



WISCONSIN DEPARTMENT OF NATURAL RESOURCES NOTICE OF FINAL GUIDANCE & CERTIFICATION

Pursuant to ch. 227, Wis. Stats., the Wisconsin Department of Natural Resources has finalized and hereby certifies the following guidance document.

DOCUMENT ID

DG-19-0004-C

DOCUMENT TITLE

2015 Wisconsin Act 177, Requirements for Certain Residential & Fire Protection Wells

PROGRAM/BUREAU

Drinking Water & Groundwater Program

STATUTORY AUTHORITY OR LEGAL CITATION

Section 281.34, Wisconsin Statutes

DATE SENT TO LEGISLATIVE REFERENCE BUREAU (FOR PUBLIC COMMENTS)

10/28/2019

DATE FINALIZED

12/23/2019

DNR CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

A handwritten signature in black ink, appearing to be 'Stanley'.

12/12/19

Signature

Date

DNR GUIDANCE DISCLAIMER

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. 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.

A. Statement of Problem Being Addressed

This guidance is expected to improve consistency when implementing regulations under s. 281.34, Wis. Stats., specifically to determine if a proposed or existing well meets the definition of a high capacity well after the enactment of 2015 Wisconsin Act 177. It will also be used to ensure that consistent messaging is being conveyed by the Department of Natural Resources (WDNR).

This guidance is proposed because statutory language does require some level of interpretation by the WDNR in order to properly and consistently implement the law. This guidance is designed to help property owners, well drillers, and WDNR staff, to determine when a proposed or existing well meets the new definition of a high capacity well. [s. 281.34 (1) (b), Wis. Stats.]

B. Background & Discussion

2015 Wisconsin Act 177 (Act), took effect on October 1, 2016 and the WDNR Water Use Program is the primary state government entity responsible for the Act's implementation. The Act created and modified several statutory definitions with the overall effect that certain residential and fire protection wells no longer meet the statutory definition of a high capacity well.

Under s. 281.34, Wis. Stats., a person must obtain approval from the WDNR before constructing or withdrawing water from a high capacity well. An owner must submit an application and \$500 fee to the WDNR to apply for a high capacity well.

Once approved by WDNR, high capacity wells are subject to additional requirements under s. 281.346, Wis. Stats., and corresponding chapters NR 850, 852, 856, and 860, Wis. Adm. Code. Under these chapters, high capacity wells are registered with WDNR and must record and report annual pumping data and are subject to annual water use fees. In addition certain withdrawals from the Great Lakes basin are subject to conservation measures, and water use permits.

As of October 1, 2016, the Act removed the following types of wells from the definition of "high capacity well":

- A "residential well," defined to mean a well that has a capacity of 100,000 gallons per day or less and that is used primarily to provide water to a single-family or multi-family residence.
- A "fire protection well," defined to mean a well that is used primarily for fire protection purposes.

As such the revised definition of *high capacity well*, [s. 281.34 (1)(b), Wis. Stats.], is as follows:

A high capacity well is defined as a well, except for a residential well or fire protection well, that, together with all other wells on the same property, except for

residential wells and fire protection wells, has a capacity of more than 100,000 gallons per day.

The statutory changes outlined above mean that high capacity well regulations, including requiring prior WDNR approval, are not required to construct a “residential well” with a capacity of less than 100,000 gallons per day, or a “fire protection well” even if it is on a property with other high capacity wells. Requirements to register or report water use for residential wells are no longer in effect due to the statutory changes.

In addition “residential wells” and “fire protection wells” are no longer considered for determining whether water use fees apply under s. 281.346 (12), Wis. Stats. This means that water use fees will no longer apply for these wells.

However, owners of fire protection wells are still required to register their withdrawals if the well will have the capacity to pump 100,000 gallons per day or more (70 gpm or greater) per s. 281.346 (3), Wis. Stats. This means the vast majority of fire protection wells will remain registered with the WDNR, and if the fire protection well is located in the Great Lakes basin water use permits may apply.

Even though prior WDNR approval is not required, property owners that intend to construct a residential well or fire protection well, as defined above, must comply with the state’s well notification requirements. [s. 281.34 (3), Wis. Stats.]

C. Guidance

The statutory language does require some level of interpretation by WDNR in order to properly and consistently implement the law. WDNR staff will have to determine whether a well meets the new definition of a high capacity well, specifically as it related to “multi-family residence” and “used primarily”, terms that are not defined in the Act.

The Water Use Program will determine the classification of a well by using the definition of “residential well” and “fire protection well” added to s. 281.34 Wis. Stats., by 2015 Wisconsin Act 177, in conjunction with the definition of “public water supply” in NR 809, Wis. Adm. Code and customer class definitions found in PSC 185, Wis. Adm. Code. The relevant definitions follow:

- “Commercial customer” means a business, not-for-profit organization, or other institution that provides goods or services and that takes service for non-residential purposes. [PSC 185.12 (3u)]
- "Multi-family residential customer" means a customer taking service for a building that is intended primarily for residential purposes, has three or more dwelling units. [PSC 185.12 (11m)]
- "Industrial customer" means a customer who is engaged in the manufacture or production of goods. [PSC 185.12 (10e)]

- "Public authority customer" means a customer that is a department, agency, or entity of the local, state, or federal government, including a public school, college, or university. [PSC 185.12 (17m)]
- "Non-residential customer" means any commercial, industrial, or public authority customer [PSC 185.12(12m)]
- "Public water system" means a system for the provision to the public of piped water for human consumption through pipes or other constructed conveyances, if the system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. A public water system is either a "community water system" or a "non-community water system." [NR 809.04 (67)]

The definition of "*used primarily*" means that the residential or fire protection well's water use will principally support that specific purpose. In cases where wells are used for multiple water uses (for example a well that serves both residential and dairy/livestock operations or a well that is used for both fire protection and agricultural irrigation), the owner or operator would need to demonstrate that the primary use of the well is for residential or fire protection use.

The attached flowcharts (Figures 1- 3) below provide guidance on determining whether a well meets the statutory definitions of a "residential well" or a "fire protection well".

Existing "residential wells" and "fire protection wells"

Prior to Act 177 the WDNR's Water Use Program tracked all high capacity wells, including low capacity residential wells and fire protection. The Water Use Program intends to flag all existing low capacity wells (pump capacity less than 100,000 gallons per day) designated with a water use code of DS11 (private / single residence potable use) and DS-12 (private / multiple residences, non-community use for less than 25 persons served) and remove their status as high capacity wells.

Fire protection wells, designated with a water use code of OT01, will also be flagged to eliminate the wells from consideration as high capacity wells similar to the DS-11 and DS-12 wells. The OT01 wells with a capacity greater or equal to 100,000 gallons per day will still be tracked in the water use data system for Great Lakes Compact implementation in accordance with s. 281.346 (3), Wis. Stats.

Figure 1: Act 177 Residential Well (Single Family)

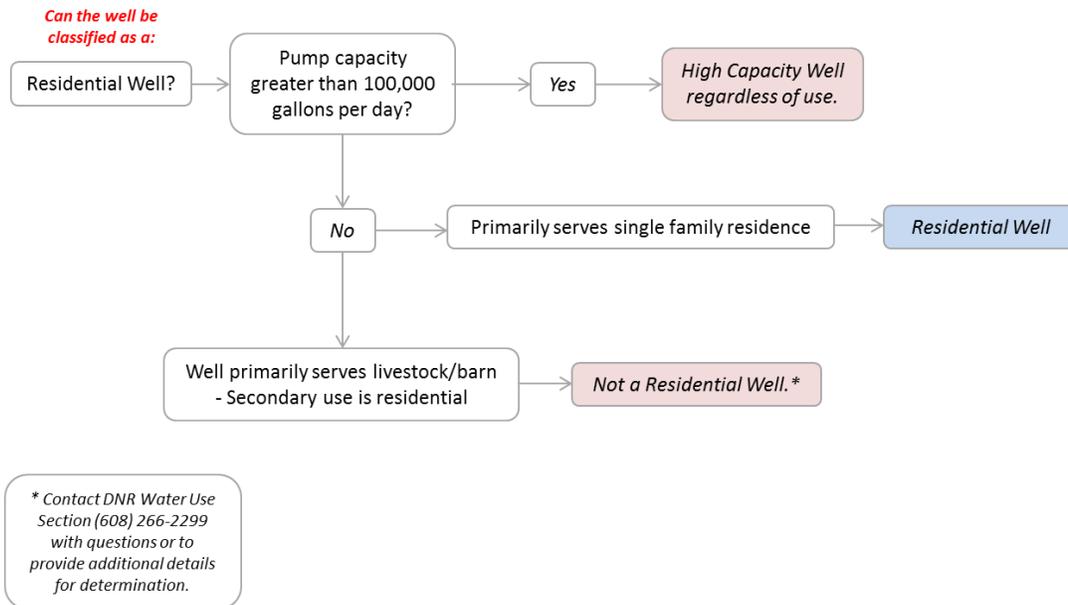


Figure 2: Act 177 Fire Protection Well

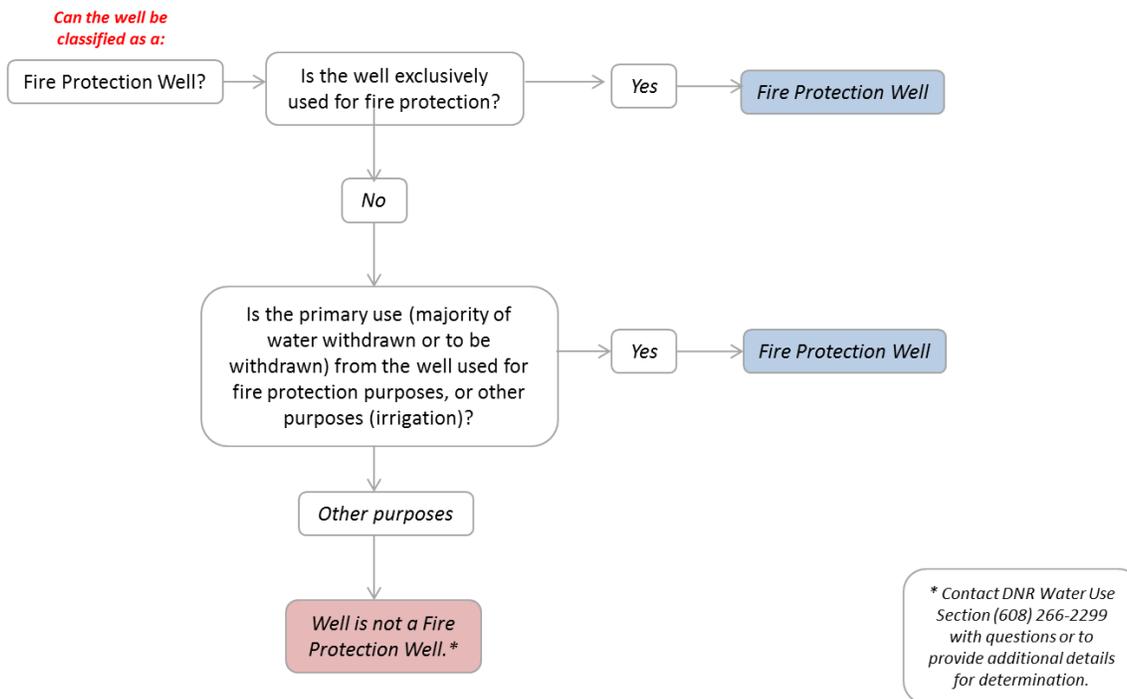


Figure 3: Act 177 Multi-Family Residential Well

