



**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Environment...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

Testimony in support of Clearinghouse Rule 10-046

Senate Public Hearing – Committee on Environment
Wednesday, September 29, 2010 411 South – State Capitol

Clearinghouse Rule 10-046

Relating to asbestos project inspection and notification revision fees and affecting small business.

Hello! I am Bill Baumann, Chief of the Compliance, Enforcement & Emission Inventory Section in the DNR Bureau of Air Management. I am here today to speak in support of Clearinghouse Rule 10-046 and to provide brief background information on our asbestos control program. This rule contains standards for charging fees in relation to the asbestos notification requirements of ch. NR 447. The Natural Resources Board adopted the Air Management rule being considered today at its August, 2010 meeting.

The DNR's Air Management asbestos responsibilities - inspecting asbestos abatement projects, responding to public complaints regarding abatement projects, and taking enforcement action where necessary – are all focused on protecting public health from the adverse effects that result from exposure to asbestos. It is vital that these efforts continue. There is no "safe" asbestos exposure level; any exposure may lead to diseases such as asbestosis, lung cancer, mesothelioma, and other forms of cancer. The DNR activities have in the past been funded by a combination of asbestos notification fees and funds from a federal grant. The federal grant also funds a variety of other EPA mandated Air Management Program activities such as developing state plans to implement federal air quality standards and monitoring ambient air quality. Due to declining grant amounts, this grant can no longer support all of the activities previously funded. The fee increases contained in the proposed NR 410.05 revisions will enable the current levels of asbestos program staffing, service and activities to be maintained, funded completely by asbestos program fees.

Summary of the Proposed Rule

Inspection fees are based on the size of project and amount of asbestos involved. The revised asbestos inspection fees proposed in the rule range from \$135 (increase of \$60 over the current fee) for small projects, to \$1200 (increase of \$575 over the current fee) for very large projects. The proposed rule also adds a new \$100 fee for review of significant revisions to asbestos notifications, adds a new \$100 fee for fire training burns, and provides for charging an additional fee, equal to the inspection fee, for projects that are begun prior to submitting the required notification to the department.

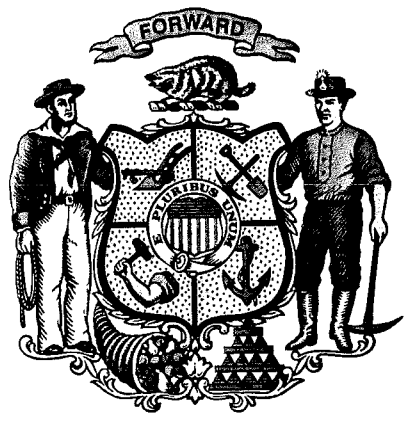
Public Comment

Two public hearings were held on the proposed rule changes, one each in Madison and Wausau. There was also an opportunity to provide written comments during the comment period on the proposed rule. The limited number of comments we received fell into two general areas.

One area involved support for DNR asbestos staff for their efforts in increasing compliance and leveling the playing field across the asbestos abatement industry in Wisconsin.

The other topic had to do with the impact of the proposed fee increases on asbestos abatement contractors. It is a common business practice for contractors to pay asbestos notification fees for their clients prior to the initiation of an abatement project, and "carry" those fees until being compensated for their work at the conclusion of the project. The proposed fee increases would result in increased costs temporarily carried by the contractors. To address this concern, the Department will provide information to abatement contractors on structuring abatement contracts to provide for up front payment of asbestos fees by property owners.

Thank you for your time and attention. I will be glad to try to answer any questions you may have about the proposed rule revisions.



**Senate Committee on Environment
29 September 2010
411 South
State Capitol**

WDNR Statement re: Clearinghouse Rules 10-059, 10-060, and 10-061

Thank you for the opportunity to be here. My name is Eric Ebersberger and I am the Section Chief of the Water Use Section in the DNR's Bureau of Drinking Water & Groundwater. The Water Use Section is coordinating Great Lakes Compact implementation for the DNR.

Clearinghouse Rules 10-059, 10-060, and 10-061 relate to implementing the Great Lakes Compact—and associated state water use legislation in Wisconsin.

Wisconsin's Compact implementing legislation (2007 Wisconsin Act 227) specifically directed the DNR to promulgate rules related to water use registration and reporting (the subject of Clearinghouse Rule 10-059—or NR 856) and Water Conservation & Efficiency (the subject of Clearinghouse Rule 10-060—or NR 852). The 2009-11 Biennial Budget Bill (2009 Wisconsin Act 28) directed the DNR to promulgate a rule specifying a water use fee in the Great Lakes basin on withdrawals exceeding 50 million gallons per year (the subject of Clearinghouse Rule 10-061—or NR 850).

The Natural Resources Board unanimously adopted each of these three rules at its August 2010 meeting in Superior, Wisconsin.

Public Hearings: The department held five joint hearings on these rules between June 28th and June 30th, 2010—in Milwaukee, Ashland, Green Bay, Wausau and Madison. A combined total of 24 people attended the five hearings, and 3 people provided oral comments.

Great Lakes Compact Rulemaking Update: These rules are 3 of 7 Great Lakes Compact-related rules that the DNR will promulgate. Other Compact-related rules in development include:

- Water Use Permitting;
- Water Loss from Consumptive Use
- Water Supply Service Area Planning; and
- A Public Participation rule related to Diversion Proposals.

All these rules relate to implementing the Great Lakes Compact—and we have been specifically directed—in legislation—to promulgate these rules.

The Great Lakes Compact requires that states have parallel water quantity management programs—and these rules fill gaps in Wisconsin's water management program.

I'll now discuss the Compact related Clearinghouse rules before you today.

Clearinghouse Rule 10-059 NR 856 Registration & Reporting

The purpose of the rule is to clarify and further define new registration and reporting requirements for large water withdrawals—statewide.

Registration

Under the statute, any person with a water supply system with the *capacity to withdraw* water in amounts averaging 100,000 GPD or more in any 30-day period must register the withdrawal with the DNR.

The rule sets forth the procedures and requirements for registration.

The DNR has received questions re: what a “withdrawal” is. The statute broadly defines it as “the taking of water from surface water or groundwater”. We interpret this to include any method of taking or redirecting water from its natural course making it unavailable for other purposes, even if only temporarily. For example, we consider that operations that redirect water from its natural stream course “withdraw” the water. However, in-stream uses of water, where water may be temporarily impounded but is not redirected, is not considered a withdrawal. We have worked with—and will continue to work with persons to offer compliance assistance regarding whether their operation constitutes a “withdrawal”.

Measuring

The rule also requires persons with registered withdrawals to measure the volume of water withdrawn—at least on a monthly basis. The rule identifies a range of options for measuring withdrawals including an option that allows for tailoring a measurement process on a case-by-case basis for challenging situations. The rule does not require anyone to purchase new measuring devices.

Reporting

Under the statute, any person who actually *withdraws* an average of 100,000 GPD or more in any 30-day period—or who diverts any amount of water from the Great Lakes basin—must annually report their monthly volumes of withdrawal or diversion.

(Registration is triggered by *capacity*; reporting is triggered by actual withdrawal).
Reporting for a calendar year is required by March 1st of the following calendar year.
The DNR is developing an on-line water use registration and reporting system to facilitate compliance.

Comment Summary: The department received comments from 17 individuals and organizations related to NR 856. They included:

- Questions related to the definition of withdrawal and measurement. As referenced earlier, the DNR has worked with various groups to clarify whether their particular water use is a withdrawal, to allow flexibility in the measurement of withdrawals; and to avoid double counting when water withdrawn is reused in a process.

- Comments related to the release of information gathered through the registration and reporting process—particularly specific locational information. Some of the comments requested further protection for this information. However, we also received comments encouraging sufficient access to locational information to allow sufficient assessment of impacts of withdrawals.

The statute provides that the department may consider domestic security concerns when determining whether information regarding the locations of withdrawals may be released to the public. On the other hand, Wisconsin's Open Records law contains a strong presumption that records are open to public inspection.

The DNR worked to balance the competing statutory provisions and the concerns expressed in the comments. The rule allows for the protection of information that may impact domestic security while preserving the state's public policy in favor of the release of public information.

Clearinghouse Rule 10-060

NR 852 Water Conservation & Water Use Efficiency

Advisory Committee: As directed in statute, the DNR drafted NR 852 with the help of the Public Service Commission and the Department of Commerce. In addition, we convened a 30+ member advisory committee—with representatives from each water use sector—to help us draft a water conservation & efficiency rule.

NR 852 establishes mandatory water conservation and efficiency measures for:

- New and increased withdrawals in the Great Lakes basin that exceed an average of 100,000 GPD in any 30-day period;
- New and increased diversions of Great Lakes water; and
- Persons applying for water loss approvals under §281.35, Stats., associated with withdrawals that result in a water loss averaging 2 MGD or more in any 30-day period.

Conservation and efficiency measures are not mandatory for:

- Pre-existing withdrawals in the Great Lakes basin (i.e. those in effect on 12/8/2008—the effective date of the Great Lakes Compact)

Persons subject to the provisions of NR 852 are categorized into one of three tiers, with specific conservation & efficiency measures prescribed within each tier.

The conservation & efficiency measures are focused on understanding current water use and exploring opportunities to reduce use or gain efficiencies.

The measures in Tier 1, which are considered to be cost-effective for persons in all sectors, include, e.g.:

- Conducting a water audit (examine & document water use from point of entry into the distribution system to the end use);

- Developing a leak detection and repair program;

The conservation & efficiency measures are broken down by water use sector. There are 7 water use sectors: Public water supply; commercial & institutional; irrigation; livestock watering; industrial; power production; and “other”.

The rules do not require retrofitting. (The enabling legislation specifically prevents the department from requiring retrofitting.)

Comment Summary: We received comments from 29 individuals and organizations on the proposed NR 852, and we made several changes in response to those comments.

Also, our statutory authority to impose mandatory conservation measures statewide on withdrawals resulting in a water loss exceeding an average of 2 MGD of more in any 30-day period was questioned. Those withdrawals require a water loss approval under s. 281.35 of the Statutes—which is not part of the Great Lakes Compact. However, s. 281.35 specifies that the DNR cannot issue a water loss approval unless the applicant incorporates “reasonable conservation practices”; and the DNR is proposing the measures in NR 852 as a common and consistent standard to determine what “reasonable conservation practices” are for purposes of issuing water loss approvals.

We intend that NR 852 serve as a guideline for water conservation measures for other DNR program activities.

Clearinghouse Rule 10-061 NR 850 Water Use Fees

Origin of Fees The 2009-11 biennial budget (2009 Wisconsin Act 28)—contained fee authorization and spending authority for Great Lakes Compact implementation.

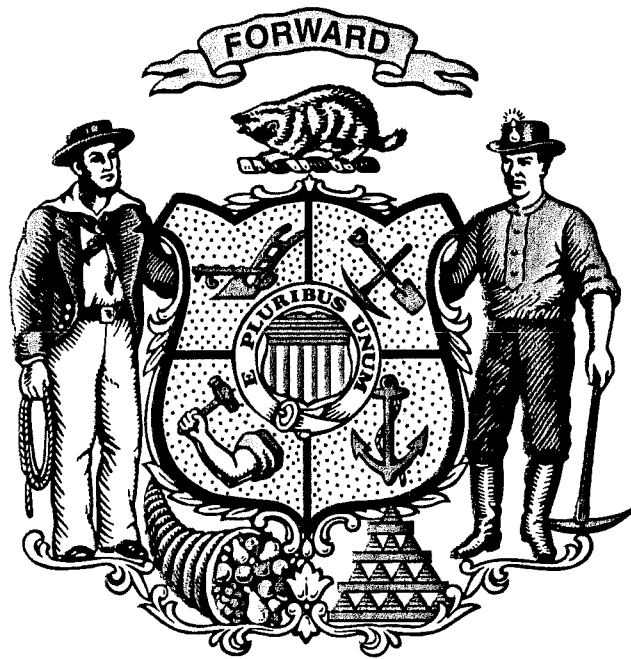
- **There are 2 Compact-related Fees**
 - 1. Statutory Base Fee (\$125)** imposed statewide on owners of water supply systems with the capacity to withdraw 100,000 gallons per day.
 - This rule clarifies that one \$125 fee will cover all water supply systems on one contiguous property – or one public water supply system (e.g. 5 high capacity wells on one contiguous property = one \$125 base fee; Madison water utility = one \$125 fee)
 - 2. Fee on Great Lakes basin withdrawals exceeding 50 million gallons per year (MGY).**
 - Includes surface water and groundwater withdrawals from anywhere within the Lake Michigan or Lake Superior basins.
 - The fee is structured in blocks of 50 million gallons (MG) and the fee per MG increases in each block e.g.

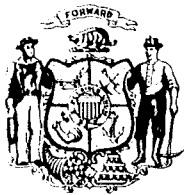
- A fee of \$1.50 is assessed on each MG withdrawn from 50 to 100 MG;
 - A fee of \$2 is assessed on each MG withdrawn from 100 to 150 MG
 - The fee increases by \$0.50 per MG in each block up to the point where persons pay \$6 for each MG withdrawn over 500 MGY.
 - The fee is capped at \$9,500 per year. Persons withdrawing just over 1.8 billion gallons per year will hit the cap. (approx. 9 public water systems hit the cap based on 2009 data. Also includes most power companies and some large industrial facilities, e.g. paper mills).
 - Some examples of fees paid:
 - Large Ag Irrigator withdrawing 130 MGY = \$135
 - Large dairying operation withdrawing 75 MGY = \$38
 - City of approx. 13,000 withdrawing 400 MGY = \$1,050
- **What the Fee Funds:** The fee revenue will fund all aspects of Great Lakes Compact implementation in the state, including:
- Water use registration & reporting, water use permitting, water supply service area planning; and water conservation & efficiency. Duties include technical assistance, outreach and training for registrants and permittees. (4 FTE; 2 LTE);
 - Database development and maintenance, including expenditures for a water use database; on-line registration and reporting systems; and geographic information systems (GIS) tools to help analyze water use throughout the state to help us sustainably manage the state's water resources;
 - Development of a statewide water use inventory—as directed by the Compact—that consists of information about the waters of the state including information about the location, type, quantity, and uses of the state's water resources.
 - Groundwater & surface water monitoring and mapping to provide continuous data for the water resources inventory and statewide water use management decisions.

Comment Summary: (We received 6 comments on the Water Use fee rule.)

- **Fee Cap:** We had comments on both sides of the fee cap: some argued that the cap should be raised; others argue that it should be no higher than what it is (\$9,500).

The fee was set @ \$9,500 in an attempt to balance concerns on both sides of the issue and to help avoid an undue economic impact on any individual withdrawer. We tried to be mindful of the impact on the different types of entities within the various water use sectors that would be subject to the fee.





JIM HOLPERIN

STATE SENATOR

Testimony for Senate Environment Committee
Senator Jim Holperin, September 29, 2010

Thank you for this opportunity to comment on NR 850 on behalf of a small aquaculture operation in Elton, WI in Langlade County...Silver Moon Springs. You will hear from owner Tim Winkel shortly.

By accidents of geography and design that occurred some 60 years ago, Silver Moon Springs now finds itself the victim of an Administrative Rule which imposes fees that could well drive it out of business.

I hope this Committee will recommend a rule amendment that prevents Silver Moon Springs and perhaps other small aquaculture operations from becoming collateral damage in an otherwise laudatory rule that implements the Great Lakes Compact in Wisconsin.

Several rearing ponds at Silver Moon Springs are fed by Elton Creek which flows north to south through the property. If the original owners had built those ponds only a few yards west of their current location and directly in the stream channel, there would be no problem and Silver Moon Springs would be completely exempted from this rule.

However, the rearing ponds were built perhaps 200 feet east of the stream channel, so creek water must be diverted into the ponds by a small concrete dam. The water flows in from the north and out to the south, exactly as it

would if the ponds were constructed directly in the stream channel, but because the ponds are just a few feet away from the stream channel we have a “withdrawal” subject to \$9,500 annually in state fees, rather than a “temporary impoundment” which is fee exempt.

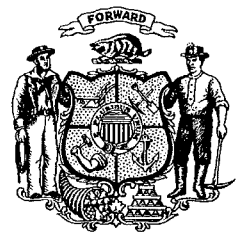
Unfortunately, the way it is designed, Silver Moon Springs cannot control the flow of Elton Creek. If it rains a lot, as it did this past summer, Tim Winkel will probably owe the state the maximum annual fee of \$9,500. If it’s a little dryer, like last summer, the fee may be only \$7,500 or so.

The point is that, unlike almost every other entity which “withdraws” water under this rule, Mr. Winkel has no control over the volume of water that flows through his operation. He must take, and pay for, whatever Elton Creek sends him.

I would urge the Committee to recommend that the Department reconsider its definition of “withdrawal” to see if what Silver Moon springs is doing is really “temporarily impounding” Elton Creek.

If federal rules make this impossible, I would urge the Committee to recommend that the Department review the fiscal impact of this rule on small aquaculture operations and incorporate some sort of relief based on gross revenues.

Thank you for considering this request.





WISCONSIN'S BUSINESS VOICE SINCE 1911

TO: Senate Committee on Environment

FROM: Scott Manley, Environmental Policy Director
Wisconsin Manufacturers & Commerce

DATE: September 29, 2010

RE: Clearinghouse Rule 10-060, Great Lakes Compact Water Conservation and Efficiency Rules

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to provide input on the DNR rules which implement the water conservation and efficiency requirements from the Great Lakes Compact legislation (2007 Act 227). Many of our members operate with groundwater or surface water withdrawal permits throughout the state, including the Great Lakes Basin, and therefore have a significant interest in this proposal. We respectfully request your attention with regard to one aspect of the rule before you today.

Before outlining our specific concern with regard to the proposed rule, WMC wishes to express our support for enhanced water conservation and efficiency. Prior to promulgation of this rule, and prior to enactment of the enabling statute, our members have already undertaken significant efforts to conserve water and use this resource efficiently. Wisconsin businesses conserve water because it is the right thing to do, and because it often makes economic sense to do so.

We appreciate the efforts of DNR staff to work with the regulated community on the development of this rule. The rulemaking process leading up to this rule has been transparent, and agency staff have made a concerted effort to keep interested parties apprised of policy developments throughout the promulgation process. Many of the concerns raised on behalf of our members were addressed in the final version of the rule.

However, a key statutory provision that confines the DNR's water conservation regulatory authority to the Great Lakes Basin was not followed in this rule. We ask the Committee to direct the Department to revise the rule such that the Tier 3 Compact-level water conservation requirements do not apply to facilities located outside of the Great Lakes Basin.

The Compact legislation was very clear that water conservation and efficiency measures were to be voluntary outside of the Great Lakes Basin. Section 281.346(8) establishes goals and objectives for the newly-created water conservation and efficiency program. The statute is clear that water conservation and efficiency measures outside of the Great Lakes Basin are to be voluntary only. Specifically, s. 281.346(b)(1) defines the statewide program to require "promotion of environmentally sound and economically feasible water conservation measures through a *voluntary statewide program*." (emphasis added).

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By contrast, s. 281.346(b)(1m) prescribes "*Mandatory and voluntary conservation and efficiency measures for the waters of the Great Lakes basin* that are necessary to implement subs. (4), (4s), (5), (5m), and (6) and s. 281.348" (emphasis added). The statute clearly limits mandatory conservation requirements to projects occurring in the Great Lakes Basin for purposes of implementing the conservation requirements embedded in the permitting framework enacted in the Compact legislation.

The concept that water conservation and efficiency measures would be voluntary statewide and mandatory within the Great Lakes Basin was a point of agreement throughout the negotiations on the Compact legislation, and was an important factor leading to WMC's support of 2007 Act 227.

Contrary to this statutory directive, the rule proposes to require statewide water conservation and efficiency requirements under NR 852.02(1)(c)4. to new or increased withdrawals statewide of 2,000,000 gallons per day or more in a 30-day period. These withdrawal thresholds apply to permitting actions arising from the requirements of s. 281.35(4) – a statute that was first enacted in 1985, many years prior to enactment of the Compact legislation. The Legislature never intended to apply the very robust (Tier 3) conservation requirements applicable in the Great Lakes Basin under the Compact to withdrawals on a statewide basis. Indeed, the enabling legislation plainly describes statewide conservation requirements to be voluntary.

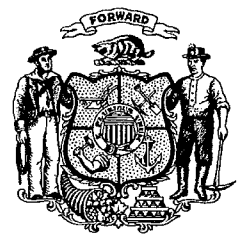
Withdrawals that are subject to the permitting requirements under s. 281.35 require an applicant to provide "a description of the conservation practices the applicant intends to follow" (see s. 281.35(5)(15)). Similarly, s. NR 142.06(2)(n), which implements the permitting requirements of s. 281.35, requires an applicant to provide "a description of the conservation practices the applicant intends to follow." Both the statute and the administrative code provision provide that the applicant lists conservation practices that he or she intends to follow. This is a very different regulatory construct than what is proposed in NR 852.02(1)(c)(4), which requires adherence to a very prescriptive list of Conservation and Efficiency Measures (CEMS) as defined by the Department, and implementation of "environmentally sound and economically feasible conservation measures" – a term of art that didn't exist when s. 281.35 was enacted.

If the Legislature had intended for a prescriptive water conservation regime to apply to permits regulated under s. 281.35, it would have amended the statute to cross-reference the conservation requirements established in s. 281.346(8) in the Compact legislation. The legislature did not do so. On the contrary, the Legislature left in tact the statutory framework in s. 281.35(5) that simply requires applicants to list conservation measure with which they intend to comply.

In summary, the Legislature never intended for the robust, mandatory water conservation and efficiency measures applicable in the Great Lakes Compact to apply on a statewide basis. In fact, s. 281.346(8) very specifically limits statewide conservation and efficiency measures under the Compact legislation to be voluntary. Furthermore, the applicability of conservation requirements to projects regulated under s. 281.35 is confined only to those conservation practices the applicant intends to follow. That is, the conservation requirements are driven by

measures *proposed by the applicant*, not a prescriptive list of measures mandated by the Department (i.e. the mandatory CEMS appearing in Table 2 of the rule).

For these reasons, WMC believes it is clear that DNR lacks the statutory authority to require mandatory Compact-level water conservation and efficiency measures outside the Great Lakes Basin, and the proposed Tier 3 requirements of the rule should be limited to projects occurring in the Great Lakes Basin only. We do not believe the Legislature intended mandatory water conservation measures to apply outside the Great Lakes Basin, and we respectfully ask the Committee to request a revision to the rule accordingly.



Senate Public Hearing – Committee on Environment

Wednesday, September 29, 2010

411 South – State Capitol

Clearinghouse Rule 10-047

Relating to fees for reviewing applications for construction of air pollution sources.

I am Andrew Stewart, Chief of the Permits and Dispersion Modeling Section in the Department of Natural Resources, Bureau of Air Management. I am here today to speak in support of our new source review program and related state rules. The Natural Resources Board adopted the Air Management rule being considered at this hearing in August, 2010.

The Department of Natural Resources Air Management's new source review program reviews and issues permits for sources of air pollution at new and expanding businesses in Wisconsin. All activities under this program are funded solely by fees paid by the permit applicants themselves. The majority of these fees have not been raised since 1999.

Over the past four years the Department has carried out a number of efficiency and streamlining efforts:

- We have downsized the number of staff working on construction permits, creating a smaller group of people dedicate to reviewing construction permit applications.
- We have created and implemented new types of permits called General and Registration permits that significantly reduces the permitting burden for business that qualify. Over 800 companies, many being small businesses, have taken advantage of these permits since they were introduced.
- We have added additional exemptions so that changes that once required a air permit now no longer do so.
- And we have created and put into production information technology systems to supplement and support these improvements.

These efforts have resulted in significant improvement in the Department's ability to review and issue construction permits that is most evident in the reduction in time it takes to get one, going from 132 days in 2007 to 73 days in 2010.

However, despite these efforts, the Department stills faces a deficit because over the last 11 years since the last fee increase, staff cost have gradually increased and the fees charged today are not sufficient to pay for the work that needs to be done to review and issue these permits in a timely manner.

The fee increases contained in this rule revision will enable the Air Program to maintain the current levels of service and activities at a time when it is critical for businesses to be able to adapt quickly in order to take advantage of opportunities.

Summary of the Proposed Rule

I have summarized the rule in bullet point, but let me just say that the fee increases being requested are what have been determined to be necessary to adequately support the new source review program in meeting its statutory obligations and deadlines. It is based on a workload analysis and takes into account all of the streamlining efforts mentioned.

The revised rule

- increases existing fees for construction permit applications;
- increases the existing non-refundable initial application fee;
- increases existing fee for determinations of being exempt from the need for a construction permit;

- establishes fees for other determinations of being exempt from the need for a construction permit where currently there is no charge;
- establishes the ability to collect fees for permit applications that are withdrawn or abandoned prior to final permit determination.
- expands the ability to refund fees in situations where the final cost of the permit is less than the initial application fee.

Public Comment

The department conducted 3 hearings on the revisions in June in Madison, Milwaukee and in Wausau. No comments were made at those hearings. Written comments were received on the revisions from Wisconsin Manufactures & Commerce, the Wisconsin Paper Council and jointly from the Wisconsin Transportation Builders and the Aggregate Producers of Wisconsin. Basically, comments were made on the size of the fee increase and questions were raised as to whether the department has availed itself of all of the streamlining and efficiencies opportunities available to it.

The requested fee increase is based on an analysis of what is needed to continue to be able to get construction permits issued in the time it takes today. Without it, available resources will be a fraction of what was available in previous years, resulting in an immediate and direct impact on the time it takes to review and issue a construction permit. The department feels that this is an unacceptable situation that would be detrimental to Wisconsin's economic recovery.

One comment stated that the proposed fees are higher than those in surrounding states, making doing business in Wisconsin more expensive.

The proposed fees are in line with fees charged for similar work in surrounding states. This is based on communications with new source review staff in Minnesota, Illinois, Michigan and Indiana. Direct comparison on a fee-by-fee basis is difficult due to the different ways that states collect fees to support this work.

Another comment was directed at the increase in the initial application fee, which is being proposed to go from \$1350 to \$7500.

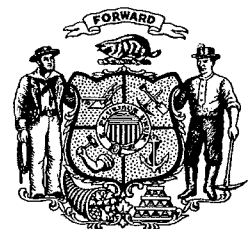
Raising the initial application fee does not raise the final cost of obtaining an air permit as the entire amount is applied towards the final fees assessed. In other words, this fee serves as a down payment on the final cost of the permit. Accompanying the request to raise the initial application fee is also a request to expand the air program's ability to provide refunds to permit applicants when the final cost of the permit is less than that fee.

In closing, the majority of permit review fees have not been raised since 1999. Inflation alone has increased over 30% since then. The new source review program has been operating under a structural deficit for a number of years and has completely exhausted surplus funds that had been built up in previous years. Furthermore, and more importantly, air regulations continue to get more complex, and it is happening at a time when it has never been more critical for a business to be able to adapt quickly in order to take advantage of opportunities. Without adequate resources the air program will not be able to respond to these changes, putting both these opportunities and public protection at risk.

Thank you for your time and attention. I will be glad to answer any questions about the proposed rule revisions.



WISCONSIN STATE LEGISLATURE



Senate Committee on Environment -Water Use Hearing 9-29-10

Wisconsin Aquaculture is a small but an important family farm orientated agriculture industry with a sound environmental history dating back to 1856, which follows sustainable best management practices. Wisconsin Aquaculture is diverse - raising fish for food, stocking and baitfish.

- Over 2300 DATCP registered fish farms, these include over 1900 farm ponds, nearly 100 DNR facilities and about 125 business farms
- Public and Private aquaculture has equivalent \$14.1 million in farm gate sales
- Wisconsin Aquaculture contributes \$21 million in economic activity to the state
- 117 fish farms have under \$50,000 in sales

The Wisconsin Aquaculture Industry agrees that water conservation and water use in the state is an important issue because aquaculture, as defined, is water dependent. The first rule of fish farming is to keep you product wet - the livestock lives in water and because of the industry's dependency on water, fish farmers are good stewards of the watersheds in which the farms are located. Wisconsin Aquaculture uses water, it does not take water and therefore is not a consumptive user - the water is not withdrawn and it remains within the watershed.

The administrative rules relating to the water use program implementing the Great Lakes Compact are very comprehensive, complex and will have a devastating effect on the Wisconsin Aquaculture Industry. The fee structure in NR 850, which is capped at \$9500, places an enormous burden on small businesses; they would be paying a very high percentage of their business income in fees.

- Milwaukee with a population of nearly 1 million pays the same fee at its cap (\$9500) as an individual fish farmer. That's less than 1 penny per person for Milwaukee residents.
- The majority of fish farmers in Wisconsin have less than \$50,000 in sales which means the fees could represent 19-30% or higher of gross sales.
- Eight of the DNR hatchery facilities have estimated total fees of \$13,676, three of their facilities within the GLB will pay no fees - but one fish farmer by the department's estimation, may pay between \$7500 and \$9500. One fish farm could pay nearly 70% of what all the DNR hatcheries pay and uses less water than most of them.

A new study entitled "Economic Impacts of Private Sector Aquaculture-Based Recreational Fishing in the Western USA", authored by Dr. Craig Bond and Daniel Deisenroth, has found that for every dollar sold of fish for recreational use resulted in \$36 generated in the region. The fees of \$9500 if paid would put the fish farmer out of business because he cannot pass on those fees on and stay competitive. If the farmer sold \$9500 in fish for recreation it could mean \$342,000 in economic activity generated for the State of Wisconsin or in other words there would be a loss of \$342,000 to the State if the water fees are paid.

Wisconsin Aquaculture is an important agriculture industry for the State, and is a partner in sustainably managing our resources - please consider the economic impact these fees impose - find a way to lessen the impact on small business.

NR 850 Water Use Fees for
Known Aquaculture Facilities in the Great Lakes Basin

Company Name	Withdrawal Baseline in Millions of Gallons per Year	Estimated Fees Based on Baseline*	Estimated Fees Based on 2009 Reporting
Artesian Trout Farm	551.88	\$1,886	\$993
Brown County	105.12	\$85	**
CD Smith Inc	210.24	\$331	\$0
Cedar Island Conservancy Ltd.	1011.05	\$4,641	\$1,023
Diamond Lake Campground	78.84	\$43	**
Fond du Lac County (Rolling Meadows GC)	109.5	\$94	**
Hayward Bait and Tackle	262.8	\$495	\$0
Kenosha County Golf Division	105.12	\$85	**
Kenosha County Golf Division	183.96	\$260	**
Northern Aquaculture Demonstration Facility	52.56	\$4	**
Pristine Waters Fish Farm	105.12	\$85	**
RENCO Machine - Fish-O-Matic	79.059	\$44	**
Romeo Springs Trout Farm	684.01	\$2,679	\$1,888
Silver Moon Springs LLC	31.39	\$0	**
Silver Moon Springs LLC	2744.07	\$9,500	\$7,500
The Club at Strawberry Creek LLC	525.6	\$1,729	\$0
The Trout Farm LLC	323.39	\$719	\$192
U. S. Fish & Wildlife Service	3679.2	\$9,500	\$9,500

*The baseline was identified by the applicant and is the maximum capacity of the water supply system's most restrictive component.

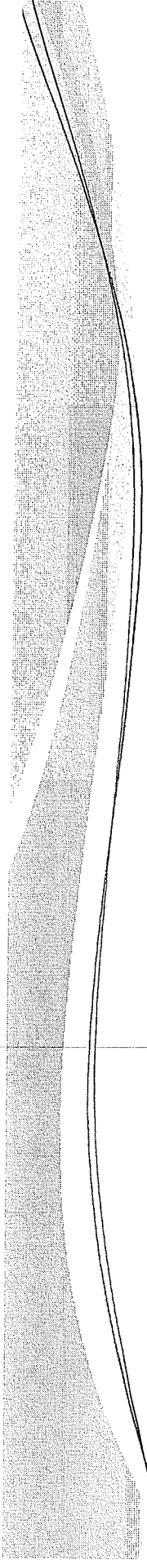
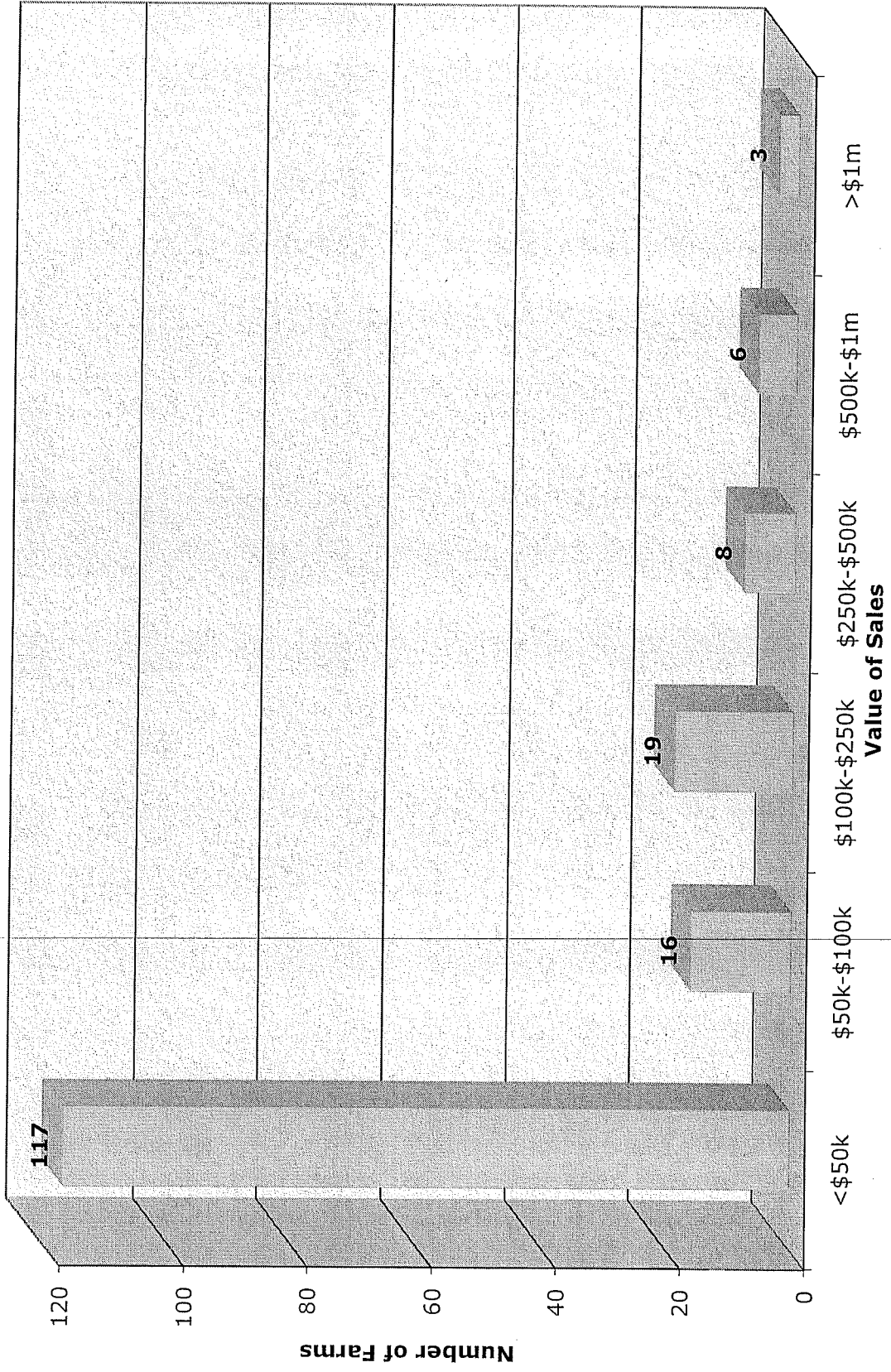
**No aquaculture withdrawal volume was reported.

NR 850 Water Use Fees for
DNR Facilities in the Great Lakes Basin

DNR Facility Name	Withdrawal Baseline in Millions of Gallons per Year	Estimated Fees Based on Facility Plan or 2009 Reporting
Les Voight (Bayfield)	552	\$1,887
Besadny	693.8	\$2,738
Kettle Moraine Springs	515.1	\$1,666
Kettle Moraine Springs Annex	236.5	\$410
Root River	163.9	\$210
Strawberry Creek	121	\$117
Thunder River	336.6	\$771
Wild Rose	1217	\$5,877

The following DNR facilities are not considered a withdrawal - Brule, Lakewood, Langlade.

Wisconsin Aquaculture Farm Sales





Wisconsin Aquaculture Association

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Department of Natural Resources
Kristy Rogers
P O Box 7921
101 S. Webster St
Madison, WI 53707-7921

July 6, 2010

Dear Ms. Rogers;

This letter will serve as written comments to NR 850, NR 852 and NR 856 which are currently open to public comments. The Wisconsin Aquaculture Association (WAA) is the voice of the Wisconsin aquaculture industry, 100% industry led and producer centered to promote, educate and advocate for the economic viability and environmental sustainability of fish farming in Wisconsin. WAA agrees that water conservation and water use in the state is an important issue because aquaculture, as defined, is water dependent - our member's products are grown in water, and because of our dependency on water, we are good stewards of the watersheds in which our farms are located. We use water responsibly and but are not consumers of water – the water goes right back into the watershed. WAA members practice best management practices and our organization is currently in the process of writing and adopting Water Efficiency Practices for Wisconsin Aquaculture. Following are our comments:

NR 850 –

WAA 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. NR 850 bases "withdraw" and "withdrawal" on State Statute 281.346 (y) and (z) which states: (y) *"Withdraw" means to take water from surface water or groundwater.* And (z) *"Withdrawal" means the taking of water from surface water or groundwater, including the taking of surface water or groundwater for the purpose of bottling the water.* The activity of aquaculture occurs within the water, it does not "take" nor does the process of "taking" occur. The activity of raising aquaculture products within the water is the same for private fish farms and the state's public fish hatcheries. 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 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.

NR 852, NR 856 –

WAA recognizes that NR 852 and NR 856 are rules for increased or new water use within the GLB and is required for water conservation and water use efficiency. However, as presented at the Water Conservation & Water Use Efficiency Rule Development Advisory Committee Meetings held on March 9 and 17, 2010 - aquaculture does not easily fit into the categories and outlined activities of Table 1 and Table 2. We refer to the letter to Eric Ebersberger

sent by Ron Johnson, Aquaculture Outreach Specialist, and who is also a member of the committee representing the aquaculture industry (which is attached). As outlined in the letter to Mr. Ebersberger, WAA is concerned that the basis of the criteria was for terrestrial animals and that aquaculture does not fit into several of the measures asked for. This could lead to confusion and possibly an incomplete plan or rejection of Conservation Efficiency Measures (CEM). Wisconsin Aquaculture is diverse and farms utilize ponds, raceways, and recirculation aquaculture systems (RAS), many farms use very little water on an annual basis. And as far as regarding source metering - artesian flow is not pumped and therefore is not metered and does not have a pump to maintain. WAA suggests that wording in the Mandatory Conservation and Efficiency Measures and the requirements to Analyze Conservation and Efficiency measures incorporate language that exempts aquaculture when it does not apply or includes language that more clearly delineates aquaculture activities so CEM's can be maintained.

WAA is also concerned that although NR 852 and NR 856 are measures to conserve and prevent diversion of water from the Great Lakes Basin, these measures will be adopted statewide or even by other governmental bodies such as counties, cities or villages and the ambiguity in wording for aquaculture will be carried out statewide, causing confusion and frustration between farmers and governmental entities.

WAA has a joint Regulatory Policy Committee with the Wisconsin Aquaculture Industry Advisory Council (WAIAC) and has members who are willing to assist the department with wording that satisfies the requirements of the administrative rules and also allows aquaculture, as an industry, to fit into the required measures.

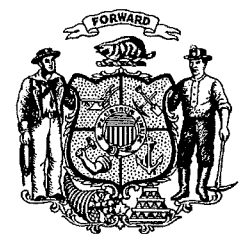
Sincerely,

Jeff Taylor

Jeff Taylor, President WAA



WISCONSIN STATE LEGISLATURE





Water Use Program – August 2010 Proposed Rules on Registration, Fees, and Water Conservation

The Department is in the process of proposing six new administrative rules related to large water withdrawals statewide to implement the Great Lakes Compact and related legislation. The new laws and rules are the foundation for achieving Wisconsin's goal of sustainable water use –

“Sustainably manage the quantity and quality of water in the state to ensure that water is available to be used to protect and improve our health, economy and environment now and into the future.”

In June 2010, the Department held public hearings and received public comment on the first three rules. The Department considered the public comments and made revisions to the draft rules. The Department will now present the final rule drafts to the Natural Resources Board for final adoption in August. This fact sheet briefly summarizes the purpose and key elements of the proposed rules. Additional information can be found at <http://dnr.wi.gov/org/water/dwg/greatlakes/rules.html>.

NR 856 Water Use Registration and Reporting

WHAT IS THE PURPOSE OF THE RULE? The purpose of the rule is to clarify and further define new statewide registration and reporting requirements for large withdrawals of water and diversions of water from the Great Lakes Basin. Information gathered from the process will be used to develop an inventory that will help us answer the following questions about our water use in Wisconsin.

- How much water are we using?
- Where are we using it?
- What are we using it for?

WHO DOES THE RULE IMPACT? The rule impacts persons who have the capacity to withdraw or take water from groundwater or surface water in quantities that average 100,000 gallons per day or more in any 30-day period and persons who divert any amount of water from the Great Lakes Basin. Examples include public water systems, high capacity well owners, and certain people who withdraw water from lakes and streams. (Note – 100,000 gallons per day is equivalent to 70 gallons per minute operated for 24 hours per day)

WHAT ARE THE KEY ELEMENTS OF THE RULE?

1. Registration

- Any person in the state who has or proposes to have a water supply system with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period or who diverts water in any amount from the Great Lakes Basin is required to register with the Department.
- The rule sets forth the procedures and information required for registration.

WHAT IS A WITHDRAWAL?

WHAT DOES IT MEAN TO WITHDRAW?

Withdraw or withdrawal means the taking of water from surface water or groundwater. There are many different methods for withdrawing water including wells, intake pipes, and ditches. When someone withdraws water, it is taken out of or redirected from its natural course making it unavailable for other purposes, even if only temporarily.

2. Measurement

- Any person registered must measure the volume of water withdrawn every month.
- The rule identifies a range of options for measuring withdrawals including an option that allows for tailoring a measurement process on a case by case basis for challenging situations like aquaculture facilities.
- The purchase of new metering devices is NOT required by the rule.

3. Reporting

- Any person in the state who withdraws an average of 100,000 gallons per day or more in any 30-day period or who diverts any amount from the Great Lakes Basin must annually report to the Department their monthly volumes of withdrawal or diversion.
- Reporting for each calendar year is required by March 1 the following year.
- The rule provides flexibility in how the information is collected to help eliminate duplication of reporting to the Department.

NR 850 Water Use Fees

WHAT IS THE PURPOSE OF THE RULE? The purpose of the rule is to establish fees for persons who withdraw more than 50,000,000 gallons per year from the Great Lakes Basin as directed by the new statute (2009 Wisconsin Act 28, the 2009-11 biennial budget). Please note that the statutes established an annual fee of \$125 for all registered withdrawals statewide. The rule does not seek to change this annual fee.

WHO DOES THE RULE IMPACT? The rule impacts persons who withdraw more than 50,000,000 gallons per year from the Great Lakes Basin.

WHAT ARE THE KEY ELEMENTS OF THE RULE?

- The rule establishes fees based on an increasing block rate structure. The fee increases as the withdrawal amount increases. The following table summarizes the fee structure. (Note: MGY = millions of gallons per year)

HOW WILL THE FEE REVENUE BE USED?

Revenue from the fees will be used for Great Lakes Compact (Compact) related programs including:

- Building a water resources inventory.
- Developing methods to monitor groundwater and surface water quantity and to assess the impacts of withdrawals.
- Implementation of the registration, reporting, permitting and all other related requirements of the Compact.

Great Lakes Basin-Specific Fee for Withdrawals > 50 MGY	
<u>Amount Withdrawn</u>	<u>Fee Per Million Gallons</u>
>50 MGY to 100 MGY	\$1.50
100 MGY to 150 MGY	\$2.00
150 MGY to 200 MGY	\$2.50
200 MGY to 250 MGY	\$3.00
250 MGY to 300 MGY	\$3.50
300 MGY to 350 MGY	\$4.00
350 MGY to 400 MGY	\$4.50
400 MGY to 450 MGY	\$5.00
450 MGY to 500 MGY	\$5.50
500 MGY +	\$6.00

- The Great Lakes Basin-specific fee for one facility or property is capped at \$9500.

EXAMPLES – FEE CALCULATIONS IN THE GREAT LAKES BASIN

- A large dairy operation withdrawing 75 MGY would pay the annual base fee of \$125, plus a Great Lakes Basin-specific fee of \$37.50 for an annual total of \$162.50.
- A public water system withdrawing 500 MGY would pay the annual base fee of \$125, plus a Great Lakes Basin-specific fee of \$1,575, for an annual total of \$1,700.
- A power company withdrawing 2100 MGY would pay the annual base fee of \$125, plus a Great Lakes Basin-specific fee capped @ \$9,500, for an annual total of \$9,625.

NR 852 Water Conservation and Water Use Efficiency

WHAT IS THE PURPOSE OF THE RULE? The purpose of the rule is to establish mandatory water conservation and efficiency measures for certain types of large water withdrawals and to promote voluntary water conservation for all water users. This rule is part of Wisconsin's Objectives for Water Use Efficiency and Conservation.

WHO DOES THE RULE IMPACT? The rule provides mandatory requirements for the following types of water withdrawals and diversions:

- New and increased regulated withdrawals in the Great Lakes Basin.
- New and increased diversions of Great Lakes water.
- New and increased withdrawals statewide that have a water loss greater than 2,000,000 gallons per day in any 30-day period.

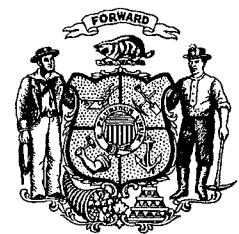
WHAT ARE THE KEY ELEMENTS OF THE RULE?

- Water conservation is not required for existing facilities at their current level of water withdrawal.
- The rule categorizes withdrawals and diversions into one of three tiers. The conservation requirements increase with each tier.
- CEMs that involve retrofitting are optional.

4 BASIC CONSERVATION AND EFFICIENCY MEASURES

- Conduct a water audit.
- Develop a leak detection and repair program.
- Educate your staff or customers about your water conservation activities.
- Measure all sources of water.

Rule Requirements	Tier 1	Tier 2	Tier 3
Develop a water conservation plan.	X	X	X
Implement 4 prescribed basic Conservation and Efficiency Measures (CEMs).	X	X	X
Implement 4 prescribed intermediate CEMs OR choose your own CEMs to reduce water use or increase efficiency by 10%.		X	X
Identify and implement all available CEMs that are cost effective or environmentally sound and economically feasible.			X



Water Policy Center

Conceptual Framework

The School of Freshwater Sciences would house a Water Policy Center that aims to be an internationally known Center engaged in cutting edge interdisciplinary problem solving to protect the public interest in freshwater resources. The Center would use an applied research model to tackle real world problems; it would function both as a high level consulting firm serving clients and a think tank producing academic research. It would also serve a communications function to educate the public about emerging science and policy research about water conservation, protection, and restoration.

The potential for establishing a major new policy institution is at a critical juncture at this time given the interdisciplinary potential of the new School of Freshwater Science, the focus on creating Milwaukee as a water hub, M7's Water Council, federal commitment to restoring the Great Lakes, and Sweetwater Trust's efforts to restore area waters.

Need for Interdisciplinary Approaches and Training for Next Generation Leaders

Bringing together scientists, engineers, lawyers, economists, and others on interdisciplinary teams is increasingly important if we are to resolve some of the most pressing water supply and management issues of our time. Scientists are confronted almost daily with the problem of transferring science into the public domain to inform policy deliberations and decision making. The relationship between science and policy is reciprocal. Legislation and public referenda that may rule the land and water for generations is often drafted and decided on nuanced legal interpretations of scientific information. Without the science and engineering done at the state of the art level and informing policymaking, policy prescriptions will be inefficient if not flat wrong. Without good public policy research and teaching, the science cannot be implemented.

Yet, in the professional world, there is a large gap between scientific research and policy development. From regulatory agencies and non-profit environmental groups to consulting firms and water-oriented business ventures, scientists and policy makers need to be able to speak each other's language, understand the ecological, economic, and legal/policy structures that exist, and work together to build creative solutions to provide a sustainable water future for the planet.

Rarely do graduate students get the hands on experience in interdisciplinary problem solving needed to prepare them to fill these needed roles in society. The Water Policy Center could be a place that provides that critical educational component for graduate students and produce interdisciplinary problem solving leaders to protect water.

Advisory Committee – composed of nationally-known leaders in each discipline participating in the Center would recommend program direction

