



**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Environment...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

**State of Wisconsin
Department of Natural Resources**

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Board Order No.: DG-23-10
Clearinghouse Number CR10-061
Subject of Rules: Water Use Fees
Date of Transmittal: August 18, 2010

Send a copy of any correspondence or notices pertaining to the rule to:

**Linda Haddix
Department Rules Coordinator
101 South Webster, LS/8
P O Box 7921
Madison, WI 53707-7921**

**An electronic copy of the proposed rules submittal may be obtained by
contacting: Linda.haddix@wisconsin.gov**

REPORT TO LEGISLATURE

NR 850, Wis. Adm. Code

Board Order No. DG-23-10
Clearinghouse Rule No. 10-061

Basis and Purpose of the Proposed Rule

Section 281.346 (12)(c), created in 2009 Wisconsin Act 28, directs the Department to promulgate a rule specifying an annual fee for persons who withdraw more than 50 million gallons per year from the waters of the Great Lakes basin. Revenue from the fee will be deposited to an appropriation funding the implementation of the Great Lakes Compact in the state.

Section 281.346 (12) also provides that any person with a water supply system anywhere in the state with the capacity to withdraw an average of 100,000 gallons per day in any 30-day period must pay to the Department an annual base fee of \$125. The fee imposed in this rule for persons withdrawing more than 50 million gallons per year from surface or groundwater in the Great Lakes basin will be in addition to the base fee.

This rule clarifies that the annual \$125 base fee will cover all water supply systems on one property or a single public water supply, and the rule implements an additional Great Lakes basin-specific fee on persons who withdraw more than 50 million gallons of water per year (MGY).

Summary of Public Comments

The department received relatively few oral or written comments on NR 850. Comments reflected both support and opposition for the \$9,500 annual cap on the fee; concerns that the department review the fee over time to ensure that it raises revenue sufficient to fund water use program needs; questions related to how the fee revenue would be spent; and comments suggesting that the fee should not apply to certain types of withdrawals. Please see Attachment 1 to this report for a full discussion of the comments and corresponding department responses.

Modifications Made

The rule was changed to accommodate Legislative Council Rules Clearinghouse changes, including amending the fee descriptions so that the list of fees applies to the specific break points of 50 million gallons and above.

Appearances at the Public Hearing

Five hearings were held to solicit comments. The hearings were held jointly with the hearings for NR 856 Water Use Registration & Reporting and NR 852 Water Conservation and Water Use Efficiency. All of the hearings were held at 6:00 p.m. The first hearing was in Milwaukee on June 28, 2010. The hearings in Green Bay and Ashland were conducted together using videoconferencing on June 29, 2010. The final two hearings in Wausau and Madison were also conducted together using

videoconferencing on June 30, 2010. A total of 18 persons filled out appearance slips at the 5 hearings; and three persons provided oral comments.

The following table lists the persons who attended at least one of the hearings, and their stated position, if any, on the rules.

Hearing Participant	Oral Statement	Position			
		In support	In opposition	As interest may appear	None indicated
Patrick Harrington – Representing Wisconsin Rural Water Association (WRWA)					X
Dan Peplinski				X	
Mike Hahn – Representing Southeastern Wisconsin Regional Planning Commission		X			
Ed Glatfelter – Representing Alliance for the Great Lakes	X			X	
Kenneth Graves – Representing Georgia Pacific				X	
Randy Kraemer				X	
Heidi Schmitt Marquez		X			
Dean Freeberg					X
Trevor Petermann				X	
Julie Maas					X
Eric Van Laanen – Representing WRWA					X
Edward Hendzel – Representing WRWA					X
Mary Vendiola – Representing Midwest Environmental Advocates	X			X	
Ed Morse – Representing WRWA					X
Darrin Pope – Representing Vierbicher				X	
Tom Lochner – Representing Wisconsin State Cranberry Growers Association	X		X		
Jeff LaBelle			X		
Andrew Aslesen – Representing WRWA			X		

Changes to Rule Analysis and Fiscal Estimate

None.

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Dan Peplinski				X	
Mike Hahn – Representing Southeastern Wisconsin Regional Planning Commission		X			
Ed Glatfeltér – Representing Alliance for the Great Lakes	X			X	
Kenneth Graves – Representing Georgia Pacific				X	
Randy Kraemer				X	
Heidi Schmitt Marquez		X			
Dean Freeberg					X
Trevor Petermann				X	
Julie Maas					X
Eric Van Laanen – Representing WRWA					X
Edward Hendzel – Representing WRWA					X
Mary Vendiola – Representing Midwest Environmental Advocates	X			X	
Ed Morse – Representing WRWA					X
Darrin Pope – Representing Vierbicher				X	
Tom Lochner – Representing Wisconsin State Cranberry Growers Association	X		X		
Jeff LaBelle			X		
Andrew Aslesen – Representing WRWA			X		

Changes to Rule Analysis and Fiscal Estimate
None.

Attachment 1: NR 850 Water Use Fee Comment Summary

Comment: (From a coalition of environmental groups) “The proposed fee schedules for both statewide fees and fees for very large withdrawals should be reviewed and adjusted over time to ensure that they are sufficient to meet the scope and needs of the programs implementing the Great Lakes Compact.”

Department Response: The department will annually review fee revenue in an effort to ensure that the department collects sufficient revenue to cover its approved expenditure authority for program implementation.

Comment: “WAA (Wisconsin Aquaculture Association) is concerned with the water use fees in the Great Lakes Basin (GLB) which are set up for “Withdrawals” for users of more than 50 Million Gallons of Water per year. The concern is that some fish farms located in the GLB could be charged the annual fee for artesian flow of water which occurs naturally on their farms. ... The activity of aquaculture occurs within the water, it does not “take” nor does the process of “taking” occur. ... We are suggesting a provision in NR 850 that clearly defines that aquaculture does not “withdraw” water, does not engage in the “withdrawal” of water and therefore is not subject to the annual fees. Additionally, a fish farm property may also have artesian flow, springs and surface water that is not utilized and simply flows through the location and but (sic) could be subject to the fee structure. The effect of these fees, if applied to the aquaculture activities, artesian flow, springs or surface water, would make their facilities economically unfeasible and therefore they would close their businesses. The administrative rule would put out of business those facilities that are currently good stewards of the watershed.”

Department Response: “Withdraw” means to take water from surface water or groundwater [s. 281.346(1)(y), Stats.]. When someone withdraws water it is taken out of or redirected from its natural course, making it unavailable for other purposes. In-stream water uses are not considered withdrawals, nor is the temporary impoundment of water that does not redirect water from its natural course. Some older aquaculture facilities, for example, are constructed directly in a natural spring pond or stream channel. These facilities would not be considered withdrawals. The department will work with each facility to determine if a facility has a withdrawal or would be classified as an in-stream use. Additionally, the tiered fee structure was designed to ameliorate—to the extent possible—the impact on small businesses under the assumption that small businesses generally pump less water than large businesses.

There is no suggestion in the statute directing the department to promulgate a fee rule that fees should differ depending on the size of the business withdrawing the water; or that any business should be exempted, and the department assumes that the Legislature intended that the department apply the fee evenhandedly based on the size of the withdrawal, rather than the size of the business.

Comment: (Wisconsin Rural Water Association) Provide some explanation as to what would be funded with the close to \$1 million to be raised annually by these

Response to Legislative Council Rules Clearinghouse Report

The department made all changes recommended by the Legislative Council Rules Clearinghouse.

Final Regulatory Flexibility Analysis

The fee imposed in this rule on persons withdrawing more than 50 million gallons per year will primarily affect public water systems, power companies, and large industrial water users. Small businesses that will be affected include agricultural operations, including irrigation, livestock, and aquaculture. The department lacks comprehensive data regarding water withdrawals; however, the data the department does have suggests that relatively few small businesses withdraw more than 50 million gallons per year.

Small businesses that withdraw an average of 100,000 gallons of water per day or more in any 30-day period must report their calendar year water usage to the department by March 1 of the following calendar year. Minimal computer skills will be necessary to report the amount of water withdrawn annually. Fees based on the amount of water withdrawn must be paid by June 30th. The department is developing an on-line reporting mechanism for water withdrawals that is expected to be easy to use and take little time to complete.

Attachment 1: NR 850 Water Use Fee Comment Summary

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Department Response: The department will annually review fee revenue in an effort to ensure that the department collects sufficient revenue to cover its approved expenditure authority for program implementation.

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Department Response: “Withdraw” means to take water from surface water or groundwater [s. 281.346(1)(y), Stats.]. When someone withdraws water it is taken out of or redirected from its natural course, making it unavailable for other purposes. In-stream water uses are not considered withdrawals, nor is the temporary impoundment of water that does not redirect water from its natural course. Some older aquaculture facilities, for example, are constructed directly in a natural spring pond or stream channel. These facilities would not be considered withdrawals. The department will work with each facility to determine if a facility has a withdrawal or would be classified as an in-stream use. Additionally, the tiered fee structure was designed to ameliorate—to the extent possible—the impact on small businesses under the assumption that small businesses generally pump less water than large businesses.

There is no suggestion in the statute directing the department to promulgate a fee rule that fees should differ depending on the size of the business withdrawing the water, or that any business should be exempted, and the department assumes that the Legislature intended that the department apply the fee evenhandedly based on the size of the withdrawal, rather than the size of the business.

Comment: (Wisconsin Rural Water Association) Provide some explanation as to what would be funded with the close to \$1 million to be raised annually by these

proposed fees (the annual statutory fee of \$125 and the proposed tiered fee on Great Lakes basin withdrawals exceeding 50 million gallons per year.

Department Response: The revenue from the fees will fund all aspects of Great Lakes Compact implementation, including:

- Staffing related expenditures for up to 4 full-time employees and 2 limited term employees (LTE) to implement all aspects of the Compact, including the registration & reporting; water use permitting; water supply service area planning; water loss, and water conservation & water use efficiency programs statewide;
- Database development and maintenance, including expenditures for a water use database; Web-based on-line registration and reporting systems; and Geographical Information Systems (GIS) development to help the department compile and depict a water resources inventory of the location, quantities, and uses of waters of the state -- to help us sustainably manage those resources.
- Surface water and groundwater monitoring and mapping to provide continuous data for the water resources inventory and statewide water use management decisions.

The Legislature provided \$924,400 in expenditure authority for state fiscal year 2011. The fee structure is designed to provide sufficient revenue to cover the expenditure authority, with a small allowance for margin of error, given that the department must make several assumptions regarding water use throughout the state in the absence of sufficient data.

Comments: (Wisconsin Rural Water Association) “[A]lthough the water use fee structure as proposed in section NR 850.04(2) seems reasonable for the most part, we are opposed to a cap on such fees as proposed in NR 850.04(4). By proposing an increasing fee structure it would appear that the intent of this regulation is to provide some incentive for water systems to limit withdrawals and undertake conservation measures. However, by proposing a cap for the largest water users, it forces the medium-sized users and their customers to, in effect, subsidize the largest withdrawers from the basin and would appear to eliminate any incentive whatsoever on their part once the cap is met.”

(Wisconsin Paper Council) “The proposed fees in NR 850 are higher than those contained in NR 142 (repealed as part of this rulemaking). However, given the programmatic issues at hand, the fees do not appear to be unreasonable. A key factor in this assessment is the \$9,500 cap on fees for water withdrawals within the Great Lakes basin. Absent this cap, fees on some paper companies could rise to the \$40,000 - \$70,000 per year range. We strongly support the \$9,500 fee cap and urge that it be retained in the final rule.”

Department Response: The department proposed a cap of \$9,500 to help avoid an undue economic impact on any individual withdrawer. Additionally, the increasing block rate structure minimizes the impact on those entities pumping less than 500 million gallons per year (compared to a flat rate structure of, e.g., \$4 per million gallons over 50 million gallons per year—which would be necessary to raise an

equivalent amount of revenue.) Although the fee may, in some cases, help encourage persons to conserve water by using less or using it more efficiently, at \$9,500 the cap is unlikely to financially prevent many persons from using more water when their business or operation demands it. However, because the department is seeking to generate approximately \$400,000 annually from the Great Lakes basin-specific fee on persons withdrawing over 50 million gallons per year, setting a cap at \$9,500 (as opposed to a much higher cap) results in the majority of persons paying a somewhat higher fee than they would were the cap raised.

Comment: (Wisconsin Transportation Builders Association and Aggregate Producers of Wisconsin) "As it is currently drafted, NR 850 fails to account for withdrawals that are, in effect, repetitive use of the *same gallon of water* from the same Basin source."

Department Response: Fee calculations will be based on reported water use. The department added language to the proposed NR 856 (Water Use Registration & Reporting) to clarify that water that is reused on a property is not to be included in the monthly volumes of withdrawal. The department will work with all industries to develop a consistent approach for measuring withdrawals versus water reuse.

equivalent amount of revenue.) Although the fee may, in some cases, help encourage persons to conserve water by using less or using it more efficiently, at \$9,500 the cap is unlikely to financially prevent many persons from using more water when their business or operation demands it. However, because the department is seeking to generate approximately \$400,000 annually from the Great Lakes basin-specific fee on persons withdrawing over 50 million gallons per year, setting a cap at \$9,500 (as opposed to a much higher cap) results in the majority of persons paying a somewhat higher fee than they would were the cap raised.

Comment: (Wisconsin Transportation Builders Association and Aggregate Producers of Wisconsin) "As it is currently drafted, NR 850 fails to account for withdrawals that are, in effect, repetitive use of the *same gallon of water* from the same Basin source."

Department Response: Fee calculations will be based on reported water use. The department added language to the proposed NR 856 (Water Use Registration & Reporting) to clarify that water that is reused on a property is not to be included in the monthly volumes of withdrawal. The department will work with all industries to develop a consistent approach for measuring withdrawals versus water reuse.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal s. NR 142.03 (4) and to create ch. NR 850 relating to water withdrawal fees in the Great Lakes basin and affecting small business.

DG-23-10

Analysis Prepared by the Department of Natural Resources

- 1. Statute interpreted:** Section 281.346 (12), Stats.
- 2. Statutory authority:** Sections 227.11 (2)(a) and 281.346 (12), Stats.
- 3. Explanation of agency authority:** Section 227.11 (2)(a) gives state agencies general rulemaking authority. Section 281.346 (12)(c) directs the Department to promulgate a rule specifying the amount of an annual fee to be paid by persons who withdraw from the Great Lakes basin more than 50,000,000 gallons of water per year.
- 4. Related Statute or Rule:** This rule relates to implementing the provisions of the Great Lakes—St. Lawrence River Basin Water Resources Compact (Compact) in Wisconsin pursuant to sections 281.343, 281.346; and 281.348, Stats. Revenue from the fees assessed pursuant to this rule will be deposited to a program revenue appropriation dedicated to funding Compact implementation activities in the state.
- 5. Plain language analysis:** The proposal contained in this order repeals a provision of an existing rule that provided authority to assess water withdrawal fees on persons making withdrawals from the waters of the state in amounts averaging 100,000 gallons per day or more in any 30-day period. Those fees ranged from \$35 to \$500 dollars depending on the amount of the withdrawal. However, the fee program and the associated registration program were not implemented by the Department.

Under the provisions of s. 281.346 (12), as created in 2009 Wisconsin Act 28, beginning in 2011, any person with a water supply system anywhere in the state with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period must pay to the Department an annual fee of \$125. This rule clarifies that the annual \$125 fee will cover all water supply systems on one property or a single public water supply. Section 281.346 (12)(c) further directs the Department to promulgate a rule specifying an additional annual fee for persons who withdraw more than 50,000,000 gallons per year from the waters of the Great Lakes basin—that is, from surface water or groundwater within the land area of the state draining to Lakes Michigan or Superior, or from those lakes. The proposed fee would increase per 50 million gallon increment as shown in the following table:

Great Lakes Basin-Specific Fee for Withdrawals > 50 MGY	
Amount Withdrawn	Fee Per Million Gallons
> 50 MGY to 100 MGY	\$1.50
100 MGY to 150 MGY	\$2.00
150 MGY to 200 MGY	\$2.50
200 MGY to 250 MGY	\$3.00
250 MGY to 300 MGY	\$3.50
300 MGY to 350 MGY	\$4.00
350 MGY to 400 MGY	\$4.50
400 MGY to 450 MGY	\$5.00
450 MGY to 500 MGY	\$5.50
500 MGY +	\$6.00

The fee would not exceed \$9,500 annually for withdrawals from a water supply system on a contiguous property or a public water system. The fees specified in this rule will be assessed on a calendar year basis and will be due to the Department by June 30th of the following calendar year.

6. **Federal regulatory analysis:** There are no comparable federal regulations pertaining to fees for water withdrawals.
7. **Comparison with rules in adjacent states:** The following table compares water withdrawal fees in adjacent states.

Water Withdrawal Fee Comparison				
Wisconsin	Illinois	Iowa	Michigan	Minnesota
<p>\$125 statutory fee—statewide—for water supply systems with the capacity to withdraw an average of 100,000 gallons-per-day or more in any 30-day period. Proposed additional annual fee for Great Lakes Basin withdrawals exceeding 50 million gallons per year. The proposed fee would be assessed at an inclining rate in tiers of 50 million gallons as follows:</p> <p>(>50 – 100) \$1.50/mil. (100 – 150) \$2/mil. (150 – 200) \$2.50/mil. (200 – 250) \$3/mil. (250 – 300) \$3.50/mil. (300 – 350) \$4 /mil. (350 – 400) \$4.50/mil. (400 – 450) \$5/mil. (450 – 500) \$5.50/mil.</p> <p>(Above 500) \$6/mil. The fee would not exceed \$9,500 annually for withdrawals from one property or public water system.</p>	<p>No annual water use fee.</p>	<p>Iowa charges an annual water use fee to each water use permittee designed to generate \$500,000 each year. Permits are required for persons that withdraw at least 25,000 gallons in a 24-hour period during a calendar year; and the same fee is charged to each permittee. For 2009, the annual fee was \$135 for each permittee.</p>	<p>\$200 annual reporting fee for withdrawals exceeding 100,000 gallons per day averaged over a consecutive 30-day period. (No annual fee for withdrawals for agricultural use.)</p>	<p>\$140 minimum annual water use fee for withdrawals between 0 and 50 million gallons.</p> <p>Marginal fee rates for withdrawals exceeding 50 million gallons per year as follows:</p> <p>(>50 – 100) \$3.50/mil. (100 – 150) \$4/mil. (150 – 200) \$4.50/mil. (200 – 250) \$5/mil. (250 – 300) \$5.50/mil. (300 – 350) \$6/mil. (350 – 400) \$6.50/mil. (400 – 450) \$7/mil. (450 – 500) \$7.50/mil. (Above 500) \$8/mil.</p> <p>Maximum Annual water use fees:</p> <p>\$750 for any single agricultural irrigation permit; \$50,000 for an entity w/3 or fewer permits; \$75,000 for an entity w/4 to 5 permits; \$250,000 for an entity with > 5 permits; \$250,000 for a city of the first class; \$10,000 for a municipality that furnishes electric service and steam for home heating.</p>

Great Lakes Basin-Specific Fee for Withdrawals > 50 MGY	
Amount Withdrawn	Fee Per Million Gallons
> 50 MGY to 100 MGY	\$1.50
100 MGY to 150 MGY	\$2.00
150 MGY to 200 MGY	\$2.50
200 MGY to 250 MGY	\$3.00
250 MGY to 300 MGY	\$3.50
300 MGY to 350 MGY	\$4.00
350 MGY to 400 MGY	\$4.50
400 MGY to 450 MGY	\$5.00
450 MGY to 500 MGY	\$5.50
500 MGY +	\$6.00

The fee would not exceed \$9,500 annually for withdrawals from a water supply system on a contiguous property or a public water system. The fees specified in this rule will be assessed on a calendar year basis and will be due to the Department by June 30th of the following calendar year.

6. **Federal regulatory analysis:** There are no comparable federal regulations pertaining to fees for water withdrawals.
7. **Comparison with rules in adjacent states:** The following table compares water withdrawal fees in adjacent states.

Water Withdrawal Fee Comparison				
Wisconsin	Illinois	Iowa	Michigan	Minnesota
<p>\$125 statutory fee—statewide—for water supply systems with the capacity to withdraw an average of 100,000 gallons-per-day or more in any 30-day period. Proposed additional annual fee for Great Lakes Basin withdrawals exceeding 50 million gallons per year. The proposed fee would be assessed at an inclining rate in tiers of 50 million gallons as follows:</p> <p>(>50 – 100) \$1.50/mil. (100 – 150) \$2/mil. (150 – 200) \$2.50/mil. (200 – 250) \$3/mil. (250 – 300) \$3.50/mil. (300 – 350) \$4 /mil. (350 – 400) \$4.50/mil. (400 – 450) \$5/mil. (450 – 500) \$5.50/mil.</p> <p>(Above 500) \$6/mil. The fee would not exceed \$9,500 annually for withdrawals from one property or public water system.</p>	<p>No annual water use fee.</p>	<p>Iowa charges an annual water use fee to each water use permittee designed to generate \$500,000 each year. Permits are required for persons that withdraw at least 25,000 gallons in a 24-hour period during a calendar year; and the same fee is charged to each permittee. For 2009, the annual fee was \$135 for each permittee.</p>	<p>\$200 annual reporting fee for withdrawals exceeding 100,000 gallons per day averaged over a consecutive 30-day period. (No annual fee for withdrawals for agricultural use.)</p>	<p>\$140 minimum annual water use fee for withdrawals between 0 and 50 million gallons.</p> <p>Marginal fee rates for withdrawals exceeding 50 million gallons per year as follows:</p> <p>(>50 – 100) \$3.50/mil. (100 – 150) \$4/mil. (150 – 200) \$4.50/mil. (200 – 250) \$5/mil. (250 – 300) \$5.50/mil. (300 – 350) \$6/mil. (350 – 400) \$6.50/mil. (400 – 450) \$7/mil. (450 – 500) \$7.50/mil. (Above 500) \$8/mil.</p> <p>Maximum Annual water use fees:</p> <p>\$750 for any single agricultural irrigation permit; \$50,000 for an entity w/3 or fewer permits; \$75,000 for an entity w/4 to 5 permits; \$250,000 for an entity with > 5 permits; \$250,000 for a city of the first class; \$10,000 for a municipality that furnishes electric service and steam for home heating.</p>

- 8. Summary of the factual data and analysis that support the proposed rule:**
Based on available data and assumptions, the Department projects that the \$125 annual fee will apply to approximately 4900 properties and generate just over \$600,000 annually; and the proposed fee on withdrawals exceeding 50 million gallons per year will apply to approximately 200 to 250 properties in the Great Lakes basin and generate approximately \$390,000 annually.
- 9. Analysis and supporting documentation in support of the determination of the rule's effect on small business:** The Department lacks complete data on the number and nature of all operations withdrawing water above the threshold amount of 50 million gallons per year. However, based on the withdrawal data that does exist (e.g. high capacity well pumpage data), comparatively few small businesses will be affected by the rule.
- 10. Effect on small business:** The \$125 annual fee will affect hundreds of small business throughout the state. However, the fee imposed on withdrawals exceeding 50 million gallons per year is expected to primarily affect public water systems, power companies, and large industrial operations in water-intensive industries. The rule will affect an unknown number of small businesses that withdraw more than 50 million gallons of water per year from waters within the Great Lakes basin; however the Department estimates that there are relatively few small businesses that withdraw water at levels exceeding the threshold amounts.
- 11. Agency contact person:**
Eric Ebersberger, DG/5
Wisconsin Department of Natural Resources
Bureau of Drinking Water & Groundwater
Water Use Section
(608) 266-9254
Eric.Ebersberger@wisconsin.gov
- 12. Place where comments are to be submitted and deadline for submission:**
Comments are to be submitted to Kristy Rogers, Bureau of Drinking Water & Groundwater, P.O. Box 7921, Madison, WI 53707-7921 by July 7, 2010.

SECTION 1. Section NR 142.03 (4) is repealed.

SECTION 2. Chapter NR 850 is created to read:

**CHAPTER NR 850
WATER USE FEES**

NR 850.01 Purpose
NR 850.02 Applicability

NR 850.03 Definitions
NR 850.04 Fees

NR 850.01 Purpose. The purpose of this chapter is to implement s. 281.346 (12), Stats., by establishing annual fees for water withdrawals from the Great Lakes basin of more than 50,000,000 gallons per year and by specifying procedures for assessing and collecting the fee specified in s. 281.346(12)(a).

Note: Section 281.346(12)(a) provides that "A person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period shall pay to the department an annual fee of \$125, except that the department may promulgate a rule specifying a different amount."

NR 850.02 Applicability. This chapter applies to any person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period, and to persons who withdraw more than 50,000,000 gallons of water per year from the waters of the state within the Great Lakes basin using a water supply system or systems on one property, or using a public water supply.

NR 850.03 Definitions. In this chapter:

(1) "Department" means the department of natural resources.

(2) "Great Lakes basin" has the meaning specified in s. 281.346(1)(je), Stats.

Note: Section 281.346(1)(je), Stats., defines "Great Lakes basin" to mean "the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec, within the jurisdiction of the parties."

(3) "One property" "has the meaning specified in s. NR 812.07(68).

Note: Section NR 812.07(68), Wisc. Adm. Code, defines "one property" to mean "all contiguous land controlled by one owner, lessee, or any other person having a possessory interest. Lands under single ownership bisected by highways or railroad right-of-ways are considered contiguous."

(4) "Person" has the meaning specified in s. 281.346(1)(nm), Stats.

Note: Section 281.346(1)(nm), Stats., defines "person" to mean "an individual or other entity, including a government or a nongovernmental organization, including any scientific, professional, business, nonprofit, or public interest organization or association that is neither affiliated with nor under the direction of a government."

(5) "Public water supply" has the meaning specified in s. 281.346(1)(pm), Stats.

Note: Section 281.346(1)(pm), Stats., defines "public water supply" to mean "water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers."

(6) "Water supply system," has the meaning specified in s. 281.346(1)(wp), Stats.

Note: Section 281.346(1)(wp), Stats., defines "water supply system, when not preceded by 'public'", to mean "one of the following: 1. Except as provided in subd. 2., the equipment handling water from the point of intake of the water to the first point at which the water is used. 2. For a system for providing a public water supply, the equipment from the point of intake of the water to the first point at which the water is distributed."

(7) "Waters of the state" has the meaning specified in s. 281.01(18), Stats.

Note: Section 281.01(18), Stats., defines "Waters of the state" to include "those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds,

SECTION 1. Section NR 142.03 (4) is repealed.

SECTION 2. Chapter NR 850 is created to read:

**CHAPTER NR 850
WATER USE FEES**

NR 850.01 Purpose
NR 850.02 Applicability

NR 850.03 Definitions
NR 850.04 Fees

NR 850.01 Purpose. The purpose of this chapter is to implement s. 281.346 (12), Stats., by establishing annual fees for water withdrawals from the Great Lakes basin of more than 50,000,000 gallons per year and by specifying procedures for assessing and collecting the fee specified in s. 281.346(12)(a).

Note: Section 281.346(12)(a) provides that "A person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period shall pay to the department an annual fee of \$125, except that the department may promulgate a rule specifying a different amount."

NR 850.02 Applicability. This chapter applies to any person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period, and to persons who withdraw more than 50,000,000 gallons of water per year from the waters of the state within the Great Lakes basin using a water supply system or systems on one property, or using a public water supply.

NR 850.03 Definitions. In this chapter:

(1) "Department" means the department of natural resources.

(2) "Great Lakes basin" has the meaning specified in s. 281.346(1)(je), Stats.

Note: Section 281.346(1)(je), Stats., defines "Great Lakes basin" to mean "the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec, within the jurisdiction of the parties."

(3) "One property" "has the meaning specified in s. NR 812.07(68).

Note: Section NR 812.07(68), Wisc. Adm. Code, defines "one property" to mean "all contiguous land controlled by one owner, lessee, or any other person having a possessory interest. Lands under single ownership bisected by highways or railroad right-of-ways are considered contiguous."

(4) "Person" has the meaning specified in s. 281.346(1)(nm), Stats.

Note: Section 281.346(1)(nm), Stats., defines "person" to mean "an individual or other entity, including a government or a nongovernmental organization, including any scientific, professional, business, nonprofit, or public interest organization or association that is neither affiliated with nor under the direction of a government."

(5) "Public water supply" has the meaning specified in s. 281.346(1)(pm), Stats.

Note: Section 281.346(1)(pm), Stats., defines "public water supply" to mean "water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers."

(6) "Water supply system," has the meaning specified in s. 281.346(1)(wp), Stats.

Note: Section 281.346(1)(wp), Stats., defines "water supply system, when not preceded by 'public'", to mean "one of the following: 1. Except as provided in subd. 2., the equipment handling water from the point of intake of the water to the first point at which the water is used. 2. For a system for providing a public water supply, the equipment from the point of intake of the water to the first point at which the water is distributed."

(7) "Waters of the state" has the meaning specified in s. 281.01(18), Stats.

Note: Section 281.01(18), Stats., defines "Waters of the state" to include "those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds,

wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.”

(8) “Withdraw” has the meaning specified in s. 281.346(1)(y), Stats.

Note: Section 281.346(1)(y), Stats., defines “withdraw” to mean “to take water from surface water or groundwater”.

NR 850.04 Fees. (1) A person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period shall pay to the department a fee of \$125, which covers all water supply systems on one property, or a single public water supply.

(2) In addition to the fee specified in subsection (1), unless exempted under sub. (3), any person who withdraws more than 50,000,000 gallons of water per year from the waters of the state within the Great Lakes basin using a water supply system or systems on one property, or a public water supply, shall pay a fee in accordance with the schedule of fees in this subsection. The schedule is as follows, with the stated fee in each clause applied to the total amount of water withdrawn, as applicable:

- (a) \$1.50 per 1,000,000 gallons for amounts withdrawn in excess of 50,000,000 gallons but not more than 100,000,000 gallons per year;
- (b) \$2 per 1,000,000 gallons for amounts withdrawn in excess of 100,000,000 gallons but not more than 150,000,000 gallons per year;
- (c) \$2.50 per 1,000,000 gallons for amounts withdrawn in excess of 150,000,000 gallons but not more than 200,000,000 gallons per year;
- (d) \$3 per 1,000,000 gallons for amounts withdrawn in excess of 200,000,000 gallons but not more than 250,000,000 gallons per year;
- (e) \$3.50 per 1,000,000 gallons for amounts withdrawn in excess of 250,000,000 gallons but not more than 300,000,000 gallons per year;
- (f) \$4 per 1,000,000 gallons for amounts withdrawn in excess of 300,000,000 gallons but not more than 350,000,000 gallons per year;
- (g) \$4.50 per 1,000,000 gallons for amounts withdrawn in excess of 350,000,000 gallons but not more than 400,000,000 gallons per year;
- (h) \$5 per 1,000,000 gallons for amounts withdrawn in excess of 400,000,000 gallons but not more than 450,000,000 gallons per year;
- (i) \$5.50 per 1,000,000 gallons for amounts withdrawn in excess of 450,000,000 gallons but not more than 500,000,000 gallons per year;
- (j) \$6 per 1,000,000 gallons for amounts withdrawn in excess of 500,000,000 gallons per year.

(3) No fee is required for a project involving the withdrawal of surface water to prevent flood damage or to remove flood waters during a period of flooding, as determined by the department.

(4) The fee specified in sub. (2) shall not exceed \$9,500 per year for one property or for a single public water supply.

(5) The fees specified in this section are assessed on a calendar year basis and shall be paid by June 30th of the following calendar year.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2) (intro.), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated in Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated in Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____

Matthew J. Frank, Secretary

(SEAL)

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal s. NR 142.03 (4) and to create ch. NR 850 relating to water withdrawal fees in the Great Lakes basin and affecting small business.

DG-23-10

Analysis Prepared by the Department of Natural Resources

1. **Statute interpreted:** Section 281.346 (12), Stats.
2. **Statutory authority:** Sections 227.11 (2)(a) and 281.346 (12), Stats.
3. **Explanation of agency authority:** Section 227.11 (2)(a) gives state agencies general rulemaking authority. Section 281.346 (12)(c) directs the Department to promulgate a rule specifying the amount of an annual fee to be paid by persons who withdraw from the Great Lakes basin more than 50,000,000 gallons of water per year.
4. **Related Statute or Rule:** This rule relates to implementing the provisions of the Great Lakes—St. Lawrence River Basin Water Resources Compact (Compact) in Wisconsin pursuant to sections 281.343, 281.346, and 281.348, Stats. Revenue from the fees assessed pursuant to this rule will be deposited to a program revenue appropriation dedicated to funding Compact implementation activities in the state.
5. **Plain language analysis:** The proposal contained in this order repeals a provision of an existing rule that provided authority to assess water withdrawal fees on persons making withdrawals from the waters of the state in amounts averaging 100,000 gallons per day or more in any 30-day period. Those fees ranged from \$35 to \$500 dollars depending on the amount of the withdrawal. However, the fee program and the associated registration program were not implemented by the Department.

Under the provisions of s. 281.346 (12), as created in 2009 Wisconsin Act 28, beginning in 2011, any person with a water supply system anywhere in the state with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period must pay to the Department an annual fee of \$125. This rule clarifies that the annual \$125 fee will cover all water supply systems on one property or a single public water supply. Section 281.346 (12)(c) further directs the Department to promulgate a rule specifying an additional annual fee for persons who withdraw more than 50,000,000 gallons per year from the waters of the Great Lakes basin—that is, from surface water or groundwater within the land area of the state draining to Lakes Michigan or Superior, or from those lakes. The proposed fee would increase per 50 million gallon increment as shown in the following table:

Great Lakes Basin-Specific Fee for Withdrawals > 50 MGY	
Amount Withdrawn	Fee Per Million Gallons
> 50 MGY to 100 MGY	\$1.50
100 MGY to 150 MGY	\$2.00
150 MGY to 200 MGY	\$2.50
200 MGY to 250 MGY	\$3.00
250 MGY to 300 MGY	\$3.50
300 MGY to 350 MGY	\$4.00
350 MGY to 400 MGY	\$4.50
400 MGY to 450 MGY	\$5.00
450 MGY to 500 MGY	\$5.50
500 MGY +	\$6.00

The fee would not exceed \$9,500 annually for withdrawals from a water supply system on a contiguous property or a public water system. The fees specified in this rule will be assessed on a calendar year basis and will be due to the Department by June 30th of the following calendar year.

6. **Federal regulatory analysis:** There are no comparable federal regulations pertaining to fees for water withdrawals.
7. **Comparison with rules in adjacent states:** The following table compares water withdrawal fees in adjacent states.

Water Withdrawal Fee Comparison				
Wisconsin	Illinois	Iowa	Michigan	Minnesota
<p>\$125 statutory fee—statewide—for water supply systems with the capacity to withdraw an average of 100,000 gallons-per-day or more in any 30-day period. Proposed additional annual fee for Great Lakes Basin withdrawals exceeding 50 million gallons per year. The proposed fee would be assessed at an inclining rate in tiers of 50 million gallons as follows:</p> <p>(>50 – 100) \$1.50/mil. (100 – 150) \$2/mil. (150 – 200) \$2.50/mil. (200 – 250) \$3/mil. (250 – 300) \$3.50/mil. (300 – 350) \$4 /mil. (350 – 400) \$4.50/mil. (400 – 450) \$5/mil. (450 – 500) \$5.50/mil. (Above 500) \$6/mil.</p> <p>The fee would not exceed \$9,500 annually for withdrawals from one property or public water system.</p>	<p>No annual water use fee.</p>	<p>Iowa charges an annual water use fee to each water use permittee designed to generate \$500,000 each year. Permits are required for persons that withdraw at least 25,000 gallons in a 24-hour period during a calendar year; and the same fee is charged to each permittee. For 2009, the annual fee was \$135 for each permittee.</p>	<p>\$200 annual reporting fee for withdrawals exceeding 100,000 gallons per day averaged over a consecutive 30-day period. (No annual fee for withdrawals for agricultural use.)</p>	<p>\$140 minimum annual water use fee for withdrawals between 0 and 50 million gallons.</p> <p>Marginal fee rates for withdrawals exceeding 50 million gallons per year as follows:</p> <p>(>50 – 100) \$3.50/mil. (100 – 150) \$4/mil. (150 – 200) \$4.50/mil. (200 – 250) \$5/mil. (250 – 300) \$5.50/mil. (300 – 350) \$6/mil. (350 – 400) \$6.50/mil. (400 – 450) \$7/mil. (450 – 500) \$7.50/mil. (Above 500) \$8/mil.</p> <p>Maximum Annual water use fees:</p> <p>\$750 for any single agricultural irrigation permit; \$50,000 for an entity w/3 or fewer permits; \$75,000 for an entity w/4 to 5 permits; \$250,000 for an entity with > 5 permits; \$250,000 for a city of the first class; \$10,000 for a municipality that furnishes electric service and steam for home heating.</p>

Great Lakes Basin-Specific Fee for Withdrawals > 50 MGY	
Amount Withdrawn	Fee Per Million Gallons
> 50 MGY to 100 MGY	\$1.50
100 MGY to 150 MGY	\$2.00
150 MGY to 200 MGY	\$2.50
200 MGY to 250 MGY	\$3.00
250 MGY to 300 MGY	\$3.50
300 MGY to 350 MGY	\$4.00
350 MGY to 400 MGY	\$4.50
400 MGY to 450 MGY	\$5.00
450 MGY to 500 MGY	\$5.50
500 MGY +	\$6.00

The fee would not exceed \$9,500 annually for withdrawals from a water supply system on a contiguous property or a public water system. The fees specified in this rule will be assessed on a calendar year basis and will be due to the Department by June 30th of the following calendar year.

6. **Federal regulatory analysis:** There are no comparable federal regulations pertaining to fees for water withdrawals.
7. **Comparison with rules in adjacent states:** The following table compares water withdrawal fees in adjacent states.

Water Withdrawal Fee Comparison				
Wisconsin	Illinois	Iowa	Michigan	Minnesota
<p>\$125 statutory fee—statewide—for water supply systems with the capacity to withdraw an average of 100,000 gallons-per-day or more in any 30-day period. Proposed additional annual fee for Great Lakes Basin withdrawals exceeding 50 million gallons per year. The proposed fee would be assessed at an inclining rate in tiers of 50 million gallons as follows:</p> <p>(>50 – 100) \$1.50/mil. (100 – 150) \$2/mil. (150 – 200) \$2.50/mil. (200 – 250) \$3/mil. (250 – 300) \$3.50/mil. (300 – 350) \$4 /mil. (350 – 400) \$4.50/mil. (400 – 450) \$5/mil. (450 – 500) \$5.50/mil.</p> <p>(Above 500) \$6/mil. The fee would not exceed \$9,500 annually for withdrawals from one property or public water system.</p>	<p>No annual water use fee.</p>	<p>Iowa charges an annual water use fee to each water use permittee designed to generate \$500,000 each year. Permits are required for persons that withdraw at least 25,000 gallons in a 24-hour period during a calendar year; and the same fee is charged to each permittee. For 2009, the annual fee was \$135 for each permittee.</p>	<p>\$200 annual reporting fee for withdrawals exceeding 100,000 gallons per day averaged over a consecutive 30-day period. (No annual fee for withdrawals for agricultural use.)</p>	<p>\$140 minimum annual water use fee for withdrawals between 0 and 50 million gallons.</p> <p>Marginal fee rates for withdrawals exceeding 50 million gallons per year as follows:</p> <p>(>50 – 100) \$3.50/mil. (100 – 150) \$4/mil. (150 – 200) \$4.50/mil. (200 – 250) \$5/mil. (250 – 300) \$5.50/mil. (300 – 350) \$6/mil. (350 – 400) \$6.50/mil. (400 – 450) \$7/mil. (450 – 500) \$7.50/mil. (Above 500) \$8/mil.</p> <p>Maximum Annual water use fees: \$750 for any single agricultural irrigation permit; \$50,000 for an entity w/3 or fewer permits; \$75,000 for an entity w/4 to 5 permits; \$250,000 for an entity with > 5 permits; \$250,000 for a city of the first class; \$10,000 for a municipality that furnishes electric service and steam for home heating.</p>

- 8. Summary of the factual data and analysis that support the proposed rule:** Based on available data and assumptions, the Department projects that the \$125 annual fee will apply to approximately 4900 properties and generate just over \$600,000 annually; and the proposed fee on withdrawals exceeding 50 million gallons per year will apply to approximately 200 to 250 properties in the Great Lakes basin and generate approximately \$390,000 annually.
- 9. Analysis and supporting documentation in support of the determination of the rule's effect on small business:** The Department lacks complete data on the number and nature of all operations withdrawing water above the threshold amount of 50 million gallons per year. However, based on the withdrawal data that does exist (e.g. high capacity well pumpage data), comparatively few small businesses will be affected by the rule.
- 10. Effect on small business:** The \$125 annual fee will affect hundreds of small business throughout the state. However, the fee imposed on withdrawals exceeding 50 million gallons per year is expected to primarily affect public water systems, power companies, and large industrial operations in water-intensive industries. The rule will affect an unknown number of small businesses that withdraw more than 50 million gallons of water per year from waters within the Great Lakes basin; however the Department estimates that there are relatively few small businesses that withdraw water at levels exceeding the threshold amounts.
- 11. Agency contact person:**
Eric Ebersberger, DG/5
Wisconsin Department of Natural Resources
Bureau of Drinking Water & Groundwater
Water Use Section
(608) 266-9254
Eric.Ebersberger@wisconsin.gov
- 12. Place where comments are to be submitted and deadline for submission:**
Comments are to be submitted to Kristy Rogers, Bureau of Drinking Water & Groundwater, P.O. Box 7921, Madison, WI 53707-7921 by July 7, 2010.

SECTION 1. Section NR 142.03 (4) is repeal ed.

SECTION 2. Chapter NR 850 is created to read:

**CHAPTER NR 850
WATER USE FEES**

NR 850.01 Purpose
NR 850.02 Applicability

NR 850.03 Definitions
NR 850.04 Fees

NR 850.01 Purpose. The purpose of this chapter is to implement s. 281.346 (12), Stats., by establishing annual fees for water withdrawals from the Great Lakes basin of more than 50,000,000 gallons per year and by specifying procedures for assessing and collecting the fee specified in s. 281.346(12)(a).

Note: Section 281.346(12)(a) provides that "A person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period shall pay to the department an annual fee of \$125, except that the department may promulgate a rule specifying a different amount."

NR 850.02 Applicability. This chapter applies to any person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period, and to persons who withdraw more than 50,000,000 gallons of water per year from the waters of the state within the Great Lakes basin using a water supply system or systems on one property, or using a public water supply.

NR 850.03 Definitions. In this chapter:

(1) "Department" means the department of natural resources.

(2) "Great Lakes basin" has the meaning specified in s. 281.346(1)(je), Stats.

Note: Section 281.346(1)(je), Stats., defines "Great Lakes basin" to mean "the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec, within the jurisdiction of the parties."

(3) "One property" "has the meaning specified in s. NR 812.07(68).

Note: Section NR 812.07(68), Wisc. Adm. Code, defines "one property" to mean "all contiguous land controlled by one owner, lessee, or any other person having a possessory interest. Lands under single ownership bisected by highways or railroad right-of-ways are considered contiguous."

(4) "Person" has the meaning specified in s. 281.346(1)(nm), Stats.

Note: Section 281.346(1)(nm), Stats., defines "person" to mean "an individual or other entity, including a government or a nongovernmental organization, including any scientific, professional, business, nonprofit, or public interest organization or association that is neither affiliated with nor under the direction of a government."

(5) "Public water supply" has the meaning specified in s. 281.346(1)(pm), Stats.

Note: Section 281.346(1)(pm), Stats., defines "public water supply" to mean "water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers."

(6) "Water supply system," has the meaning specified in s. 281.346(1)(wp), Stats.

Note: Section 281.346(1)(wp), Stats., defines "water supply system, when not preceded by 'public'", to mean "one of the following: 1. Except as provided in subd. 2., the equipment handling water from the point of intake of the water to the first point at which the water is used. 2. For a system for providing a public water supply, the equipment from the point of intake of the water to the first point at which the water is distributed."

(7) "Waters of the state" has the meaning specified in s. 281.01(18), Stats.

Note: Section 281.01(18), Stats., defines "Waters of the state" to include "those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds,

SECTION 1. Section NR 142.03 (4) is repeal ed.

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**CHAPTER NR 850
WATER USE FEES**

NR 850.01 Purpose
NR 850.02 Applicability

NR 850.03 Definitions
NR 850.04 Fees

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Note: Section 281.346(12)(a) provides that "A person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period shall pay to the department an annual fee of \$125, except that the department may promulgate a rule specifying a different amount."

NR 850.02 Applicability. This chapter applies to any person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period, and to persons who withdraw more than 50,000,000 gallons of water per year from the waters of the state within the Great Lakes basin using a water supply system or systems on one property, or using a public water supply.

NR 850.03 Definitions. In this chapter:

(1) "Department" means the department of natural resources.

(2) "Great Lakes basin" has the meaning specified in s. 281.346(1)(je), Stats.

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Note: Section NR 812.07(68), Wisc. Adm. Code, defines "one property" to mean "all contiguous land controlled by one owner, lessee, or any other person having a possessory interest. Lands under single ownership bisected by highways or railroad right-of-ways are considered contiguous."

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Note: Section 281.346(1)(nm), Stats., defines "person" to mean "an individual or other entity, including a government or a nongovernmental organization, including any scientific, professional, business, nonprofit, or public interest organization or association that is neither affiliated with nor under the direction of a government."

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Note: Section 281.346(1)(pm), Stats., defines "public water supply" to mean "water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers."

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Note: Section 281.346(1)(wp), Stats., defines "water supply system, when not preceded by 'public'", to mean "one of the following: 1. Except as provided in subd. 2., the equipment handling water from the point of intake of the water to the first point at which the water is used. 2. For a system for providing a public water supply, the equipment from the point of intake of the water to the first point at which the water is distributed."

(7) "Waters of the state" has the meaning specified in s. 281.01(18), Stats.

Note: Section 281.01(18), Stats., defines "Waters of the state" to include "those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds,

wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.”

(8) “Withdraw” has the meaning specified in s. 281.346(1)(y), Stats.

Note: Section 281.346(1)(y), Stats., defines “withdraw” to mean “to take water from surface water or groundwater”.

NR 850.04 Fees. (1) A person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period shall pay to the department a fee of \$125, which covers all water supply systems on one property, or a single public water supply.

(2) In addition to the fee specified in subsection (1), unless exempted under sub. (3), any person who withdraws more than 50,000,000 gallons of water per year from the waters of the state within the Great Lakes basin using a water supply system or systems on one property, or a public water supply, shall pay a fee in accordance with the schedule of fees in this subsection. The schedule is as follows, with the stated fee in each clause applied to the total amount of water withdrawn, as applicable:

- (a) \$1.50 per 1,000,000 gallons for amounts withdrawn in excess of 50,000,000 gallons but not more than 100,000,000 gallons per year;
- (b) \$2 per 1,000,000 gallons for amounts withdrawn in excess of 100,000,000 gallons but not more than 150,000,000 gallons per year;
- (c) \$2.50 per 1,000,000 gallons for amounts withdrawn in excess of 150,000,000 gallons but not more than 200,000,000 gallons per year;
- (d) \$3 per 1,000,000 gallons for amounts withdrawn in excess of 200,000,000 gallons but not more than 250,000,000 gallons per year;
- (e) \$3.50 per 1,000,000 gallons for amounts withdrawn in excess of 250,000,000 gallons but not more than 300,000,000 gallons per year;
- (f) \$4 per 1,000,000 gallons for amounts withdrawn in excess of 300,000,000 gallons but not more than 350,000,000 gallons per year;
- (g) \$4.50 per 1,000,000 gallons for amounts withdrawn in excess of 350,000,000 gallons but not more than 400,000,000 gallons per year;
- (h) \$5 per 1,000,000 gallons for amounts withdrawn in excess of 400,000,000 gallons but not more than 450,000,000 gallons per year;
- (i) \$5.50 per 1,000,000 gallons for amounts withdrawn in excess of 450,000,000 gallons but not more than 500,000,000 gallons per year;
- (j) \$6 per 1,000,000 gallons for amounts withdrawn in excess of 500,000,000 gallons per year.

(3) No fee is required for a project involving the withdrawal of surface water to prevent flood damage or to remove flood waters during a period of flooding, as determined by the department.

(4) The fee specified in sub. (2) shall not exceed \$9,500 per year for one property or for a single public water supply.

(5) The fees specified in this section are assessed on a calendar year basis and shall be paid by June 30th of the following calendar year.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2) (intro.), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 10, 2010.

Dated in Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____

Matthew J. Frank, Secretary

(SEAL)

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Dated in Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)

Fiscal Estimate — 2009 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number If Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number DG-23-10

Subject
 Water Use Fees for Large Withdrawals from the Great Lakes Basin

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.

Yes No

Decrease Costs

Local: No Local Government Costs
 Indeterminate

1. Increase Costs
 Permissive Mandatory

2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities
 Counties Others Public Utilities

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 s. 20.370 (4)(ai)

Assumptions Used in Arriving at Fiscal Estimate

Rule Summary: Section 281.346 (12) (c), directs the Department to promulgate a rule specifying an additional annual fee for persons who withdraw more than 50 million gallons per year (MGY) from the waters of the Great Lakes basin—that is, from surface water or groundwater within the land area of the state draining to Lakes Michigan or Superior, or from those lakes. The proposed fee would be assessed on marginal increments of withdrawals over 50 million gallons per year starting @ \$1.50 per million gallons over 50 million, and would increase \$0.50 per million gallons for each 50 million gallon increment as follows:

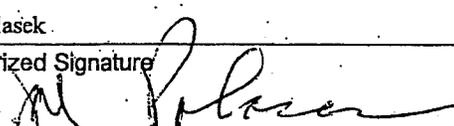
For amounts withdrawn between 50 MGY to 100 MGY	\$1.50/million gallons withdrawn
For amounts withdrawn between 100 MGY to 150 MGY	\$2.00/million gallons withdrawn
For amounts withdrawn between 150 MGY to 200 MGY	\$2.50/million gallons withdrawn
For amounts withdrawn between 200 MGY to 250 MGY	\$3.00/million gallons withdrawn
For amounts withdrawn between 250 MGY to 300 MGY	\$3.50/million gallons withdrawn
For amounts withdrawn between 300 MGY to 350 MGY	\$4.00/million gallons withdrawn
For amounts withdrawn between 350 MGY to 400 MGY	\$4.50/million gallons withdrawn
For amounts withdrawn between 400 MGY to 450 MGY	\$5.00/million gallons withdrawn
For amounts withdrawn between 450 MGY to 500 MGY	\$5.50/million gallons withdrawn
For amounts withdrawn in excess of 500 MGY	\$6.00/million gallons withdrawn

The fee would not exceed \$9,500 annually for withdrawals from a water supply system on a contiguous property or a public water system. The fee would take effect in 2011. Fee revenue will be deposited in a program revenue appropriation supporting Great Lakes Compact implementation. The Department anticipates that between 200 and 300 persons will pay the fee annually.

The rule also clarifies that the statutorily-imposed statewide annual fee of \$125 on persons with water supply systems with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period will be imposed on a calendar-year basis and will be due by June 30th of the following calendar year, beginning in 2011.

Long-Range Fiscal Implications

None

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Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 04-29-10

Fiscal Estimate — 2009 Session

Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number DG-23-10

Assumptions Used in Arriving at Fiscal Estimate -- Continued

State Fiscal Effect:

Revenues that will be generated as a result of the annual withdrawal fee are the result of the fee provisions enacted in law in 2009 Wisconsin Act 28. The Department assumes that the statutory statewide base fee of \$125 on persons with water supply systems with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period will be imposed on approximately 4900 persons and will generate approximately \$612,500 annually. (Revenue from this base fee is not included on the attached fiscal estimate worksheet.)

Based on actual withdrawal data from public water supply systems and high capacity well owners, and assumptions related to surface water withdrawals, the Department expects that the fee will generate between \$380,000 and \$400,000 annually. In addition, state-owned facilities (e.g., state fish hatcheries) that withdraw over 50 million gallons per year in the Great Lakes Basin would have to pay the fee. The Department lacks accurate data on total amounts of water withdrawn from state-owned facilities, therefore costs to the state are indeterminate at this time.

Local Government Fiscal Impacts: Based on 2009 data, there are approximately 180 public water systems in the Great Lakes Basin. Of those 180 systems, approximately 90 systems withdraw in excess of 50 million gallons per year and will be affected by this rule--e.g., systems withdrawing 100 million gallons of water per year will pay approximately \$75 under the rule; systems withdrawing 1 billion gallons of water per year will pay approximately \$4,600; and systems withdrawing 2.3 billion gallons of water per year will pay \$9,500 per year. The Department anticipates that approximately 9 public water systems in the Great Lakes basin will pay the maximum \$9,500 fee, 60 public water systems will pay a fee under \$1,000, and more than 90 public water systems in the Great Lakes basin would pay no additional fee over the \$125 statutory base fee.

Private Sector Fiscal Impact: The Department lacks complete data on the number and nature of all operations withdrawing water above the threshold amount of 50 million gallons per year. However, based on the withdrawal data that does exist (e.g. high capacity well pumpage data), comparatively few small businesses will be affected by the rule.

Fiscal Estimate — 2009 Session

Page 2 Assumptions Narrative
Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number DG-23-10

Assumptions Used in Arriving at Fiscal Estimate -- Continued

State Fiscal Effect:

Revenues that will be generated as a result of the annual withdrawal fee are the result of the fee provisions enacted in to law in 2009 Wisconsin Act 28. The Department assumes that the statutory statewide base fee of \$125 on persons with water supply systems with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period will be imposed on approximately 4900 persons and will generate approximately \$612,500 annually. (Revenue from this base fee is not included on the attached fiscal estimate worksheet.)

Based on actual withdrawal data from public water supply systems and high capacity well owners, and assumptions related to surface water withdrawals, the Department expects that the fee will generate between \$38000^{380,000} and \$400,000 annually. In addition, state-owned facilities (e.g., state fish hatcheries) that withdraw over 50 million gallons per year in the Great Lakes Basin would have to pay the fee. The Department lacks accurate data on total amounts of water withdrawn from state-owned facilities, therefore costs to the state are indeterminate at this time.

Local Government Fiscal Impacts: Based on 2009 data, there are approximately 180 public water systems in the Great Lakes Basin. Of those 180 systems, approximately 90 systems withdraw in excess of 50 million gallons per year and will be affected by this rule--e.g., systems withdrawing 100 million gallons of water per year will pay approximately \$75 under the rule; systems withdrawing 1 billion gallons of water per year will pay approximately \$4,600; and systems withdrawing 2.3 billion gallons of water per year will pay \$9,500 per year. The Department anticipates that approximately 9 public water systems in the Great Lakes basin will pay the maximum \$9,500 fee, 60 public water systems will pay a fee under \$1,000, and more than 90 public water systems in the Great Lakes basin would pay no additional fee over the \$125 statutory base fee.

Private Sector Fiscal Impact: The Department lacks complete data on the number and nature of all operations withdrawing water above the threshold amount of 50 million gallons per year. However, based on the withdrawal data that does exist (e.g. high capacity well pumpage data), comparatively few small businesses will be affected by the rule.

Fiscal Estimate Worksheet — 2009 Session
 Detailed Estimate of Annual Fiscal Effect

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number DG-23-10

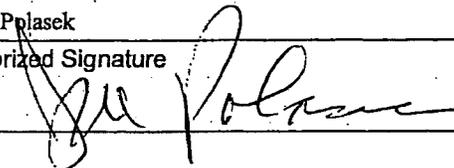
Subject
 Water Use Fees for Large Withdrawals from the Great Lakes Basin

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		(FTE)	(- FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS		390,000	-
SEG/SEG-S			-
Total State Revenues		\$	\$ -

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ 390,000	\$ _____

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