

## **Title 4. Environment and Natural Resources—Chapter 404**

### **WELL ABANDONMENT** **Tsi? Kahne·kóte Kayanl̄hsla** *our laws of the wells*

404.1. Purpose and Policy	404.5. Well Operation Permit
404.2. Adoption, Amendment, Repeal	404.6. Abandonment Procedures
404.3. Definitions	404.7. Penalties
404.4. Abandonment Required	404.8. Conflict with Federal

---

#### **404.1. Purpose and Policy**

404.1-1. The purpose of this law is to require the abandonment or upgrading of all unused, unsafe or noncomplying wells located within the exterior Reservation boundaries of the Oneida Nation to prevent contamination of groundwater.

404.1-2. The proper abandonment of wells protects public health, safety and welfare by assuring that unused, unsafe or noncomplying wells, or wells which may serve as conduits for contamination, or wells which may be illegally cross-connected to the municipal water system, are properly abandoned.

#### **404.2. Adoption, Amendment, Repeal**

404.2-1. This law was adopted by the Oneida Business Committee by resolution BC-8-31-94-A and amended by resolution BC-07-26-17-A.

404.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

404.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

404.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

404.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **404.3. Definitions**

404.3-1. All words used herein shall have their ordinary meaning unless specifically defined within this section.

404.3-2. Unless otherwise stated within this law, the following specific definitions shall apply:

(a) “Municipal water system” means a system for the provision to the public of piped water for human consumption when such system has at least 15 service connections or regularly serves at least 25 year-round residents owned or operated by a city, village, county, town, town sanitary district or public institution, or a privately owned water utility serving any of the above.

(b) “Noncomplying” means a well or a pump installation which does not meet the provisions of NR 112, Wis. Admin. Code.

(c) “Pump installation” means the pump and related equipment used for withdrawing water from a well including the discharge piping, the underground connections, pitless adapters, pressure tanks, pits, sampling faucets and well seals or caps.

(d) “Unsafe” means a well or pump installation which produces water which is bacteriologically contaminated or contaminated with substances exceeding the standards of chs. NR 809 or 140, Wis. Admin. Code, or for which a Health Advisory has been issued.

(e) “Unused” means a well or pump installation which has not been in use for three (3) months prior to the date of the adoption of this Law or has not had a functional pumping system for three consecutive months.

(f) “Well” means an excavation or opening into the ground made by digging, boring, drilling, driving, or other methods for the purpose of obtaining groundwater for consumption or other use.

(g) “Well Abandonment” means the filling and sealing of a well according to the provisions set out herein or by adoption within this code of §NR 112.26, Wis. Admin. Code.

#### **404.4. Abandonment Required**

404.4-1. All wells located on premises served by a municipal water system or, regardless of location, are unused or of noncomplying construction, shall be abandoned in accordance with the terms of this law and §NR 112.26, Wis. Admin. Code, unless a well operation permit has been obtained from the Oneida Environmental Health and Safety Division within three (3) months of adoption of this law, prior to opening a well after adoption of this law, or a renewal permit was granted within three months of expiration of prior permits.

#### **404.5. Well Operation Permit**

404.5-1. The Oneida Environmental Health and Safety Division may grant a yearly well operation permit to a private well owner to operate a well for a period not to exceed five (5) years, providing the conditions of this section are met. An owner may request renewal of a well operation permit by submitting information verifying that the conditions of this section are met.

404.5-2. The following requirements must be met prior to granting a permit

(a) A yearly water quality test is performed at the owner’s expense.

(b) The Oneida Environmental Health and Safety Division or its agent, may conduct inspections or have water quality tests conducted to obtain or verify information necessary for consideration of a permit application, on an annual basis for reverification, or upon request for permit renewal.

(c) Permit applications and renewals shall be made on forms provided by the Oneida Environmental Health and Safety Division.

404.5-3. The following conditions must be met for issuance or renewal of a well operation permit.

(a) The well and pump installation meet or are upgraded to meet the requirements of ch. NR 112, Wis. Admin. Code; and

(b) The well construction and pump installation have a history of producing bacteriologically safe water as verified by sampling histories. No exception to this condition may be made for unsafe well, unless the Oneida Environmental Health and Safety Division provides the appropriate form for the continued use of the well; and

(c) There are no cross-connections between the well and pump installation and the municipal water system; and

(d) The proposed use of the well and pump installation will be reviewed on a case by case basis.

#### **404.6. Abandonment Procedures**

404.6-1. All wells abandoned under the jurisdiction of the Oneida Nation shall be abandoned according the procedures and methods set out herein and supplemented in §NR 112.26, Wis. Admin. Code. Provided that, any notification within the state regulation shall be superseded and integrated as reasonable with the notification procedures herein.

404.6-2. The owner of the well, or the owner's agent, shall notify the Oneida Environmental Health and Safety Division at least 48 hours prior to the commencement of any well abandonment activities. The abandonment of the well may be observed by the Oneida Environmental Health and Safety Division, or its designated agent.

404.6-3. A well abandonment report will be completed and submitted by the owner's agent, to the Oneida Environmental Health and Safety Division within 10 days of the completion of the well abandonment. The well abandonment report form is available from the Oneida Environmental Health and Safety Division.

404.6-4. All debris, pump, piping, unsealed liners and any other obstructions which may interfere with sealing operations shall be removed prior to abandonment.

#### **404.7. Penalties**

404.7-1. Any well owner or agent violating any provision of this law shall be subject to forfeiture of not less than \$100 nor more than \$1,000. Each day of violation is a separate forfeiture. Provided that each forfeiture be proven individually.

404.7-2. Failure to comply with this law within ten (10) working days after receiving written notice of this violation, the Oneida Nation may impose a penalty and cause the well abandonment to be performed at the expense of the well owner.

404.7-3. It shall be a valid defense to any continuing forfeiture that the well owner has begun procedures to abandon the well and shall be by sworn affidavit that notice has been presented to the Oneida Environmental Health Program of approved well abandonment procedure.

406.7-4. Contested Action Hearings. All citations, penalties, forfeitures, orders and declarations issued pursuant to this law shall include a pre-hearing date with the Judiciary Trial Court which shall be set for the next scheduled monthly prehearing date that is at least thirty (30) days after the citation was issued. Persons wishing to contest a citation shall appear at the prehearing, at which time the Judiciary Trial Court shall accept pleas which either contest or admit committing the act for which the citation was issued. The Judiciary shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the prehearing, for all persons entering a plea contesting the fact that they committed the act for which a citation was issued. In addition to scheduling requested hearings, the Judiciary may also make conditional orders at the prehearing which are effective until the matter is resolved.

(a) Community Service. Community service may be substituted for fines at the Judiciary's discretion, provided that, if so substituted, the Judiciary shall use the rate of one (1) hour per ten dollars (\$10.00) of the fine.

(b) Allocation of Citation Revenue. All fines and penalties issued by citations are payable to the Environmental Resource Board or its designee, the proceeds of which the

Environmental Resource Board shall contribute to the Nation's general fund.

(c) Appealing the Decision of the Judiciary Trial Court. Any person wishing to contest the determination of the Judiciary Trial Court may appeal the applicable determination to the Judiciary's Court of Appeals in accordance with the Rules of Appellate Procedure.

(d) Pursuing Payment of a Citation. The Environmental Resource Board may pursue payment from parties who have failed to make the required payments through the garnishment process contained in the Garnishment law and/or by attaching a Tribal member's per capita payment pursuant to the Per Capita law.

**404.8. Conflict with Federal.**

404.8-1. Should any part of this law be found to be in conflict with federal requirements which are required in order that the Oneida Nation receive federal funds, the conflicting section of this law is to be considered inoperative only for the purpose of the particular funding and that particular conflict. Provided that any consideration in regards to federal funding does not undermine the purposes and policies of this law. Such conflict shall not affect the operation of the remainder of this law in its application to those agencies or department directly affected.

---

Adopted - BC-8-31-94-A  
Amended – BC-07-26-17-A