

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

**IN THE MATTER OF:** ) **Administrative Cause**  
 ) **Number: 23-WA-004**  
**READOPTION OF 312 IAC 13** )  
**GOVERNING WATER WELL DRILLERS** )  
**AND WATER WELL PUMP INSTALLERS** ) **(LSA Document #23-69(F))**

**RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULES**

**A. INTRODUCTION**

For consideration is the readoption of 312 IAC 13 in its entirety, and without amendment. This article provides for the placement of a well that is near a building. 312 IAC 13 can be accessed through the Indiana General Assembly’s website at:

<http://www.in.gov/legislative/iac/T03120/A00130.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 13 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.<sup>1</sup>

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<sup>1</sup> 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.<sup>2</sup>

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 13.

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

#### **The continued need for the rule.**

312 IAC 13 establishes procedures for the licensing of water well drillers and provides minimum construction standards for water wells as required under IC 25-39. Improper well construction could result in the contamination of the State's groundwater resources and potentially impact the health of Indiana's residents.

#### **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.**

Complaints regarding implementation of 312 IAC 13 typically involve Department of Natural Resources' (DNR) lack of investigation and enforcement capability with regard to non-licensure or improper well construction. Few complaints are received regarding the licensing procedures or the well construction standards.

#### **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 13 was developed in cooperation with the Indiana Ground Water Association (IGWS) which has generally resulted in easy administration and minimal compliance issues. Administration of the rule is also facilitated by continuing education requirements for drillers and pump installers set forth in IC 25-39.

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

312 IAC 13 is not believed to overlap, duplicate or conflict with other federal, state or local laws, rules, regulations or ordinances. Potential duplications or conflicts with other rules, regulations or ordinances have been addressed with exemption provisions.

#### **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.**

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

312 IAC 13 was recodified in 2017 as LSA Document #17-132(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 13 was posted to the *Indiana Register* at 20230215-IR-312230069RNA as anticipated by IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 13 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 13, 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