

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:) **Administrative Cause**
) **Number: 23-WA-003**
READOPTION OF 312 IAC 12)
GOVERNING WATER WELL DRILLING)
AND GROUND WATER) **(LSA Document #23-68 (F))**

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULES

A. INTRODUCTION

For consideration is the readoption of 312 IAC 12 in its entirety, and without amendment. This article provides standards applicable to water well drillers and water well pump installers. 312 IAC 12 can be accessed through the Indiana General Assembly’s website at:
<http://www.in.gov/legislative/iac/T03120/A00120.PDF>.

If rules are readopted in their current form without amendments, 312 IAC 2-2-4(b) authorizes the Director of the Division of Hearings to approve preliminary adoption. The Commission retains authority to take final action on readoptions. The Director of the Division of Hearings approved preliminary adoption on January 3, 2023. The standard practice is to readopt rules by article, and 312 IAC 12 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IC 4-22-2.5-3.1 AND IC 4-22-2.1-5

Executive Order 13-03 requires agencies to “suspend rulemaking action on any proposed rules”. The Director of the Office of Management and Budget (OMB) has determined the moratorium set forth in Executive Order 13-03 was not applicable to readoptions.¹

¹ Indiana State Budget Agency email dated May 2, 2013, to heads of state agencies. OMB’s determination caused Financial Management Circular 2015-1 to be equally inapplicable to readoptions.

The OMB determined that the fiscal analyses, as specified in Financial Management Circulars 2010-4, are not required to be submitted to the OMB for State Budget Agency's approval if those analyses have been submitted to the OMB in a previous rule adoption or amendment.²

Mark Basch, Section Head (*Basch*) with the Department of Natural Resources, Division of Water, was appointed Small Business Regulatory Coordinator for this rule readoption. Basch provided the Hearing Officer with the analyses as required for the proposed readoption of 312 IAC 12.

REVIEW UNDER IC 4-22-2.5-3.1(c)

The continued need for the rule.

312 IAC 12 establishes minimum well construction standards for water wells as required under IC 14-25-4. Failure to comply with the minimum well construction standards preclude the owner of a nonsignificant ground water withdrawal facility from protection against the impacts caused by a significant ground water withdrawal facility under IC 14-25-4.

The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.

Few complaints are received by Department of Natural Resources (DNR) from the public or small business regarding implementation of 312 IAC 12 and are typically directed at the well driller's and/or plumber's lack of public notification of the provisions of 312 IAC 12 and IC 14-25-4.

The complexity of the rule, including any difficulties encountered by:

(A) the agency in administering the rule; or

(B) small businesses in complying with the rule.

312 IAC 12 was developed in cooperation with the Indiana Ground Water Association (IGWA) and the public which has generally resulted in easy administration and minimal compliance issues. Notification requirements by the well driller and pump installer have been somewhat difficult to administer by DNR; however, are now addressed by continuing education requirements set forth in IC 25-39, and recent amendments to 312 IAC 13 specifying minimum pump setting depths consistent with 312 IAC 12.

The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

312 IAC 12 is not believed to overlap, duplicate or conflict with other federal, state or local laws, rules, regulations or ordinances. The rule is consistent with the minimum well construction standards established by IC 25-39 and 312 IAC 13.

² OMB emails dated March 16 and March 24, 2017. OMB's determination effectively renders Executive Order 2-89 inapplicable to readoptions.

The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

312 IAC 12 was readopted in 2017 as LSA Document #17-134(F). No significant changes in technology, economic conditions or other factors in the area affected by the rule have occurred since that time.

On February 16, 2023, the analyses required under IC 4-22-2.5-3.1 were forwarded to the Legislative Council as required by IC 4-22-2-28(i).

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On February 15, 2023, the Notice of Intent to Readopt 312 IAC 12 was posted to the *Indiana Register* at 20230215-IR-312230068RNA as anticipated by IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 12 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately. No request was made.

The hearing officer recommends the Commission approve the readoption of 312 IAC 12, without amendment, for subsequent filing with the Publisher under IC 4-22-2-35 as authorized at IC 4-22-2.5-4(c)(1).

Dated: April 10, 2023



Billie Franklin
Hearing Officer