

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Adoption of Board Order DG-23-10, creation of NR 850 and revisions to NR 142 relating to water use fees.

FOR: AUGUST 2010 **BOARD MEETING**

TO BE PRESENTED BY: Eric Ebersberger, Bureau of Drinking Water & Groundwater

SUMMARY:

Board Order DG-23-10 rescinds a portion of NR 142 and creates NR 850. NR 850 specifies an annual fee for persons who withdraw more than 50 million gallons of water per year from the waters of the Great Lakes basin.

The rule sets forth definitions and specifies a method for assessing the fee, provides for an exemption, and specifies a maximum fee.

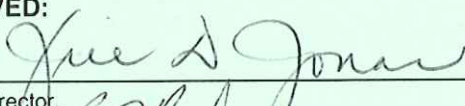


RECOMMENDATION: Adoption of Board Order DG-23-10, creation of NR 850 and revisions to NR 142 relating to water use fees.

LIST OF ATTACHED MATERIALS:

- No Fiscal Estimate Required
- No Environmental Assessment or Impact Statement Required
- No Background Memo

- Yes Attached
- Yes Attached
- Yes Attached

APPROVED:


 Bureau Director,

 Administrator,

 Secretary, Matt Frank

7/23/10
 Date
7/26/10
 Date
7-28-10
 Date

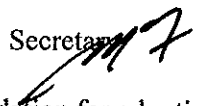
cc: Laurie J. Ross - AD/8
 Linda Haddix - LS/8
 Eric Ebersberger - DG/5
 Judy Ohm - LS/8
 Shaili Pfeiffer - DG/5

Kristy Rogers - DG/5
 Dino Tisoris - DG/5

DATE: July 26, 2010

FILE REF: DG-23-10, NR 850

TO: Members, Natural Resources Board

FROM: Matt Frank, Secretary 

SUBJECT: Recommendation for adoption of proposed amendments to Wis. Adm. Code Chapter NR 142 and creation of Wis. Adm. Code Chapter NR 850

1. Why the rule is being proposed

Section 281.346 (12)(c), created in 2009 Wisconsin Act 28 (the 2009-11 biennial budget bill), directs the department to promulgate a rule specifying an annual fee for persons who withdraw more than 50 million gallons per year from the waters of the Great Lakes basin. Revenue from the fee will be deposited to an appropriation funding the implementation of the Great Lakes Compact in the state.

Section 281.346 (12) also provides that any person with a water supply system anywhere in the state with the capacity to withdraw an average of 100,000 gallons per day in any 30-day period must pay to the department an annual base fee of \$125. The fee imposed in this rule for persons withdrawing more than 50 million gallons per year from surface or groundwater in the Great Lakes basin will be in addition to the base fee.

2. Summary of the rule.

This rule clarifies that the annual \$125 base fee will cover all water supply systems on one property or a single public water supply, and the rule implements an additional Great Lakes basin-specific fee on persons who withdraw more than 50 million gallons of water per year (MGY). As shown in Table 1 below, the fee for persons withdrawing more than 50 MGY in the Great Lakes basin is structured in tiers, with the first tier imposing a fee of \$1.50 per million gallons withdrawn between 50 MGY and 100 MGY. The second tier imposes a fee of \$2.00 per million gallons withdrawn between 100 and 150 MGY. The fee per million gallons increases by \$0.50 for each 50 million gallon tier up to the point where each million gallons pumped over 500 million gallons is charged a fee of \$6.00. The additional fee for withdrawals exceeding 50 MGY from the Great Lakes basin is capped at \$9,500 for all water supply systems on any contiguous property or for a public water supply system.

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

3. How the proposal affects existing policy.

The proposal contained in this order repeals a provision of NR 142 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 registration program associated with it were not implemented by the department.

4. Hearing Synopsis, Public Comments, Rules Clearinghouse Comments, and Post Hearing Contacts.

Public Hearings: The department held five joint hearings between June 28th and June 30th, 2010 to solicit comments on NR 850 Water Use Fees, NR 852 Water Conservation & Water Use Efficiency, and NR 856 Water Use Registration & Reporting. The department held a hearing in Milwaukee on June 28th, 2010; in Ashland and Green Bay via videoconferencing on June 29th, 2010; and in Wausau and Madison via videoconferencing on June 30th, 2010. Each hearing was held at 6 PM. Attorney Judy Ohm served as the hearing officer for each hearing, and water use section staff including Kristy Rogers, Shaili Pfeiffer, Steve Elmore, Dino Tsoiris, and Eric Ebersberger attended the hearings. A combined total of 24 persons attended the hearings, and 3 persons provided oral comments.

Public Comment: The department received relatively few oral or written comments on NR 850. Comments reflected both support and opposition for the \$9,500 annual cap on the fee; concerns that the department review the fee over time to ensure that it raises revenue sufficient to fund water use program needs; questions related to how the fee revenue would be spent; and comments suggesting that the fee should not apply to certain types of withdrawals. Please see Attachment 1 to this memorandum for a full discussion of the comments and corresponding department responses.

Rules Clearinghouse Comments: All changes recommended by the Legislative Council Rules Clearinghouse were incorporated.

Post Hearing Contacts: None on NR 850.

5. Information on environmental analysis, if needed.

No environmental analysis is required. This action is a Type III action under Ch. NR 150, Wis. Admin. Code.

6. Final Regulatory Flexibility Analysis.

Although the rule will primarily affect public water systems, power companies, and large industrial water users, small businesses that will be affected include agricultural operations, including irrigation, livestock, and aquaculture. The department lacks comprehensive data regarding water withdrawals; however, the data the department does have suggests that relatively few small businesses withdraw more than 50 MGY.

Small businesses that withdraw an average of 100,000 gallons of water per day or more in any 30-day period must report their calendar year water usage to the department by March 1 of the following calendar year. Minimal computer skills will be necessary to report the amount of water withdrawn annually. Fees based on the amount of water withdrawn must be paid by June 30th. The department is developing an on-line reporting mechanism for water withdrawals that is expected to be easy to use and take little time to complete. Additionally, the department will issue a bill to entities withdrawing more than 50 million gallons per year.

Attachment 1: NR 850 Water Use Fee Comment Summary

Comment: (From a coalition of environmental groups) “The proposed fee schedules for both statewide fees and fees for very large withdrawals should be reviewed and adjusted over time to ensure that they are sufficient to meet the scope and needs of the programs implementing the Great Lakes Compact.”

Department Response: The department will annually review fee revenue in an effort to ensure that the department collects sufficient revenue to cover the costs of program implementation and approved expenditure authority for program implementation.

Comment: “WAA (Wisconsin Aquaculture Association) is concerned with the water use fees in the Great Lakes Basin (GLB) which are set up for “Withdrawals” for users of more than 50 Million Gallons of Water per year. The concern is that some fish farms located in the GLB could be charged the annual fee for artesian flow of water which occurs naturally on their farms. ... The activity of aquaculture occurs within the water, it does not “take” nor does the process of “taking” occur. ... We are suggesting a provision in NR 850 that clearly defines that aquaculture does not “withdraw” water, does not engage in the “withdrawal” of water and therefore is not subject to the annual fees. Additionally, a fish farm property may also have artesian flow, springs and surface water that is not utilized and simply flows through the location and but (sic) could be subject to the fee structure. The effect of these fees, if applied to the aquaculture activities, artesian flow, springs or surface water, would make their facilities economically unfeasible and therefore they would close their businesses. The administrative rule would put out of business those facilities that are currently good stewards of the watershed.”

Department Response: “Withdraw” means to take water from surface water or groundwater [s. 281.346(1)(y), Stats.]. When someone withdraws water it is taken out of or redirected from its natural course, making it unavailable for other purposes. In-stream water uses are not considered withdrawals, nor is the temporary impoundment of water that does not redirect water from its natural course. Some older aquaculture facilities, for example, are constructed directly in a natural spring pond or stream channel. These facilities would not be considered withdrawals. The department will work with each facility to determine if a facility has a withdrawal or would be classified as an in-stream use. Additionally, the tiered fee structure was designed to ameliorate—to the extent possible—the impact on small businesses under the assumption that small businesses generally pump less water than large businesses.

There is no suggestion in the statute directing the department to promulgate a fee rule that fees should differ depending on the size of the business withdrawing the water, or that any business should be exempted, and the department assumes that the Legislature intended that the department apply the fee evenhandedly based on the size of the withdrawal, rather than the size of the business.

Comment: (Wisconsin Rural Water Association) Provide some explanation as to what would be funded with the close to \$1 million to be raised annually by these proposed fees (the annual statutory fee of \$125 and the proposed tiered fee on Great Lakes basin withdrawals exceeding 50 million gallons per year.

Department Response: The revenue from the fees will fund all aspects of Great Lakes Compact implementation, including:

- Development and operation of the registration & reporting, water use permitting, water supply service area planning, water loss, and water conservation & water use efficiency programs statewide. Duties will include technical assistance, outreach and training to business sectors and local governments in all aspects of the program requirements; timely review of permit applications and water conservation plans; delivery and analysis of data (up to 4 full-time employees and 2 limited term employees (LTE)).
- Database development and maintenance, including expenditures for a water use database; Web-based on-line registration and reporting systems; and Geographical Information Systems (GIS) development to allow the department to compile, depict and share a water resources inventory of the location, quantities, and uses of waters of the state -- to help sustainably manage the state's water resources.
- Surface water and groundwater monitoring and mapping to provide continuous data for the water resources inventory and statewide water use management decisions.

To address these needs, the Legislature provided \$924,400 in expenditure authority for state fiscal year 2011. The fee structure is designed to provide sufficient revenue to cover the expenditure authority, with a small allowance for margin of error, given that the department must make several assumptions regarding water use throughout the state in the absence of sufficient data.

Comments: (Wisconsin Rural Water Association) “[A]lthough the water use fee structure as proposed in section NR 850.04(2) seems reasonable for the most part, we are opposed to a cap on such fees as proposed in NR 850.04(4). By proposing an increasing fee structure it would appear that the intent of this regulation is to provide some incentive for water systems to limit withdrawals and undertake conservation measures. However, by proposing a cap for the largest water users, it forces the medium-sized users and their customers to, in effect, subsidize the largest withdrawers from the basin and would appear to eliminate any incentive whatsoever on their part once the cap is met.”

(Wisconsin Paper Council) “The proposed fees in NR 850 are higher than those contained in NR 142 (repealed as part of this rulemaking). However, given the programmatic issues at hand, the fees do not appear to be unreasonable. A key factor in this assessment is the \$9,500 cap on fees for water withdrawals within the Great Lakes basin. Absent this cap, fees on some paper companies could rise to the \$40,000 - \$70,000 per year range. We strongly support the \$9,500 fee cap and urge that it be retained in the final rule.”

Department Response: The department proposed a cap of \$9,500 to help avoid an undue economic impact on any individual withdrawer. Additionally, the increasing block rate structure minimizes the impact on those entities pumping less than 500 million gallons per year (compared to a flat rate structure of, e.g., \$4 per million gallons over 50 million gallons per year—which would be necessary to raise an equivalent amount of revenue.) Although the fee may, in some cases, help encourage persons to conserve water by using less or using it more efficiently, at \$9,500 the cap is unlikely to financially prevent many persons from using more water when their business or operation demands it.

Comment: (Wisconsin Transportation Builders Association and Aggregate Producers of Wisconsin) “As it is currently drafted, NR 850 fails to account for withdrawals that are, in effect, repetitive use of the *same gallon of water* from the same Basin source.”

Department Response: Fee calculations will be based on reported water use. The department added language to the proposed NR 856 (Water Use Registration & Reporting) to clarify that water that is

reused on a property is not to be included in the monthly volumes of withdrawal. The department will work with all industries to develop a consistent approach for measuring withdrawals versus water reuse.

Fiscal Estimate — 2009 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number DG-23-10

Subject
 Water Use Fees for Large Withdrawals from the Great Lakes Basin

Fiscal Effect
 State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input checked="" type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs — May be possible to absorb within agency's budget. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Decrease Costs	

Local: No Local Government Costs
 Indeterminate

1. <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input checked="" type="checkbox"/> Towns <input checked="" type="checkbox"/> Villages <input checked="" type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input checked="" type="checkbox"/> Others <u>Public Utilities</u> <input checked="" type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Chapter 20 Appropriations s. 20.370 (4)(ai)
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Assumptions Used in Arriving at Fiscal Estimate

Rule Summary: Section 281.346 (12) (c), directs the Department to promulgate a rule specifying an additional annual fee for persons who withdraw more than 50 million gallons per year (MGY) 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 be assessed on marginal increments of withdrawals over 50 million gallons per year starting @ \$1.50 per million gallons over 50 million, and would increase \$0.50 per million gallons for each 50 million gallon increment as follows:


For amounts withdrawn between 50 MGY to 100 MGY	\$1.50/million gallons withdrawn
For amounts withdrawn between 100 MGY to 150 MGY	\$2.00/million gallons withdrawn
For amounts withdrawn between 150 MGY to 200 MGY	\$2.50/million gallons withdrawn
For amounts withdrawn between 200 MGY to 250 MGY	\$3.00/million gallons withdrawn
For amounts withdrawn between 250 MGY to 300 MGY	\$3.50/million gallons withdrawn
For amounts withdrawn between 300 MGY to 350 MGY	\$4.00/million gallons withdrawn
For amounts withdrawn between 350 MGY to 400 MGY	\$4.50/million gallons withdrawn
For amounts withdrawn between 400 MGY to 450 MGY	\$5.00/million gallons withdrawn
For amounts withdrawn between 450 MGY to 500 MGY	\$5.50/million gallons withdrawn
For amounts withdrawn in excess of 500 MGY	\$6.00/million gallons withdrawn

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 fee would take effect in 2011. Fee revenue will be deposited in a program revenue appropriation supporting Great Lakes Compact implementation. The Department anticipates that between 200 and 300 persons will pay the fee annually.

The rule also clarifies that the statutorily-imposed statewide annual fee of \$125 on persons with water supply systems with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period will be imposed on a calendar-year basis and will be due by June 30th of the following calendar year, beginning in 2011.

Long-Range Fiscal Implications

None

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 04-29-10

Fiscal Estimate — 2009 Session

**Page 2 Assumptions Narrative
Continued**

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number DG-23-10

Assumptions Used in Arriving at Fiscal Estimate – Continued

State Fiscal Effect:

Revenues that will be generated as a result of the annual withdrawal fee are the result of the fee provisions enacted in to law in 2009 Wisconsin Act 28. The Department assumes that the statutory statewide base fee of \$125 on persons with water supply systems with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period will be imposed on approximately 4900 persons and will generate approximately \$612,500 annually. (Revenue from this base fee is not included on the attached fiscal estimate worksheet.)

Based on actual withdrawal data from public water supply systems and high capacity well owners, and assumptions related to surface water withdrawals, the Department expects that the fee will generate between \$38000 and \$400,000 annually. In addition, state-owned facilities (e.g., state fish hatcheries) that withdraw over 50 million gallons per year in the Great Lakes Basin would have to pay the fee. The Department lacks accurate data on total amounts of water withdrawn from state-owned facilities, therefore costs to the state are indeterminate at this time.

Local Government Fiscal Impacts: Based on 2009 data, there are approximately 180 public water systems in the Great Lakes Basin. Of those 180 systems, approximately 90 systems withdraw in excess of 50 million gallons per year and will be affected by this rule--e.g., systems withdrawing 100 million gallons of water per year will pay approximately \$75 under the rule; systems withdrawing 1 billion gallons of water per year will pay approximately \$4,600; and systems withdrawing 2.3 billion gallons of water per year will pay \$9,500 per year. The Department anticipates that approximately 9 public water systems in the Great Lakes basin will pay the maximum \$9,500 fee, 60 public water systems will pay a fee under \$1,000, and more than 90 public water systems in the Great Lakes basin would pay no additional fee over the \$125 statutory base fee.

Private Sector Fiscal Impact: 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.

Fiscal Estimate Worksheet — 2009 Session
 Detailed Estimate of Annual Fiscal Effect

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number DG-23-10

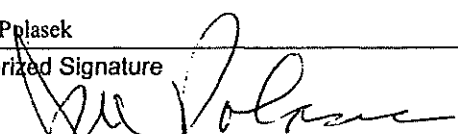
Subject
 Water Use Fees for Large Withdrawals from the Great Lakes Basin

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations — Salaries and Fringes	\$	\$ -
(FTE Position Changes)	(FTE)	(FTE)
State Operations — Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
Total State Costs by Category	\$	\$ -
B. State Costs by Source of Funds		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
State Revenues	Increased Revenue	Decreased Revenue
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS	390,000	-
SEG/SEG-S		-
Total State Revenues	\$	\$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$	\$
Net Change in Revenues	\$ 390,000	\$

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 04-29-10

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. 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
<p>\$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:</p> <p>(>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.</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>No annual water use fee.</p>	<p>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 was \$135 for each permittee.</p>	<p>\$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.)</p>	<p>\$140 minimum annual water use fee for withdrawals between 0 and 50 million gallons.</p> <p>Marginal fee rates for withdrawals exceeding 50 million gallons per year as follows:</p> <p>(>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> <p>Maximum Annual water use fees:</p> <p>\$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; \$250,000 for a city of the first class; \$10,000 for a municipality that furnishes electric service and steam for home heating.</p>

- 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. 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.
- 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 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:**
Eric Ebersberger, DG/5
Wisconsin Department of Natural Resources
Bureau of Drinking Water & Groundwater
Water Use Section
(608) 266-9254
Eric.Ebersberger@wisconsin.gov
- 12. Place where comments are to be submitted and deadline for submission:**
Comments are to be submitted to Kristy Rogers, Bureau of Drinking Water & Groundwater, P.O. Box 7921, Madison, WI 53707-7921 by July 7, 2010.

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 850.03 Definitions

NR 850.02 Applicability

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) "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."

(7) "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.”

(8) “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.

(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 _____.

Dated in Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)