

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Modification and Adoption of Board Order DG-23-10, creation of NR 850 and revision to NR 142 relating to water use fees, adopted by the Board in August 2010, and modified based on input from the Senate.

FOR: OCTOBER 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.

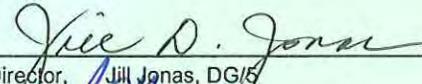
The rule sets forth definitions and specifies a method for assessing the fee, provides for an exemption, and specifies maximum fees. Based on a request from the Senate Committee on Environment, the rule adopted by the Board in August 2010 has been modified to provide for a lower cap on fees for small businesses.

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

LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/> | Fiscal Estimate Required | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

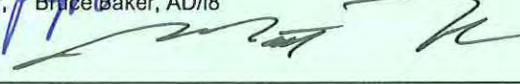
APPROVED:


Bureau Director, Jill Jonas, DG/5

10/15/10
Date


Administrator, Bruce Baker, AD/i8

10/15/10
Date


Secretary, Matt Frank

10-15-10
Date

DATE: October 15, 2010

FILE REF: DG-23-10, NR 850

TO: Members, Natural Resources Board

FROM: Matt Frank, Secretary

SUBJECT: Recommendation for adoption of proposed modifications to Board Order DG-23-10, creation of NR 850 and revisions to NR 142 relating to water use fees, adopted by the Board in August 2010, and modified base on input from the Senate Committee on Environment to include a lower cap on fees for small businesses.

1. Why the rule modification is being proposed

The Board adopted NR 850 at its August, 2010 meeting in Superior, Wisconsin. The Senate Committee on Environment held a hearing on the rule on September 29, 2010 at which it heard testimony from persons concerned about the potential adverse economic impact resulting from the imposition of a large water use fee on a small business. As a result, the Senate Committee on Environment has requested that the department consider a modification to the rule that would limit the annual water withdrawal fee for a small business—as defined in s. 227.114 (1), Stats., to \$1,000. (Section 227.114 (1), Stats., defines “small business” to mean “a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross sales of less than \$5,000,000.”) The department has modified the rule in accordance with the Senate Committee’s request. The department anticipates that the proposed change will decrease revenues to the water use program revenue appropriation by less than \$10,000 annually. The modification does not increase fees for any other water users. Total revenues to the appropriation are expected to be approximately \$980,000 annually. While comprehensive data regarding all water withdrawals is not yet available, the data the department does have suggests that few small businesses withdraw more than 50 MGY. Aquaculture is the only large water-using industry with small business entities of which we are aware. We are aware of four small businesses in the aquaculture sector that withdraw more than 50 MGY.

Statutory Background: 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 modified 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 rule caps the fee for withdrawals exceeding 50 MGY from the Great Lakes basin at \$9,500 for all water supply systems on any contiguous property or for a public water supply system; however, as modified pursuant to the Senate Committee on Environment request, the rule imposes a separate cap of \$1,000 for small businesses.

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. 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 during the public comment period. 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.

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

Post Hearing Contacts: None on NR 850.

Senate Committee on Environment Testimony: Persons testifying at the September 29, 2010 hearing held on the rule before the Senate Committee on Environment expressed concern over the potentially adverse environmental impact that large water use fees could have on small businesses—specifically on aquaculture operations.

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. The proposed modification would limit the fees charged to a small business to \$1,000.

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.

Fiscal Estimate — 2009 Session

<input type="checkbox"/> Original	<input checked="" 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 (NR 850)

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.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs
 Indeterminate

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others Public Utilities
 School Districts WTCS Districts

Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 s. 20.370 (4)(ai)

Assumptions Used in Arriving at Fiscal Estimate

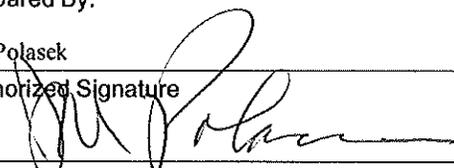
The Natural Resources Board approved DG-23-10 (NR 850) at its August 2010 meeting. This fiscal note is updated to reflect a modification to DG-23-10 (NR 850) made at the request of the Senate Committee on Environment. Specifically, the Senate Committee asked that the rule be modified to place a cap of \$1,000 annually on fees charged to small businesses. The Department assumes that the modification will decrease revenues by less than \$10,000 annually. [S.227.114 (1), Stats., defines "small business" to mean "a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross sales of less than \$5,000,000."]

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

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) 10/15/2010

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

The fee would not exceed \$9,500 annually for withdrawals from a water supply system on a contiguous property or a public water system; and, as modified pursuant to a request by the Senate Committee on Environment, the fee would not exceed \$1,000 annually for a "small business" as defined at s. 227.114 (1), Stats. 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.

State Fiscal Effect:

2009 Act 28 created the annual base water withdrawal fee and the revenues it generates. 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 established by this rule will generate between \$370,000 and \$390,000 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 1.9 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 existing withdrawal data (e.g. high capacity well pumpage data), comparatively few small businesses will be affected by the rule. Additionally, based on withdrawal data from aquaculture operations in the Great Lakes basin, the Department assumes that there are approximately 4 aquaculture facilities that qualify as "small businesses" under Ch. 227, Stats. that may have paid a fee in excess of \$1,000 annually, were it not for the \$1,000 cap on small businesses. As a result, the Department assumes that capping the fee on small businesses at \$1,000 will reduce annual revenues by less than \$10,000. The Department is not aware of other small businesses located in the Great Lakes basin that withdraw water annually in amounts (i.e. approximately 400 million gallons per year) that would result in an annual water use fee exceeding \$1,000 under 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 (NR 850)

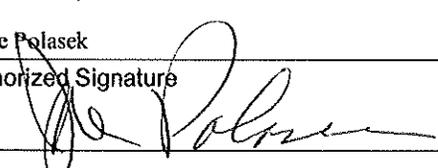
Subject
 Water Use Fees for Large Withdrawals from the Great Lakes Basin

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	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS		380,000	-
SEG/SEG-S			-
Total State Revenues	\$	\$ -	

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$	\$
Net Change in Revenues	\$ 380,000	\$

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	10/15/2010

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

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

DG-23-10

Analysis Prepared by the Department of Natural Resources

1. **Statute interpreted:** Section 281.346 (12), Stats.
2. **Statutory authority:** Sections 227.11 (2)(a) and 281.346 (12), Stats.
3. **Explanation of agency authority:** Section 227.11 (2)(a) gives state agencies general rulemaking authority. Section 281.346 (12)(c) directs the Department to promulgate a rule specifying the amount of an annual fee to be paid by persons who withdraw from the Great Lakes basin more than 50,000,000 gallons of water per year.
4. **Related Statute or Rule:** This rule relates to implementing the provisions of the Great Lakes—St. Lawrence River Basin Water Resources Compact (Compact) in Wisconsin pursuant to sections 281.343, 281.346, and 281.348, Stats. Revenue from the fees assessed pursuant to this rule will be deposited to a program revenue appropriation dedicated to funding Compact implementation activities in the state.
5. **Plain language analysis:** The proposal contained in this order repeals a provision of an existing rule that provided authority to assess water withdrawal fees on persons making withdrawals from the waters of the state in amounts averaging 100,000 gallons per day or more in any 30-day period. Those fees ranged from \$35 to \$500 dollars depending on the amount of the withdrawal. However, the fee program and the associated registration program were not implemented by the Department.

Under the provisions of s. 281.346 (12), as created in 2009 Wisconsin Act 28, beginning in 2011, any person with a water supply system anywhere in the state with the capacity to withdraw an average of 100,000 gallons per day or more in any 30-day period must pay to the Department an annual fee of \$125. This rule clarifies that the annual \$125 fee will cover all water supply systems on one property or a single public water supply. Section 281.346 (12)(c) further directs the Department to promulgate a rule specifying an additional annual fee for persons who withdraw more than 50,000,000 gallons per year from the waters of the Great Lakes basin—that is, from surface water or groundwater within the land area of the state draining to Lakes Michigan or Superior, or from those lakes. The proposed fee would increase per 50 million gallon increment as shown in the following table:

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

The fee would not exceed \$9,500 annually for withdrawals from a water supply system on a contiguous property or a public water system, and the fee would not exceed \$1,000 annually per property for a small business as defined in s. 227.114 (1), Stats. (The \$1,000 fee cap for small businesses represents a modification of the version of NR 850 approved by the Natural Resources Board at its August 2010 meeting.) The fees specified in this rule will be assessed on a calendar year basis and will be due to the Department by June 30th of the following calendar year.

6. **Federal regulatory analysis:** There are no comparable federal regulations pertaining to fees for water withdrawals.
7. **Comparison with rules in adjacent states:** The following table compares water withdrawal fees in adjacent states.

Water Withdrawal Fee Comparison				
Wisconsin	Illinois	Iowa	Michigan	Minnesota
<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. (Above 500) \$6/mil.</p> <p>The fee would not exceed \$9,500 per year per property or public water system, and would not exceed \$1,000 per year for a small business.</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. Based on the withdrawal data that does exist (e.g. high capacity well pumpage data), comparatively few small businesses will be affected by the rule. However, this modified rule provides that the fee would not exceed \$1,000 annually per property for a small business as defined in s. 227.114 (1), Stats. (Section 227.114 (1), Stats., defines "small business" to mean "a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross sales of less than \$5,000,000."
- 10. Effect on small business:** The \$125 annual fee will affect hundreds of small business throughout the state. However, the fee imposed on withdrawals exceeding 50 million gallons per year is expected to primarily affect public water systems, power companies, and large industrial operations in water-intensive industries. The rule—as modified from the version approved by the Natural Resources Board at its August 2010 meeting provides a fee cap of \$1,000 for a small business and will affect an unknown number of small businesses that withdraw more than 50 million gallons of water per year from waters within the Great Lakes basin. However, the Department estimates that there are relatively few small businesses that withdraw water at levels exceeding the threshold amounts.
- 11. Agency contact person:**
Eric Ebersberger, DG/5
Wisconsin Department of Natural Resources
Bureau of Drinking Water & Groundwater
Water Use Section
(608) 266-9254
Eric.Ebersberger@wisconsin.gov

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) "Small business" has the meaning specified in s. 227.114(1), Stats.

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

(7) "Water supply system," has the meaning specified in s. 281.346(1)(wp), Stats.

Note: Section 281.346(1)(wp), Stats., defines "water supply system, when not preceded by 'public'", to mean "one of the following: 1. Except as provided in subd. 2., the equipment handling water from the point of intake of the water to the first point at which the water is used. 2. For a system for providing a public water supply, the equipment from the point of intake of the water to the first point at which the water is distributed."

(8) "Waters of the state" has the meaning specified in s. 281.01(18), Stats.

Note: Section 281.01(18), Stats., defines "Waters of the state" to include "those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction."

(9) "Withdraw" has the meaning specified in s. 281.346(1)(y), Stats.

Note: Section 281.346(1)(y), Stats., defines "withdraw" to mean "to take water from surface water or groundwater".

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

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

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

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

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

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

SECTION 3. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2) (intro.), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated in Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____

Matthew J. Frank, Secretary

(SEAL)