

Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item

SUBJECT:

Request that the Board approve the statement of scope for Board Order DG-16-16, and conditionally approve the public hearing notice for Board Order DG-16-16 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse proposed rules affecting ch(s). NR 812, Wis. Admin. Code, related to well construction and pump installation.

FOR: October 2016 Board meeting

PRESENTER'S NAME AND TITLE: Pat Stevens, Administrator, Environmental Management Division

SUMMARY:

NR 812, Wis. Adm. Code, contains standards for the location, construction or reconstruction, maintenance and inspection of wells and water systems and heat exchange drillholes, for the filling and sealing of wells and drillholes, and for the installation and maintenance of pumping and treatment equipment. NR 812 revisions are needed to correct and clarify, streamline processes, update construction standards, and ensure consistency with federal and state law.

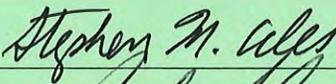
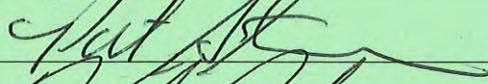
Proposed revisions are intended to address 3 major areas: 1)correct errors or unclear language; 2)streamline existing processes and requirements; and 3)update standards. Key issues are to modernize well construction and pump installation standards that have not been updated in over 20 years, to reflect current industry methods, equipment and materials, and streamline related processes. Minimal controversy is expected. Revisions are intended to maintain current environmental protections while correcting, streamlining and updating rule language. NR 812 has been revised several times since the first well code was adopted in 1936. The last Board action resulted in October 2014 revisions which added Heat Exchange drilling, property transfer inspections, citation authority, and arsenic sampling to NR 812.

The Department's preliminary determination is that proposed rule changes to NR 812 will have minimal economic impact (level 3).

RECOMMENDATION: That the Board approve the statement of scope and conditionally approve the public hearing notice for Board Order DG-16-16 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse.

LIST OF ATTACHED MATERIALS:

- Statement of scope
- Governor approval of statement of scope

Approved by	Signature	Date
Steve Ales, Acting Director Drinking Water and Groundwater Bureau		9/6/16
Pat Stevens, Administrator Environmental Management Division		9/16/16
Cathy Stepp, Secretary		10/3/16

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule officer - LS/8

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: DG-16-16

Relating to: NR 812 – Well Construction and Pump Installation

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

Not applicable.

2. Detailed description of the objective of the proposed rule:

The primary objectives of NR 812 revisions are to correct and clarify, streamline processes, update construction standards, and ensure consistency with federal and state law. Specific objectives include:

- a. Correct errors in NR 812.08 separation distances and other code provisions that resulted from past rulemaking, and address related Revisor notes.
- b. Clarify definitions and terms.
- c. Update and consolidate figures for clarity and accuracy.
- d. Update well and drillhole location requirements to ensure clarity and appropriate protection from contamination sources.
- e. Clarify laboratory certification requirements for required sampling.
- f. Streamline and clarify approval processes and requirements.
- g. Streamline nitrate and arsenic sampling frequency.
- h. Streamline water treatment requirements for private wells.
- i. Update standards in NR 812, Subchapter II to reflect current industry methods, equipment and materials, and streamline related processes.
- j. Update code to be consistent with current laws, including ch. 280 and 281, Wis. Stats. and ch. NR 809, Wis. Adm. Code.
- k. Evaluate offset pump installation requirements.
- l. Clarify citation authority.
- m. Clarify license and applicability for well and drillhole filling and sealing.
- n. Address emerging contaminant issues.
- o. Improve overall organization of rule content.

Additional rule changes may be considered to accomplish the objectives described in this scope statement.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

NR 812, Wis. Adm. Code establishes uniform standards for the location, construction or reconstruction, maintenance and inspection of wells and water systems and heat exchange drillholes, for the filling and sealing of wells and drillholes, and for the installation and maintenance of pumping and treatment equipment. Proposed revisions are intended to address 3 major areas:

- correct errors or unclear language,
- streamline existing processes and requirements, and
- update standards which have not been revised for over 20 years.

Policy Area	Alternatives	Comments
Correct errors and clarify language	No rule revision Program guidance Correct errors only Clarify language only	<ul style="list-style-type: none"> • Failure to correct and clarify code language maintains confusion for regulated community, inconsistent implementation, and inefficiency for DNR staff. • Program guidance has been issued to address some errors, but does not have force of law
Streamline processes and requirements	No rule revision Program guidance Some streamlining	<ul style="list-style-type: none"> • Failure to streamline maintains existing unclear procedures, unnecessary burden for regulated community, and inefficiency for DNR staff • Program guidance cannot be used to modify procedures or requirements • Streamlining some, but not all, procedures and requirements misses the opportunity to address customer requests for clarity and efficiency
Update standards	No rule revision Program guidance	<ul style="list-style-type: none"> • Failure to update standards maintains outdated code language that does not match current industry practices, is inconsistent with state and federal law, and misses the opportunity to improve groundwater protection during well construction • Program guidance cannot be used to update standards

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 227.11(2)(a)(intro.), Wis. Stats., provides that a state agency, "may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute," subject to certain restrictions.

Chapter 280, Wis. Stats., establishes the statutory authority and framework for regulation of Well Drilling, Heat Exchange Drilling and Pump Installation. Section 280.11, Wis. Stats., specifically directs the department to prescribe, publish and enforce minimum reasonable standards and rules for methods to be pursued to obtain pure drinking water for human consumption, and to establish safeguards deemed necessary in protecting the public health against the hazards of polluted sources of impure water supplies intended or used for human consumption. This statute gives the department general supervision and control over all methods of obtaining groundwater for human consumption including the construction or reconstruction of wells, authority to prescribe, amend, modify or repeal any applicable rule and to perform any act deemed necessary for the safeguarding of public health.

Chapter 281, Wis. Stats., gives the department authority to regulate groundwater withdrawals, and includes enforcement authorities.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

NR 812 rule revisions are expected to require approximately 860 department employee hours.

6. List with description of all entities that may be affected by the proposed rule:

- a. Private well owners
- b. Licensed well drillers, heat exchange drillers and pump installers

- c. Certified laboratories
- d. Noncommunity public water system owners
- e. Local and public health officials
- f. Wisconsin Water Well Association
- g. Wisconsin Geothermal Association
- h. Wisconsin Department of Health Services
- i. Wisconsin Geologic and Natural History Survey

Industry representatives have provided input, and are in general support of the proposed rule objectives.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Federal law does not directly regulate the construction of wells or heat exchange drillholes, and does not regulate the installation of pumps. For public drinking water systems, Wisconsin is a primacy state, with the primary responsibility to enforce state drinking water regulations consistent with the federal Safe Drinking Water Act. One federal requirement of Wisconsin's primacy role is that the state assures that the design and construction of new or substantially modified public water system facilities will be capable of compliance with the State primary drinking water regulations. For noncommunity public drinking water systems, NR 812, Wis. Adm. Code, provides the design and construction standards to meet this federal requirement.

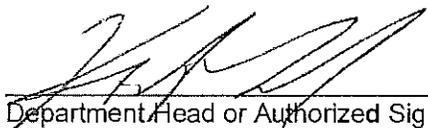
8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The Department's preliminary determination is that proposed rule changes to NR 812 will have minimal economic impact (less than \$50,000 per year and with unquantifiable environmental benefits). The "information and advice period" is anticipated to be 30 days to ensure adequate time for affected entities to provide input. Overall the proposed changes are expected to reduce regulatory burden and clarify requirements, with industry savings resulting in a net positive economic impact on small businesses.

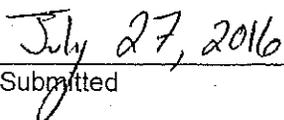
9. Anticipated number, month and locations of public hearings:

The Department anticipates holding 4 public hearings in December 2017. Hearing cities are anticipated to be: Eau Claire, Wausau, Green Bay, Madison. Technology options will be explored to hold all hearings concurrently, reducing DNR staff time and travel costs. These locations will provide access to convenient hearing locations for interested parties around the state.

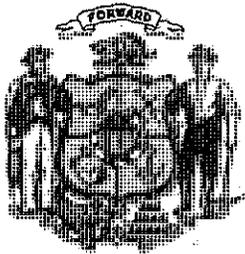
Contact Person: Liesa Lehmann, (608)267-7649, liesa.lehmannkerler@wisconsin.gov
Private Water Section Chief, Bureau of Drinking Water and Groundwater



Department Head or Authorized Signature



Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

August 9, 2016

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

RE: Scope Statement for NR 812 (DG-16-16)
Relating to well construction and pump installation

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on July 28, 2016, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapter NR 812 (DG-16-16) of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

A handwritten signature in black ink, appearing to be "Scott Walker", written over a light blue horizontal line.

Scott Walker
Governor