

**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 or 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.