

**Ann Diers**

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**From:** Pam Andersen [pandersen@dnr.ne.gov]  
**Sent:** Thursday, July 06, 2006 9:35 AM  
**To:** adiers@dnr.ne.gov; Susan France (sfrance@dnr.state.ne.us)  
**Cc:** Pam Bonebright (pbonebright@dnr.state.ne.us)  
**Subject:** RE: Letter to NARD/NRD Managers re 46-602

Ann,

I am attaching a redraft of your letter. They are only suggested changes, of course. The redraft is intended to be more explicit about what the change to 46-602.01 means and to say what DNR is going to do to implement it so that the letter can't be misinterpreted as just telling the NRDs what to do. Perhaps we should go one step further and tell the NRDs that are too permissive that we won't be registering replacement wells in their districts if the wells don't comply with 46-602.

Pam

-----Original Message-----

**From:** Ann Diers [mailto:adiers@dnr.ne.gov]  
**Sent:** Wednesday, July 05, 2006 2:33 PM  
**To:** Pam Andersen (pandersen@dnr.state.ne.us); Susan France (sfrance@dnr.state.ne.us)  
**Cc:** Pam Bonebright (pbonebright@dnr.state.ne.us)  
**Subject:** Letter to NARD/NRD Managers re 46-602

Pam and Susan:

Pam Bonebright emailed me late last week with her concern that some NRDs may have rules that, because they repeated the pre-July 14th statutory definition of a replacement well, may need to be revised to be compliant with the requirements in 46-602.01 going forward. I spoke with Ann Bleed about this, and she thought that we should probably send a communication with the forms that Pam B. indicated that she would be forwarding to the NRDs.

I learned today that the memo/forms went out on Friday. I reviewed the memo that went out, and it does not mention the issue that the NRDs should probably be considering.

I went ahead and prepared a draft letter that could be used as further correspondence on this issue, if Ann Bleed still wants a letter to be sent. Would you mind looking at the draft, and giving me any comments by Thursday noon? I will then let Ann know that the planned communication has already been sent, and see if she wants to go ahead with a separate letter.

Thanks.

Ann

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# DNR MEMO

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April 1, 2004

TO: Natural Resources Districts  
FROM: Roger Patterson  
SUBJECT: Replacement/Abandoned Wells

In January of this year, Department staff sent letters regarding replacement wells to certain water well owners in your District. Copies were provided to each related NRD. Specifically, the letters were sent to water well owners who had registered water wells as replacement wells with the Department, but who, in the fourteen months following construction of the new water wells, had not filed a notice of abandonment for the original wells with the Department. Since the letters were sent out, the Department has received many calls from water well owners, from water well contractors, and from natural resources district staff with questions and concerns.

The Department received numerous questions about the application of Neb. Rev. Stat. § 46-602 and the natural resource district's regulations in a variety of situations. It is our hope that this letter helps to answer those questions.

## **Neb. Rev. Stat. §46-602**

In order for the Department to properly register a well as a replacement well it must meet the requirements of Neb. Rev. Stat. § 46-602(2)(a)-(b) which reads in relevant part as follows:

.... For purposes of this section, replacement water well means a water well which (i) replaces an abandoned water well within three years after the last operation of the abandoned water well or replaces a water well that will not be used after construction of the new water well and the original water well will be abandoned within one year after such construction and (ii) is constructed to provide water to the same tract of land served by the water well being replaced.  
.... No water well shall be registered as a replacement water well until the Department of Natural Resources has received a properly completed notice of abandonment for the water well being replaced..."

Put simply, the Department cannot register a water well as a replacement water well if the well does not meet the requirements of § 46-602(2). The Department does not have the authority to grant variances to statutes or to waive the statutory requirements. Therefore, the Department must make sure that a water well registration form complies with all statutory requirements in order for the Department to properly register a well as a replacement well.

A natural resources district does have the authority to define for the District's purposes what constitutes a replacement water well. (See Neb. Rev. Stat. §§ 46-714(3)(h) and 46-739(6)(d)). The District's definition can be the same as the statutory definition, or it can be different. A natural resources district can also grant variances to its rules for good cause shown. However, it is very important to note that the District's definition **will not** impact the Department's

requirements under § 46-602(2). If the well does not meet the requirements of §46-602, the well will not be registered as a replacement well by the Department.

Based on the above analysis, the Department has made the following determinations with regards to well registration:

1. If the original water wells were not decommissioned within one year of construction of the new well, the new wells are the illegal wells—not the original wells.
2. If the new well is a replacement for surface water no longer being used, it is not a replacement well for the purposes of §46-602 even though it may fit the definition of a replacement well for purposes of a natural resource district's regulations.
3. If the water well owner now wants to make the original water well a stock or domestic well or a back up irrigation well, the new well cannot be registered as a replacement well because no well has been abandoned. In many instances, the new well can be legally registered if the natural resources district will give the landowner a new well permit.
4. If a natural resources district has a moratorium on new wells, it can choose to grant a variance to the moratorium.
5. If the natural resources district is within an area designated as fully or over appropriated, the NRD can choose to grant a variance for a new water well as long as the new use is offset.

Therefore, although water wells that were originally registered as replacement wells cannot now be registered as replacement wells, because the original well was not decommissioned within one year from construction of the new water well, there are several options, as outlined above, available to a natural resources district depending upon its rules, practices, and board decisions.

The Department has listed procedures below, for the registration of wells, that will generally apply to those natural resource districts that are similarly situated.

#### **Non Management Areas**

1. For those water wells that wereregistered as a replacement water well, but the well did not meet the statutory requirements for registration as a replacement water well, if the well is located within an area not included within a ground water management area, the Department shall notify the water well owner that he or she must file a Water Well Registration Modification form as required by §46-602(7) to show that their well is a new water well, not a replacement.
2. Once such a form is received, the Department will assign a new registration number to the new well.

3. If no modification form is received, the Department shall notify the water well owner that the water well is an illegal water well and order him or her to decommission the water well.
4. Copies of all letters and orders shall be sent to the local natural resources district.
5. The District, of course, has the ability to issue any orders concerning the illegal well that are consistent with the District's rules and regulations.

### **Ground Water Management Areas Not Subject to Moratoriums or Stays**

1. The Department will notify the water well owner that the new well cannot be registered as a replacement water well and request that the owner submit a Water Well Registration Modification form.
2. The form must be accompanied by a permit from the local natural resources district for a new water well (unless the well was constructed prior to the formation of the ground water management area).
3. Whether the District grants the permit will be up to each District.
4. The District can choose to modify the original permit for such well (if one exists) to show that it is a new well for purposes of water well registration, or the District can issue a new construction permit.
5. At the District's discretion, it may choose to say that for purposes of the District, the well will be a replacement well.
6. Each District must determine whether its rules, policies and board allow for such a designation.
7. If this designation is made on the permit, the Department will capture such designation in the Department's data base.
8. Once the Water Well Registration Modification form is received, the Department will assign a new registration number to the new well.
9. If the District chooses not to allow for a new well or to change the original permit, or if the water well owner fails to file a Modification form, the Department shall notify the water well owner that their water well is an illegal water well and order him or her to decommission the water well.
10. Copies of all letters and orders shall be sent to the local natural resources district.
11. The District, of course, has the ability to issue any orders concerning the illegal well that are consistent with the District's rules and regulations.

## Ground Water Management Areas Subject to Moratoriums or Stays

1. The Department will notify the water well owner that the new well cannot be registered as a replacement water well and request that the owner submit a Water Well Registration Modification form.
2. The form must be accompanied by a permit from the local natural resources district for a new water well (unless the well was constructed prior to the formation of the ground water management area).
3. Whether the District grants the permit will be up to each District.
4. If the water well is located in an area designated as fully or over appropriated, the District may have defined a replacement water well under the terms of Neb. Rev. Stat. § 46-714(3)(h) or § 46-739(6)(d).
5. The District may need to grant a variance to the stay under the terms of Neb. Rev. Stat. § 46-714(3)(j).
6. In such instances where variances are granted, the District must have a plan for the offsets required.
7. The District can choose to modify the original permit for such well (if one exists) to show that it is a new well for purposes of water well registration, or the District can issue a new construction permit.
8. The well may be a replacement well, pursuant to the provisions of District rules and regulations.
9. Each District must determine whether its rules, policies and board allow for such a designation.
10. If this designation is made on the permit, the Department will capture such designation in the Department's data base.

If a water well cannot come into compliance with the registration statutes, the Department will notify the water well owner that he or she must decommission the water well in compliance with Neb. Rev. Stat. §46-602(8) (or, if the District has declined to issue a permit, it may issue a cease and desist order or an order to decommission in accordance with District rules). If compliance is not forthcoming, such matter will be referred to the Attorney General pursuant to Neb. Rev. Stat. § 46-613.02 (Reissue 2004).

Once again, we hope this letter helps to clarify some of the outstanding questions and concerns regarding the applicability of Neb. Rev. Stat. §46-602 and the Departments procedures in registering water wells. Please let me know if you have any further questions regarding the above.