

## Report From Agency

### REPORT TO LEGISLATURE

NR 860, Wis. Adm. Code  
Board Order No. DG-34-10  
Clearinghouse Rule No. CR 10-109

#### Basis and Purpose of the Proposed Rule

NR 860 Water Use Permitting is being proposed to define the process, requirements, and criteria for water use permitting in the Great Lakes basin. 2007 Wisconsin Act 227 and 2009 Wisconsin Act 28 require the department to draft rules to implement the water use permitting program by December 8, 2011.

The rule establishes definitions, application information requirements, review time limits, required permit conditions, criteria for permit issuance, procedures for amending and terminating permits, and standards and procedures for public participation for the water use permitting program.

#### Summary of Public Comments

Information on the proposed rule was posted on the department website on September 13, 2010 and information was sent to approximately 950 people using the GovDelivery system on September 21, 2010. The public comment period closed on October 31, 2010. The department received public comments from 6 individuals and organizations. All of the comments, along with the Department's responses, are included in Attachment 1.

#### Modifications Made:

The department received a large number of excellent comments. The comments were sorted by subject material and are grouped in Attachment 1 by rule subchapter. The department incorporated or made changes to the rule to address the majority of the comments.

The comments on NR 860 Subchapter 1 - General Provisions, included a request to add definitions for clarity, concerns with the open records request section, and questions or concerns on a number of the required permit conditions. The department added definitions and also amended or deleted several of the required permit conditions based on the comments including removing the required permit condition that the withdrawal shall not injure public rights in navigable waters and the permit condition that stated that the department may require additional conditions in a general permit.

There were a large number of comments pertaining to NR 860 Subchapter II - General Water Use Permits and Subchapter III - Individual Water Use Permits. The comments included proposed modifications to provide clarity to the permit processes and concerns and suggestions related to the criteria and conditions for obtaining permits. The department made a substantial number of changes to address the comments.

The department also made several changes to NR 860 Subchapter IV - Public Participation to provide additional clarity. There were a number of comments that expressed concern with when public participation was required for general permits versus notice of coverage issued under a general permit. Public participation is only required for the initial department issuance of the general permits. There is no public participation required when the department issues notice of coverage under a general permit to an individual withdrawer.

## Appearances at the Public Hearing

### **10/13/10 - Milwaukee**

As interest may appear:  
Neal Kolb, Lake Geneva, WI

No Comment:  
Karen Hobbs, Chicago, IL

### **Green Bay - 10/14/10**

As interest may appear:  
Jacqueline K. Powell, Green Bay, WI  
Melissa Mrotek, Green Bay, WI

No Comment:  
Richard Jones, Green Bay, WI

## Changes to Rule Analysis and Fiscal Estimate

Minor corrections and updates were made to the Rule Analysis. No changes were made to the Fiscal Estimate.

## Response to Legislative Council Rules Clearinghouse Report

The department made all changes recommended by the Legislative Council Rules Clearinghouse. Clearinghouse comment 5.d. suggested removing the phrase "in the manner described by the department". This phrase is used throughout the rule to describe the manner in which applicants submit information to the department. The Clearinghouse commented that the phrase "... is unnecessary because the rule goes on to specify the types of information that must be included in an application". The phrase "in the manner described by the department" is intended to provide flexibility on how the department receives an application or information. It allows the Department to accept applications and information via paper forms, email, internet submittal, etc. The phrase does not impact the actual information that is required to be submitted. The department changed the phrase throughout the rule to "using the method prescribed by the department" to provide clarity.

## Final Regulatory Flexibility Analysis

The proposed rule is not expected to have a significant economic impact on small businesses. The rule affects small businesses that supply their own water with water supply systems that on average withdraw over 100,000 gallons per day in any 30-day period. Small businesses, like other entities that are affected by this rule, will have to obtain a permit, follow the permit conditions, measure the amount of water used on a monthly basis, and report that water use annually. Small businesses that receive water solely from a public water supply will not be directly impacted by this rule. Most small businesses regulated by this rule are expected to fall within the general permit category. The general permit requirements are straightforward and can be accomplished by most individuals with no specific professional background. The application for an individual permit may require the hiring of a professional environmental consultant to assist with the evaluation of impacts from a proposed withdrawal