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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 10-059

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### 1. Statutory Authority

Section 281.346 (3) (a), Stats., provides that all of the following must register with the Department of Natural Resources (DNR):

a. A person proposing to begin a withdrawal from the waters of the state using a water supply system that will have the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period.

b. A person proposing to increase the capacity of a water supply system so that it will have the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period.

c. A person who, on July 1, 2009, has a water supply system with the capacity to make a withdrawal from the waters of this state averaging 100,000 gallons per day or more in any 30-day period and who is not previously registered with DNR under another statutory section.

d. A person proposing to begin a diversion of water.

Section NR 856.11 applies the provisions of ch. NR 856 to a person described in items a. and c., above. No specific mention is made of the person in item b., above. Further, with respect to a person who diverts water, s. NR 856.11 applies ch. 856 to a person who not only proposes to begin a diversion, but also to a person who “had” a diversion of water on December 8, 2008.

Finally, Section NR 856.11 (2) exempts from the provisions of ch. NR 856 withdrawals made by certain supply vehicles and withdrawals for certain short-term noncommercial projects.

What statutory authority exists for the provisions in s. NR 856.11 that deviate from the provisions in s. 281.346 (3) (a), Stats.?

## **2. Form, Style and Placement in Administrative Code**

a. The rule preface either specifically should indicate where comments about the rule are to be submitted and the deadline for their submission or indicate where the public will be able to obtain this information.

b. In s. NR 856.15 (2) (intro.), the phrase “any of the following” should be inserted before the phrase “domestic security concerns.”

c. In s. NR 856.20 (4) (j), the notation “ss.” should be replaced by the notation “s.”

d. Section NR 856.21 (3) should be rewritten in the active voice to read: “An owner is not required to amend a registration when...”

e. Section NR 856.22 (1) and (3) should begin with the phrase “An owner.” Similarly, s. NR 856.30 (1) and (2) should begin with the word “A.”

f. In s. NR 856.30 (2) (intro.), the phrase “all of” should be inserted before the phrase “the following information.”

g. Section NR 856.30 (2) (d) refers to procedures set forth in department rules and guidelines. To the extent these procedures meet the definition of the term “rule” in s. 227.01 (13), Stats., they should be set forth in the text of ch. NR 856.

h. In s. NR 856.31, the multiple occurrences of the word “must” should be replaced by the word “shall.”

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Item 8 of the rule preface would be clearer if citations were made to the scientific literature and manuals used in the preparation of the rule.

b. In s. NR 856.11 (1) (a) and (b), commas should set off the phrase “or a public water supply.” Paragraph (c) apparently refers to a person who diverted water beginning on or after December 8, 2008. If so, the provision should state this clearly. Finally, in par. (c), a comma should be inserted after the word “had.”

c. In s. NR 856.11 (2) (b), the number “3” should be replaced by the word “three.” [See also the use of the number “6” in s. NR 856.20 (2).]

d. In s. NR 856.20 (2), the phrase “of the effective date” should be replaced by the phrase “after the effective date.” [See also sub. (6) and s. NR. 845.21 (2).]

e. In s. NR 856.21 (1) (b), should the word “and” be replaced by the word “or.”?

f. In s. NR 856.21 (2), the phrase “is responsible for amending” should be replaced by the phrase “shall amend.”

g. In s. NR 856.22 (2) (a), does the phrase “reduced in size permanently” refer to reducing the capacity of a water supply system to less than 100,000 gallons per day in any 30-day period?

h. In s. NR 856.30 (4) and (5), the use of the term “responsible party” is unclear. It appears in sub. (4) that the term could be replaced by the defined term “owner.” Similarly, in sub. (5), the term could be replaced by the phrase “new owner.” Finally, in sub. (5), should the word “sold” be replaced by the word “transferred”?