

## Chapter 28

# Private Water Systems Ordinance For Well And Drillhole Abandonment

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28.01 Title. This ordinance shall be known and cited as The Private Water System Ordinance of Kewaunee County.

28.02 Authority and Adoption.

- (1) This ordinance is adopted under the authority granted to the County by ss. 59.067 and 162.07, Wis. Stats., and ch. NR 845, Wis. Adm. 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, 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.

28.03 Jurisdiction. The provisions of this ordinance shall apply to all private water systems within Kewaunee County pertinent to well abandonment and drillhole abandonment.

- 28.04 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 well abandonment and drillhole abandonment.
- 28.05 Intent. The intent of this ordinance is to regulate well abandonment and drillhole abandonment and to provide for administration and enforcement of this ordinance.
- 28.06 Effective Date. This ordinance shall be effective upon its adoption by the Kewaunee County Board of Supervisors.
- 28.07 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 County 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.
- 28.08 Repeal. All other county ordinances or parts of ordinances inconsistent or conflicting with this ordinance, to the extent of the inconsistency only, are repealed.
- 28.09 Definitions.
- (1) *Administrator* means the county employee designated by the County Board of Supervisors to administer ch. NR 812, Wis. Adm. Code, pertinent to well abandonment and drillhole abandonment in the county as authorized by the Department.
  - (2) *Central Office* means the Bureau of Water Supply, 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(7), Wis. Adm. Code.
  - (4) *County office staff* means county office personnel trained to answer general well abandonment and drillhole abandonment questions.
  - (5) *Delegation level* means the program level, as set forth in s. NR 845.05, Wis. Adm. Code, at which a county is authorized to administer and enforce ch. NR 812, Wis. Adm. Code.
  - (6) *Department* means the Wisconsin Department of Natural Resources.
  - (7) *District Office* means the Department office located in Green Bay, Wisconsin.
  - (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. This is typically an individual well serving a restaurant, industry, service station, tavern, motel, campground or church.

- (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 ordinance* means a county ordinance, approved by the Department, regulating private water systems at the county's authorized delegation level.
  - (16) *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.
  - (17) *Public Water System* has the meaning designated in ch. NR 811, Wis. Adm. Code.
  - (18) *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.
  - (19) *Water system* means the water collection, storage, treatment facilities and all structure, piping and appurtenances by which water is provided.
  - (20) *Well* has the meaning designated in ch. 162, Wis. Stats.
  - (21) *Well construction* means the procedures, methods, materials and equipment used during the construction or reconstruction of a private well.
- 28.10 County Responsibilities. It is the county's responsibility to require the proper abandonment (filling and sealing) of wells meeting the criteria of s. NR 812.26(2), Wis. Adm. Code. The 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.
- 28.11 Cooperation. The county 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.

28.12 Administrator. The Kewaunee County Conservationist shall act as the Administrator of this ordinance and is assigned the duties of administering the private water systems program in accordance with Department rules.

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 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 well abandonment 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 credential, during reasonable hours for the drillhole abandonment. 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 a property for inspection purposes is denied, the administrator may obtain a special inspection warrant under ss. 66.122 and 66.123, Wis. Stats.
  - (b) Order any person owning, operating or installing a private water system to abandon it, if the well meets one of the criteria listed in s. NR 812.26(2) or Wis. Adm. Code.
  - (c) Enforce any or all ordinances applicable to private water systems in accordance with Department rules.
- (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) Provide the Department with copies of all abandonment inspection forms and correspondence as required by ch. NR 845, Wis. Adm. Code.
  - (b) Investigate and record all private water system complaints pertinent to well and drillhole abandonment.
  - (c) Investigate cases of noncompliance with this ordinance, ch. NR 812, Wis. Adm. Code, and ch.162, Wis. Stats., issue orders to abate the noncompliance, and submit violations to the District Attorney or County Corporation Counsel for enforcement.
  - (d) 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.

- (e) 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.
- (f) Assist the Department as specified in ch. NR 845, Wis. Adm. Code.
- (g) Refer variance requests and actions which require Department approval to the Department.
- (h) The Administrator, a trained county inspector or county office staff shall be available at the administrator's office for answering questions regarding well abandonment and drillhole abandonment for a minimum of four regularly scheduled hours each working day.

28.13 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 County Land & Water Conservation Committee and the appeal shall be given a due process proceeding in accord with s. 59.97(2)(e) of the Wis. Statutes. The Committee 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. Adm. Code, shall be referred to the Department pursuant to s. NR 845.09(11)(b), Wis. Adm. Code. Committee 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.

28.14 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 District Attorney or County Corporation Counsel for enforcement.

28.15 Administrator Directives and Orders.

- (1) *Field Directive*. The administrator, after investigation and a determination that a violation exists, may issue a written field directive, as well as an offer of cost-share assistance. 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 (no more than 60 days after the date the field directive was given) by which the violation must be corrected, and shall include the inspector's telephone number and office address.
- (2) *Formal Directive*. A formal letter (certified mail, return receipt requested) may be issued, which states the violation, the ordinance (administrative rule or statutory) section violated, the date the violation was noted, the inspector who noted the violation and assigning a date (no more than 90 days after the postmark date of the

formal directive) by which the correction must be made. An offer of cost-share assistance will also be included along with a formal directive.

- (3) *Correction Order.* Upon discovery and after documentation of a violation, the administrator may issue a correction order. A correction order does not require an offer of cost-share assistance. The administrator will use a stepped enforcement procedure by issuing a formal directive before issuing a correction order. A correction 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 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 (no more than 30 days after the postmark date of the correction order) 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 District Attorney or County Corporation Counsel with a recommendation to seek injunctive relief and/or forfeitures from the Circuit Court of Kewaunee County. Orders must be signed by the administrator of the private water system ordinance.
  - (i) Correction orders shall be mailed using certified mail, return receipt requested by the ordinance administrator.
  - (j) The administrator shall report all orders that have not been complied with to the District Attorney or the County Corporation Counsel for enforcement.

#### 28.16 Enforcement Actions.

- (1) An enforcement action may be brought by the District Attorney or County 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 directive or order issued by the county administrator.
  - (c) Resisting, obstructing or interfering with the county administrator's, or an authorized assistant's, actions undertaken pursuant to this ordinance.
- (2) The District Attorney or County Corporation Counsel may, for any violation, seek:
- (a) Injunctive relief.
  - (b) Forfeitures of not less than \$100. Each day of violation shall be considered 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 have the amount of the forfeiture added on to future tax bills; or 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.