

CHAPTER 26

PRIVATE WATER SYSTEMS (WELL) ORDINANCE

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PRIVATE WATER SYSTEMS (WELL) ORDINANCE

26.01 Authority and Adoption.

- (1) This ordinance is adopted under the authority granted to Trempealeau County by ss. 59.70(6) and 280.21, Wis. Stats., and ch. NR 845, Wis. Adm. Code.
- (2) This ordinance is subject to the provisions of ss. 59.70(6) and 280.21, 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. 280, Wis. 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.

26.02 Jurisdiction.

The provisions of this ordinance shall apply to all private water systems within Trempealeau County pertinent to well location, existing private water systems and well and drillhole abandonment.

26.03 Purpose.

The purpose of this ordinance is to protect the drinking water and groundwater resources of the county through regulating new private well location, existing private water systems and well and drillhole abandonment.

26.04 Intent.

The intent of this ordinance is to regulate the location of newly constructed private wells, existing private water systems, the abandonment of all wells and drillholes, and the administration and enforcement of this ordinance.

26.05 Definitions.

In this ordinance:

- (1) “Administrator” means the Trempealeau County Department of Land Management Director or employee(s) designated by the Director to administer ch. NR 812, Wis. Adm. Code, pertinent to private well location and well and drillhole abandonment in the county as authorized by the Department.
- (2) “Central Office” means the Bureau of Drinking Water and Groundwater of the Wisconsin Department of Natural Resources, located in Madison, Wisconsin, 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(16), Wis. Adm. Code.
- (4) “Contaminant” means any physical, chemical, biological or radiological substance or matter in water.
- (5) “Department” means the Wisconsin Department of Natural Resources.
- (6) “Drillhole” has the meaning designated in ch. NR 845, Wis. Adm. Code.
- (7) “Emergency installation” has the meaning designated in ch. NR 845, Wis. Adm. Code.
- (8) “Existing installations” has the meaning designated in ch. NR 812, Wis. Adm. Code.
- (9) “Health hazard” means a condition, which constitutes:
 - (a) A violation of ch. NR 812, Wis. Adm. Code, regarding the installation, construction, operation or maintenance of a private well.
 - (b) Confirmed bacteriologically unsafe well water quality.

- (c) A threat to safety or groundwater quality.
- (10) “Noncommunity water system” means a public water supply system that is not a community water system. It serves at least 25 persons per day at least 60 days each year. A noncommunity water system commonly serves a transient population rather than permanent year-round residents. (Note: *Examples of a non-community water system include those serving schools, motels, restaurants, churches, campgrounds and parks.*)
- (11) “Noncomplying well” means a private water system not in compliance with all provisions of ch. NR 812, Wis. Adm. Code.
- (12) “Person” means an individual, corporation, company, association, cooperative, trust, institution, partnership, state, public utility, sanitary district, municipality or federal agency.
- (13) “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.
- (14) “Primary drinking water standards” means those maximum contaminant levels, which represent minimum public health standards, set forth in ch. NR 809, Wis. Adm. Code.
- (15) “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 noncommunity water systems.
- (16) “Private water system ordinance” means the county ordinance, approved by the Department, regulating private water systems at the county's authorized delegation level.
- (17) “Private well” means 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 and noncommunity wells. It does not include springs, or private or public wells that require written plan approval from the Department.
- (18) “Public Water System” has the meaning designated in ch. NR 811, Wis. Adm. Code.
- (19) “Reconstruction” means modifying the original construction of a private well. It includes but is not limited to deepening, lining, installing or replacing a screen, under-reaming, hydrofracturing and blasting.
- (20) “Region Office” means the Department office located in Eau Claire, Wisconsin.
- (21) “Uniform Private Water Systems Guidance Manual” means the manual prepared by the Department outlining county procedures for administering and enforcing ch. NR 812, Wis. Adm. Code.
- (22) “Variance” means an approval issued by the Department under ch. NR 812, Wis. Adm. Code, allowing a private water system to vary from ch. NR 812, Wis. Adm. Code, requirements if Department approved conditions are met, and strict compliance with ch. NR 812, Wis. Adm. Code, is not feasible.

- (23) “Water system” means the water supply, storage, treatment facilities and all structures and piping by which water is provided for any purpose.
- (24) “Well” has the meaning designated in s. 280.01(6), Wis. Stats.
- (25) “Well Construction” means the procedures, methods, materials and equipment used during the construction or reconstruction of a well.
- (26) “Well Location Permit” means the county/state well location permit issued by the county which allows for the construction or reconstruction of a private well.

26.06 County Responsibilities.

- (1) *Private Well Location Permit.* It is the county's responsibility to:
 - (a) 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.
 - (b) Conduct inspections of wells for which well location permits are required as soon as possible after the well is constructed.
 - (c) Determine whether the casing height of a permitted well complies with ch. NR 812, Wis. Adm. Code, and that there is a properly sealed vermin-proof cap or seal on the upper terminus of the well.
 - (d) Require the abandonment of wells not in service, or wells that will be taken out of service, if the wells are unused, noncomplying or bacteriologically unsafe. A county may require abandonment of a well with water exceeding a primary drinking water standard listed in ch. NR 809, Wis. Adm. Code, or other chemical compounds for which state health advisory limits have been issued including inorganic and organic compounds, after consultation with and approval by the Department.
 - (e) Require upgrading or replacement of all inspected private wells that are not in compliance with the minimum private well separation distances in ch. NR 812, Wis. Adm. Code, and wells where the casing height or well cap does not comply.
- (2) *Existing Private Water Systems.* It is the county's responsibility to:
 - (a) Follow up on all initial bacteriologically-unsafe sample results in the county, that the county is informed of, from all private water systems located in the county covered under this ordinance submitted to a laboratory certified by the Department of Agriculture, Trade and Consumer Protection under s. 299.11, Stats. Initial unsafe sample follow up shall consist of, at a minimum, a telephone contact or form

letter, but may be an on-site visit. The county shall advise the property owner what action should be taken and offer further assistance. Follow up on bacteriologically-unsafe results from samples analyzed by the State Laboratory of Hygiene need not be done by the county. If further assistance is requested following a second unsafe sample submitted to the State Laboratory of Hygiene or a laboratory certified by the Department of Agriculture, Trade and Consumer Protection, the county shall follow the procedures described in the uniform private water systems guidance manual. Problems with private water systems which require action beyond the authorized delegation level of the county shall be referred to the Department.

- (b) Annually inspect 10% of the existing noncommunity water systems located in the county. The county shall collect coliform bacteria and nitrate samples for the systems inspected each year and follow up on bacteriologically-unsafe samples and samples exceeding the primary drinking water standard for nitrates. Follow up procedures are described in the uniform private water systems guidance manual. When all non-community wells in the county have been inspected and sampled under this program, the county shall repeat the inspection and analysis procedure described in this paragraph.
 - (c) On the request of a property owner or a lending institution, conduct an inspection of the well and pump installation and collect a water sample for coliform bacteria analysis, and if also requested collect a nitrate-nitrogen sample, for the private water system.
 - (d) Conduct a private water system inspection and evaluation whenever any water sample is collected as part of a complaint or problem follow up unless authorized not to do so by the Department.
 - (e) Require upgrading of all inspected private water systems that are not in compliance with the minimum well location and pump installation standards of ch. NR 812, Wis. Adm. Code.
- (3) *Well and Drillhole Abandonment.* The county shall require the proper abandonment (filling and sealing) of wells and drillholes in accordance with standards established in s. NR 812.26, Wis. Adm. Code. The County may also require the abandonment of a well with water exceeding a primary drinking water standard listed in ch. NR 809, Wis. Adm. Code, or other chemical compounds for which state health advisory limits have been issued including inorganic and organic compounds, after consultation with and approval by the Department.

26.07 Administration.

The Trempealeau County Department of Land Management will administer ch. NR 812, Wis. Adm. Code, pertinent to private well location, including existing private water systems and well and drillhole abandonment in the county as authorized by the Department.

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 location, construction, alteration or installation of all private water systems and the abandonment of all wells and drillholes within the county, at the county's authorized delegation level.

- (1) *Qualifications of Administrator.* The Administrator shall be informed on the principles and practices of private well location, existing private water systems and well and drillhole abandonment.
- (2) *Powers.* 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:
 - (a) In the performance of his or her duties, the Administrator or an authorized assistant may enter any building or property upon presentation of the proper credentials, 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 permit required under this ordinance. No person may interfere with the Administrator or authorized assistants in the performance of their duties. Any person interfering shall be in violation of this ordinance and is subject to penalty as provided by this ordinance. If consent to enter a property for inspection purposes is denied, the Administrator may obtain a special inspection warrant under s. 66.0119(2), Wis. Stats.
 - (b) Order any person owning, operating or installing a private water system to abandon, modify, repair or replace it in a complying, safe and sanitary condition if the system is found to be unused, bacteriologically unsafe or not in compliance with ch. NR 812, Wis. Adm. Code, or the county ordinance.
 - (c) Prohibit the use of any new or existing private water system that is found to be installed, constructed, operated or maintained so as to be a health hazard to the users, neighbors or community.
 - (d) Appoint assistants to aid in processing activities associated with private well location, existing private water systems and well and drillhole abandonments.

- (e) Enforce any or all ordinances applicable to private water systems in accordance with Department rules.
 - (f) 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.
- (3) *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.
- (a) Record all permits, fees, inspections and other official actions, and make an annual report to the County Board of Supervisors.
 - (b) Provide the Department with copies of all permits, abandonment inspection forms and correspondence as required by ch. NR 845, Wis. Adm. Code.
 - (c) Inspect the location of new private water systems upon completion.
 - (d) Inspect existing water systems as required by ch. NR 845, Wis. Adm. Code.
 - (e) Investigate and record all private water system complaints related to the county's delegation level.
 - (f) Investigate cases of noncompliance with this ordinance, ch. NR 812, Wis. Adm. Code, and ch. 280, Wis. Stats., issue orders to abate the noncompliance and submit violations to the Corporation Counsel for enforcement.
 - (g) Refer complaints and cases of noncompliance that are believed to be or known to be beyond the scope of the county's delegation level to the Department.
 - (h) Cooperate with all other government units and agencies in the enforcement of all state and local laws and regulations of matters related to this ordinance.
 - (i) Assist the Department as specified in ch. NR 845, Wis. Adm. Code.

- (j) Refer variance requests and actions, which require Department approval to the Department.
- (k) Advise owners not to drink or use water from private water systems under conditions specified in ch. NR 845, Wis. Adm. Code.
- (L) The Administrator, a trained county inspector, or county office staff shall be available at the Administrator's office for answering questions regarding permit applications, existing private water systems, and well and drillhole abandonments for a minimum of four regularly scheduled hours each working day.

26.08 Permits.

- (1) No person may install a private well or reconstruct or rehabilitate an existing private well unless the owner of the property on which the private water supply system is to be installed holds a valid permit issued by the county or has received authorization from the county to proceed with the construction of the well.
- (2) No private well may be constructed within the jurisdictional limits of the county without the appropriate permit 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 well location permit application shall be on forms provided by the Administrator.
- (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 or installation if the 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. Where a well location 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. Adm. Code.
- (5) The Administrator shall assist applicants in preparing 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. A county may reserve final approval or disapproval action of a permit, which requires Department action, until the variance or special approval request has been acted on by the Department.

- (6) The Administrator shall issue written notice to each applicant whose permit application is disapproved. An application shall be disapproved if the well's construction would result in noncompliance with ch. NR 812, Wis. Adm. Code, or if a construction variance or special approval request was denied by the Department. Each notice shall:
 - (a) State the specific reason(s) 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.
- (7) In emergency situations well construction may proceed immediately without the required county permit provided the property owner or the property owner's designated agent gives notice to the Administrator prior to construction. Notification shall include the owner's name, address, property legal description, proposed starting date and identification of the person who will be obtaining the permit. Unless other arrangements are made with the Administrator, the permit shall be applied for on the first workday following initial construction. The well constructor shall be responsible for maintaining full compliance with all provisions of ch. NR 812, Wis. Adm. Code.
- (8) A permit transfer application shall be submitted to the county when there is a change of well constructor, or 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.
- (9) As soon as the well location permit is received it shall be displayed conspicuously at the well site during construction for a minimum of 7 days following completion of construction or until the well has been inspected by county staff, whichever occurs first.
- (10) A well location permit shall be valid for a period of one year or until construction is completed, whichever occurs 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. Adm. Code, in effect at the time of the reapplication. The Administrator may require additional inspection and fees for reapplications.
- (11) 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.
- (12) 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.

- (13) No permit may be issued to any property owner or well constructor who is in violation of this ordinance, until the violation has been corrected, unless the permit is to allow correction of the violation.

26.09 Appeals.

Persons seeking to appeal decisions 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 Trempealeau County Board of Adjustment and the appeal shall be given a due process proceeding. The Board of Adjustment 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 Board of Adjustment 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. Adm. Code, shall be referred to the Department pursuant to s. NR 845.09(11)(b), Wis. Adm. Code. The Board of Adjustment appellate decisions shall be made in writing and shall be filed in the Administrator's office. Appeals of decisions made by authorized agents on the behalf of the Administrator, shall be made first to the Administrator and then be appealable as provided herein.

26.10 Violations.

The Administrator shall investigate violations of the Private Water System Ordinance and ch. NR 812, Wis. Adm. Code, relating to the county's authorized delegation level(s), issue orders to abate the violations and submit orders to the Corporation Counsel for enforcement.

26.11 Administrator Directives and Orders.

- (1) *Field Directive.* 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) *Formal Directive.* A formal letter may be issued that identifies the violation; the ordinance, administrative rule or statutory section violated; the date the violation was noted; the inspector who noted the violation; and the date by which the correction must be made.
- (3) *Correction Order.* Upon discovery, and after documentation of a violation, the Administrator may issue a corrective 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 names of the parties involved such as the, owner, permittee, well constructor, or pump installer.
- (c) The section(s) of the ordinance and Wisconsin Administrative Code section(s) 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(s) 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 and/or forfeitures from the Circuit Court of Trempealeau County. (Orders must be signed by the Administrator of the private water system ordinance.)
- (i) Orders shall be served on the property owner by registered mail with return receipt. Where appropriate the Administrator may request the Trempealeau County Sheriff to serve any particular order.
- (j) The Administrator shall report all orders that have not been complied with to the Corporation Counsel for enforcement.

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

- (2) The Corporation Counsel may, for any violation, seek:
 - (a) Injunctive relief.
 - (b) Forfeitures of not less than \$100 nor more than \$2,000, or both for each violation. (Each day a violation exists is a separate offense.)
- (3) 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.

26.13 Fee Schedule for Permits and Inspections.

The private water systems inspection and permit fees will be established by the Trempealeau County Environment and Land Use Committee and may be modified by motion of that committee.

(History: Res. 2003-03-11; Res. 2016-06-04)