact either of us (Marianna Sucht (262) 884-2363 or Don Swailes (608) 266-7093) at your convenience. Please also be assured, we have and will continue to work with the Spring Green Well Association in any way we can to help the system remain in compliance with the requirements of the Safe Drinking Water Act and the States requirements for design and operation of community water systems.

Sincerely,

Don Swailes

Don Swailes, Leader
Safe Drinking Water Team

Marianna Sucht

Marianna Sucht,
Drinking Water Specialist

cc: G. Meyer, AD/5
Paul Sandvick, Spring Green Well Association
G. McCutcheon, SER
J. Jonas, DG/2

October 4, 2000

Honorable John Lehman
State Capitol
P.O. Box 8952
Madison, WI 53708

COPY

Re: Spring Green Well Association

Dear Representative Lehman,

I received a copy of the September 5, 2000, DNR letter to you from Don Swailes regarding our community well. It took some time to calm down and digest the letter prior to responding.

In short, I am very upset with DNR's intent to maintain the status quo. I find it highly disturbing to be subject to the regulatory whims of a non-elected bureaucracy.

The problem with our community well is but one example of government run amuck through the virtually unlimited regulatory power of administrative code. Our well problem obviously began at the federal level with flawed EPA regulations that created unintended ramifications. The problem was then compounded by additional constraints imposed by the DNR.

Now it seems that the problem is correctable but the DNR bureaucracy is digging in its heels and refusing to make the necessary change. Unless explicitly prohibited by federal law I see no reason for this posture.

Now as for the letter from Don Swailes, I think it will be best if I address it point by point, repeating Mr. Swailes' comments in italics. Please refer to the Swailes letter for the complete text of his items 1-3.

Item 1.

Our codes do not contain a definition of "existing" by design.

Yes, we agree. This is the very point we wish to have addressed and changed.

Approximately 90% of all current water systems "existed" before the Safe Water Drinking Act (SDWA) passed in 1974.

This is an irrelevant statistic. Undoubtedly most of that 90% is made up of municipal water systems. Here we are talking about wells, specifically community wells, and in this instance, a neighborhood well serving only eight homes.

Congress certainly intended the requirements of the act to apply to systems in existence at that time as well as any new systems that were created after 1974.

This statement is an assumption about the intentions of Congress and nothing more. I will be presenting my own assumptions in this regard as we go along.

Congress typically grandfathers legislation. The Declaration of Trust for our well was filed with Racine County on December 5, 1974, and the well itself would have been drilled prior to that. Further, all the relevant provisions of the DNR code became effective long after this date. According to a letter from Marianna Sucht dated August 11, 2000, Section NR 809 "Safe Drinking Water" of the Wisconsin Administrative Code became effective in 1991 and Section NR 811.01 governing operation, design and construction of community water systems became effective in April 1978. Your office was copied on this letter.

In any event it is unlikely that Congress intended to saddle a neighborhood well of eight homes with the same restrictions, testing requirements, and multi-thousand dollar cost as a municipality the size of Milwaukee where the same burden is distributed over 150,000 homes or more. The intent of Congress was certainly not to punish little community wells such as ours in an inequitable manner such as this.

Still further, unless Congress specifically denied the right of states to supply a definition for "existing", I see no reason why it can't be done.

As such, an implicit objective of our Safe Drinking Water Code (NR 809) is to encompass existing systems and require that they be upgraded to meet the most recent public health based requirements of the federal Safe Drinking Water Act.

We request that the appropriate part of NR 809 and/or NR 811 be changed to include an explicit definition of the word "existing", such definition being worded to grandfather, and therefore exempt from regulatory jurisdiction, community wells such as ours. The intent is to grandfather wells that were installed in compliance with existing law prior to the dates that NR 809 and NR 811 became effective.

It undoubtedly was neither the intent of Congress nor of the Wisconsin legislature to saddle little community wells such ours with the huge regulatory expense of maintaining or upgrading an existing well simply for the sake of being in compliance with an arbitrary set of administrative rules. In all likelihood the original focus was on the maintenance of municipal water systems but somewhere along the line a distortion of the original intent has resulted in a set of regulations that is highly punitive to small community wells such as ours. This violates any concept of fairness and should be remedied now.

We cannot exempt the Spring Green Well Association from future compliance with the amended SDWA.

Nothing has been presented to date demonstrating that state or federal law prohibits such an exemption. In the absence of such prohibition I strongly urge that the desired exemption be made.

It is possible for the Association to obtain a variance from compliance with a maximum contaminant level or a specific treatment technique but not, unfortunately, from compliance and reporting requirements of the SDWA.

The requested change to the Wisconsin Administrative Code would solve the problem and eliminate the need for compliance for small community wells such as ours. This change would

involve incorporation of a definition for the word "existing" into the Code, such definition being worded to permit grandfathering, and therefore the exclusion from regulatory jurisdiction, of community wells such as ours which were in operation prior to the effective dates of sections NR 809 and NR811.

Item 2.

The requirement you are referring to is a State requirement found in Chapter NR811 (Requirements for the Operation and Design of Community Water Systems). Section NR 811.01 states in part "...The standards for design and construction shall be considered minimum standards to which existing facilities shall be upgraded when improvements are undertaken at those facilities. These standards may be imposed on a case-by-case basis to existing facilities when the department determines that potential health risk exists."

Since this part of the Wisconsin Administrative Code was written by DNR it can undoubtedly be modified by DNR, including the upgrade provisions. The extremely punitive nature of the upgrade provisions of this section is implied by the recognition of a need for flexibility in interpretation.

Your interpretation of the rule that "...if a part of the well fails the entire system must be replaced" is a bit oversimplified but essentially correct.

This is undoubtedly an unintended runaway interpretation of Wisconsin law as applied to small community wells like ours. It imposes a huge and unnecessary burden simply to comply with bureaucratic rules. Fixing and upgrading portions of a system should not result in the imposition of a mandate to reconstruct the entire system to the tune of up to $10,000 or more. This is highly unnecessary and punitive to small community wells

A medical analogy would be to require surgical replacement of all major organs when all you really needed was a minor skin graft.

While the department can require upgrades at any time for protection of public health, it is our policy <u>not to require</u> upgrading as a result of normal maintenance work. On the other hand, replacement of major system components such as a well pump, pressure tank, treatment equipment, or pumphouses, would generally result in the requirement for upgrading those and any interrelated facilities that do not comply with the current requirements.

Translation: You might be able to get away with a skin graft but a kidney transplant would still require replacement of all major organs. You bear the cost.

There is no specific allowance to exempt any water system from compliance with requirements to upgrade the system if needed.

We request that a specific allowance be created by including a definition of "existing" that permits grandfathering, and therefore exemption, of community wells such as ours from regulatory jurisdiction, as discussed earlier.

We do however, consider many factors when determining whether a system must upgrade. As mentioned above, routine maintenance does not generally require upgrade. We have waived

upgrade requirements in situations where the system can prove that within some short time period (1 to 5 years generally) they will be connected to a municipal water system and their wells abandoned.

This is small consolation when you are forced to upgrade only to be notified shortly thereafter that municipal water is about to be installed after all. Again, it is an enforcement of bureaucratic rules that serve little purpose with regard to safe water delivery. It only serves to impose unjustifiably expensive compliance on small community wells such as ours.

In other cases where financial hardship is a consideration, we have extended compliance periods to spread costs over time and accommodate system users ability to fund the upgrades. Generally these sorts of considerations require the system owners to enter into a legally binding compliance agreement which includes provisions for immediate compliance should the system fail to live up to its end of the agreement.

Extension of compliance periods would certainly be helpful if system upgrades are required. However, grandfathering to exempt small wells such as ours from regulatory jurisdiction by means of an appropriate definition for the word "existing" would eliminate the need to consider upgrade extensions.

Without knowing what constitutes failure of the system "to live up to its end of the agreement", it is difficult to address the issue of a legally binding compliance agreement with provisions for immediate compliance. However, immediate compliance could be financially catastrophic for a small community well association like ours.

Item 3.

The department has previously allowed some systems to extend synthetic organic monitoring into the following year and we believe we can do that in the case of the Spring Green system. Beyond that, we do not have a significant amount of flexibility to reduce monitoring.

This is an acceptable response to the extent that each test is federally mandated. However, to the extent that this can be mitigated by modification of Section NR 809 every attempt should be made to do so.

Once again, grandfathering to exempt community wells such as ours from regulation is the one approach that would satisfy our needs.

Right now we are faced with approximately $2500 of testing to be shared among only eight households, one of whom is already several years in arrears on his well maintenance payments. This places an even heavier burden on those that do pay. Unfortunately, we have no mechanism available to force delinquents to pay up.

Our well is at a 300-foot depth, which would seem to make most of the compliance testing totally unnecessary, with the exception of microbial testing. We would want to monitor for microbial contamination on an ongoing basis with or without DNR involvement.

The department has expended significant efforts over the past 10 years to implement a well vulnerability/susceptibility program in the State that allows us to take advantage of the minimum

sampling frequencies allowed under federal regulations. Through these efforts, we have saved the State water systems well over $20 million while maintaining a very high level of public health protection.

Once again, the regulatory quagmire from the federal bureaucracy has been identified as the principal villain that must be dealt with. In the absence of explicit federal prohibition, community wells such as ours should be able to escape its grasp by introduction of a carefully crafted definition of "existing" into appropriate parts of sections NR 809 and/or NR 811 of the Wisconsin Administrative Code.

In closing, I wish to make the following comments:

With regard to administrative code itself, the unbridled power vested in non-elected bureaucrats far surpasses that of any elected official. Authoritarian rule by a non-elected bureaucrat is the hallmark of a dictatorship, not of a democracy. It should be stopped now!

The potential for abuse of power has been amply demonstrated in the present circumstance. The DNR has demonstrated a nonsensical need to "protect turf" at the expense of a common-sense solution to our well problem.

It undoubtedly was not the intent of Congress or of the Wisconsin legislature to severely punish someone for simply having the misfortune to be connected to an eight-family well.

Best regards,

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Swailes - 6-7093

1) inclusion of small wells

2) standards

set by state of fed?
if by state, can they vary depending on size of system?

fed sets standards for quality

3) upgrades

required by fed?
if not, why required by state?

not required by fed. fed set standards. state thinks this is the best way to implement these standards.

10/23/00 Swailes

90% of systems in existence prior to 1974, if intended to exempt, almost nobody would be covered.

- has underground pressure tank. not up to code, grandfathered but if some part fails, all parts must be brought up to code. in this case, would mean getting rid of underground tank.

- other than municipal systems ~540

subdivision	150	(7 or more homes on 1 well)
mobile home parks	300-350	
care units	remainder	