

## **TITLE 9 HEALTH AND SANITATION**

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### **CHAPTER 45 RELATING TO PRIVATE WATER SYSTEMS**

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#### **45.01 AUTHORITY AND ADOPTION.**

- (1) This ordinance is adopted under the authority of ss. 59.067 and 162.07, Wis. Stats., and Ch. NR 845, Wis. Admin. Code.
- (2) This ordinance is subject to the provisions of ss. 59.067 and 162.07, Wis. Stats., and all rules promulgated thereunder regulating private water systems.
- (3) This ordinance may not be more lenient nor more stringent than the rules promulgated pursuant to ch. 162, Stats.
- (4) Failure to comply with any of the provisions of such regulations shall constitute a violation of this ordinance, actionable according to the penalties provided herein.
- (5) This ordinance applies to the entire county and includes cities, towns, villages and sanitary districts in the county.

**45.02 JURISDICTION.** The provisions of this ordinance shall apply to all private water systems within Dane County.

**45.03 PURPOSE.** The purpose of this ordinance is to protect the drinking water and groundwater resources of the county by governing access to groundwater through regulating (1) private well location and (2) existing private water systems.

**45.04 INTENT.** The intent of this ordinance is to regulate (1) the locations of wells and (2) existing water systems and to provide for the administration and enforcement of this ordinance.

#### **45.05 EFFECTIVE DATE.**

- (1) This ordinance shall be effective July 1, 1987 for well location.
- [History: (2) rep., OA 29, 1995-96, pub. 12/06/95.]

**45.06 SEVERABILITY AND NON-LIABILITY.** If any section, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected. The county asserts that there is no liability on the part of the board of supervisors, its agencies or employees for any health hazards or damages that may occur as a result of reliance upon, and compliance with, this ordinance.

**45.07 REPEAL.** All other county ordinances or parts of ordinances inconsistent or conflicting with this ordinance, to the extent of the inconsistency only, are repealed.

**45.08 DEFINITIONS.** As used in this ordinance, the following words and phrases have the meanings indicated:

- (1) *Administrator* means the county employee designated by the county executive to issue permits for private well location and to administer ch. NR 812, Wis. Admin. Code, in the county as authorized by the department. The administrator is hereby empowered to delegate his or her authority under this ordinance to any or all of the certified well inspectors employed by the Department of Public Health for Madison and Dane County.

- (2) *Central office* means the department's bureau of water supply, located in Madison, which functions as the coordinating authority for the statewide water supply program.
- (3) *Community water system* has the meaning designated in s. NR 811.02(7), Wis. Admin. Code.
- (4) *County* means the County of Dane.
- (5) *County office staff* means county office personnel trained to answer general well location questions and to accept permit applications.
- (6) *Delegation level* means the program level, as set forth in s. NR 845.05, Wis. Admin. Code, at which a county is authorized to administer and enforce ch. NR 812, Wis. Admin. Code.
- (7) *Department* means the Department of Natural Resources of the State of Wisconsin.
- (8) *District office* means the department's office located in Madison, Wisconsin.
- (10) *Existing installations* has the meaning designated in ch. NR 812, Wis. Admin. Code.
- (11) *Health hazard* means a condition which constitutes:
- (a) A violation of ch. NR 812, Wis. Admin. Code, regarding the installation, construction, operation or maintenance of a private well; or
  - (b) Confirmed bacteriologically unsafe well water quality.
- (11m) *Large parcel* means, for the purpose of this ordinance, a parcel having dimensions such that all boundary lines cannot be shown on a sheet of paper not to exceed 8½ inches by 11 inches for a plan diagram that has a scale of 1-inch equals 100 feet or smaller.
- (12) *Noncommunity water system* means a public water supply system that serves at least 25 people at least 60 days each year. A noncommunity water system commonly serves a transient population rather than permanent year-round residents. This is typically an individual well serving a restaurant, industry, service station, tavern, motel, campground or church.
- (13) *Noncomplying well* means a private water system not in compliance with all provisions of ch. NR 812, Wis. Admin. Code, in effect at the time the well was constructed.
- (14) *Person* means an individual, corporation, company, association, cooperative, trust, institution, partnership, state, public utility, sanitary district, municipality or federal agency.
- (15) *Personal interest* means having a financial interest in a property or being related by marriage or birth to a person having a financial interest in a property.
- (16) *Primary drinking water standards* means those maximum contaminant levels which represent minimum public health standards set forth in ch. NR 809, Wis. Admin. Code.
- (17) *Private water system* means the water collection, storage and treatment facilities and all structures, piping and appurtenances by which water is provided for human consumption by other than community water systems. For the purpose of this ordinance, it includes non-community water systems.
- (18) *Private water systems ordinance* means a county ordinance, approved by the department, regulating private water systems at the county's authorized delegation level.

(19) *Private well* means, for the purpose of this ordinance, any drilled, driven point, dug, bored or jetted well-constructed for the purpose of obtaining groundwater for potable use, including wells constructed in special well casing depth areas, wells constructed to potable well standards regardless of the intended use of the well and noncommunity wells. It does not include springs, or private or public wells that require written plan approval from the department.

(20) *Public water system* has the meaning designated in ch. NR 812, Wis. Admin. Code.

(21) *Reconstruction* means modifying the original construction of a private well. It includes, but is not limited to, deepening, lining, installing or replacing a screen, underreaming, hydrofracturing and blasting.

(22) *Variance* means an approval issued by the department under ch. NR 812, Wis. Admin. Code, allowing a private water system to vary from ch. NR 812, Wis. Admin. Code, requirements if department approved conditions are met.

(23) *Water system* means the water collection, storage, treatment facilities and all structures, piping and appurtenances by which water is provided.

(24) *Well* has the meaning designated in ch. 162, Wis. Stats.

(25) *Well construction* means the procedures, methods, materials and equipment used during the construction or reconstruction of a private well.

(25m) *Well constructor* means any person who constructs a well.

(26) *Well location permit* means a permit, or comparable registration system, issued by the county which allows the construction or reconstruction of a private well.

[History: (1) am., Sub. 1 to OA 43, 1987-88, pub. 06/18/88; (9) rep., (12) am. and (25m) cr., OA 29, 1995-96, pub. 12/06/95; (11m) cr. and (19) am., OA 21, 2002-03, pub. 03/04/03; (1) am., OA 22, 2012-13, pub. 11/21/12.]

[45.09-45.10 reserved.]

#### **45.11 COUNTY RESPONSIBILITIES; PRIVATE WELL LOCATION PERMITS.**

In accepting Level 1 and Level 5 responsibility from the department, the county hereby agrees to:

(1) Issue permits authorizing the location of new and replacement private wells, including drilled, driven point, dug, bored or jetted wells, or the reconstruction or rehabilitation of existing private wells.

(2) Conduct inspections of wells for which well location permits are required as soon as possible after the well is constructed.

(3) Determine whether the casing height of a permitted well complies with ch. NR 812, Wis. Admin. Code, and that there is a cap or seal on the upper terminus of the well.

(4) Require the abandonment of wells not in service, or that will be taken out of service, if the well is unused, noncomplying or bacteriologically unsafe. The county may require abandonment of a well or drillhole as per s. NR 812.26, Wis. Admin. Code, or which has other chemical compounds, including inorganic and organic compounds, for which state health advisory limits have been issued, after consultation with and approval by the department.

(5) Require upgrading of all inspected private wells that are not in compliance with the minimum private well locational distances in ch. NR 812, Wis. Admin. Code.

[History: (intro.) am., OA 29, 1995-96, pub. 12/06/95; (4) am., OA 21, 2002-03, pub. 03/04/03; (4) am., OA 10, 2003-04, pub. 09/12/03.]

#### **45.12 COUNTY RESPONSIBILITIES; EXISTING PRIVATE WATER SYSTEMS.**

(1) On the request of a property owner or a lending institution, the administrator will conduct an evaluation of the well and collect a water sample for coliform bacteria analysis and, if also requested, collect a nitrate-nitrogen sample from the private water supply.

(2) The administrator will conduct a private water system evaluation whenever any water sample is collected as part of a complaint or problem follow-up, unless directed not to do so by the department.

(3) The administrator shall require upgrading of all inspected private water systems that are not in compliance with the minimum private well location standards of ch. NR 812, Wis. Admin. Code.

[History: 45.12 am., OA 29, 1995-96, pub. 12/06/95.]

**45.13 COOPERATION WITH OTHER UNITS.** The administrator shall cooperate with all other governmental units and agencies in the enforcement of all state and local laws and regulations pertaining to matters in this ordinance.

#### **45.14 ADMINISTRATOR.**

(1) The county director of environmental health shall act as the Dane County administrator and is assigned the duties of administering the private water system program in accordance with department rules.

(2) The administrator shall have the power and duty to enforce the provisions of this ordinance and all other ordinances, laws and orders of the county and of the State of Wisconsin which relate to the construction, alteration or installation of all private water systems within the county, at the county's authorized delegation level.

#### **45.15 QUALIFICATIONS OF ADMINISTRATOR.**

(1) The administrator shall be informed on the principles and practices of private well construction. If the administrator has a personal interest in the construction or modification of any well subject to the provisions of ch. 162, Wis. Stats., ch. NR 812, Wis. Admin. Code, or county ordinance, the county executive shall, after consultation with the department, designate another knowledgeable person to examine the application to issue the required permit(s) and to make the necessary inspections.

**45.16 POWERS OF ADMINISTRATOR.** The administrator shall have all the powers necessary to enforce the provisions of this ordinance commensurate with the level or levels of the county's delegated authority, including the following:

(1) In the discharge of his or her duties, the administrator or an authorized assistant may enter any building or property upon presentation of the proper credential, during reasonable hours for the purpose of inspecting the private water system and may request the owner or operator to produce the private well location required under this ordinance. No person may interfere with the administrator or an authorized assistant in the performance of his or her duties. Any person interfering shall be in violation of this

ordinance and subject to penalty as provided by this ordinance. If consent to enter property for inspection purposes is denied, the administrator may obtain a special inspection warrant under ss. 66.122 and 66.123, Wis. Stats.

(2) Order any person owning, operating or installing a private water system to abandon, repair or place it in a complying safe or sanitary condition if the system is found to be unused, bacteriologically unsafe or not in compliance with ch. NR 812, Wis. Admin. Code, or this ordinance.

(3) Prohibit the use of any new well which is found to be installed, located, constructed, operated or maintained so as to be a health hazard to the users, neighbors or community.

(4) Appoint assistants to aid in processing applications for well location permits.

(5) Enforce any or all ordinances applicable to private water systems in accordance with department rules.

(6) If the administrator of the private water systems ordinance or an authorized assistant determines that the location or construction of a private well does not comply with this ordinance, the administrator or assistant shall post, in a conspicuous place upon the site, a suspension of work order demanding cessation of work. The administrator shall notify the well constructor and property owner in writing of the noncompliance and the nature of the work to be discontinued and corrected, identifying the location and the name of the person issuing the order. It shall be a violation of this ordinance to engage in work at conflict with the terms of an order or to make an unauthorized removal of a posted order. Work may resume on the site only under the direction of the administrator.

[History: (3) am., OA 29, 1995-96, pub. 12/06/95.]

**45.17 DUTIES OF ADMINISTRATOR.** It shall be the duty of the administrator to enforce the provisions of this ordinance and perform the following duties commensurate with the level or levels of the county's delegated authority:

(1) Record all permits, fees, inspections and other official actions and make an annual report thereon to the county board of supervisors.

(2) Provide the department with copies of all permits and correspondence as required by ch. NR 845, Wis. Admin. Code.

(3) Inspect the location of new private water systems upon completion.

(5) Investigate and record all private water system complaints.

(6) Investigate cases of noncompliance with this ordinance, ch. NR 812, Wis. Admin. Code, and ch. 162, Wis. Stats., issue orders to abate the noncompliance and submit complaints to the corporation counsel for enforcement.

(7) Refer complaints and cases of noncompliance believed to be or known to be beyond the scope of the county's delegation level to the department.

(8) Cooperate with all other governmental units and agencies in the enforcement of all state and local laws and regulations of matters related to this ordinance.

(9) Assist the department as specified in ch. NR 845, Wis. Admin. Code.

(10) Refer variance requests and actions which require department approval to the department.

(11) Advise owners not to drink or use water from private water systems under conditions specified in ch. NR 845, Wis. Admin. Code.

(12) The administrator, a trained county inspector or county office staff shall be available at the administrator's office for answering questions regarding permit applications and for accepting applications for well location for a minimum of four regularly scheduled hours each working day.

[History: (4) rep., OA 29, 1995-96, pub. 12/06/95.]

*[45.18-45.20 reserved.]*

#### **45.21 REQUIREMENTS AND PERMITS.**

(1) No person may install a private well or water system unless the owner of the property on which the private water system is to be installed holds a valid well location permit issued by the county or has made arrangements to acquire a permit by notifying the administrator prior to construction. Notification shall include providing the administrator with the property owner's name and address, property legal description, proposed starting date and identification of the person who will be obtaining the permit. Unless other arrangements are made in advance, the permit shall be applied for on the first workday following initial construction.

(2) No private water system may be located, installed or operated within the jurisdictional limits of the county without the appropriate permit being obtained in compliance with sub. (1) above and without being in full compliance with the provisions of this ordinance and all other applicable state and local laws and regulations. Permit applications for the location of a well shall be made by the property owner or the property owner's designated agent. Permits shall be issued from the office of the administrator.

(3) The permit application shall be on forms provided by the administrator, and shall include the following:

(a) A site plan diagram. The plan diagram shall be submitted on paper not less than 8½ by 11 inches and shall include the location of all structures, septic tanks, septic absorption fields, underground fuel storage tanks, animal yards and other sources of contamination; at least one property line, the property access road and nearest public road. Distances shall be provided by dimension or to scale. For large parcels the plan must include a small-scale diagram showing all property lines and adjacent roads in addition to the large-scale diagram showing site details.

(b) A copy of any variance granted by the department including proof that the variance has been properly recorded.

(4) Well location permit applications shall be signed by the property owner or the property owner's designated agent. Well location permit applications shall be submitted to the administrator at least 2 working days prior to construction if the property owner or well constructor is interested in receiving information about potential contamination sources such as landfills, underground storage tanks, primary and replacement on-site sewage disposal system areas on the development site and on adjacent properties, and special casing areas. When a well permit application is submitted less than 2 working days prior to construction, the well constructor shall be responsible for maintaining full compliance with all provisions of ch. NR 812, Wis. Admin. Code. The permit application may be submitted by the property owner or the property owner's designated agent and shall be issued to the property owner.

**(5)(a)** The administrator shall assist applicants by answering questions and providing forms, reviewing applications and approve, disapprove or notify an applicant of the need to seek a variance or special approval from the department or return the permit application due to incompleteness for all private water systems to be constructed or modified in the county, within 2 working days following submission of the permit application. The administrator may reserve final approval or disapproval of a permit which requires department action until the variance or special approval request has been acted on by the department.

**(b)** If a permit is disapproved because an applicant submits an incomplete or inaccurate application, one-half of the application fee shall be retained by the county. Any reapplication shall require the same fee as a new application.

**(7)** The administrator shall issue written notice to each applicant whose permit application is disapproved. An application shall be disapproved if the well construction would result in noncompliance with ch. NR 812, Wis. Admin. Code, or if a well construction variance or special approval request was denied by the department. Each notice shall:

**(a)** State the specific reason for denial.

**(b)** Inform the applicant of the right to request a special approval or a variance from the department and the procedures for making such a request.

**(8)** When construction occurs on a weekend or holiday, notification shall be provided to the administrator on the first workday following the weekend or holiday in the same manner as described in sub. 4 above. Unless other arrangements are made with the administrator, the permit application shall be obtained on the first workday following the weekend or holiday. The well constructor shall be responsible for maintaining full compliance with all provisions of ch. NR 812, Wis. Admin. Code.

**(10)** A permit transfer application shall be submitted to the county when there is a change of property owner after the application is submitted but before well construction is completed. Failure to submit a transfer application to the county shall invalidate a previously issued permit. The application shall be on a form made available by the administrator.

**(11)** As soon as the well location permit is received it shall be displayed conspicuously at the well site during construction, for a minimum of seven (7) days following completion of construction or until the well has been inspected by county staff, whichever occurs first.

**(12)** A well location permit shall be valid for a period of one year or until construction is completed, whichever comes first. If the permit expires, a new application shall be submitted to the administrator. Reapplications shall be evaluated so that construction will comply with the provisions of ch. NR 812, Wis. Admin. Code, in effect at the time of the reapplication. The administrator may require additional inspection and fees for reapplications.

**(13)** A well location permit is not required nor shall be issued by the county for private water systems requiring written plan approval from the department.

**(14)** Any permit issued under this section shall be void if any false or inaccurate statement is made or if any inaccuracy is shown on any application for a permit.

**(15)** No permit may be issued to any property owner or designated agent of the property owner who is in violation of this ordinance, until the violation has been corrected, unless the permit is to allow correction of the violation.

**[History:** (5)(a) and (b) am., Sub. 1 to OA 43, 1987-88, pub. 06/18/88; (1), (2), (4), (5), (7), (8), (10), (11) and (15) am. and (6) and (9) rep., OA 29, 1995-96, pub. 12/06/95; (3) am., OA 21, 2002-03, pub. 03/04/03; (3)(a) am., OA 10, 2003-04, pub. 09/12/03.]

**45.22 APPEALS.** Persons seeking to appeal a decision of the administrator under this ordinance shall file written letters of appeal with the administrator. The administrator shall place the appeal on the agenda of the Board of Health for Madison and Dane County and the appeal shall be given a due process proceeding in accord with s. 46.17. The board shall decide whether to uphold, uphold with modifications or reverse the administrator's decision based upon the terms and intent of this ordinance and of relevant state laws and administrative rules. No appellate decision of the committee shall have the effect of approving an existing or proposed condition that would violate this ordinance or state law or administrative rule. Appeals that may only be approved by the granting of a variance to ch. NR 812, Wis. Admin. Code, shall be referred to the department pursuant to ch. NR 845, Wis. Admin. Code. Board appellate decisions shall be made in writing and shall be filed in the administrator's office. Appeals of decisions made by authorized agents on behalf of the administrator shall be made first to the administrator and then be appealable as provided herein.

**[History:** am., OA 22, 2012-13, pub. 11/21/12.]

**45.23 VIOLATIONS.** The administrator shall investigate violations of this ordinance and ch. NR 812, Wis. Admin. Code, at the county's authorized delegation level(s), issue orders to abate the violations and submit orders to the corporation counsel for enforcement.

**45.24 ADMINISTRATIVE DIRECTIVES AND ORDERS.**

(1) The administrator, after investigation and a determination that a violation exists, may issue a written field directive. This field directive may consist of a hand written note on an inspection report, or similar paper, identifying the violation that has occurred and assigning a date by which the violation must be corrected, and shall include the inspector's telephone number and office address.

(2) A formal letter may be issued which states the violation, the ordinance, administrative rule or statutory section violated, the date the violation was noted, the name of the inspector who noted the violation and the date by which the correction must be made.

(3) Upon discovery and after documentation of a violation, the administrator may issue a correction order. The administrator may use a stepped enforcement procedure by issuing a directive before an order or may proceed directly to issuing a correction order. An order shall include the following:

(a) The location of the violation (site).

(b) The name of the parties: owner, permittee, well constructor.

(c) The section of the ordinance and Wisconsin Administrative Code violated.

(d) The date of inspection of the site where the violation occurred.

(e) The name of the person who conducted the inspection which revealed the violation.

(f) The date by which the correction must be completed.

(g) The name of the person who must be contacted regarding subsequent inspection of the site.

(h) A statement that if the order is not complied with, the administrator will refer the violation to the corporation counsel with a recommendation to seek injunctive relief or forfeitures, or both, from the circuit court of Dane County. Orders must be signed by the administrator.

(i) Orders shall be served on the owner or well constructor by certified mail. Where appropriate, the administrator may request the sheriff to serve any particular order. The administrator shall report all orders that have not been complied with to the corporation counsel for enforcement.

**[History:** (3)(i) am., Sub. 1 to OA 43, 1987-88, pub. 06/18/88.]

#### **45.25 ENFORCEMENT ACTIONS.**

(1) An enforcement action may be brought by the corporation counsel against a person or persons for any of the following violations:

(a) Failure to comply with any provision of this ordinance;

(b) Failure to comply with any permit specification or requirement;

(c) Failure to comply with any directive or order issued by the county administrator;

(d) Resisting, obstructing or interfering with the county administrator's or an authorized assistant's actions undertaken pursuant to this ordinance.

(2) The county corporation counsel may, for any violation, seek injunctive relief or forfeitures of not less than \$50.00 nor more than \$200.00, or both, for each violation.

(3) Each day a violation exists is a separate offense.

(4) Any person who has the ability to pay any forfeiture entered against him or her under this ordinance but refuses to do so may be confined in the county jail until such forfeiture is paid, but in no event to exceed thirty (30) days. In determining whether an individual has the ability to pay a forfeiture imposed under this section, all items of income and all assets may be considered regardless of whether or not the income or assets are subject to garnishment, lien or attachment by judgment creditors under the laws of this state.

**[History:** (2) am., OA 16, 2000-01, pub. 02/05/01.]

*[45.26-45.50 reserved.]*

#### **45.51 FEE SCHEDULES.**

(1) The fee for a well siting permit shall be \$226.00.

(2) The fee for a transfer of a well siting permit shall be \$50.00.

(3) The fee for a re-inspection of a well site shall be \$148.00.

**(4)** Where work has begun to install a well before a well location permit has been obtained, the fee shall be doubled.

**[History:** (1) and (2) am., and (4) rep., OA 21, 2002-03, pub. 03/04/03; (1)–(3) am., OA 37, 2003-04, pub. 04/28/04; am., OA 25, 2006-07, pub. 12/29/06, eff. 01/01/07; (1) am., OA 31, 2009-10, pub. 11/25/09, eff. 01/01/10; (1)–(3) am., OA 22, 2012-13, pub. 11/21/12; (1) and (3) am., 2019 OA-15, pub. 11/20/19; (1)–(3) am., (4) cr., 2023 OA-67, pub. 01/02/24.]

*[45.52-45.99 reserved.]*

## **END OF CHAPTER**

**[History:** Ch. 45 cr., OA 4, 1987-88, pub. 09/14/87; references throughout chap. 45 to NR 11.03(2), NR 109, NR 112, NR 145 and NR 145.05 were changed to, respectively, NR 811.02(7), NR 809, NR 812, NR 845 and NR 845.05, OA 29, 1995-96, pub. 12/06/95.]