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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 10-132

#### 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 NR 854.11 (3) should be revised to conform with s. 281.346 (5e) (a) 3., Stats. The statute provides that a person “may choose to”, but the rule states that a person “shall”. The rule should conform with the statute’s permissive option, rather than create a mandatory obligation.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The statutory authority given in the analysis should include s. 281.346 (4) and (5e), Stats.

b. In s. NR 854.01, the reference to the Safe Drinking Water Act should include the Act’s citation (42 U.S.C. s. 300f to 300j), and should include the citation to its adoption in ch. NR 809. A similar change is needed in s. NR 854.06 (3) (e).

c. In s. NR 854.01, the end of the second sentence should include, “and the Great Lakes-St. Lawrence River Basin Water Resources Compact under s. 281.348, Stats.”

d. In s. NR 854.03 (15), the citation to s. NR 811.02 (27) in the text and the note should be corrected to sub. (46). In the note, “Supplier of water” should be deleted, as that is not defined in s. NR 811.02 (46). Also, “Wis. Adm. Code” should be deleted here and in other places where it is used in the rule.

e. Section NR 854.06 (8) (intro.) should cite to “approved areawide water quality management plans under s. 283.83, Stats.,” and “applicable comprehensive plans as defined in s. 66.1001 (1) (a), Stats.”

f. In s. NR 854.06 (8) (c) 6., the reference to ch. 299, Stats., should more specifically cite s. 299.83, Stats.

g. In s. NR 854.12 (4) (b), “281.344 (5)” should be inserted before “281.346 (5),” and “281.344 (4s)” should be inserted before “281.346 (4s)”.

h. In s. NR 854.12 (6), the last sentence references s. NR 854.09. However, that section is for the public participation process, and not for specified withdrawals. Which section is meant to be referenced here?

i. It should be noted that in s. NR 854.13, a reference is made to ch. NR 860 which has not yet been reviewed or approved by the Legislature.

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

a. The place where comments are to be submitted for the proposed rule is listed as “to be determined” in the analysis. The place and deadline should be specified.

b. The format for all section titles should capitalize just the first word in the title.

c. In s. NR 854.03 (2), the phrase “, such as apartments or condominiums,” should be deleted.

d. In s. NR 854.03 (5), it seems that “customers” in the first sentence should refer to “another” public water supply system that purchases water from “the applying” public water supply system. Also, in the second sentence, would the consecutive water system that is a customer be purchasing from “the applying” public supply system rather than from an “other” public water supply system?

e. In s. NR 854.03 (20), does the definition of “public authority use” include tribal governments?

f. In s. NR 854.03 (26), the list of sources should be in the singular, *i.e.*, “including a well, spring, lake, river, and pond.”

g. In s. NR 854.03 (27), an “owner” is already defined in sub. (15) and does not need to be repeated here. This definition should be revised to simply state that “supplier of water” has the same meaning as “owner” given in sub. (15). The reference to s. NR 811.02 (27) is incorrect (it should be sub. (65)), and that definition simply refers back to the definition of “owner” itself in s. NR 811.02 (incorrectly referenced as sub. (44); it should be sub. (46)).

h. In s. NR 854.03 (28), would it be necessary to specify which “system” is being referenced? For example: the water supply system, the public water supply system, the waterworks or water system?

i. In s. NR 854.04 (1), the reference to subs. (2) and (3) should be in the alternative, not the plural, *i.e.*, “specified in sub. (2) or (3)”.

j. In s. NR 854.04 (1), the last sentence of the introductory material and pars. (a) to (d) impose specific deadlines that are exceptions to the general deadline provided in the introductory material, and should therefore be separated and noted as exceptions or requirements that apply in specific circumstances.

k. In s. NR 854.04 (2) and (3), “may” should replace “will”.

l. In s. NR 854.04 (5), “persons” should be changed to the singular, *i.e.*, “A person operating a public water supply system that has an approved...”.

m. In s. NR 854.06 (intro.), “following” should replace “items in this section”.

n. In s. NR 854.06 (3) (f), should “contamination” be defined? Should “potential,” “significant,” or “known” be defined?

o. In s. NR 854.06 (5) (a), the “recent past” should be defined. As a comparison, in s. NR 854.06 (4), the description of water use is over the last 10 years.

p. In s. NR 854.06 (5) (b), “shall” should replace “must”.

q. In s. NR 854.06 (8) (b), does a letter “or similar documentation” provide adequate guidance for acceptable, required documentation?

r. In s. NR 854.06 (9), “Owners” should be changed to the singular, *i.e.*, “An owner of a public supply system that is required...”.

s. In s. NR 854.06 (10) and (11), “it is expected that” should be inserted after “If”. A similar change is needed in s. NR 865.07 (1). A comma should be inserted after the cite to s. NR 854.07.

t. In s. NR 854.06 (12) (d), “from a governing body” or other specified source of the approval, should be inserted after “obtained”.

u. In s. NR 854.06 (12) (e), “to a straddling community, intrabasin transfers within a straddling community, and diversions to a community in a straddling county” should be inserted after “diversion”.

v. In s. NR 854.08 (1), does this subsection adequately meet the requirements of s. 281.348 (3) (c) 5., Stats.? That statute requires an assessment of economic impact for the significant recommendations of the plan, not just for supply alternatives that are addressed in s. NR 854.07 (though presumably supply alternatives would be a significant recommendation).

w. In s. NR 854.08 (1) (d), what documentation is required, *i.e.*, actual copies, or a summary list? Also, “par.” should replace “paragraph”.

x. In s. NR 854.09, pursuant to s. 281.348 (3) (b) 1., Stats., a requirement should be added that for a plan that covers a public water supply system that withdraws water from the

Great Lakes basin, the owner shall provide access to all documents relevant to the application. This is distinct from the requirement of s. NR 854.09 (4).

y. In s. NR 854.09 (3) (c), “or” should be inserted after “orally”.

z. In s. NR 854.11 (1) and (2), “that totals at least” should replace “of at least”.

aa. In ss. NR 854.11 (1), (2), and (3), and 854.12 (2) (d), the statutory cites should include “Stats.” after the section numbers.

bb. In s. NR 854.11 (3), “per day” should be inserted after “gallons”.

cc. In s. NR 854.12 (1), “written” should be inserted before “decision”.

dd. In s. NR 854.12 (2) (a), “other applicable statutes and rules” should be replaced by a list of specific statutes or rules that are applicable.

ee. In s. NR 854.12 (2) (a) 2., the language should be conformed to mirror s. 281.348 (3) (d) 2., Stats., which requires that the plan “effectively utilize...to the extent practicable,” rather than “will meet the water demand”.

ff. In s. NR 854.12 (2) (d), “approved” should be inserted between “applicable” and “areawide”.

gg. In s. NR 854.12 (2), a par. (f) should be inserted to meet the requirements of s. 281.348 (3) (d) 5., Stats.

hh. In s. NR 854.12 (4) (b), “database” should replace the fourth use of “permit”, to be consistent with s. 281.348 (4) (b), Stats.

ii. In s. NR 854.12 (6), “may” should replace “can” in the last sentence.

jj. In s. NR 854.15 (1), “other applicable department authorities” should be replaced by a list of specific authorities that are applicable. Also, “Ch.” should be lower case: “ch.”