

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCE BOARD
CREATING RULES

The Wisconsin Natural Resource Board proposes an order to repeal sections NR 142.03 (1), (2), and (3) and to create chapter NR 856 relating to the registration and reporting process for water withdrawals and affecting small business.

DG-25-10

Analysis Prepared by the Department of Natural Resources

- 1. Statutes Interpreted:** Sections 281.343(4), 281.346(3) and (14), Stats.
- 2. Statutory Authority:** Sections 227.11(2)(a), 281.346(3), Stats.
- 3. Explanation of Agency Authority:** Section 227.11 (2) (a), Stats., expressly confers rulemaking authority on the department to promulgate rules interpreting any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Section 281.346(3)(b), Stats., authorizes the Department to promulgate rules to establish information requirements for statewide water withdrawal registration and reporting.

- 4. Related Statute or Rule:** Wisconsin Statutes Sections 30.18, 281.34, 281.343, 281.344, 281.346, 281.348, 281.35 and the following rules under development: Water Conservation and Efficiency, Water Use Permitting, Water Use Fees, Water Use Public Involvement, Water Loss from Consumptive Uses, and Water Supply Service Area Plans.
- 5. Plain Language Analysis:** This rule rescinds a portion of an existing rule related to registration of water withdrawals and creates a new rule that clarifies and further defines new statewide statutory requirements for withdrawals of waters of the state and diversions of water from the Great Lakes Basin. The new law requires the following:
 - Registration for any person who has or proposes to have a water supply system with the capacity to withdraw 100,000 gallons per day or more in any 30-day period or who diverts water in any amount from the Great Lakes Basin.
 - Annual reporting for any person who makes a withdrawal in excess of 100,000 gallons per day or more in any 30-day period or who diverts any amount from the Great Lakes Basin.

The rule sets forth definitions, procedures and information requirements for registrations, procedures for amending and terminating registrations, methods for measuring withdrawals, and procedures for annual reporting.

- 6. Federal Regulatory Analysis:** There are no comparable federal regulations pertaining to water withdrawals. However, in passing the Great Lakes – St. Lawrence River Basin Water Resources Compact (Compact), each of the Great Lakes states now have similar regulations requiring the registration and permitting of certain levels of water withdrawals and diversions from the Great Lakes Basin.

7. Comparison with Rules in Adjacent States:

The following table compares regulatory requirements for water withdrawals in adjacent states.

	Wisconsin	Illinois	Iowa	Michigan	Minnesota
Registration	Registration is required for persons with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period.	An allocation permit is required for withdrawals from the Lake Michigan Basin.	Water use permits are required of any person or entity that withdraws at least 25,000 gallons in a 24-hour period during any calendar year.	Registration is required for a new withdrawal averaging over 100,000 gallons per day in any 30-day period or an increase averaging over 100,000 gallons per day in any 30-day period beyond the baseline capacity of a withdrawal.	Water Use permits are required for withdrawals greater than or equal to 10,000 gallons per day or 1 million gallons per year from surface or groundwater.
Reporting	Monthly water withdrawal volumes are reported annually by March 1 for withdrawals averaging 100,000 gallons per day or more in any 30-day period.	Annual reporting is required for all withdrawals from the Lake Michigan basin and statewide for withdrawals over 100,000 gallons per day.	Monthly water withdrawal volumes are reported by all water use permit holders annually by January 31.	Monthly water withdrawal volumes are reported by all registrants annually by April 1.	Monthly water withdrawal volumes are reported by all water use permit holders annually by February 15.

8. Summary of the Factual Data and Analysis that Support the Proposed Rule: Published scientific literature and manuals, including U.S. Department of the Interior Bureau of Reclamation’s “Water Measurement Manual, Third Edition”, prepared cooperatively by U.S. Government agencies and “Groundwater and Wells, Second Edition”, 1989, written by Fletcher Driscoll were used as the basis for developing the withdrawal measurement standards. Existing state statutes, department rules, and department procedures were used to guide the development of the registration and reporting process.

9. Analysis and Supporting Documentation in Support of the Determination of the Rule’s Effect on Small Business: Any person with a water supply system with the capacity to make a withdrawal from the waters of the state of 100,000 gallons per day is required to register. In addition, any person who makes a withdrawal averaging 100,000 gallons per day or more in any 30-day period must also report their water withdrawals to the department annually. To comply, small businesses follow the same requirements as other persons who withdraw water. The registration and reporting requirements are straightforward and can be accomplished by most individuals with no specific professional background.

10. Effect on Small Business: This rule will affect small businesses that supply their own water with water supply systems that have the capacity to withdraw over 100,000 gallons per day. Small businesses, like other entities that are affected by this rule, will have to

determine the amount of water used on a monthly basis and report that water use annually. Small businesses that receive water solely from a public water supply will not be impacted by this rule. Specific standards will provide clarity and consistency in the registration and reporting process.

11. Agency Contact Person:

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12. Place where comments are to be submitted and deadline for submission: Comments are to be submitted to Kristy Rogers, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707 by July 7, 2010.

SECTION 1. Section NR 142.03(1), (2), and (3) are repealed.

SECTION 2. Chapter NR 856 is created to read:

**CHAPTER NR 856
WATER USE REGISTRATION AND REPORTING**

SUBCHAPTER I– GENERAL PROVISIONS

- NR 856.10 Purpose
- NR 856.11 Applicability
- NR 856.12 Definitions
- NR 856.13 Determining Withdrawal Capacity
- NR 856.14 Responsible Parties
- NR 856.15 Open Records Requests and Water Use Information
- NR 856.16 Enforcement

SUBCHAPTER II - REGISTRATION

- NR 856.20 Procedures
- NR 856.21 Amendments
- NR 856.22 Terminations

SUBCHAPTER III – RECORDKEEPING AND REPORTING

- NR 856.30 Measurement and Reporting Requirements
- NR 856.31 Measurement Methods and Frequency

SUBCHAPTER I – GENERAL PROVISIONS

NR 856.10 Purpose. The purpose of this chapter is to implement s. 281.346(3), Stats., by establishing requirements for registering water withdrawals and collecting and reporting of accurate water withdrawal data to support management of the state's water resources.

NR 856.11 Applicability. (1) Unless exempted under sub. (2), this chapter applies to the following persons regardless of whether the activity is permitted, approved, or otherwise authorized under other regulatory authority of the department:

(a) Any person who proposes to begin a withdrawal from the waters of the state using a water supply system or systems on one property, or a public water supply, with the capacity to withdraw an amount averaging 100,000 gallons per day or more in any 30-day period.

(b) Any person who proposes to increase the capacity of a water supply system or systems on one property, or a public water supply, so that it will have the capacity to withdraw an amount averaging 100,000 gallons per day or more in any 30-day period.

(c) Any person who on July 1, 2009 had a water supply system or systems on one property or a public water supply with the capacity to withdraw from the waters of the state an amount averaging 100,000 gallons per day or more in any 30-day period.

(d) Any person who proposes to begin a diversion on or after December 8, 2008 or who had a diversion on December 8, 2008.

(2) This chapter does not apply to withdrawals for any of the following purposes:

(a) To supply vehicles, including vessels and aircraft, for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

(b) To use in a noncommercial project that lasts no more than three months for fire fighting, humanitarian, or emergency response purposes.

NR 856.12 Definitions. In this chapter:

(1) “Consumptive use” has the meaning specified in s. 281.346(1)(e), Stats.

Note: Section 281.346(1)(e), Stats., defines “consumptive use” to mean “a use of water that results in the loss of or failure to return some or all of the water to the basin from which the water is withdrawn due to evaporation, incorporation into products, or other processes.”

(2) “Continuous water use” means a water use that is intended to be uninterrupted through time except for short periods such as for maintenance and because of power outages.

(3) “Department” means the department of natural resources.

(4) “Diversion” has the meaning specified in s. 281.346(1)(h), Stats.

Note: Section 281.346(1)(h), Stats., defines “diversion” to mean “a transfer of water from the Great Lakes basin into a watershed outside the Great Lakes basin, or from the watershed of one of the Great lakes into that of another, by any means of transfer, including a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, tanker ship, tanker truck, or rail tanker except that ‘diversion’ does not include any of the following: 1. The transfer of a product produced in the Great Lakes basin or in the watershed of one of the Great Lakes, using waters of the Great Lakes basin, out of the Great Lakes basin or out of that watershed. 2. The transmission of water within a line that extends outside the Great Lakes basin as it conveys water from one point to another within the Great Lakes basin if no water is used outside the Great Lakes basin. 3. The transfer of bottled water from the Great Lakes basin in containers of 5.7 gallons or less.”

(5) “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.”

(6) “Intermittent water use” means a water use that starts and stops irregularly or regularly through time.

(7) “One property” has the meaning specified in s. NR 812.07(68).

Note: Section NR 812.07(68), Wis. 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.”

(8) “Owner,” for water supply systems other than public water supply systems, means a person who owns property on which a water supply system is located or proposed to be located or the designated representative of such a person. For public water supply systems, owner means a person who owns the public water supply or designated representative of such a person.

(9) “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.”

(10) “Property” has the same meaning as “one property,” as specified in sub. (7).

(11) “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.”

(12) “Source” means an individual location where water is withdrawn from groundwater or surface water, such as a well or surface water intake.

(13) “Water loss” has the meaning specified in s. 281.346(1)(wm), Stats.

Note: Section 281.346(1)(wm), Stats., defines “water loss” to mean “the amount of water that is withheld from or not returned to the basin from which it is withdrawn as a result of a diversion or consumptive use or both.”

(14) “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.”

Note: The water supply system includes all points of intake of water into a water supply system.

(15) “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.”

(16) “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.”

(17) “Withdrawal” has the meaning specified in s. 281.346(1)(z), Stats.

Note: Section 281.346(1)(z), Stats., defines “withdrawal” to mean “the taking of water from surface water or groundwater, including the taking of surface water or groundwater for the purpose of bottling the water.”

(18) “Well” has the meaning specified in s. 281.34(1)(h), Stats.

Note: Section 281.34(1)(h), Stats., defines “well” to mean “any drillhole or other excavation or opening deeper than it is wide that extends more than 10 feet below the ground surface and is constructed for the purpose of obtaining groundwater.”

NR 856.13 Determining Withdrawal Capacity. (1) The withdrawal capacity for a property is the total capacity in gallons per day from all water sources on the property.

Note: The withdrawal capacity may not necessarily be the same as the approved maximum daily withdrawal set forth by another department approval or permit, such as a high capacity well approval or a permit issued under s. 30.18, Stats.

(2) The withdrawal capacity for a public water supply is the total capacity from all water sources in the system.

(3) The capacity of individual water sources shall be one of the following:

(a) For flowing sources, the maximum flow rate.

(b) For pumped sources, the maximum hydraulic capacity of the most restrictive component of the water supply system. If the most restrictive component is a pump, the maximum capacity is determined based on the pump curve at the lowest system pressure setting.

NR 856.14 Responsible Parties. (1) The person responsible for registering, reporting, amending, or terminating registrations as required under this chapter is one of the following:

(a) For water supply systems, the owner of the property on which the water supply system is located.

(b) For public water supply systems, the owner of the public water supply system.

NR 856.15 Open Records Requests and Water Use Information. (1) The locations of withdrawals and diversions are sensitive information that may impact domestic security.

(2) Open records requests received by the department under ss. 19.21 to 19.39, Stats., that request information on the locations of withdrawals or diversions may be subject to greater

scrutiny by the department because of domestic security concerns, as allowed under s. 281.346(3)(cm), Stats. The department may request any of the following with respect to open records requests seeking information on the locations of withdrawals or diversions, in order to address domestic security concerns:

(a) That the request be put in writing.

(b) The name, mailing address, telephone number, and email address of the requester and the company or organization that the requester represents.

(c) The specific information requested.

(d) The reason the information is requested and how it will be used.

(3) In considering the public's interest in domestic security when reviewing requests submitted under sub. (2), the department may consider guidance and information from state and federal agencies and organizations with responsibility for domestic security and may place conditions on the use of the information, or may provide the requested information in a different format, when necessary to protect the public's interest in domestic security. The department shall explain its reasons for why conditions or special formats are necessary to protect the public's interest in domestic security in its response to the requester.

(4) Water use information collected by the department shall be provided to the public in an easily accessible form such as a report or database summary, at least annually. Information provided by the department shall not include the following information:

(a) the registrant's personal information except for the registrant's name; and

(b) location information at a scale more specific than the public land survey section level.

NR 856.16 Enforcement. (1) Violations of this chapter may be prosecuted by the department under s. 281.346(14), Stats.

(2) Any violation of these rules shall be treated as a violation of the statutes they interpret or under which they are promulgated.

(3) Persons violating this chapter are subject to penalties as specified in s. 281.346(14), Stats.

SUBCHAPTER II – REGISTRATION

NR 856.20 Procedures. (1) Any person proposing to begin a withdrawal or diversion to which this chapter applies shall register with the department prior to withdrawing or diverting water.

(2) Any person who on July 1, 2009 had a water supply system to which this chapter applies shall register within six months after the effective date of this subsection [legislative reference bureau inserts date].

(3) Registration is required for each property and each public water system.

(4) A person shall register in the manner prescribed by the department and shall provide all of the following information:

(a) The name, mailing address, telephone number, and email address of the owner and operator.

(b) The locations and sources of the withdrawal or diversion.

(c) The daily withdrawal capacity of the water supply system, the daily withdrawal capacity from each source and, for water supply systems located in the Great Lakes Basin, an estimate of the maximum hydraulic capacity of the most restrictive component of the water supply system or systems.

(d) An estimate of the volume of the withdrawal or diversion in terms of gallons per day average in any 30-day period.

(e) The uses made of the water.

(f) The places at which the water is used.

(g) The places at which any of the water is discharged.

(h) Whether the water use is continuous or intermittent.

(i) Whether the person holds an approval or permit under s. 30.18, 281.35, 283.31, Stats., or other statutes.

(j) A map showing the location of the property or public water supply, sources, and discharges.

Note: The department is developing an internet based system that will allow registrants to identify required locations using an online mapping tool..

(5) The department shall not accept a registration until it is complete. A complete registration contains all of the information identified in sub. (4).

(6) The department shall notify owners if the registration is incomplete or if it has been accepted within 30 calendar days after the receipt of the registration.

NR 856.21 Amendments. (1) A registration amendment is required when changes or modifications are made to any of the following:

(a) Property ownership or property boundaries.

(b) The name, mailing address, telephone number, and email address of the owner or

(c) The locations and sources of the withdrawal or diversion.

(d) The daily withdrawal capacity of the water supply system or individual source or sources.

(e) The uses made of the water.

(f) The places at which the water is used.

(g) The places at which any of the water is discharged.

(2) Except for changes in property ownership, the owner shall amend the registration in the manner prescribed by the department by March 1 of the year following the change or modification. For changes in property ownership, the new owner shall amend the registration within 30 calendar days of the change.

Note: Registration amendments may be completed as part of the annual reporting process.

(3) An owner is not required to amend a registration when replacing equipment with equipment of the same capacity and operating parameters.

NR 856.22 Terminations. (1) An owner may terminate registration only when the withdrawal capacity of the water supply system or systems on one property or for a public water system is no longer at the level requiring registration under s. NR 856.11.

(2) One property or a public water system no longer has the withdrawal capacity at the level requiring registration under s. NR 856.11 when one of the following occurs:

(a) For flowing sources, the connection between the source or sources and the water supply system is physically eliminated or reduced in size permanently to below the level requiring registration under s. NR 856.11.

Note: Elimination of the physical connection may require filling of channels, filling and sealing of wells, removal of pipes or conduits, or re-routing flow around the water supply system or facility.

(b) For pumped sources, the connection between the source or sources and the water supply system is physically eliminated or reduced in size to below the level requiring registration under s. NR 856.11 and the pump or pumps are reduced in capacity to below the level requiring registration under s. NR 856.11 or are removed from the system permanently.

Note: Elimination of the physical connection may require filling of channels, filling and sealing of wells, or removal of pipes or conduits.

(3) An owner shall terminate the registration in the manner prescribed by the department by the end of the calendar year of the calendar year in which the water supply system is no longer at the capacity requiring registration under s. NR 856.11.

SUBCHAPTER III – RECORDKEEPING AND REPORTING

NR 856.30 Measurement and Reporting Requirements. (1) A person registered under this chapter shall determine the monthly volume of water withdrawn from the property or public water supply, or the monthly volume of water diverted, using methods and procedures set forth in s. NR 856.31.

(2) A person registered under this chapter that makes a withdrawal that averages 100,000 gallons per day or more in any 30-day period, or diverts any amount of water, shall annually report to the department the monthly volumes of the withdrawal or diversion. Reports shall be submitted to the department in the manner prescribed by the department by March 1 of every year and shall contain all of the following information about the previous year's withdrawals:

(a) Monthly volumes of withdrawal for each source on the property or in the public water supply and if applicable, the monthly volumes of diversion.

(b) The estimated volumes of each use made of the water.

(c) Method or methods used to measure the withdrawals or diversion.

(d) A statement advising the department if the withdrawal was at a level greater than or equal to 1,000,000 gallons per day for 30 consecutive days.

(e) Estimated or actual water loss from consumptive use. Water loss and consumptive use estimations and calculations shall follow the procedures set forth in department rules and guidelines.

(f) Method or methods used to determine water loss from consumptive use.

(3) Withdrawal information shall be made available to the department upon request.

(4) The owner shall maintain records of the withdrawal or diversion for a minimum of three years. Records include monthly volumes of withdrawal and, if applicable, diversion; methods used to measure or estimate the withdrawal or diversion; calibration records of meters; and any other pertinent documents necessary to calculate or estimate the withdrawal or diversion volume.

(5) When a property or portion of a property is transferred to another person, the previous owner shall provide copies of the records identified in sub. (4) to the new owner of the property. The new owner is responsible for reporting all withdrawals that occurred during the calendar year as required in sub. (2).

NR 856.31 Measurement Methods and Frequency. (1) Withdrawals shall be measured in accordance with the following methods:

(a) Sources that flow or are pumped at a rate of 70 or more gallons per minute shall be measured using one of the following methods:

1. Totalizing flow meter. Flow meters shall be read and documented at least once every month.

2. Pump operation is timed with an hour meter and the pumping capacity is used to calculate total pumpage. The operation time and pumping capacity shall be documented for each period of use.

3. Flow rate is measured using a weir. For sources with little or no flow rate variability, flow rate shall be measured on a daily basis for the first week and at a minimum of weekly thereafter. For sources with flow rate variability, flow rate shall be measured daily.

4. Flow rate is measured by discharge from a horizontal pipe. Flow rate shall be measured on a daily basis for the first week and at a minimum of weekly thereafter.

5. Alternative method and monitoring frequency that has been approved by the department.

(b) Sources that flow or are pumped at a rate of less than 70 gallons per minute shall be measured using one of the following methods:

1. Totalizing flow meter. Flow meters shall be read and documented at least once every month.

2. Pump operation is timed with an hour meter and the pumping capacity is used to calculate total pumpage. The operation time and pumping capacity shall be documented for each period of use.

3. Flow rate is measured using a weir. For sources with little or no flow rate variability, flow rate shall be measured on a daily basis for the first week and at a minimum of weekly thereafter. For sources with flow rate variability, flow rate shall be measured daily.

4. Flow rate is measured by discharge from a horizontal pipe. Flow rate shall be measured on a daily basis for the first week and at a minimum of weekly thereafter.

5. Estimate based upon time to fill a container of known volume. Flow rate shall be measured on a daily basis for the first week and at a minimum of weekly thereafter and if the flow is not continuous, hours of operation shall also be recorded.

6. Alternative method and monitoring frequency that has been approved by the department.

(2) The monthly volume of water withdrawn shall not include the volumes of water that

are reused on the property or within the public water system.

(3) Meters and measuring devices shall be maintained and calibrated as directed by the manufacturer.

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

(SEAL)

By _____

Matthew J. Frank, Secretary