

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES**

NOTICE OF PUBLIC HEARINGS
Natural Resources Board Order DG-03-13

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold public hearings on proposed revisions to chapters NR146 and NR812, relating to licensing for well filling and sealing contractors, well inspectors and water well drilling rig operators; to inspection of water systems at time of real estate transfer; and to citations for violations related to well drilling and pump installation to protect public health and groundwater, on the dates and at the time and locations listed below. Hearings will be held jointly with hearings on DG-02-13 relating to heat exchange drilling.

Hearing Information

Date and Time 1

Monday, December 16, 2013
4:00 PM

Locations (attendees may select any location listed below on December 16)

Madison: UW-Pyle Center Room 227, 702 Langdon Street, Madison, WI 53706
LaCrosse: UW-La Crosse Room 102 Wing Technology, 1725 State St. La Crosse, WI 54601
Wausau: UWC-Wausau Room 144, near the main entrance, 518 S. 7th Avenue Wausau, WI 54401
Milwaukee: UW-Milwaukee Room 264 Enderis Hall, 2400 East Hartford Ave, Milwaukee, WI 53201

Date and Time 2

Tuesday, December 17, 2013
4:00 PM

Locations (attendees may select any location listed below on December 17)

Madison: UW-Pyle Center Room 227, 702 Langdon Street, Madison, WI 53706
Eau Claire: UW-Eau Claire Old Library Room 1128, 105 Garfield Ave., Eau Claire WI 54702
Green Bay: UW-Green Bay Instructional Services Room 1034, 2420 Nicolet Drive, Green Bay, WI 54311
Ashland: Wisconsin Indianhead Technical College Room 7, 2100 Beaser Avenue, Ashland, WI 54806

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Ms. June Everson, Bureau of Drinking Water and Groundwater, P.O. Box 7921, 101 South Webster Street, Madison, WI 53707-7921; by E-mail to june.everson@wisconsin.gov or by calling (608) 266-6669. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and Fiscal Estimate

The proposed rules and supporting documents, including the fiscal estimates, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link <https://health.wisconsin.gov/admrules/public/Home>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Ms. June Everson, Bureau of Drinking Water and Groundwater, P.O. Box 7921, 101 South Webster Street, Madison, WI 53707-7921; by E-mail to june.everson@wisconsin.gov or by calling (608) 266-6669.

Submitting Comments

Comments on the proposed rules must be received on or before 4:30 PM on December 20, 2013. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Mr. Randell Clark
Department of Natural Resources
Bureau of Drinking Water and Groundwater
101 S Webster St, Madison, WI 53703
Fax: (608) 267-7650
E-mail: Randell.clark@wisconsin.gov
Internet: Use the Administrative Rules System Web site at the link provided above.

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted: Sections 227.11 and s. 280.11(1), Wis. Stats.

2. Statutory authority: Sections 280.11(1), 280.15(3g), 280.30, 280.98, 281.11, 281.12 and 281.19, Wis. Stats.

3. Explanation of agency authority:

Chapter 280.11(1), Wis. Stats., grants authority to the department to, among other things, establishment of all safeguards necessary in protecting public health against the hazards of polluted or impure water supplies. Specifically, s. 280.15(3g), Wis. Stats., requires compliance with licensing, training and education requirements promulgated by the department by rule for water well drilling rig operators. S. 280.30, Wis. Stats., requires licenses or registrations for persons performing property transfer well inspections or water well filling and sealing. S. 280.98, Wis. Stats, requires the department to promulgate rules for issuance of citations for specific licensing or well and pump code violations. Section 281.11, Wis. Stats., authorizes the department to serve as the central unit of government to protect maintain, and improve the quality and management of the waters of the state, ground and surface, public and private. Section 281.12, Wis. Stats., provides that the department shall have general supervision and control over waters of the state. Section 281.19, Wis. Stats., grants authority to the department to adopt rules applicable throughout the state for the construction, installation, use and operation of practicable and available methods for preventing and abating pollution of the waters of the state.

4. Related statutes or rules:

Chapter 280, Wis. Stats. – Pure Drinking Water, provides definitions for terms, defines the powers of the department, and lays out well drilling registration, licensing and qualification requirements and fees for such. It also defines certain prohibitions and exceptions, local authority and defines penalties and citations.

Chapter 281, Wis. Stats. – Water and Sewage, designates the department as the central unit of government to protect, maintain, and improve the quality and management of the waters of the state, ground and surface, public and private, provides that the department shall have general supervision and control over waters of the state, and grants authority to the department to adopt rules applicable throughout the state for the construction, installation, use and operation of practicable and available methods for preventing and abating pollution of the waters of the state.

Chapter NR 146, Wis. Adm. Code – Well Driller and Pump Installer Registration, provides definitions, registration requirements, defines the requirements for the initial application and registration conditions. It also defines requirements for out-of-state drillers, renewals and the registrant responsibilities, as well as license suspension and revocation criteria.

Chapter NR 812, Wis. Adm. Code – Well Construction and Pump Installation, provides purpose, applicability, cooperation with the department, contracts for noncomplying installations, disposal of pollutants and injection prohibition, drinking water standards, definitions and location criteria, well filling and sealing requirements, requirements of new pump installations and water treatment, standards for existing installations, and variance conditions.

5. Plain language analysis:

The proposed rules amend chs. NR 146 and NR 812, Wis. Adm. Code, to create specific requirements for property transfer well inspections to help protect sources of drinking water as well the health of consumers. The proposed rules do not require inspections of wells at time of property transfer, but sets

uniform minimum standards if an inspection is performed. The proposed rule changes will reduce the amount of time staff currently spend answering questions and writing variances because several requirements for existing wells have been simplified and/or eliminated. Inspection forms and laboratory reports will not be submitted to the department.

The proposed rules make other changes in chs. NR 146 and 812 to conform the provisions of the rules to existing statutes. Specifically, the rule order includes provisions in NR 146 for:

1. The qualifications and training for a registered water well drilling rig operator to become a licensed water well driller.
2. The requirements for department issuance of citations related to water well drilling and pump installing.
3. The qualifications for performing property transfer well inspections and well filling and sealing.

The proposed order includes provisions in NR 812 for

1. Procedures and requirements property transfer well inspections.
2. Well filling and sealing procedures.
3. Eliminating some separation distance requirements that are no longer considered a health hazard for wells.
4. Citation procedures

6. Summary and comparison with existing and proposed federal regulations.

No federal regulations currently apply to private water supply wells with regard to licensing, well inspections, well filling and sealing or citations for code violations.

7. Comparison of similar rules in adjacent states:

ILLINOIS: In Illinois, the Department of Public Health is responsible for oversight of the well construction code, and has authority over the location, construction and modification of closed loop wells. The Department of Public Health's Closed Loop Well Contractors Certification Board oversees the rules, licensing and administration.

INDIANA: Indiana has a well construction code and requires a water well driller license.

IOWA: Iowa has a well drilling code and a well driller certification. Fee is \$400 initially and \$300 for renewal. License is for a two-year period and requires 16 contact hours of continuing education.

MICHIGAN: Michigan has no codified rules at this time, but has guidelines for heat exchange systems. Michigan has a Water Well Drilling Contractor license. Water well driller license fee is \$40.

MINNESOTA: Minnesota Department Health requires that the status of all wells on a property be disclosed at time of property transfer for the purpose of getting unused and noncomplying wells filled and sealed. There is no requirement to inspect the well or disclose their compliance with the well code at time of property transfer. Minnesota does not have citation authority for license or well or pump code violations, but can issue administrative orders with financial penalties for noncompliance. Minnesota does not require water well drilling rig operators to be registered. Minnesota requires that filling and sealing of wells be performed by a licensed contractor.

OHIO: Ohio has requirements for well construction. Ohio has a well driller registration process and a \$250 annual fee.

8. Summary of factual data and analytical methodologies:

Instances of drinking water and groundwater contamination have occurred in Wisconsin as a result of failure to properly fill and seal wells. 2005 Wisconsin Act 360 was prompted by concerns in the water well and pump industry that current regulation and licensing did not adequately address the inspection of water wells and pumps at time of property transfer and that inexperienced or even unqualified individuals were doing inspections. The Wisconsin Water Well Association took the lead, yet worked closely with

department to develop Act 360. The proposed rules amend NR 146 and NR 812 so that rule provisions are consistent with the statutory changes made in 2005.

9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis:

The proposed rules codify fee amounts set in statute. The current water well drilling license is \$50.00 per year for an individual drilling license and/or \$50.00 for the drilling firm business license. Administration of the water well driller license exam is currently done at no cost to the water well driller. No complaints of economic hardship or business impacts have been received during the collection of existing license fees. The water well drilling rig operator registration fee is \$25 per year. Annual continuing education costs about \$150 per year. The Wisconsin Water Well Association, representing many affected drillers, or individual drillers participating in the advisory committee to rule development, have not expressed any concern about the impact of the fees.

10. Effect on small business:

Economic impacts of this rule will be minimal. Actual costs to well drillers and pump installers are small and unlikely to affect decisions to offer a service or enter a business sector.

Overall economic impacts are uncertain. Additional protection of groundwater through better filling and sealing practices may reduce future costs of drinking water treatment or groundwater clean-up.

11. A copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats., for rules proposed by the Department of Veterans Affairs: [if not applicable, so state]
Not applicable.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary