

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCE BOARD
CREATING RULES

The Wisconsin Natural Resource Board proposes an order to create chapter NR 860 Water Use Permitting relating to the application and permit process for withdrawals of Great Lakes basin water and affecting small business.

DG-34-10

Analysis Prepared by the Department of Natural Resources

- 1. Statutes Interpreted:** Sections 281.346(4m), 281.346(4s), 281.346(5), 281.346(5m), 281.346(6), and 281.346(9), Stats.
- 2. Statutory Authority:** Sections 227.11(2)(a), 281.346(4s), 281.346(5), and 281.346(9), 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(4s), Stats., directs the Department to promulgate rules associated with the creation of General Water Use Permits for the Great Lakes basin. The rules are to establish permit application information requirements; permit review time limits; and requirements for estimating, monitoring, and reporting of water withdrawals from the Great Lakes basin.

Section 281.346(5), Stats., directs the Department to promulgate rules associated with the creation of Individual Water Use Permits for the Great Lakes basin. The rules are to establish permit application information requirements; permit review time limits; permit limits on the location and times and uses of withdrawals; and requirements for estimating, monitoring, and reporting of water withdrawals from the Great Lakes basin.

Section 281.346(9) Stats., directs the Department to promulgate rules for public notice and participation procedures for applications for general and individual water use permits.

- 4. Related Statute or Rule:** Sections 30.18, 281.343, 281.344, 281.346, and 281.35, Stats., Chapters NR 850, 852, and 856, Wis. Adm. Code, and the following rules under development Water Loss from Consumptive Uses, and Water Supply Service Area Plans.
- 5. Plain Language Analysis:** This rule supports the implementation of 2007 Wisconsin Act 227 and the Great Lakes—St. Lawrence River Basin Water Resources Compact (Compact) by defining the process, requirements, and criteria for water use permitting in the Great Lakes basin. Beginning on December 8, 2011, coverage under a general permit or an individual permit is required for all persons who

withdraw water from the Great Lakes basin in an amount that averages 100,000 gallons per day or more in any 30-day period.

The rule establishes definitions, permit application information requirements, permit review time limits, required permit conditions, criteria for permit issuance, procedures for amending and terminating permits, and standards and procedures for public participation for the water use permitting program.

6. Federal Regulatory Analysis: There are no comparable federal regulations pertaining to withdrawals of Great Lakes basin water.

7. Comparison with Rules in Adjacent States: The following table compares permitting requirements for water withdrawals in adjacent states. In addition, all Great Lakes states have agreed through the Great Lakes Compact to have management programs for water withdrawals from the Great Lakes Basin.

Wisconsin	Michigan	Illinois	Iowa	Minnesota
A water use general permit is required for withdrawals from the Great Lakes basin that average 100,000 gallons per day or more in any 30-day period. A water use individual permit is required for withdrawals from the Great Lakes basin that equal at least 1,000,000 gallons per day for any 30 consecutive days.	Permits are required for new and increased withdrawals of more than 2,000,000 gallons per day, new or increased withdrawals of more than 1,000,000 gallons per day if the withdrawal will have a certain type of impact (Zone C withdrawal), and new or increased intrabasin transfers of more than 100,000 gallons per day average over any 90-day period.	An allocation permit is required for withdrawals from the Great Lakes 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.	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.

8. Summary of the Factual Data and Analysis that Support the Proposed Rule: Information from the Great Lakes-St. Lawrence River Basin Water Resources Council, other Great Lakes states, existing state statutes, and existing department rules and procedures were used to guide the development of the proposed rule.

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 operations withdrawing water above the thresholds requiring a permit. However, based upon the withdrawal data that does exist (e.g. high capacity well pumpage data), most small businesses are expected to fall within the general permit category with very few needing to obtain an individual permit.

10. Effect on Small Business: This rule will affect small businesses that supply their own water with water supply systems that withdraw an average of 100,000 gallons per day. Small businesses, like other entities that are affected by this rule, will have to obtain a permit, measure 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. Most small businesses regulated by this rule are expected to fall within the general permit category. The general permit requirements are straightforward and can be accomplished by most individuals with no specific professional background. The application for an individual permit may require the hiring of a professional environmental consultant to assist with the evaluation of impacts from a proposed withdrawal.

11. Agency Contact Person:

Kristy J. Rogers, Water Supply Specialist
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12. Place where comments are to be submitted and deadline for submission:

Comments were submitted to Kristy Rogers, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707 by October 31, 2010.

SECTION 1. Chapter NR 860 is created to read:

**CHAPTER NR 860
WATER USE PERMITTING**

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SUBCHAPTER I – GENERAL PROVISIONS

NR 860.10 Purpose. The purpose of this chapter is to implement s. 281.346(4m), (4s), (5), (5m), (6), and (9), Stats. This chapter establishes the process, requirements, and criteria for water use permitting.

NR 860.11 Definitions. In this chapter:

(1) “Baseline” means the amount of a preexisting withdrawal, as determined by the department under s. 281.346(4e), Stats.

(2) “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.”

(3) “Days” means calendar days unless otherwise specified.

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

(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) “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.”

(7) “Owner,” for water supply systems other than public water supply, 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, “owner” means a person who owns the public water supply or designated representative of such a person.

(8) “Permittee” means an owner that is issued a permit.

(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) “Preexisting withdrawal” means a withdrawal that started prior to December 8, 2008.

(11) “Property” has the same meaning as “one property,” as specified in sub. (6).

(12) “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.”

(13) “Significant adverse environmental impact” means alteration of groundwater levels, groundwater discharge, surface water levels, surface water discharge, groundwater temperature, surface water temperature, groundwater chemistry, surface

water chemistry, or other factors to the extent such alterations cause significant degradation of environmental quality including biological and ecological aspects of the affected water resource.

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

(15) "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."

(16) "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.

(17) "Water use intensity" has the meaning specified in s. NR 852.03(29).

Note: Section NR 852.03(29), Wis. Adm. Code, defines "water use intensity" to mean "a measure of water use per unit production, sales unit, or customer served."

(18) "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."

(19) "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."

(20) "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."

(21) "Withdrawal amount" means the permitted amount of a withdrawal in a notice of coverage under a general permit or an individual permit as specified by the

department under s. 281.346(4g), (4s), or (5), Stats. The withdrawal amount for an automatically issued notice of coverage under a general permit or an individual permit shall not be less than the baseline unless specifically requested by the owner.

(22) "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 860.12 Responsible Parties and Eligible Permittees. (1) The owner is the person responsible for obtaining, modifying, terminating, and complying with notice of coverage under a general permit or with an individual permit.

(2) The department shall issue notice of coverage under a general permit or issue an individual permit only to the responsible party under sub. (1).

NR 860.13 Interim Approvals. All interim approvals issued under s. 281.344(5m), Stats., expire on December 8, 2011. Any person regulated under this chapter shall obtain notice of coverage under a general permit or an individual permit no later than December 7, 2011.

NR 860.14 Open Records Requests. (1) The locations of withdrawals 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 may be subject to greater scrutiny by the department because of domestic security concerns, as allowed under s. 281.346(3)(cm) and (9)(e), Stats. The department may request all of the following with respect to open records requests seeking information on the locations of withdrawals, 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 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.

NR 860.15 Required Permit Conditions. All general and individual water use permits issued by the department shall at a minimum contain all of the following conditions:

(1) The permittee shall comply with all conditions of the permit. Permit noncompliance is a violation of the permit and may be grounds for enforcement action, permit suspension or revocation, or denial of a redetermination or reissuance. If a permittee violates any terms of the permit, the permittee is subject to the penalties established in ch. 281, Stats.

(2) The permit does not convey any property or water rights of any sort, or any exclusive privilege. The permit does not authorize any injury or damage to private property or any invasion of personal rights, or any infringement of federal, state, or local laws, rules, or regulations.

(3) The permittee shall allow an authorized representative of the department, upon presentation of credentials, to do all of the following:

(a) Enter, upon reasonable notice, the owner's premises where a regulated withdrawal is located or conducted, or where records are required under the conditions of the permit.

(b) Have access to and copy, at reasonable times, any records that are required under the conditions of the permit.

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices or operations regulated or required under the permit.

(4) The permittee shall measure and record the amounts of withdrawal and annually report to the department following the requirements in ss. NR 856.30 and 856.31. Annual reporting is required each calendar year for all permittees.

(5) An individual permit is not transferable without prior approval from the department.

(6) The permittee shall by March 1 notify the department of changes made in the previous calendar year to the information submitted in the application that require amendment following the requirements in s. NR 860.16.

(7) A modification to the permit or notice of coverage is required to increase the established withdrawal amount set forth in the permit or notice of coverage.

(8) The permittee shall implement the applicable water conservation and water use efficiency requirements of an approved water conservation plan under ch. NR 852.

(9) If a water supply service area plan is required by s. 281.346 or 281.348, Stats., the withdrawal shall be consistent with the approved water supply service area plan.

NR 860.16 Amendments and Transfers. (1) A permit amendment is required when changes or modifications are made to any of the following:

(a) Property boundaries.

(b) Property ownership or public water supply ownership of withdrawals covered by a general permit.

Note: Changes in property ownership or public water supply ownership for withdrawals authorized by an individual permit require an approved transfer meeting the requirements of sub. (4).

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

(d) The locations and sources of the withdrawal.

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

(f) The uses made of the water.

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

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

(2) The owner shall amend the permit using the method prescribed by the department by March 1 of the year following the change or modification.

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

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

(4) Department approval is required for the transfer of an individual permit to a new property owner or public water supply owner. A person who proposes to assume responsibility for an individual permit for a permitted withdrawal, shall submit an application meeting the requirements of s. NR 860.31(3)(a) and a statement acknowledging acceptance of the terms of the current permit. The department shall review the request for a transfer and make a decision to either approve the transfer or require a new permit, following the requirements of s. NR 860.31(3).

NR 860.17 Terminations. (1) A permittee may request termination of an individual permit or coverage under a general permit if the withdrawal amount decreases below the thresholds requiring a permit or notice of coverage under this chapter.

(2) Terminating a water use registration under ch. NR 856 constitutes a termination of an individual permit or coverage under a general permit.

(3) Terminating an individual permit or coverage under a general permit terminates the baseline established under s. 281.346(2)(e), Stats., for persons with preexisting withdrawals.

NR 860.18 Enforcement. (1) Violations of this chapter may be prosecuted by the department under s. 281.346(14), Stats.

(2) Any violation of this chapter 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 – GENERAL WATER USE PERMITS

NR 860.20 Applicability. (1) Unless authorized by an individual permit or unless exempted under sub. (2), all of the following persons who withdraw water from the Great Lakes basin shall obtain coverage under a general water use permit:

(a) Any person who on December 8, 2011, has a water supply system or systems on one property or a public water supply that withdraws an amount averaging 100,000 gallons per day or more in any 30-day period but that does not equal at least 1,000,000 gallons per day for any 30 consecutive days.

(b) Any person who after December 7, 2011 proposes a withdrawal with a water supply system or systems on one property or a public water supply that averages 100,000 gallons per day or more in any 30-day period but that does not equal at least 1,000,000 gallons per day for any 30 consecutive days.

Note: Pursuant to s. 281.346(4s)(dm), Stats., the department may require a person who is making or proposes to make a withdrawal at the general permit level listed in sub.(1)(a) or (b) to obtain an individual permit if the withdrawal is located in a groundwater protection area, as defined in s. 281.34(1)(a), Stats., or a groundwater management area designated under s. 281.34(9), Stats.

Note: Persons with a permit under s. 30.18 Stats., must also obtain a water use permit, if applicable.

(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 3 months for fire fighting, humanitarian, or emergency response purposes.

(3) Separate coverage under a general water use permit is required for each property and each public water supply.

NR 860.21 General Water Use Permits. (1) The department may issue a general water use permit that applies only to certain categories or groups of water withdrawals, or only to withdrawals located in a designated area of the Great Lakes basin, or both.

(2) For purposes of this section, a category or group of withdrawals may be defined by amount of withdrawal, water use sector, type of withdrawal or water use, geographic or watershed area, or other attribute that the department determines is appropriate for defining a category of coverage. There shall be a reasonable commonality among members of a category or group that is related to water withdrawal or use.

(3) The department shall solicit public comment following the public participation procedures in subch. IV prior to issuing a general water use permit.

(4) All general water use permits shall identify the criteria that must be met in order to qualify for coverage under the general permit. The criteria shall be limited to the requirements and authority provided under s. 281.346(4s), Stats.

(5) All general water use permits shall contain the permit conditions in s. NR 860.15 and any additional conditions necessary to meet the requirements of ch. 281, Stats.

NR 860.22 Application and Review Process for Notice of Coverage. (1) A person required to have coverage under a general water use permit under this subchapter shall obtain a notice of coverage decision following the applicable process under sub. (2) or (3).

(2) AUTOMATIC NOTICE OF COVERAGE FOR PREEXISTING

WITHDRAWALS. (a) The department shall issue automatic notice of coverage no later than December 8, 2011 to persons with a preexisting withdrawal that qualify for automatic notice of coverage as set forth in s. 281.346(4s)(c), Stats., and that have one of the following:

1. An interim approval under s. 281.344(5m), Stats.
2. A registration under chapter NR 856 completed no later than November 1, 2011.

Note: Persons with a preexisting withdrawal that made a withdrawal that averaged 100,000 gallons per day or more in any 30-day period but did not equal 1,000,000 gallons per day for any 30 consecutive days before December 8, 2008 qualify for automatic notice of coverage under a general permit.

Note: The department can not guarantee that automatic notice of coverage will be issued in time to meet the December 8, 2011 deadline for registrations received after November 1, 2011 for preexisting withdrawals that qualify for automatic notice of coverage.

(b) The department may request any missing information required by sub. (3)(a) from persons that qualify for automatic notice of coverage.

(d) Persons with a preexisting withdrawal that do not receive automatic notice of coverage on or before December 8, 2011 shall apply for notice of coverage following the process in sub. (3).

Note: Applications and information should be sent to: DNR Water Use Program DG/5, P.O. Box 7921, Madison, WI 53707-7921.

(3) NOTICE OF COVERAGE. (a) Any person required to obtain notice of coverage under a general water use permit under this subchapter that did not receive automatic notice of coverage under sub. (2) shall submit an application to the department using the method prescribed by the department, and the application shall include all of the following information about the existing or proposed withdrawal:

1. The name, mailing address, telephone number, and email address of the owner and operator.
2. The locations and sources of the withdrawal.
3. The daily withdrawal capacity of the water supply system, the daily withdrawal capacity from each source, identification of the most restrictive component of the water supply system or systems, and an estimate of the maximum hydraulic capacity of the most restrictive component of the water supply system or systems.
4. The uses made of the water.

5. The places at which the water is used.

6. The places at which any of the water is discharged.

7. Whether the person holds an approval or permit under s. 30.12, 30.18, 281.34, 281.35, 281.41, or 283.31, Stats., or s. 281.17, 2001 Stats., or other statutes and any specified withdrawal conditions set forth in the approval or permit.

8. A map showing the location of the property or public water supply, sources, and discharges if the applicant is submitting an application using a paper form.

9. If required by ch. NR 852, a water conservation plan.

Note: A water conservation plan is required by ch. NR 852 for new and increased withdrawals in the Great Lakes basin and withdrawals statewide that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period.

(b) If the application does not include all of the information under par. (a), it may be deemed incomplete. Within 30 days of receipt, the department shall notify the applicant in writing that the application is incomplete and shall describe the information that must be submitted in order for the application to be complete.

(c) The department may dismiss an application if the information needed to complete the application is not received within 30 days after the department notifies an applicant that its application is incomplete.

(d) The department shall determine if the withdrawal qualifies for coverage under a general water use permit and issue notice of coverage or dismiss the application within 45 days of receipt of a complete application. A withdrawal qualifies for coverage under a general water use permit when the requirements of s. NR 860.23(1) are completed and the withdrawal meets the criteria established in the general permit.

(e) If the department determines that an activity does not qualify for coverage under a general permit, the department shall dismiss the application in writing and state the reasons why the project does not qualify for coverage under the general permit.

(f) The department may investigate or visit a property and facility to determine whether a withdrawal qualifies for coverage under a general permit.

Note: Applications and information should be sent to: DNR Water Use Program DG/5, P.O. Box 7921, Madison, WI 53707-7921.

NR 860.23 Notice of Coverage Decisions. (1) The department shall issue notice of coverage only when all of the following have been completed:

(a) The department has received a complete application containing all of the information in s. NR 860.22(3)(a).

(b) The applicant has received all the necessary permits or approvals for the withdrawal under s. 30.12, 30.18, 281.34, or 281.41, Stats., or s. 281.17, 2001 Stats.

(c) The applicant receives department approval of a water conservation plan under ch. NR 852, if applicable.

(d) The applicant has complied with an approved water supply service area plan under s. 281.348, Stats., if applicable.

(2) The department shall specify a withdrawal amount for each notice of coverage. The department shall also specify a baseline for each automatically issued notice of coverage under s. NR 860.22(2). The withdrawal amount and baseline shall be determined by following the procedures in s. 281.346, Stats. The withdrawal amount for an automatically issued notice of coverage shall not be less than the baseline unless specifically requested by the owner.

(3) The department may suspend or revoke coverage under a general permit issued under this subchapter for cause, including obtaining coverage under the permit by misrepresentation or failure to disclose material facts or substantially violating the terms of the permit, after the opportunity for a hearing following the procedures in s. NR 860.42.

Note: An applicant or permit holder may challenge a modification, suspension, or revocation in whole or part of a notice of coverage under a general permit following the requirements under s. 281.93, Stats.

NR 860.24 Modifications to the Withdrawal Amount – Notice of Coverage.

(1) If a permittee proposes to increase the amount of a withdrawal over the established withdrawal amount in the notice of coverage but does not propose to withdraw at least 1,000,000 gallons per day for any 30 consecutive days, the permittee shall apply to the department using the method prescribed by the department for a modification to the withdrawal amount.

(2) The department shall review the application following the requirements under s. NR 860.22(3) and approve the requested modification if the increased withdrawal meets the requirements of s. NR 860.23 and s. 281.346(4s)(e), Stats.

(3) If the department determines that the application does not qualify for continued coverage under a general permit, the department shall dismiss the request in

writing and state the reasons why the requested modification does not qualify for coverage under the general permit.

(4) The department shall keep records in a database of all approved modifications to the withdrawal amount.

NR 860.25 Redetermination of Coverage. (1) Coverage under a general permit ends on the date that the term of the general permit ends.

Note: Under s. 281.346(4s)(am), Stats., the term of a general permit is 25 years.

(2) The department shall send notification to owners at least 365 days prior to the expiration of the general permit that the general permit will expire and that redetermination of coverage is required. The department shall send notification to owners using the most economical communication tool available and the most recent contact information submitted by the owner.

Note: The most economical communication tool used by the department on the effective date of this chapter . . . [LRB inserts date] is email.

(3) Owners that have received notice of coverage under a general permit that intend to continue a withdrawal that averages 100,000 gallons per day or more in any 30-day period but that does not equal at least 1,000,000 gallons per day for any 30 consecutive days, shall apply to the department using the method prescribed by the department for redetermination of coverage under a new general permit at least 180 days before the end of the term of the general permit. The failure of an owner to apply for redetermination at least 180 days prior to the expiration of the general permit shall not result in the loss of an established baseline or specified withdrawal amount.

Note: Applications and information should be sent to: DNR Water Use Program DG/5, P.O. Box 7921, Madison, WI 53707-7921.

(4) If the owner applying for a redetermination is in substantial compliance with the current general permit and qualifies for coverage under a new general permit, the department shall issue notice of coverage under the new general permit.

(5) The department shall follow the requirements of s. NR 860.22(3), when reviewing the request for redetermination of coverage.

(6) A redetermination of coverage shall specify a withdrawal amount equal to the withdrawal amount of the previous issuance of coverage unless the owner requests a reduced amount.

Note: For proposed increases to a withdrawal amount, the owner must apply to the department following s. NR 860.24.

SUBCHAPTER III – INDIVIDUAL WATER USE PERMITS

NR 860.30 Applicability. (1) Unless exempted under sub. (3), all of the following persons who withdraw water from the Great Lakes basin shall obtain an individual water use permit:

(a) Any person who on December 8, 2011, has a water supply system or systems on one property or a public water supply that withdraws at least 1,000,000 gallons of water per day for any 30 consecutive days.

(b) Any person who after December 7, 2011 proposes a withdrawal with a water supply system or systems on one property or a public water supply that equals at least 1,000,000 gallons per day for any 30 consecutive days.

(2) The department may require a person who is making or proposes to make a withdrawal at the general permit level under s. NR 860.20(1) to obtain an individual permit if the withdrawal is located in a groundwater protection area, as defined in s. 281.34(1)(a), Stats., or a groundwater management area designated under s. 281.34(9), Stats.

(3) This subchapter 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 3 months for fire fighting, humanitarian, or emergency response purposes.

(4) A separate individual water use permit is required for each property and each public water supply.

NR 860.31 Application and Review Process for Individual Water Use Permits. (1) A person required to have an individual water use permit under this subchapter shall obtain a permit decision following the applicable process under sub. (2) or (3).

(2) **AUTOMATIC ISSUANCE OF AN INDIVIDUAL WATER USE PERMIT FOR PRE-EXISTING WITHDRAWALS.** (a) The department shall issue an automatic individual water use permit no later than December 8, 2011 to persons with a preexisting

withdrawal that qualify for automatic issuance of an individual water use permit as set forth in s. 281.346(5)(c), Stats., and that have one of the following:

1. An interim approval under s. 281.344(5m), Stats.
2. A registration under chapter NR 856 completed no later than November 1, 2011.

Note: Persons with a preexisting withdrawal that are required to obtain an individual permit and that made a withdrawal that averaged 100,000 gallons per day or more in any 30-day period before December 8, 2008 qualify for automatic issuance of an individual permit.

Note: The department can not guarantee that automatic issuance of an individual permit will be issued in time to meet the December 8, 2011 deadline for registrations received after November 1, 2011 for preexisting withdrawals that qualify for issuance of an individual permit.

(b) The department may request any missing information required by sub. (3)(a) from persons that qualify for automatic issuance of an individual permit.

(d) Persons with a preexisting withdrawal that do not receive automatic issuance of an individual water use permit on or before December 8, 2011 shall apply for an individual permit under sub. (3).

(3) INDIVIDUAL WATER USE PERMITS. (a) Any person required to obtain an individual permit under this subchapter that did not receive automatic issuance of an individual water use permit under sub. (2) shall submit an application to the department using the method prescribed by the department, and the application shall include all of the following information about the existing or proposed withdrawal:

1. The name, mailing address, telephone number, and email address of the owner and operator.
2. The locations and sources of the withdrawal.
3. The daily withdrawal capacity of the water supply system, the daily withdrawal capacity from each source, identification of the most restrictive component of the water supply system or systems, and an estimate of the maximum hydraulic capacity of the most restrictive component of the water supply system or systems.
4. The projected withdrawal schedule including the average and maximum amounts and rates of the withdrawal per month and a description of any expected peak use in terms of gallons per day.
5. The uses made of the water.
6. The places at which the water is used.
7. The places at which any of the water is discharged.

8. An estimate and the method or methods used to determine the estimate, of the water loss from consumptive use from the property or a public water supply. Water loss and consumptive use estimations and calculations shall follow the procedures set forth in department rules and guidelines.

9. Whether the person holds an approval or permits under s. 30.12, 30.18, 281.34, 281.35, 281.41, or 283.31, Stats., or s. 281.17, 2001 Stats., or other statutes and any specified withdrawal conditions set forth in the approval or permit.

10. A map showing the location of the property or public water supply, sources, and discharges, if the applicant is submitting an application using a paper form.

11. If required by ch. NR 852, a water conservation plan.

Note: A water conservation plan is required by ch. NR 852 for new and increased withdrawals in the Great Lakes basin and withdrawals statewide that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period.

12. For withdrawals that require compliance with the state decision-making standard under s. 281.346(5m), Stats., all of the following information is required, in addition to the information in subds. 1. to 11.:

a. Documentation that the proposed withdrawal amount is needed to meet the applicant's projected needs.

Note: Public water systems that are required to have an approved water supply service area plan may use that plan as the required documentation.

b. Documentation of compliance with the applicable provisions of ch. NR 852.

c. An alternatives analysis comparing other potential water sources for cost-effectiveness and environmental effects.

d. A description of the baseline conditions of the source including hydrologic flow, water quality, and for surface water sources, habitat of the source. This information is not required if the department has issued a permit under s. 30.18, Stats.; an approval under s. 281.34, Stats., for the new or increased withdrawal; or has issued a permit under s. 30.12, Stats., for the structure that will be used for the new or increased withdrawal.

e. An assessment of the potential impacts of the withdrawal on the waters of the state. The department may require modeling to document the anticipated hydrologic impacts of the proposed withdrawal and any return flow or may require a water quality evaluation to determine if the withdrawal or return flow will meet established water quality standards, or may require both. This information is not required if the department

has issued a permit under s. 30.18, Stats.; an approval under s. 281.34, Stats., for the new or increased withdrawal; or has issued a permit under s. 30.12, Stats., for the structure that will be used for the new or increased withdrawal.

13. For withdrawals that require compliance with the compact-decision making standard under s. 281.346(6), Stats., all of the following information is required, in addition to the information in subd. 1. to 11.:

a. An assessment of the potential impacts of the withdrawal on the waters of the state and water dependent natural resources including wetlands. The department may require modeling to document the anticipated hydrologic impacts of the proposed withdrawal and any return flow or may require a water quality evaluation to determine if the withdrawal or return flow will meet established water quality standards, or may require both.

b. Documentation of compliance with the applicable provisions of ch. NR 852.

c. Documentation of compliance with all applicable local, state, and federal laws, rules, and regulations, and interstate and international agreements, including the Boundary Waters Treaty of 1909.

d. An analysis of the efficiency of the proposed water use, and if there is an expected increase in water loss, an analysis of the efficiency of the use of existing water supplies. The analysis shall include a comparison of the proposed water use intensity with the water use intensity of similar facilities or operations. The analysis may include information from the water conservation plan prepared in compliance with s. NR 852.07.

Note: The water conservation plan contains a description and quantification of current water use and reuse as identified by a water use audit, a calculation of water use intensity, a description of the water conservation and water use efficiency goals, documentation of the implementation of conservation and efficiency measures, and a monitoring plan.

e. An analysis of the impacts of the withdrawal over the next ten years on economic development, social development, and environmental protection taking into consideration other existing and planned withdrawals from the same source. The analysis shall include the impact of the withdrawal on the quantity and quality of the water supply for existing withdrawers and the quantity and quality of the water supply for future users, the economic impact of the water use including the number of individuals that will be employed and potential tax revenues, the social impact of the project on people living in the area of the withdrawal including access to jobs, and whether or not

the withdrawal is capable of being maintained at a steady level without exhausting natural resources or causing significant adverse environmental impact.

f. The supply potential of the water source including quality, quantity, and reliability taking into consideration interconnected water sources and water dependent natural resources.

g. A description of mitigation measures that will be implemented to prevent or eliminate significant impacts.

(b) If the application does not include the information required in par. (a), it may be deemed incomplete. Within 30 days of receipt, the department shall notify the applicant in writing that the application is incomplete and shall notify the applicant of the information that shall be submitted in order for the application to be complete.

(c) The department may dismiss an application if the information needed to complete the application is not received within 30 days after the department notifies an applicant that its application is incomplete.

(d) If the proposed withdrawal requires prior notice or regional review by the provinces of Ontario and Quebec, Canada and the states that are a party to the Great Lakes – St. Lawrence River Basin Water Resources Compact under s. 281.346(5)(L), Stats., or s. 281.346(5)(m), Stats., the department shall forward the application to the appropriate parties for review within 60 days after the end of the public comment period under subch. IV.

(e) The department shall determine if the withdrawal meets the standards for an individual permit and issue a permit or disapprove the application within the following timeframes:

1. For individual permits that do not require public participation under s. NR 860.40, within 60 days of receipt of a complete application.

2. For individual permits that require public participation under s. NR 860.40, within 60 days after the end of the public comment period.

3. For individual permits that require prior notice under s. 281.346(5)(L), Stats., or regional review under s. 281.346(5)(m) Stats., within 90 days of the completion of the prior notice and regional review.

(f) If the department determines that a withdrawal does not meet the requirements under s. NR 860.32 and s. 281.346(5) for the issuance of an individual permit, the department shall disapprove the application in writing and state the reasons for the disapproval.

(g) The department may investigate or visit a property and facility to determine whether a withdrawal meets the standards for an individual permit.

Note: Applications and information should be sent to: DNR Water Use Program DG/5, P.O. Box 7921, Madison, WI 53707-7921.

NR 860.32 Individual Water Use Permit Decisions. (1) The department shall issue an individual water use permit under s. NR 860.31(3), only when all of the following have been completed:

(a) The department has received a complete application containing the information required by s. NR 860.31(3)(a).

Note: Applications and information should be sent to: DNR Water Use Program DG/5, P.O. Box 7921, Madison, WI 53707-7921.

(b) Public participation has been completed following the procedures in subch. IV, if applicable.

(c) The applicant has received all the necessary permits or approvals for the withdrawal under s. 30.12, 30.18, 281.34, or 281.41, Stats., or s. 281.17, 2001 Stats.

(d) The department determines that the withdrawal meets the state decision-making standard under s. 281.346(5m), Stats., or the compact decision-making standard under s. 281.346(6), Stats., if applicable.

(e) The applicant receives department approval of a water conservation plan under ch. NR 852, if applicable.

(f) The applicant has complied with an approved water supply service area plan under s. 281.348, Stats., if applicable.

(g) Prior notice under s. 281.346(5)(L), Stats., and regional review under s. 281.346(5)(m) Stats., has been completed, if applicable.

(2) All individual water use permits shall contain the permit conditions in s. NR 860.15 and additional permit conditions that may be required that include any of the following:

(a) Requirements for estimating, and if necessary, monitoring substantial increases in water loss resulting from increases in withdrawal amounts and reporting the results to the department.

(b) Limitations on the location and dates or seasons of the withdrawal.

(c) The allowable uses of the withdrawal.

(d) Limits on the amount of the withdrawal necessary to ensure compliance with the decision-making standard under s. 281.346(5m) or s. 281.346(6), Stats.

(e) If the owner also has an approved diversion under s. 281.346(4), the conditions of that diversion approval.

(f) If the withdrawal requires a water loss approval under s. 281.35(4), the conditions of that water loss approval as required under s. 281.35(6)(a).

(g) If the withdrawal is from a surface water body tributary to one of the Great Lakes and would result in a water loss of more than 95 percent of the amount of water withdrawn, conditions that ensure the withdrawal does not cause significant adverse environmental impact.

(3) The department shall specify a withdrawal amount for each individual water use permit. The department shall also specify a baseline for each automatically issued individual water use permit under s. NR 860.31(2). The withdrawal amount and baseline shall be determined by following the procedures in s. 281.346, Stats. The withdrawal amount for an automatically issued individual permit shall not be less than the baseline unless specifically requested by the owner.

(4) The department may, after an opportunity for a hearing conducted following the procedures under s. NR 860.42, modify an individual permit to ensure compliance with the state or compact decision-making standard, if applicable.

(5) The department may suspend or revoke an individual water use permit for cause including obtaining the permit by misrepresentation or failure to disclose material facts or substantially violating the terms of the permit.

Note: An applicant or permit holder may challenge a modification, suspension or revocation in whole or part of an individual permit following the requirements under s. 281.93, Stats.

NR 860.33 Modifications to the Withdrawal Amount – Individual Water Use Permits. (1) If a permittee proposes to increase the amount of a withdrawal over the established withdrawal amount in the individual permit, the permittee shall apply to the department using the method prescribed by the department for a modification of the permit and submit any missing or outdated information required under s. NR 860.31(3)(a).

Note: Applications and information should be sent to: DNR Water Use Program DG/5, P.O. Box 7921, Madison, WI 53707-7921.

(2) The department shall review the application following the requirements of s. NR 860.31(3) and approve the modification if the increased withdrawal meets the requirements of s. NR 860.32(1).

Note: Department review of a proposed modification may require compliance with the state decision-making standard under s. 281.346(5m), Stats., or the compact decision-making standard under s. 281.346(6), Stats.

(3) If the department determines that the requested modification does not meet the requirements of s. NR 860.32(1), the department shall disapprove the application in writing and state the reasons for the disapproval.

(4) The department shall keep records in a database of all approved modifications to withdrawal amounts.

NR 860.34 Individual Water Use Permit Reissuance. (1) Individual water use permits expire 10 years from the date of department issuance.

(2) The department shall send notification to owners at least 365 days prior to the expiration of the permit that the individual permit will expire and that reissuance of the permit is required. The department shall send notification to owners using the most economical communication tool available and the most recent contact information submitted by the owner.

Note: The most economical communication tool used by the department on the effective date of this chapter . . . [LRB inserts date] is email.

(3) Permittees that intend to continue to withdraw at least 1,000,000 gallons of water per day for any 30 consecutive days shall apply to the department using the method prescribed by the department for reissuance of a permit at least 180 days before the expiration of the permit. The application shall include an update to the information originally submitted to the department for a permit. The failure of an owner to apply for reissuance at least 180 days prior to the expiration of the individual permit shall not result in the loss of an established baseline or specified withdrawal amount.

Note: Applications and information should be sent to: DNR Water Use Program DG/5, P.O. Box 7921, Madison, WI 53707-7921.

(4) If the permittee applying for a reissuance is in substantial compliance with the current permit, the department has completed the applicable public participation requirements under subch. IV, and the withdrawal meets the requirements under s. NR 860.32(1) and s. 281.346(5)(j), Stats., the department shall issue a new permit.

(5) The department shall follow the requirements of s. NR 860.31(3), when reviewing the reissuance request.

SUBCHAPTER IV – PUBLIC PARTICIPATION

NR 860.40 Applicability. (1) The public participation requirements outlined in this subchapter apply to all of the following:

(a) Individual water use permits under s. 281.346(5), Stats., that require the applicant to meet the state decision-making standard under s. 281.346(5m), Stats., or compact decision-making standard under s. 281.346(6), Stats., except for a public water supply that has an approved water supply service area plan under s. 281.348, Stats.

(b) General water use permits under s. 281.346(4s), Stats.

Note: Public participation is only required for the department issuance of the general permit itself. The issuance of notice of coverage under a general permit to a withdrawer does not require public participation.

(2) The department shall not issue a decision regarding a permit covered under sub. (1) until the requirements of this subchapter have been met.

NR 860.41 Public Notice and Comment. (1) The department shall draft and provide a public notice regarding each general permit proposed by the department and each individual permit application under s. NR 860.40(1). The public notice shall allow 30 days for public comment. For individual water use permit applications specified in NR 860.40(1), the notice shall be provided within 90 days of the department receiving a complete application. For general permits, the department shall provide, publish, and deliver the public notice when a draft general permit has been completed.

(2) The public notice shall comply with all of the following:

(a) Be published by the applicant as a class 1 notice under ch. 985, Stats., in the counties where water from the withdrawal will be used and in counties within five miles of the location of the withdrawal. For actions involving individual water use permits, the applicant shall provide proof of publication of the notice in the form of an affidavit from the newspaper certifying publication and documenting the date of publication.

Note: The department is responsible for publishing the required notice for general permits.

(b) Be delivered by the department or applicant to any person, group, local governmental unit, or state agency upon request. The applicant for an individual water use permit shall provide proof of delivery in the form of an affidavit or documentation from the delivery method or person.

(c) Be delivered by the department or applicant to persons or groups on a formal department water use permit application mailing list. The applicant for an individual water use permit shall provide proof of delivery in the form of an affidavit or documentation from the delivery method or person.

(3) The public notice shall include all of the following information:

(a) For individual water use permits, the name and address of each applicant.

(b) For individual water use permits, a brief description of the proposal for which the application is made, including the amount of the proposed withdrawal and the amount of any water loss from consumptive use.

(c) For general permits, a description of the types of withdrawals and the waters of the state or areas of the state covered by the general permit.

(d) A brief description of the procedures to be used to formulate a final determination on the proposed action, including the 30-day period for public comment and the 30-day period for requesting a public hearing.

(e) The process, location, and timeframes to obtain additional information, submit written comments, or request a public hearing.

(4) The public comment period is 30 days starting on the date the notice is published.

(5) Any person may submit written comments. All comments shall be submitted to the department at the address specified in the public notice by the end of the 30-day public comment period. Comments are submitted on the date they are postmarked using U.S. mail or on the date they are delivered to the address specified in the public notice.

(6) All comments shall address facts relevant to whether the proposed withdrawal complies with the applicable legal standards.

(7) The department shall retain all written comments submitted during the 30-day comment period and shall consider the comments in making its decisions on the application.

NR 860.42 Public Hearings. (1) Any interested person or group of persons, any affected local unit of government, or any state agency, may request a public hearing regarding a permit covered under s. NR 860.40(1).

(2) Requests for a public hearing under this section shall comply with all of the following:

(a) Be in writing and dated and include the applicant name or number of the proposed permit or application.

(b) Be submitted to the department at the address specified in the public notice by the end of the 30-day public comment period. A request is submitted on the date it is postmarked using U.S. mail or on the date it is delivered to the address specified in the public notice.

(c) Indicate the interests of the requestor and the reasons why a hearing is warranted. The reasons shall relate to the legal requirements for water use permits.

(3) The department shall schedule a public hearing if the request complies with sub. (2) and if the department determines that there is a significant public interest in holding a hearing.

(4) The department shall schedule the public hearing within 30 days after the completion of the 30-day public comment period.

(5) Public notice for a public hearing shall be issued by the department and follow the requirements of s. NR 860.41(2) and include the information in s. NR 860.41(3) and the time, date, and the location of the hearing.

(6) The applicant for an individual water use permit shall publish and provide the notice to persons or groups identified in s. NR 860.41(2)(b) and (c) no later than 10 days before the scheduled hearing date.

(7) Whenever possible, public hearings shall be held in the area affected by the proposed withdrawal or general permit.

(8) Any interested members of the public or representatives of government agencies may participate in a public hearing with respect to the issuance of the proposed permit subject to the procedures in sub. (9). Persons and government agencies participating need not be represented by legal counsel.

(9) Public hearings held under this subsection are not contested case hearings under ch. 227, Stats. and shall be conducted according to all of the following procedures:

(a) Public informational hearings held under this section shall be conducted by a hearing examiner designated by the secretary or secretary's designee.

(b) The hearing examiner shall open the hearing by concisely stating the scope and purpose of the hearing and explaining the procedures to be used in the hearing. The hearing examiner shall explain how and to whom notice of the final decision approving or disapproving a permit or approval will be provided and how a person may seek administrative or judicial review of the final decision.

(c) Appearance slips shall be submitted by all persons that present an oral statement at the hearing.

(d) Any person may direct informational or clarifying questions through the hearing examiner to a person making oral statements, but cross-examination is not allowed at the hearing.

(e) The hearing examiner may place time limits on individual oral statements to prevent undue repetition or insure that all persons who wish to make a statement can do so in a reasonable period of time.

(f) The hearing examiner may limit the number of representatives that may make oral statements on behalf of any individual or organized group.

(g) Even if oral statements are scheduled, unscheduled oral or written statements also shall be allowed at the hearing.

(h) Any person submitting a written statement at the hearing shall submit at least one legible copy to the hearing examiner.

(i) The hearing examiner may use additional or alternative procedures deemed necessary to insure that the hearing will be conducted in an orderly and expeditious manner, provided the measures are consistent with broad public participation in the hearing.

(j) The hearing examiner may exclude from the hearing a person who engages in loud, noisy, disruptive or contemptuous conduct.

(10) When a public hearing is conducted, the public comment period shall be extended for 10 days starting from the date of the hearing.

(11) The department shall consider the comments received at the hearing and following the hearing in making its decision.

SECTION 2. 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 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resource Board on April 27, 2011.

Dated in Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

(SEAL)

By _____
Cathy Stepp, Secretary