

WISCONSIN LEGISLATIVE COUNCIL STAFF

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FORM 2

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**RULES CLEARINGHOUSE**

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 99-095**

AN ORDER to amend NR 812.05, relating to disposal of pollutants, injection prohibition.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

06-14-99 RECEIVED BY LEGISLATIVE COUNCIL.

07-12-99 REPORT SENT TO AGENCY.

RS:DLL:jal;rv

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES  NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES  NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES  NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES  NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES  NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES  NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

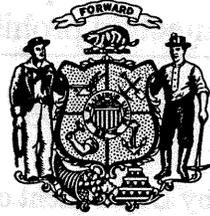
Comment Attached YES  NO

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## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 99-095

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### **2. Form, Style and Placement in Administrative Code**

In s. NR 812.05 (1) (b), the notation "NR" after each occurrence of the word "or" should be deleted. Also, the references to "811.17 or . . . 811.16 (14) (a)" should be reversed.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The use of the term "placement" is inconsistent and confusing. In the existing rule, the term applies to the activity of placing a material in a well or drillhole; in the new language, it appears to refer to the material that is placed. This should be clarified.

b. In s. NR 812.05 (1) (b) and (2), how is department approval obtained?

c. In s. NR 812.05 (1) (c), how is the department determination obtained? Is the determination known by operation of law and the provisions of ch. NR 140?

d. Section NR 812.05 (5) is unclear, and this rule-making order would be a good opportunity to clarify it. What are groundwater tracers? What approval is required for their use and how can that approval be obtained?

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend s. NR 812.05 relating to disposal of pollutants, injection prohibition.

DG-24-99

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 281.11, 281.12(1), 281.17(8), 280.11(1), 283.001(2) and s. 227.11(2)(a), Stats.

Statutes interpreted: s. 281.17(8), Stats.

The proposed amendment of s. NR 812.05 clarifies existing Department of Natural Resources (DNR) policy regarding the underground disposal of pollutants by means of well injection. The amended rule explicitly identifies the types of activities that are not prohibited under this section.

The changes to s. NR 812.05 are being proposed to ensure that common construction practices which involve the underground placement of cement, concrete or bentonite grout for the purposes of soil and excavation site stabilization, tunnel support, underpinning or foundation strengthening, groundwater control or diversion, and for limiting structural settlement are not prohibited. The proposed changes reflect current Department policy and are intended to make it easier for persons seeking to place materials underground to determine whether the activity is prohibited or requires DNR approval.

Section 1. NR 812.05 is amended to read:

**NR 812.05 Disposal of pollutants; injection prohibition.** (1) The use of any well, drillhole or water system for the underground placement of any waste, surface or subsurface water or any substance, as defined in s. 160.01(8), Stats., is prohibited unless the any of the following apply: (2)

(a) The placement is a department-approved activity necessary for the any of the following: one

1. The construction, rehabilitation or operation of the well, drillhole or water system or is a department-approved activity necessary for. (5)

2. The remediation of contaminated soil, groundwater or an aquifer.

(b) The placement consists of grouting, sealing or abandonment materials as specified in s. NR 812.20(1) or NR 812.26(7)(b); grouting or abandonment materials as specified in s. NR 811.17 or NR 811.16(14)(a); sealing or abandonment materials specified in s. NR 141.13 or NR

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141.25(2)(d); or other similar materials containing additives approved by the department under sub. (2).

(c) the placement consists of materials being used for construction purposes, such as poles, posts or cathodic protection devices, which do not release substances that the department determines are likely to cause the standards established in ch. NR 140 to be exceeded or otherwise result in environmental pollution.

*how is this know!*

(2) The department may approve alternative materials or additives that may be used in conjunction with the activities noted under sub. (1).

*but how?*

(3) For the purposes of this section, the term "drillhole":

(a) "Drillhole" includes any excavation or opening that is deeper than it is wide, even if it extends less than 10 feet below the ground surface and the term "well":

(b) "Well" includes any excavation that is deeper than it is wide regardless of its depth or purpose.

(4) Circulation of water through a closed-loop heat pump system in a drillhole is not prohibited by this section.

(5) Groundwater tracers may only be used with approval.

*expand? (5)?*

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

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 DNR  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
George E. Meyer, Secretary

(SEAL)

JAN 13 2000

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-24-99

Legislative Council Rules Clearinghouse Number 99-095

Subject of Rules Disposal of pollutants; injection prohibition

Date of Transmittal to Presiding Officers January 11, 2000

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 812.05, Wis. Adm. Code  
Disposal of pollutants, injection prohibition

Board Order No. DG-24-99  
Clearinghouse Rule No. 99-095

Statement of Need

It has been determined that construction practices commonly used to improve soil conditions for site stabilization, excavation, underpinning, tunnel support or to improve foundation strength, limit structural settlement or provide groundwater hydraulic control appear to be prohibited under s. NR 812.05. Such a prohibition is unintended and is a result of the way in which the section is currently worded. This section of the code was expanded several years ago to incorporate federal language and definitions regarding underground injection wells. However, if the present rule is interpreted literally, it would also prohibit common construction practices involving cement and other inert materials. For example, placing concrete in a post hole would be prohibited. This was never intended when the rule was originally revised.

The proposed revision is intended to clarify current Department policy regarding the regulation of the underground placement of cement, bentonite grout or other Department-approved materials used by the construction trades for geotechnical grouting, soil stabilization and foundation support. It explicitly lists the types of activities that are not subject to this prohibition.

Modifications as a Result of Public Hearings

A subsection identifying activities that are excluded from the injection prohibition has been created. Activities that are related to approved mining practices are exempted from the injection prohibition under this section because they must meet the requirements of ch. NR 132. The groundwater protection and environmental pollution language that had been proposed in s. NR 812.05(1)(c) has been removed from the text. The rule was modified to clarify the conditions under which grouting and groundwater control activities may require an additional approval as a result of the material that is proposed to be injected. A subsection that formally identifies the criteria that are to be evaluated before the use of alternative materials may be used has been added to clarify the factors that staff must evaluate before an approval may be granted. Any approval that is granted is also required to adhere to the groundwater standards established under ch. NR 140.

Appearances at the Public Hearings and Their Position

July 12, 1999 – Madison

In support – none

In opposition:

Caryl Terrell, Sierra Club – John Muir Chapter, 222 S. Hamilton St., #1, Madison, WI 53703

As interest may appear:

Bill Rock, 110 Elm Street, Madison, WI 53705

John Coleman, Great Lakes Indian Fish & Wildlife Commission, 550 Babcock Drive, Madison, WI 53706  
Claire Vanderslice, 2276 Highway I, Grafton, WI 53024

July 13, 1999 - Wausau - no appearances

Response to Comments by Legislative Council Rules Clearinghouse

The recommendations were accepted.

Final Regulatory Flexibility Analysis

The proposed amendment will not directly affect environmental quality and the expected financial impact of the proposed rule change upon small businesses is negligible as the cement, bentonite grout or other approved materials presently used by the building trades would not require additional environmental monitoring or impose new regulatory requirements.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to amend s. NR 812.05 relating to disposal of pollutants, injection prohibition.

DG-24-99

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 281.11, 281.12(1), 281.17(8), 280.11(1), 283.001(2), and  
s. 227.11(2)(a), Stats.  
Statutes interpreted: s. 281.17(8), Stats.

The proposed amendment of s. NR 812.05 clarifies existing Department of Natural Resources (DNR) policy regarding the underground disposal of a pollutant by means of well injection. The amended rule explicitly identifies the types of activities that are not prohibited under this section.

Changes to s. NR 812.05 are being proposed to ensure that common construction practices which involve the underground placement of cement, concrete or bentonite grout for the purposes of soil and excavation site stabilization, tunnel support, underpinning or foundation strengthening, groundwater control or diversion, or for limiting structural settlement are not prohibited. The proposed changes reflect existing Department policy and regulatory practices.

Amendment of the rule is intended to make it easier for any individual seeking to place materials underground to determine whether a proposed activity is prohibited or requires DNR approval.

Section 1. NR 812.05 is amended to read:

**NR 812.05 Disposal of pollutants; injection prohibition.** (1) For the purposes of this section:

(a) "Drillhole" includes any excavation or opening that is deeper than it is wide, even if it extends less than 10 feet below the ground surface.

(b) "Well" includes any excavation that is deeper than it is wide regardless of the excavation's depth or purpose.

(2) The use of any well, drillhole or water system for the ~~underground~~ placement of any waste, surface or subsurface water or any substance, as defined in s. 160.01(8), Stats., underground is prohibited unless ~~the~~ any of the following apply:

(a) The placement is a department-approved activity necessary for ~~the~~ any of the following:

1. The construction, rehabilitation or operation of ~~the~~ a well, drillhole or water system ~~or is a department-approved activity necessary for.~~

2. The construction of a cathodic protection drillhole approved under s. NR 812.09.

3. The remediation of contaminated soil, groundwater or an aquifer.

4. The study of groundwater conditions under sub. (4).

(b) The placement consists of grouting, sealing or abandonment materials as specified in s. NR 812.20 or 812.26; grouting or abandonment materials as specified in s. NR 811.16 or 811.17; sealing or abandonment materials specified in s. NR 141.13 or 141.25; or other similar materials containing additives approved under sub. (3).

(c) The placement consists of bentonite grout, cement or concrete, or other similar materials containing additives approved under sub. (3), for the purposes of soil or excavation site stabilization, tunnel support, underpinning or foundation strengthening, groundwater control or diversion or for limiting structural settlement.

(3) The department may approve alternative materials or additives that are to be used in conjunction with the activities noted under sub. (2). Approval shall be based on, but not limited to, such factors as the potential toxicity of an alternative material or additive, the effectiveness of an alternative material or additive for its specified use, the amount or quantity of material to be used, and the potential for use of an alternative material to result in groundwater contamination or otherwise harm human health or the environment.

(4) For the purposes of this section, the term "drillhole" includes any excavation or opening that is deeper than it is wide, even if it extends less than 10 feet below the ground surface and the term "well" includes any excavation that is deeper than it is wide regardless of its depth or purpose. Only department-approved groundwater tracers may be used for hydrogeologic studies. Approval shall be based on, but not limited to, such factors as the potential toxicity of a tracer, the effectiveness of a tracer for its use as specified in an application for approval, and the potential for use of a tracer to result in groundwater contamination or otherwise harm human health or the environment. A list of previously approved groundwater tracers is available from the department upon request.

(5) The following activities are not prohibited by this section:

(a) Circulation of water or a food-grade heat exchange fluid through a closed-loop heat pump system in a drillhole is not prohibited by this section. Groundwater tracers may only be used with approval.

(b) Construction of a structure such as, but not limited to, a building foundation, support footing, elevator shaft, lift station, utility conduit, sump, mine shaft or equipment vault.

(c) Except for the disposal of a waste material, the placement of a solid object such as, but not limited to, a cathodic protection device, coffin, piling, pole or post.

(d) Horticultural or agricultural practices, other than those activities that involve the use of a well or drillhole for the placement of a waste material or drainage water underground.

(e) Injection activities conducted in conjunction with a metallic mineral mining operation approved under ch. NR 132.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 8, 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)