

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal s. NR 142.03 (4) and to create ch. NR 850 relating to water withdrawal fees in the Great Lakes basin and affecting small business.

DG-23-10

Analysis Prepared by the Department of Natural Resources

1. **Statute interpreted:** Section 281.346 (12), Stats.
2. **Statutory authority:** Sections 227.11 (2)(a) and 281.346 (12), Stats.
3. **Explanation of agency authority:** Section 227.11 (2)(a) gives state agencies general rulemaking authority. Section 281.346 (12)(c) directs the Department to promulgate a rule specifying the amount of an annual fee to be paid by persons who withdraw from the Great Lakes basin more than 50,000,000 gallons of water per year.
4. **Related Statute or Rule:** This rule relates to implementing the provisions of the Great Lakes—St. Lawrence River Basin Water Resources Compact (Compact) in Wisconsin pursuant to sections 281.343, 281.346, and 281.348, Stats. Revenue from the fees assessed pursuant to this rule will be deposited to a program revenue appropriation dedicated to funding Compact implementation activities in the state.
5. **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 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	
Amount Withdrawn	Fee Per Million Gallons
> 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, and the fee would not exceed \$1,000 annually per property for a small business as defined in s. 227.114 (1), Stats. (The \$1,000 fee cap for small businesses represents a modification of the version of NR 850 approved by the Natural Resources Board at its August 2010 meeting.) 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.

6. **Federal regulatory analysis:** There are no comparable federal regulations pertaining to fees for water withdrawals.
7. **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. (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. (Above 500) \$6/mil. The fee would not exceed	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 gallons in a 24-hour period during a calendar year; and the same fee is charged to each permittee. For 2009, the annual fee	\$200 annual reporting fee for withdrawals exceeding 100,000 gallons per day averaged over a consecutive 30-day period. (No annual fee for withdrawals for agricultural use.)	\$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. Maximum Annual water use fees: \$750 for any single agricultural 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;

\$9,500 per year per property or public water system, and would not exceed \$1,000 per year for a small business.		was \$135 for each permittee.		\$250,000 for a city of the first class; \$10,000 for a municipality that furnishes electric service and steam for home heating.
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8. 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.

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 all operations withdrawing water above the threshold amount of 50 million gallons per year. 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. However, this modified rule provides that the fee would not exceed \$1,000 annually per property for a small business as defined in s. 227.114 (1), Stats. (Section 227.114 (1), Stats., defines “small business” to mean “a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross sales of less than \$5,000,000.”

10. 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—as modified from the version approved by the Natural Resources Board at its August 2010 meeting provides a fee cap of \$1,000 for a small business and 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.

11. Agency contact person:

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SECTION 1. Section NR 142.03 (4) is repealed.

SECTION 2. Chapter NR 850 is created to read:

**CHAPTER NR 850
WATER USE FEES**

NR 850.01 Purpose
NR 850.02 Applicability

NR 850.03 Definitions
NR 850.04 Fees

NR 850.01 Purpose. The purpose of this chapter is to implement s. 281.346 (12), Stats., by establishing annual fees for water withdrawals from the Great Lakes basin of more than 50,000,000 gallons per year and by specifying procedures for assessing and collecting the fee specified in s. 281.346(12)(a).

Note: Section 281.346(12)(a) provides that “A person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period shall pay to the department an annual fee of \$125, except that the department may promulgate a rule specifying a different amount.”

NR 850.02 Applicability. This chapter applies to any person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period, and to persons who withdraw more than 50,000,000 gallons of water per year from the waters of the state within the Great Lakes basin using a water supply system or systems on one property, or using a public water supply.

NR 850.03 Definitions. In this chapter:

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

(2) “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.”

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

Note: Section NR 812.07(68), Wisc. 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.”

(4) “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.”

(5) “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.”

(6) “Small business” has the meaning specified in s. 227.114(1), Stats.

Note: Section 227.114(1), Stats., defines “small business” to mean “a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross sales of less than \$5,000,000.”

(7) “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.”

(8) “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.”

(9) “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”.

NR 850.04 Fees. (1) A person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30-day period shall pay to the department a fee of \$125, which covers all water supply systems on one property, or a single public water supply.

(2) In addition to the fee specified in subsection (1), unless exempted under sub. (3), any person who withdraws more than 50,000,000 gallons of water per year from the waters of the state within the Great Lakes basin using a water supply system or systems on one property, or a public water supply, shall pay a fee in accordance with the schedule of fees in this subsection. The schedule is as follows, with the stated fee in each clause applied to the total amount of water withdrawn, as applicable:

- (a) \$1.50 per 1,000,000 gallons for amounts withdrawn in excess of 50,000,000 gallons but not more than 100,000,000 gallons per year;
- (b) \$2 per 1,000,000 gallons for amounts withdrawn in excess of 100,000,000 gallons but not more than 150,000,000 gallons per year;
- (c) \$2.50 per 1,000,000 gallons for amounts withdrawn in excess of 150,000,000 gallons but not more than 200,000,000 gallons per year;
- (d) \$3 per 1,000,000 gallons for amounts withdrawn in excess of 200,000,000 gallons but not more than 250,000,000 gallons per year;
- (e) \$3.50 per 1,000,000 gallons for amounts withdrawn in excess of 250,000,000 gallons but not more than 300,000,000 gallons per year;
- (f) \$4 per 1,000,000 gallons for amounts withdrawn in excess of 300,000,000 gallons but not more than 350,000,000 gallons per year;
- (g) \$4.50 per 1,000,000 gallons for amounts withdrawn in excess of 350,000,000 gallons but not more than 400,000,000 gallons per year;
- (h) \$5 per 1,000,000 gallons for amounts withdrawn in excess of 400,000,000 gallons but not more than 450,000,000 gallons per year;
- (i) \$5.50 per 1,000,000 gallons for amounts withdrawn in excess of 450,000,000 gallons but not more than 500,000,000 gallons per year;
- (j) \$6 per 1,000,000 gallons for amounts withdrawn in excess of 500,000,000 gallons per year.

(3) No fee is required for a project involving the withdrawal of surface water to prevent flood damage or to remove flood waters during a period of flooding, as determined by the department.

(4) The fee specified in sub. (2) shall not exceed \$9,500 per year for one property or for a single public water supply, except that the fee per property for a small business shall not exceed \$1,000 per year.

(5) The fees specified in this section are assessed on a calendar year basis and shall be paid by June 30th of the following calendar year.

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 October 27, 2010.

Dated in Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)