

Report From Agency

REPORT TO LEGISLATURE

NR 146 and 812, Wis. Adm. Code

Board Order No. DG-02-13
Clearinghouse Rule No. 13-096

Basis and Purpose of the Proposed Rule

The proposed rule would create the specific requirement for heat exchange drilling to help protect sources of drinking water as well as consumers while enhancing the availability of alternate sources of energy for heating and cooling. Rules are necessary to interpret the provisions regarding heat exchange drilling, which is now regulated as a result of passage of 2011 Wisconsin Act 150. Wisconsin Act 150 will become effective 36 months after publication, or April 1, 2015, at which time heat exchange drilling cannot be done without a license.

The Department proposes to issue a single drilling license with authorizations available for either water well or heat exchange drilling or both. Construction requirements for heat exchange drilling will be proposed in the rule.

Construction of drillholes creates a connection from the land surface through layers of soil and rock to groundwater. Improper heat exchange drillhole construction can potentially result not only in contamination of groundwater used for drinking water supply but also in reduced energy efficiency and unnecessary business and consumer costs.

Summary of Public Comments

Comments were received on approximately 22 different items. Of those, 10 were general questions or requests for clarification of language; 5 related to technical procedures for drillhole construction; 4 were comments on matters beyond the scope of the rule; 3 were matters of policy. The policy matters were: (1) request to change the threshold determining whether a project was eligible for notification or needed individual approval; (2) request for alternate ways to meet drilling experience requirements; and (3) requirement that all drillholes be geolocated on projects needing individual approval.

Modifications Made

The most significant change to the rule order relates to the request for alternate ways to meet drilling experience requirements in addition to work under a water well driller. In consultation with Gateway Tech and other advisors, the department has modified the rule to accept drilling experience gained as part of formal degree or apprenticeship programs approved by the department as well as to accept an addition type of comparable environmental drilling experience.

Other changes include: requirement for GPS locations for all drillholes installed at projects requiring individual approvals; and modification of technical procedures for drillhole construction, including allowance of field-fabricated u-bends and modification to pressure-testing procedure.

Appearances at the Public Hearing

A total of 20 people attended the eight public hearings; four persons testified on the record regarding DG-02-13. Of the 20 hearing attendees, three indicated general support of the draft code changes (Mr. Jeff Beireiger representing Wisconsin Water Well Association; Mr. Terry Marshall representing Wisconsin Water Well Association and Mr. Bruce Walker representing himself), and one indicated opposition to the draft code changes (Mr. Tom Neisen representing Gateway Technical College).

Changes to Rule Analysis and Fiscal Estimate

No changes were made to the plain language rule analysis, the fiscal estimate or the economic impact analysis.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on December 12, 2013 related to Form, Style and Placement; Adequacy of References and Clarity, Grammar, Punctuation and Use of Plain language. All changes suggested by the Legislative Clearinghouse have been made with the exception that the phrase "and affecting small business," is not added to the relating clause. The determination that small businesses are not affected was made at the beginning of the rule process based on the following factors: (1) the majority of those involved in the drilling aspect of heat exchange systems are either already licensed or eligible to be licensed at no cost as of the effective date of the license requirement; (2) the rule proposal simplifies the current regulatory process for more than 80% of projects; and (3) the construction standards set in the rule are the same as the current conditions of the currently-required written approvals. No comments indicating a small business effect were received during review of the economic impact analysis, the public hearing process, or from the Small Business Environmental Council.

Final Regulatory Flexibility Analysis

The final regulatory flexibility analysis is not required as the small business regulatory review board did not determine that the rule will have a significant economic impact on a substantial number of small businesses.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.