



**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**
- Public Hearings ... **PH**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

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

# Senate

## Record of Committee Proceedings

### **Committee on Environment**

#### **Clearinghouse Rule 10-061**

Relating to water withdrawal fees in the Great Lakes basin and affecting small business.

Submitted by Department of Natural Resources.

August 19, 2010      Referred to Committee on Environment.

September 29, 2010      **PUBLIC HEARING HELD**

Present:      (5)      Senators Miller, Jauch, Wirch, Kedzie and Olsen.

Absent:      (0)      None.

Excused:      (0)      None.

#### Appearances For

- Eric Ebersberger, Madison — DNR
- Kristy Rogers, Madison — DNR
- Peter Fritsch, Polmyra — Rushing Waters Fisheries

#### Appearances Against

- Jim Holperin, Eagle River — Senator, 12th Senate District
- Tim Winkel, Elton — Silver Moon Springs
- Ron Johnson, Wasburn — Wisconsin Aquaculture Industry

#### Appearances for Information Only

- None.

#### Registrations For

- None.

#### Registrations Against

- Bill Isermann, Evansville — Rushing Waters Fisheries
- Merika Kummel, Madison — herself

#### Registrations for Information Only

- None.

October 15, 2010      **EXECUTIVE SESSION HELD**

Present: (5) Senators Miller, Jauch, Wirch, Kedzie and Olsen.

Absent: (0) None.

Excused: (0) None.

Moved by Senator Miller, seconded by Senator Kedzie that **Clearinghouse Rule 10-061** be recommended for modifications requested.

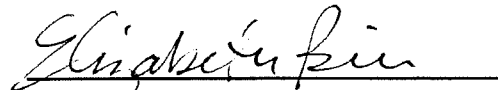
Ayes: (5) Senators Miller, Jauch, Wirch, Kedzie and Olsen.

Noes: (0) None.

MODIFICATIONS REQUESTED RECOMMENDED, Ayes 5,  
Noes 0

October 28, 2010 Modifications received.

November 11, 2010 No action taken.

  
Elizabeth Bier  
Committee Clerk

## Vote Record Committee on Environment

Date: 10.15.10

Moved by: Miller

Seconded by: Kedzie

AB \_\_\_\_\_

SB \_\_\_\_\_

Clearinghouse Rule 10-061

AJR \_\_\_\_\_

SJR \_\_\_\_\_

Appointment \_\_\_\_\_

AR \_\_\_\_\_

SR \_\_\_\_\_

Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_

A/S Sub Amdt \_\_\_\_\_

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Be recommended for:

- Passage     Adoption     Confirmation     Concurrence     Indefinite Postponement  
 Introduction     Rejection     Tabling     Nonconcurrence     modification

Committee Member

**Senator Mark Miller, Chair**

**Senator Robert Jauch**

**Senator Robert Wirch**

**Senator Neal Kedzie**

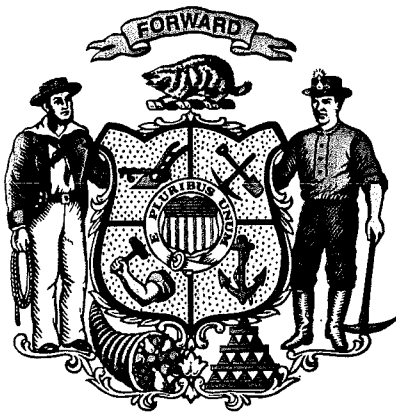
**Senator Luther Olsen**

	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Mark Miller, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Jauch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Wirch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Luther Olsen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	<u>5</u>	_____	_____	_____



Motion Carried

Motion Failed



**Executive Session Notes  
October 15, 2010**

**Call Executive Session to Order and ask Clerk to call the roll**

- ROLL CALL

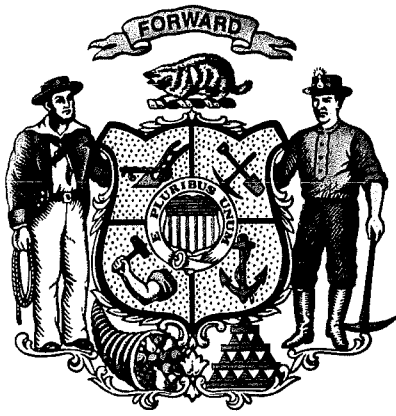
**CR 10-061**, relating to water withdrawal fees in the Great Lakes Basin and affecting small business

**CR 10-006**

- MOTION FOR MODIFICATION
- SECOND
- DISCUSSION
- ROLL CALL

**Adjourn Executive Session**

*- Mindy Walker*  
*- Jordan Lamb*      *> send language*



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, and the fee would not exceed \$1,000 annually per property for a small business as defined in s. 227.114, Stats. The fees specified in this rule will be assessed on a calendar year basis and will be due to the Department by June 30<sup>th</sup> of the following calendar year.

- Federal regulatory analysis:** There are no comparable federal regulations pertaining to fees for water withdrawals.
- 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>(&gt;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 one property or public water system, and would not exceed \$1,000 annually for a small business.</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>(&gt;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 &gt; 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>

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- 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 provides a fee cap of \$1,000 for a small business and 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.

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**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](mailto: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

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**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) "Small business" has the meaning specified in s. 227.114(1), Stats.

Note: Section 227.114(1), Stats., defines "small business" to mean "a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross sales of less than \$5,000,000."

(7) "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."

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

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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."

(9) "Withdraw" has the meaning specified in s. 281.346(1)(y), Stats.

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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, except that the fee per property for a small business shall not exceed \$1,000 per year.

(5) The fees specified in this section are assessed on a calendar year basis and shall be paid by June 30<sup>th</sup> 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.

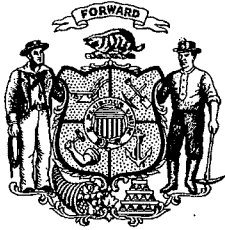
**SECTION 4. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated in Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Matthew J. Frank, Secretary

(SEAL)



**Senate Environment Committee Hearing – September 29, 2010**  
**Water Conservation and Air Pollution Rules**

**Water Conservation Rules – Eric Ebersberger and Kristy Rogers**

Senator Miller

Q: What will be done about measuring surface water diversions?

- WDNR developing estimation methods for various industries

Q: Questions about specificity of location information for diversions.

- Additional information will be required from those making Open Records requests. Assessment of requests will be done on case-by-case basis.

Senator Kedzie

Q: How are cranberry withdrawals being treated differently than other ag. uses?

- WDNR wants to understand how water is initially withdrawn. Not concerned with water re-use.

Senator Olsen

Q: What is the ultimate goal of the water conservation program?

- Three requirements of Great Lakes Compact for Wisconsin:
  - Water quantity reporting
  - Banning diversion in excess of a limit
  - Water conservation and water re-use program
- Want to develop sustainable water resources inventory

S: So this is the first step in controlling what amounts people can withdraw.

Q: Are all diversion considered equal?

- Fee schedule defined based on amount of water re-directed from natural watercourse

Q: If water is diverted and returned to watercourse, why is that not treated differently?

- Calculating fees based on consumptive use would be extremely difficult.

S: Those who divert water and return it should be treated differently.

- WDNR has no plan to adjust withdrawals based on consumptive coefficients.

S: Might be more complicated, but might also be more fair to treat uses differently.

- WDNR did not see direction to make differentiation in the statute.

#### Senator Miller

- Also matters whether sources are threatened or not.
- One criticism of past bill was that no one has defined what water uses in WI are.

#### Senator Kedzie

Q: Where do fees go? To what account? What is money used for?

- In FY2011, WDNR has \$924,000 in expenditure authority for Compact
- To be used to fund implementation of all portions of GL Compact
- Creation of database, online water-use permit application, GIS services, GW and SW monitoring and mapping

Q: If short or excess what will be done?

- Projected revenue from permits is close to expenditure authority. If short, less expenditures. If excess, to remain in expenditure account.

### **Ron Johnson – Aquaculture Outreach**

#### Senator Miller

Q: According to WDNR, most aquaculture facilities will not be heavily impacted by fees?

- Small impacts for those in GL Basin, but if fees go statewide, many aquaculture businesses will be heavily impacted.

#### Senator Olsen

Q: Were you contacted by WDNR during rule-making process?

- Yes.



Q: Do you have a plan for a different fee structure?

- Change definition of diversion.

**Jordan Lamb – Wisconsin Cranberry Growers Association**

Remaining concerns:

1. Water re-use should not be considered a withdrawal

- Flow flooding
- Multiple users on one stream

2. Open Records portion of rule

- Food supply at top of domestic security concerns.
- Specific location requirements should not be available to public.
- Water use inventory must be available online, and these specific locations should be available to all public for access.

Senator Olsen

Q: So not concerned that public knows how much you use, but rather where withdrawals are being made?

- Yes. Want the statute to not require automatic public availability of specific location information.

**Scott Manley – Wisconsin Manufacturers and Commerce**

Concerned about rule revision related to mandatory water conservation rules outside of Great Lakes Basin. Expected state-wide conservation rules to be voluntary.

Senator Miller

Q: What you are commenting on is related to water loss permitting?

- Original 1980s water loss statutes were applicant-driven in terms of conservation.
- Inappropriate to apply Compact's water loss requirements to the whole state.

Senator Olsen

Q: How is Tier 3 different than what is currently being required?

- WDNR now has prescriptive requirements for conservation measures, whereas they used to be chosen by applicants

S: Discharging water is expensive, so companies already encouraged to conserve water.

Q: Are you OK with differentiation between GL Basin and Mississippi River Basin?

- Yes, always understood that Great Lakes are unique resource and that conservation measures would be required within the GL Basin. However, rules should not be applied to entire state.

Q: So WDNR went further than allowed?

- Yes.

Q: Why shouldn't entire state follow rules?

- Great Lakes are exceptional resource that require higher level of regulatory protection.
- Outside GL Basin, conservation requirements are already built into statutes.
- Wrong to apply Compact outside of GL Basin.

Senator Miller

S: Compact implementation bill that passed the Senate said water conservation and efficient should apply to whole state. House took that measure out.

Senator Olsen

Q: What harm do state-wide Tier 3 requirements do to those outside of GL Basin?

- WDNR does not have authority.
- Legislature did not intend state-wide implementation of water loss statutes.

Senator Jauch

S: Purpose of Compact implementation bill was to protect all water resources in Wisconsin. If we are concerned about water in GL Basin, we should be concerned about water resources in entire state.

Q: We are trying to plan long-term, so we wait until there is a crisis to start looking at state-wide measures?

- S. 281.35 already applies to facilities outside of GL Basin.

Senator Olsen

S: So what you are saying is that they WDNR overstepped its authority.

Leg. Council

S: Court would apply Canons of Construction when assessing validity of WDNR's authority.

Senator Kedzie

Q: So dovetailing Compact into existing statutes will allow WDNR to go further in regulating water loss applications? (Question for Leg. Council)

- Leg. Council: Statute 281.35(15) requires applicant to stipulate conservation measures.

S: State-wide rule creates more gray areas.

Leg. Council

S: Legal issues remaining:

1. Does statute allow WDNR to impose state-side requirements?
2. To what extent does Compact override current state statutes?

## **Air Pollution Rules – Andy Stewart, WDNR**

### Senator Miller

Q: What would WDNR response be if increase in air pollution permit applications does not increase?

- Permits would take longer to approve.

### Senator Olsen

Q: How do reviews protect health and safety?

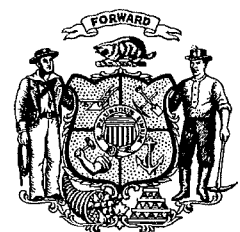
- Permit applicants have range of knowledge of applicable standards.
- Applications help inform applicants of requirements and opportunities available to prevent emissions.
- Many times emissions are above requirements and must be reduced.

Q: But you've never denied a permit?

- Permits not granted if they exceed air quality standards. No permit application has ever been denied.

S: Never seen WDNR give recommendations, just deny application and say come back.

- Staff works with applicants to understand what they can do. WDNR cannot tell applicants what to do.





## NR 860 Water Use Permitting in the Great Lakes Basin September 2010

NR 860 Water Use Permitting is one of several rules related to large water withdrawals that the Department is creating to implement the Great Lakes Compact and related legislation. The new laws and rules are the foundation for achieving Wisconsin's goal of sustainable water use –

*“Sustainably manage the quantity and quality of water in the state to ensure that water is available to be used to protect and improve our health, economy and environment now and into the future.”*

The Department is currently seeking public comments on this rule until October 31, 2010. This fact sheet briefly summarizes the purpose and key elements of the rule. Additional information can be found at <http://dnr.wi.gov/org/water/dwg/greatlakes/rules.html>. Directions on submitting comments and the public hearing schedule are provided at the end of the factsheet.

**WHAT IS THE PURPOSE OF THE RULE?** The purpose of the rule is to define the process and procedures for the water use permit program in the Great Lakes Basin. Starting on December 8, 2011, permits are required for certain existing and new water withdrawals.

**WHO DOES THE RULE IMPACT?** The rule impacts persons located in the Great Lakes basin who withdraw water in quantities that average 100,000 gallons per day or more in any 30-day period. Examples include public water systems, high capacity well owners, and certain people and businesses who withdraw water from lakes and streams such as fish farms and golf courses. (Note – 100,000 gallons per day is equivalent to 70 gallons per minute operated for 24 hours straight.) This rule does not impact persons or organizations who receive their water from a public water supply.

**WHAT IS A WITHDRAWAL?  
WHAT DOES IT MEAN TO WITHDRAW?**

Withdraw or withdrawal means the taking of water from surface water or groundwater. There are many different methods for withdrawing water including wells, intake pipes, and ditches. When someone withdraws water, it is taken out of or redirected from its natural course making it unavailable for other purposes, even if only temporarily.

**WHAT ARE THE KEY ELEMENTS OF THE RULE?**

1. Automatic Issuance of Permits – Existing Withdrawals

- Persons who had a water withdrawal before December 8, 2008 at the level requiring permits (see below) will qualify for automatic issuance of a permit.
- The Department will contact or automatically issue a permit to existing withdrawers that received previous Department approvals – such as a high capacity well approval.
- Existing withdrawers that do not have a previous Department approval must apply by November 1, 2011 in order to automatically receive a permit.
- The Department must issue all automatic permits by December 8, 2011. Existing withdrawers that do not receive an automatic permit by that date will have to apply for a water use permit.

2. General Permits – New and Increased Withdrawals

- Starting on December 8, 2011, coverage under a general permit is required for withdrawals that average 100,000 gallons per day (GPD) or more in any 30-day period but do not equal at least 1,000,000 GPD for any 30 consecutive days.
- The Department will process applications in 45 days and issue permit coverage to withdrawers that have an approved water conservation plan and the required permits from other Department programs.
- General permits expire in 25 years.

**MORE PERMITTING FACTS**

- \*New and existing withdrawers that want to increase their withdrawal will need to apply to the Department by submitting an application.
- \*There are no permit application fees.
- \*Every permit includes an authorized withdrawal amount and requirements for water conservation, monitoring and reporting.

3. Individual Permits – New and Increased Withdrawals

- Starting on December 8, 2011, an individual permit is required for withdrawals that equal at least 1,000,000 GPD for any 30 consecutive days.
- The Department permit review timeline and process depends on the volume of the withdrawal. The Department review timelines range from 60 days to greater than 150 days.
- To obtain an individual permit, larger withdrawals must meet specific decision-making standards. The requirements for each standard are below.
- Individual permits are valid for 10 years.

**STATE DECISION-MAKING STANDARD**

Requirements for new and increased withdrawals of 1,000,000 GPD.

- Demonstrate that there is no significant adverse impact to the waters of the state from the withdrawal.
- Demonstrate the need for the withdrawal.
- Implement cost-effective water conservation measures.
- Obtain the necessary permits from other department programs.

**COMPACT DECISION-MAKING STANDARD**

Requirements for new and increased withdrawals of 10,000,000 GPD or more.

- Return all of the withdrawn water to the source watershed less an allowance for consumptive use.
- Demonstrate that there is no significant adverse individual or cumulative impact to the Great Lakes basin, the source watershed, and water dependent natural resources.
- Implement environmentally sound and economically feasible water conservation measures.
- Comply with all applicable local, state, federal laws and interstate and international agreements.
- Demonstrate that the water use is reasonable.

4. Public Participation

- The rule establishes public participation procedures for the issuance of general permits and individual permits that require the state or compact decision-making standard.
- Public participation includes a public notice, 30-day public comment period, and an opportunity to request a public hearing.
- Withdrawals that propose a new or increased water loss of 5,000,000 GPD or more average in any 90-day period must also be reviewed by the other Great Lakes States and Canadian Provinces of Ontario and Quebec.

**PUBLIC COMMENT OPPORTUNITIES**

See this link for more details - <http://dnr.wi.gov/org/water/dwg/greatlakes/rules.html>.

Comments on the proposed rule may be submitted until October 31, 2010 to:

Kristy Rogers  
P O Box 7921  
101 S. Webster St.  
Madison, WI 53707-7921  
(608) 266-925  
[Kristy.Rogers@wisconsin.gov](mailto:Kristy.Rogers@wisconsin.gov)

Public Hearings are scheduled for:

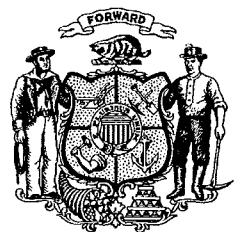
**October 13, 2010, Wednesday, 2:00 p.m.**, at the DNR Milwaukee SER Headquarters, 2300 N. Dr. Martin Luther King Jr. Dr., Milwaukee in Rooms 140-141.

**October 14, Thursday, 2:00 p.m.** Concurrent sessions will be held at the following two locations: the University of Wisconsin Green Bay, Instructional Services Building Room 1034, 2420 Nicolet Drive, Green Bay, WI (<http://www.uwgb.edu/team/maps/index.htm#is1034>) **AND** the Wisconsin Indianhead Technical College (WITC), Conference Center Room 306, 2100 Beaser Avenue, Ashland, WI (<http://www.witc.edu/ashland/map.htm>).





# WISCONSIN STATE LEGISLATURE



**Bier, Beth**

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**From:** Holperin, Jim  
**Sent:** Friday, October 01, 2010 2:28 PM  
**To:** Bier, Beth  
**Subject:** RE: compact rules

Thanks very much, Beth. I appreciate the consideration. I agree on not opening things up. Like I mentioned on Wednesday, maybe some one line addition to the rule that would apply a separate cap for "small businesses" (perhaps using the existing statutory definition as suggested by the DNR) which have gross revenues that do not exceed a certain annual amount (\$50K? \$100K?).

Creating a new cap for small businesses would pretty much leave everything else in place, including the definitions of "withdrawal" and "temporary impoundment"; the proposed method of measuring withdrawal gallonages; and the current fee structure for all other aquaculture operations since I think none except Silver Moon Springs would bump up against the new cap.

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**From:** Bier, Beth  
**Sent:** Fri 10/1/2010 2:09 PM  
**To:** Holperin, Jim  
**Subject:** compact rules

Hi Sen. Holperin,

I've talked with Mark and he's open to looking at solutions for your constituent. I'm planning to meet next week with DNR and Leg Council to see what different possibilities could be out there and give you and Mark some things to look at. I know that he's concerned about doing something that unintentionally opens up a larger loophole. The committee has jurisdiction of the rule until Oct. 18<sup>th</sup>, so there is a little time to figure something out. I'll be in touch next week.

Have a great weekend,

Beth

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Beth Bier

Office of Senator Mark Miller

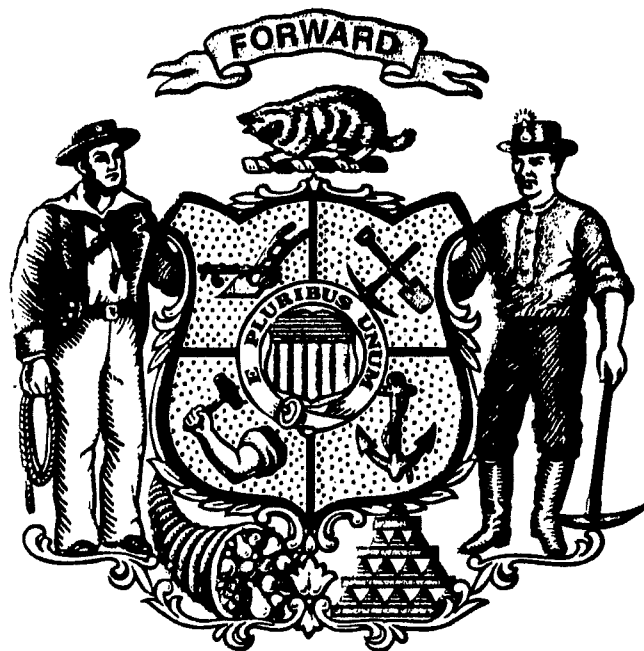
PO Box 7882

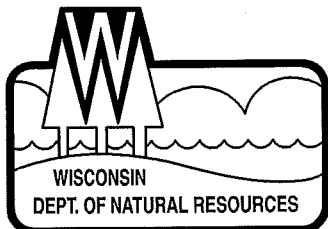
Madison, WI 53707

608.266.9170

Beth.Bier@legis.wisconsin.gov

10/7/2010





**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

Jim Doyle, Governor  
Matthew J. Frank, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TTY Access via relay - 711

October 15, 2010

Senator Mark Miller, Chairman  
Senate Committee on Environment  
Room 317 East, State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

Subject: Senate Committee on Environment request to consider modifying Clearinghouse Rule 10-061, relating to water withdrawal fees in the Great Lakes basin and affecting small business.

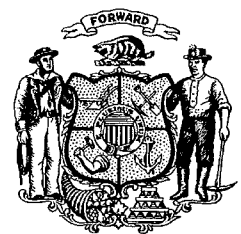
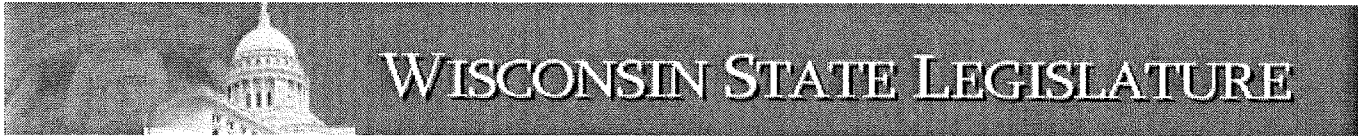
Dear Senator Miller:

The Department of Natural Resources, pursuant to the Senate Committee on Environment's request under s. 227.19 (4)(b) 2, Stats., agrees to consider modifying Clearinghouse Rule 10-061 (NR 850) to limit the annual water withdrawal fee for a small business, as defined in s. 227.14(1), Stats., to \$1,000.

This matter will be scheduled for consideration by the Natural Resources Board on Wednesday, October 27<sup>th</sup>, 2010.

Sincerely,

Matt Frank  
Secretary



NR 850 Water Use Fees for  
Known Aquaculture Facilities in the Great Lakes Basin

Company Name	Withdrawal Baseline in Millions of Gallons per Year	Estimated Fees Based on Baseline*	Estimated Fees Based on 2009 Reporting
Artesian Trout Farm	551.88	\$1,886	\$993
Brown County	105.12	\$85	**
CD Smith Inc	210.24	\$331	\$0
Cedar Island Conservancy Ltd.	1011.05	\$4,641	\$1,023
Diamond Lake Campground	78.84	\$43	**
Fond du Lac County (Rolling Meadows GC)	109.5	\$94	**
Hayward Bait and Tackle	262.8	\$495	\$0
Kenosha County Golf Division	105.12	\$85	**
Kenosha County Golf Division	183.96	\$260	**
Northern Aquaculture Demonstration Facility	52.56	\$4	**
Pristine Waters Fish Farm	105.12	\$85	**
RENCO Machine - Fish-O-Matic	79.059	\$44	**
Romeo Springs Trout Farm	684.01	\$2,679	\$1,888
Silver Moon Springs LLC	31.39	\$0	**
Silver Moon Springs LLC	2744.07	\$9,500	\$7,500
The Club at Strawberry Creek LLC	525.6	\$1,729	\$0
The Trout Farm LLC	323.39	\$719	\$192
U. S. Fish & Wildlife Service	3679.2	\$9,500	\$9,500

\*The baseline was identified by the applicant and is the maximum capacity of the water supply system's most restrictive component.

\*\*No aquaculture withdrawal volume was reported.

NR 850 Water Use Fees for  
DNR Facilities in the Great Lakes Basin

<b>DNR Facility Name</b>	<b>Withdrawal Baseline in Millions of Gallons per Year</b>	<b>Estimated Fees Based on Facility Plan or 2009 Reporting</b>
Les Voight (Bayfield)	552	\$1,887
Besadny	693.8	\$2,738
Kettle Moraine Springs	515.1	\$1,666
Kettle Moraine Springs Annex	236.5	\$410
Root River	163.9	\$210
Strawberry Creek	121	\$117
Thunder River	336.6	\$771
Wild Rose	1217	\$5,877

The following DNR facilities are not considered a withdrawal - Brule, Lakewood, Langlade.

## Calculating Great Lakes Basin Specific Fees as Proposed in NR 850

The fees proposed in NR 850 apply only to persons that withdraw more than 50 million gallons per year in the Great Lakes basin. These fees are in addition to the \$125 base fee that applies to all registered withdrawals statewide. The Great Lakes basin fee and base fee would be assessed annually. The table below shows the corresponding Great Lakes basin specific fees for different annual water withdrawal amounts.

**Table 1: Water Use Fee as Proposed in NR 850**

Total Water Withdrawn in Millions of Gallons per Year (MGY)	Great Lakes Basin Specific Fee (this fee is capped at \$9,500)
0 - 50	\$0
51 - 100	\$1.50 - \$75
101 - 250	\$77 - \$450
251 - 500	\$453.50 - \$1,575
501 - 750	\$1,581 - \$3,075
751 - 1000	\$3,081 - \$4,575
1001 - 1250	\$4,581 - \$6,075
1251 - 1500	\$6,081 - \$7,575
1501 - 1750	\$7,581 - \$9,075
1751 - 1820	\$9,081 - \$9,500
>1820	\$9,500
The total annual fee for those subject to the Great Lakes Basin Specific Fee can be calculated as follows: Total Fee = Great Lakes Basin Specific Fee + \$125 (Statewide Base Fee)	

**Table 2: NR 850 Proposed Great Lakes Basin Specific Fee Rates for Withdrawals >50 Million Gallons per Year (MGY)**

Amount Withdrawn (MGY)	Fee per Million Gallons
0 - 50	\$0.00
51 - 100	\$1.50
101 - 150	\$2.00
151 - 200	\$2.50
201 - 250	\$3.00
251 - 300	\$3.50
301 - 350	\$4.00
351 - 400	\$4.50
401 - 450	\$5.00
451 - 500	\$5.50
500 +	\$6.00

### Example Fee Calculation

The fees in Table 1 were calculated using the fee rates in Table 2. The following is an example of how the fees in Table 1 were calculated.

Withdrawal = 750 MGY in Great Lakes Basin  
Great Lakes Basin Specific Fee (calculate by multiplying gallons by the rate and adding)

$$= 50^*(\$0.00) + 50^*(\$1.50) + 50^*(\$2.00) + 50^*(\$2.50) + 50^*(\$3.00) + 50^*(\$3.50) + 50^*(\$4.00) + 50^*(\$4.50) + 50^*(\$5.00) + 50^*(\$5.50) + 250^*(\$6.00)$$

$$= \$0 + \$75 + \$100 + \$125 + \$150 + \$175 + \$200 + \$225 + \$250 + \$275 + \$1,500$$

$$= \$3,075$$

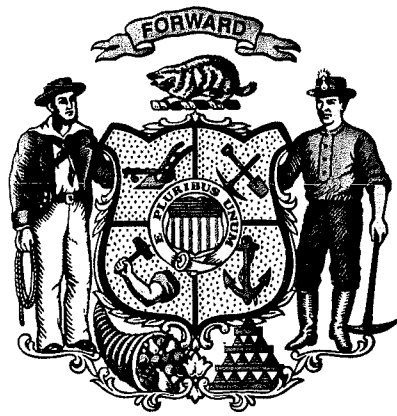
Total Fee

$$= \text{Great Lakes Basin Specific Fee} + \text{Base Fee}$$

$$= \$3,075 + \$125$$

$$= \$3,200$$





Both:

SORRY... I'd  
like to speek  
on the rule.

↓  
Dm