

## Ann Diers

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**From:** Ann Bleed [ableed@dnr.state.ne.us]  
**Sent:** Wednesday, December 29, 2004 10:20 AM  
**To:** Susan France; Ann Diers  
**Subject:** FW: Policies



Doc2.doc (35 KB)

Susan - I agree that the abandonment issue does not make a lot of sense but do we really want to get into the business of policing this stuff? Are there rules pertaining to when a well must be abandoned?

On the certified acres issue, I think this is the NRD responsibility, not ours. See the note on the document. Ann

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

**From:** Susan France [mailto:sfrance@dnr.state.ne.us]  
**Sent:** Wednesday, December 29, 2004 9:14 AM  
**To:** Ann Diers; Ann Bleed  
**Subject:** Policies

I added a couple of things. I would like to point out some problems and concerns.

The first is the law on replacements. If you abandon a well, you have three years to file and get a replacement. Even if you haven't used a well in 20 years, if you wait until after drilling a replacement to abandon the well, you can replace it. This doesn't make sense.

When staff call NRDs to see if they have certified acres to a person because the person is filing a modification and saying they are irrigating additional acres, the NRD says they don't care what is on the registration because the NRD is certifying the acres however they want and have their own data base. We need to get this together.

I am stretching the added policy on replacing a well where the original well was never used for the purpose the new well will be used for. We need to discuss this.

# DNR MEMO

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**Field Code Changed**

TO: Department Staff

FROM: Roger Patterson, Director

SUBJECT: Policies

Until further notice, the following shall be the policies of this Department.

*Cap I*

REPLACEMENT OF AN ILLEGAL WELL. Department staff shall not knowingly register a water well as a replacement well if the Department has knowledge that the original well was an illegal well. However, even if a well that does not meet all the requirements of a legal well does get registered, the action of registration alone does not make the well legal. If such a situation exists, the original well must be brought into compliance with applicable rules or laws such that it can be considered a legal well prior to any new well being registered as a replacement for such well. One example would be where the original well violates the spacing of a properly registered well.

*water WATER*

*5) defines illegal water well as*

DEFINITION OF AN ILLEGAL WELL. There are several places in Nebraska statutes that define an illegal well. Specifically Neb. Rev. Stat. 46-602(9) states, "Except for water wells which are used solely for domestic purposes and were constructed before September 9, 1993, and for test holes and dewatering wells used for less than ninety days, each water well which was completed in this state before July 1, 2001, and which is not registered on that date shall be an illegal water well until it is registered with the Department of Natural Resources." Neb. Rev. Stat. §46-706 also includes definitions of terms that are applicable. Neb. Rev. Stat. §46-706(5) states, Illegal water well means "(a) any water well operated or constructed without or in violation of a permit required by the Nebraska Ground Water Management and Protection Act, (b) any water well not in compliance with rules and regulations adopted and promulgated pursuant to the act, (c) any water well not properly registered in accordance with sections 46-602 to 46-604, or (d) any water well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws." Neb. Rev. Stat. §46-1207.01 also defines illegal water well. Thus, just because we have registered a water well does not make it a legal water well. For a well to be legal it must meet standards set out by all the laws that pertain to such well, whether the laws are found in statutes regulated by DNR, HHSS, DEQ, or NRDs.

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**Inserted:** where illegal well is defined. Specifically Neb. Rev. Stat. 46-602(9) states, "Except for water wells which are used solely for domestic purposes and were constructed before September 9, 1993, and for test holes and dewatering wells used for less than ninety days, each water well which was completed in this state before July 1, 2001, and which is not registered on that date shall be an illegal water well until it is registered with the Department of Natural Resources." Neb. Rev. Stat. §46-706 also includes definitions of terms that are applicable. Neb. Rev. Stat. §46-706(5) states, Illegal water well means (a) any water well operated or constructed without or in violation of a permit required by the Nebraska Ground Water Management and Protection Act, (b) any water well not in compliance with rules and regulations adopted and promulgated pursuant to the act, (c) any water well not properly registered in accordance with sections 46-602 to 46-604, or (d) any water well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws." Neb. Rev. Stat. §46-1207.01 also defines illegal water well. Thus, just because we have registered a water well does not make it a legal water well.

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**Inserted:** It must meet standards set out by all the laws that pertain to such well, whether the laws are found in statutes regulated by DNR, HHSS, DEQ, or NRDs.

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REPLACEMENT WELLS. The Department will not register a water well as a replacement well until such time as the original well has been properly decommissioned and the Notice of

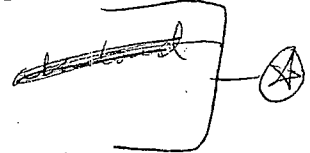
*Spell out in final policy*

has been

I don't see this as requiring

The Department interpret

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Abandonment form filed in the Department (Neb. Rev. Stat. §46-602(8)). The provisions of Neb. Rev. Stat. §46-602(2)(a and b) require either: (1) the original well to be decommissioned prior to the replacement well being drilled and the replacement well to be drilled within three years of the last operation of the original well; or, (2) the original well to be decommissioned within one year after the construction of the replacement well. When the Department receives a registration for a replacement well, and a Notice of Abandonment form for the original well is not on file, the Department will register the "replacement" well as a "suspense well." If, within 14 months from the date of construction of the "suspense" well the Department receives a Notice of Abandonment form for the original well, the Department will upon filing of the Notice of Abandonment change its records to reflect the "suspense well" is now a "replacement well." If no Notice of Abandonment form is received within that 14 month time period, the Department shall cause an investigation to be performed by staff to determine whether the original well has been decommissioned. If the original well has been decommissioned, the Department shall request the appropriate person to file a Notice of Abandonment. If the original well has not been decommissioned, the Department shall notify the water well owner that his well cannot be registered as a replacement well. At this point the owner could register the well as a new well, if any necessary permits from the NRD are obtained. If an NRD permit is not required, the Department shall just change the Department's records concerning the registration to indicate it is a new well and notify the owner of such change. If a permit is required from the NRD, the Department shall work with the NRD and the well owner to make a determination as to whether a permit can be issued and whether the water well can be properly registered.

suspense provided

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The Department will not register a water well as a replacement well if the original well was never used for such purpose as is proposed for the new well. The example is where the owner of an irrigation water well submits a modification form to change the use of the well to industrial. Soon thereafter a replacement well registration is submitted. In such cases where the modification to change use occurred within the 12 months prior to receiving a replacement well registration, Department staff will request written verification from the owner of the well that the original well was used for the same purpose as is proposed to be used by the new well.

new well will be used for a different purpose than the original well. (See Neb. Rev. Stat §46-602)

Comment: When a modification form is evaluated, aren't some of your concerns addressed? In other words, if the well is allowed to be modified in the first case, isn't that sufficient? If that is the case, I don't think we need to do any additional work.

**NOTICE OF ABANDONMENT FORMS FOR UNREGISTERED WELLS.** Under Neb. Rev. Stat. §46-602(8) any owner or water well contractor or pump installation contractor who decommissions a water well must file in the Department a Notice of Abandonment. If such a notice is filed in the Department for a water well that under the law was required to be registered, but was not registered, the Department shall request that the registration for such well be properly filed in the Department.

are to be filed with the Department, pursuant to

**MODIFICATION TO WATER WELL REGISTRATION INFORMATION.** Modifications to water well registration information is required by Neb. Rev. Stat. §46-602(7). In areas where there are stays or moratoriums on new wells or new irrigated acres or in areas where the natural resources district (NRD) is requiring certification of acres, if a modification is filed that expands the acres irrigated from the original acres, the Department shall contact the local NRD for their written concurrence on the number of acres. If a water well owner submits a modification stating the water wells have been tied together in a series, Department staff shall request written concurrence from the NRD that such action is in compliance with the NRDs policies and rules.

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Comment: Susan I don't think we need to go this extra step. The well registration database is what it is. It is the responsibility of the NRDs to certify acres etc. I think if we get into the business of trying to keep up with their certifications, it would really be onerous. If someone needs to know the number of acres that are certified, they should get an official record from the NRD. On the other hand, if the NRDs want to have the state well registration database as their official record, we could work with them on this. In such case, I would hope that they would be the one's to put the data in the database and they would be the ones responsible for its accuracy, not DNR. Ann.