

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
NOTICE OF PUBLIC HEARINGS
DG-23-10, DG-24-10, DG-25-10

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.11(2)(a) and 281.346(3), (4)(g), (8) and (12), and 281.35(10)(b), Stats., the Department of Natural Resources will hold public hearings on revisions to Wis. Adm. Code chapter NR 142, and the creation of Wis. Adm. Code chapters NR 850 Water Use Fees, NR 852 Water Conservation and Water Use Efficiency, and NR 856 Water Use Registration and Reporting, relating to implementation of the Great Lakes Compact and associated water use regulations.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:
June 28, 2010, Monday, 6:00 p.m., at the Ramada Plaza Terrace 1 & 2, 6331 South 13th Street, Milwaukee, WI.

June 29, 2010, Tuesday, 6:00 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), Ashland Room 306 Conference Center, 2100 Beaser Avenue, Ashland, WI (<http://www.witc.edu/ashland/map.htm>).

June 30, 2010, Wednesday, 6:00 p.m. Concurrent sessions will be held at the following two locations: the Pyle Center, Room 121 (Gayle VanDeBerg Auditorium), 702 Langdon St., Madison, WI (<http://conferencing.uwex.edu/location.cfm>) AND Northcentral Technical College (NTC), David Obey Center for Health Sciences Auditorium, 1000 Campus Dr., Wausau, WI 54401 (<http://www.ntc.edu/pdf/CentralCampusMap.pdf>).

NOTICE IS HEREBY FURTHER GIVEN that the order in which the three rule proposals will be considered will be decided at the time of hearing. The proposed rules and supporting documents, including the fiscal estimates, may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order Nos. DG-23-10 (NR 850 Water Use Fees), DG-24-10 (Water Conservation and Water Use Efficiency), and DG-25-10 (NR 856 Water Use Registration and Reporting). Written comments on the proposed rules may be submitted via U.S. mail to Ms. Kristy Rogers, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707 or by e-mail to Kristy.Rogers@wisconsin.gov. Comments may be submitted until July 7, 2010. Written comments whether submitted electronically or by mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and supporting documents may be obtained from Kristy Rogers, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-9254.

DG-23-10, Chapter NR 850 Water Use Fees

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 associated with it 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 | |
|---|--------------------------------|
| <u>Amount Withdrawn</u> | <u>Fee Per Million Gallons</u> |
| 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. **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 |
| \$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: (50 – 100) \$1.50/mil. (100 – 150) \$2/mil. | No annual water use fee. | 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 | \$200 annual reporting fee for withdrawals exceeding 100,000 gallons per day averaged over a consecutive 30-day period. (No annual fee for | \$140 minimum annual water use fee for withdrawals between 0 and 50 million gallons. Marginal fee rates for withdrawals exceeding 50 million gallons per year as follows: (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>(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>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>withdrawals for agricultural use.)</p> | <p>Maximum Annual water use fees: \$750 for any single agric. 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> |
|---|--|--|---|--|

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.

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.

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.

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

DG-24-10, NR 852 Water Conservation and Water Use Efficiency

Plain Language Analysis: This board order creates a new rule that clarifies and further defines new statutory requirements for water conservation and water use efficiency for withdrawals of waters of the state within the Great Lakes Basin, diversions of water from the Great Lakes Basin, and water withdrawals statewide that require a water loss approval. The new law implements the following:

1. Specifies mandatory water conservation and efficiency measures for waters of the Great Lakes Basin and withdrawals statewide that require a water loss approval.
2. Promotes voluntary statewide water conservation through the identification of water conservation and efficiency measures.
3. Guides other department regulatory, planning, resource management, liaison and financial aid determinations.

Persons subject to this chapter are categorized into one of 3 levels:

1. Tier 1 includes new and increased withdrawals in the Great Lakes Basin that average 100,000 gallons per day or more in any 30-day period but that do not equal at least 1,000,000 gallons per day for any 30 consecutive days.
2. Tier 2 includes new and increased withdrawals in the Great Lakes Basin that equal 1,000,000 gallons per day or more for any 30 consecutive days.
3. Tier 3 includes new and increased diversions in a community or county that straddles the sub-continental divide and new and increased withdrawals statewide that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period.

This tiered approach is being used to differentiate between the requirements for different types and levels of regulated activities. The level of water conservation and efficiency requirements are increased from Tier 1, to Tier 2, to Tier 3.

In addition to completing a Water Conservation Plan, there are four mandatory water conservation and efficiency measures (CEMs) for all persons for whom water conservation and efficiency requirements are mandatory under this chapter. These CEMs have been determined to be cost-effective, environmentally sound and economically feasible for all water use sectors. Implementation of additional CEMs are required for Tier 2 and Tier 3 only.

The rule sets forth definitions, sector specific water conservation and efficiency measures, elements of a water conservation plan, procedures for conducting an environmentally sound and economically feasible analysis, process for approval and reporting, and process for enforcement. **Federal Regulatory Analysis:** There are no comparable federal regulations pertaining to water conservation and water use efficiency. However, in passing the Great Lakes – St. Lawrence River Basin Water Resources Compact (Compact), each of the Great Lakes states have similar requirements to establish a water conservation and efficiency program that is consistent with the goals and objectives identified by the Great Lakes Compact Council.

Comparison with Rules in Adjacent States:

The following table compares regulatory requirements for water conservation and efficiency in adjacent states:

| Water Conservation and Water Use Efficiency Comparison | | | | |
|--|--|---|---|--|
| Wisconsin | Illinois | Iowa | Michigan | Minnesota |
| Specifies mandatory water conservation and water use efficiency measures within user sectors for certain levels of new or increased withdrawals and diversions from waters of the Great Lakes Basin and for water withdrawals statewide that require a water loss approval. Promotes voluntary statewide water | Specifies all water withdrawals over 100,000 gallons per day in the Great Lakes Basin to obtain a permit. Conservation practices within the user category are specified through permitting process. Requires permittees to submit a plan to reduce wasteful water and unaccounted for water by 8 | Specifies all persons making a water withdrawal of at least 25,000 gallons per day to obtain a water use permit. Iowa statute provides for a water allocation (permit) system based on beneficial use preventing waste, unreasonable use and unreasonable methods of use of water | Specifies all persons making large quantity withdrawals averaging 100,000 gallons a day for 30-days to evaluate generic water conservation measures applicable to their sector for review and acceptance by the Department of Environmental Quality. Requires legislative | Specifies mandatory efficient use and conservation of water through permitting process for all water users withdrawing water at a rate of 10,000 gallons a day or a million gallons per year. Water conservation must be addressed in water supply plans required for public water systems serving more than 1000 people. Requires mandatory conservation rate structures for all public water utilities |

| | | | | |
|--|--|--------------------------------------|--|--|
| conservation through the identification of water conservation and efficiency measures. | percent. Requires permittees to submit an annual water use audit form. | resources. Conservation is expected. | review of the status and preparation and acceptance of water user sector conservation measures by April 1, 2010. | located within the basin. Specifies voluntary measures including information and education, retrofitting water fixtures and encouraging water reuse. |
|--|--|--------------------------------------|--|--|

Summary of the Factual Data and Analysis that Support the Proposed Rule:

Published scientific literature, industry manuals, information from other states, consultation with the Department of Commerce and Public Service Commission, and input from an advisory committee were used as the basis for developing the water conservation plan requirements and required water conservation and efficiency measures.

Analysis and Supporting Documentation in Support of the Determination of the Rule’s Effect on Small Business:

Any person who diverts any amount of water, has a new or increased withdrawal averaging 100,000 gallons per day or more in any 30-day period from the Great Lakes Basin, or a withdrawal with a water loss over 2,000,000 gallons per day must complete a water conservation plan and implement water conservation and efficiency measures. To comply, small businesses follow the same requirements as other persons who withdraw water in the same quantity. The water conservation and water use efficiency requirements are clearly identified in this rule and do not include requirements to retrofit existing equipment. Water conservation and efficiency measures that are not environmentally sound or economically feasible do not need to be implemented.

Effect on Small Business: This rule will affect small businesses located in the Great Lakes Basin that supply their own water with water supply systems that actually withdraw water averaging 100,000 gallons per day or more in any 30-day period or have a new or increased withdrawal statewide that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period. Water conservation and efficiency measures that are not environmentally sound or economically feasible do not need to be implemented. Small businesses that receive water from a public water supply will not be impacted by this rule.

Agency Contact Person: Steven Elmore, Water Resources Management Specialist, Wisconsin Department of Natural Resources, Bureau of Drinking Water & Groundwater, (608) 264-9246 Steve.Elmore@wisconsin.gov

DG-25-10, NR 856 Water Use Registration and Reporting

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:

1. 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.
2. 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.

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 within the Great Lakes Basin.

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. |

Summary of the Factual Data and Analysis that Support the Proposed Rule: Published scientific literature and manuals 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.

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.

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.

Agency Contact Person: Kristy Rogers, Water Supply Specialist, Wisconsin Department of Natural Resources, Bureau of Drinking Water & Groundwater, (608) 266-9254, Kristy.Rogers@wisconsin.gov

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rules will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@wisconsin.gov or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call James McLimans at (608) 266-2726 with specific information on your request at least 10 days before the date of the scheduled hearing.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
By _____
Matthew J. Frank, Secretary