

**Environmental Management Division
Bureau of Drinking & Groundwater
Water Use Program**

The attached draft guidance entitled “**Replacing, Reconstructing and Transferring Approved High Capacity Wells Under 2017 Wisconsin Act 10**” was developed to help Wisconsin Department of Natural Resources (WDNR) staff, well drillers, and property owners, understand and consistently apply the requirements under the newly enacted 2017 Wisconsin Act 10. 2017 Wisconsin Act 10 (Act) took effect on June 5, 2017 and created and amended several statutes pertaining to replacement, reconstruction, and transfer of previously approved high capacity wells. The new law allows well owners to conduct these activities without WDNR approval, provided the statutory criteria are met.

The WDNR’s Water Use Program is the primary state government entity responsible for the Act’s implementation. The WDNR is proposing this guidance to help department staff, high capacity well owners, and licensed well drillers/pump installers understand the changes to the law and how the Act will be implemented.

The WDNR is now soliciting public comments on this proposed guidance for a 21-day notice period. Once the 21-day notice period is complete, the WDNR will consider all comments, revise the guidance if needed, and make a copy of the final guidance available to the appropriate internal and external stakeholders.

Comments related to this draft guidance should be sent to:
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BUREAU OF DRINKING WATER & GROUNDWATER PROGRAM GUIDANCE

Water Use Program

Replacing, Reconstructing and Transferring Approved High Capacity Wells Under 2017 Wisconsin Act 10

Effective Date: XXXXX
Guidance #: DG-2018-001

Notice: This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

APPROVED:

Steve Elmore, Director
Bureau of Drinking Water and Groundwater

Date

A. Statement of Problem Being Addressed

This guidance is expected to improve consistency when implementing regulations under Wis. Stat. s. 281.34. Specifically, this guidance is intended to clarify the process and criteria under which a high capacity well owner can reconstruct, replace, or transfer a previously approved high capacity well following the enactment of 2017 Wisconsin Act 10 (Act). It will also be used to ensure that consistent messaging is conveyed by the Department of Natural Resources (WDNR).

B. Background & Discussion

2017 Wisconsin Act 10 took effect on June 5, 2017. The Act amended and created several statutes pertaining to replacement, reconstruction, and transfer of approved high capacity wells. The new law allows well owners to conduct these activities without WDNR approval and without paying any additional fee, provided the statutory criteria are met. Please note that Act 10 does not affect any applications or approvals required for public water supply systems, or school or wastewater treatment plant wells under Wis. Admin. Code Chapters NR 108, 810, 811, and 812, and this guidance does not address requirements under those chapters.

The Act also outlines department actions relative to a “designated study area” in parts of the Central Sands Region of the state. This guidance discusses only sections of the law relevant to requirements for high capacity well owners, and does not pertain to the “designated study area” provisions of the Act.

Prior to the implementation of the Act, well owners were required under Wis. Stat. s. 281.34(2), to receive department approval prior to replacing or reconstructing a high capacity well and, in the case of replacement wells, to submit a \$500 application fee.

The Act specifies that high capacity wells can be reconstructed, repaired, replaced, or transferred without an application fee or WDNR approval, although notification to the department must be submitted no later than 90 days after the action. In addition, the Act establishes several requirements for actions taken under its statutory authority. These include:

- Conditions included in the original approval continue to apply, including the previously approved pump capacity, to the replaced or reconstructed high capacity well (*Wis. Stat. [s. 281.34\(2g\)\(e\)](#)*).
- Any new high capacity well, constructed under Wis. Stat. s. 281.34(2g), is required to meet current well construction standards as outlined in Wis. Admin. Code Chapters NR 811 and NR 812 (*Wis. Stat. [s. 281.34\(2g\)\(a\)2.](#)*).
- Replacement or reconstructed high capacity wells must be drilled to substantially the same depth as the existing high capacity well (*Wis. Stat. [s. 281.34\(2g\)\(a\)2.b. & 3.](#)*).

- The replacement high capacity well must be either located within a 75-foot radius of the existing high capacity well, or be located farther from the nearest groundwater protection area than the existing high capacity well and may not be located within any other groundwater protection area (*Wis. Stat. s. [281.34\(2g\)\(a\)2.b.](#)*)
- In order for a replacement well to meet the criteria of the Act, the existing high capacity well (well being replaced) must be permanently filled and sealed within 90 days of the construction of the replacement well (*Wis. Stat. [s. 281.34\(2g\)\(c\).](#)*)
- The owner of a new high capacity well that is constructed in the designated study area outlined at ([link to website](#)) or who takes any action (Replacement, Reconstruction or Transfer) authorized by the Act in the designated study area must have a means to report readings of “a water meter showing the volume of water usage ... in gallons” (*Wis. Stat. [s. 281.34\(7m\)\(i\)](#)*)

C. Guidance

Well Repair & Maintenance

Under the Act, a high capacity well owner is allowed to repair and maintain an existing approved high capacity well without obtaining any additional approval (*Wis. Stat. s. 281.34 (2g)(a)1.*), provided that after the repair and maintenance the well still complies with the conditions of the existing high capacity well approval (*Wis. Stat. s. 281.34 (2g)(d)*). This statutory change codifies long standing department policy which allowed the repair and maintenance of existing approved high capacity wells as long as the repair and maintenance did not result in a well that is out of compliance with the conditions of its approval.

Well Reconstruction

The Act allows a high capacity well owner to “reconstruct the high capacity well, if the reconstructed high capacity well is constructed to substantially the same depth and specifications as the existing high capacity well” (*Wis. Stat. s. 281.34(2g)(a)3.*), without an application or approval from the department. “Reconstruct,” as defined by *Wis. Stat. s. 281.34(1)(ek)* means “to modify original construction including deepening, lining, installing or replacing a screen, and underreaming”.

The statutory language requires some level of interpretation by WDNR to properly and consistently implement the law, specifically in interpreting the phrase “substantially the same depth and specifications as the existing high capacity well”. These determinations will be made on a case by case and fact specific basis. In construing the phrase “substantially the same depth and specifications as the existing high capacity well,” the department will consider the depth of the reconstructed well as compared to the depth of the existing well and the construction specifications of the reconstructed well as compared to the construction specifications of the original well.

As an example, WDNR may conclude that a replacement well was drilled to “substantially the same depth and specifications” as the existing high capacity well if the well was constructed within the same aquifer, using about the same construction specifications, and to a depth that is essentially the same as the original well.

Reconstruction of an existing approved high capacity well that is **not** constructed to substantially the same depth and specifications of the existing approved high capacity well should follow the procedure for reconstruction which was in place prior to the Act:

1. The high capacity well owner or well driller should provide an email or other written documentation detailing the proposed reconstruction activities to the water use section.
2. The proposed reconstruction will be reviewed for compliance with the applicable Wisconsin Administrative Code well construction and pump installation requirements.
3. An email approving the code compliant well reconstruction will be sent to the well driller and property owner.
4. Licensed well driller submits a new well construction report to the department documenting the reconstruction.

Replacement Wells

Under the Act, an owner of an existing high capacity well is allowed to construct a replacement high capacity well, without submitting a new high capacity well application or undergoing department review, if it meets certain criteria. Listed below are the criteria established in the Act for a new well to qualify as a replacement well, and additional information about definitions and department verification procedures.

- The new high capacity well is constructed in accordance with current well construction standards at the date of construction. (Wis. Stat., s 281.34(2g) (a)2.)

The current well constructions standards at the date of construction are the applicable well construction standards specified in Wis. Admin. Code chs. NR 812 & NR 811, at the date of construction of the replacement well. This includes providing notification to the regional water supply specialist at least one work day prior to starting construction. A list of regional water supply specialists is available by searching keyword ‘Private water supply specialists’ at dnr.wi.gov.

- The existing high capacity well is properly filled and sealed, and notification is provided within 90 days. Notification must include the method by which the existing well was filled and sealed. (Wis. Stat. s. 281.34(2g)(a)2 & (c))

To provide the required notification within the 90 day time frame that the existing well (being replaced) was filled and sealed, a well abandonment report should be submitted by the licensed well driller/pump installer who performed the work. To ensure the well abandonment report is matched to the correct high capacity well,

please include the high capacity well number and the Wisconsin Unique Well Number of the well that is permanently filled and sealed.

- The replacement high capacity well is drilled to substantially the same depth as the existing high capacity well. (Wis. Stat. s. 281.34(2g)(a)2.b.)

The department's determination of whether a replacement well is constructed to "substantially the same depth" as the existing high capacity well will be made on a case by case and fact specific basis, using the same process as described in this guidance under "Well Reconstruction."

- The replacement high capacity well is still subject to the conditions included in the approval for the existing high capacity well. (Wis. Stat. s. 281.34(2g)(d))

A replacement well must still meet the conditions of the existing high capacity well, which means the replacement well must meet the well construction conditions (including any construction specifications) and the withdrawal conditions in the approval for the existing high capacity well.

- The replacement high capacity well is located either within a 75-foot radius of the existing high capacity well or is located farther from the nearest groundwater protection area (GPA) and not located within any other GPA. (Wis. Stat. s. 281.34(2g)(a)2.b.)

To verify that the location of the replacement well meets the above locational requirements, the department will compare the GPS locations of the existing and replacement high capacity wells using the follow information:

- *The location of the existing (original) high capacity well will be determined using the existing wells' Well Construction Report (if its GPS location was included on the construction report) and the latitude and longitude on the required well abandonment report submitted for the existing well.*
- *The location of the replacement well will be determined using the latitude and longitude submitted with the well construction report for the replacement well.*

In addition to the locational criteria above, in order for the replacement well to be consistent with the conditions of the approved existing high capacity well, the replacement well must be located on the same "one property"¹ as defined by Wis. Admin. Code, s. NR 812.07 (68), as the existing well. To ensure siting a replacement well meets the above criteria, a high capacity well owner or well driller can contact the department at 608-266-2299, or via email at DNRHICAPAPPLICATIONS@wisconsin.gov.

If the owner of a high capacity well does not follow the requirements for replacement wells specified in the Act, then the well does not meet the statutory criteria for a

¹ Wis. Admin. Code s. NR 812.07 (68), defines "One Property" as all contiguous land controlled by one owner, lessee, or any other person having a possessory interest. Lands under a single ownership bisected by highways or railroad right-of-ways are considered contiguous.

replacement well, and a high capacity well application and approval for the new well will be required.

Transfer of High Capacity Well

As part of the Act, Wis. Stat. s. 281.34(2g)(a)4., states that a new high capacity well approval is not required in order to transfer an approval, “concurrent with transferring the land on which the high capacity well is located, to the person to whom the land is transferred”. The new owner of the high capacity well shall notify the department no later than 90 days after the transfer, per Wis. Stat. s. 281.34 (2g)(c).

To comply with the Act, the new owner should notify the department within 90 days by completing the high capacity well ownership change form (form 3300-266) and mailing it to the department.

Department Notification

The department does not intend to create new forms for the post-construction notification process spelled out in the Act. The required notification when reconstructing or replacing an approved high capacity well may be accomplished by providing notification to the regional water supply specialist at least one work day prior to starting construction and through submittal of a Well Construction Report (WCR) for the reconstructed or replacement well and a Well Filling and Sealing Report (form 3300-005) for the well being replaced. To notify the department of a transfer of the high capacity well approval concurrent with the transfer of the land, the new well owner may complete form 3300-266 (entitled *High capacity well & surface water withdrawal system ownership change*). In addition, the department is developing web-based tools for well owners to notify the department when a change of ownership occurs for high capacity wells.

When completing a WCR for a replacement or reconstruction authorized by Act 10, the well driller or pump installer should mark section 2 of the WCR as either a replacement or reconstructed well, and include the WUWN of the well being replaced. If additional comments are required, for example, the documentation of contamination of the existing well, use the comment section on the replacements wells’ WCR. After submittal of the required form(s), the high capacity well owner will receive an updated listing of the sources on their property with the new high capacity well numbers and WUWN’s for the source(s) on their property.