Chapter NR 142

WISCONSIN WATER MANAGEMENT AND CONSERVATION

NR 142.01 Applicability; purpose.
NR 142.02 Definitions.
NR 142.04 Determining consumptive use.
NR 142.05 Determining water loss.
NR 142.06 Water loss approval.
NR 142.07 Great Lakes basin water loss.
NR 142.09 Department investigations.

NR 142.01 Applicability; purpose. (1) APPLICABILITY. This chapter applies to any person withdrawing water from any waters of the state.

(2) PURPOSE. The purpose of this chapter is to protect and promote the conservation of the waters of the state; to provide for the management of the waters of the state through the development of a statewide water quantity resources plan; to register major withdrawals from the waters of the state; and to require departmental approval for major interbasin diversions and consumptive uses of water in order to protect public and private water rights in the state when the level, flow, use or quality of the waters of the state is threatened.

History: Cr. Register, October, 1988, No. 394, eff. 11–1–88.

NR 142.02 Definitions. The following definitions apply to the terms used in this chapter:

(1) "Approval" means a permit issued under s. 30.18, Stats., or an approval under s. 281.41, Stats.

(2) "Authorized base level of water loss" means any of the following:

(a) The maximum 30–day average water loss authorized as a condition of a permit or approval.

(b) If par. (a) does not apply, the highest average daily water loss over any 30–day period that is reported to the department or the public service commission under s. 30.18 (6) (c), 281.35, or 281.41, Stats.

(c) If there is no water loss from an existing withdrawal, zero gallons per day.

(3) "Consumptive use" has the meaning designated in s. 281.35 (1) (c), Stats.

Note: Consumptive uses are determined under s. NR 142.04.

(4) "Consumptive use coefficient" means a constant numerical measure, as determined under s. NR 142.04 (1) to (4), which is used to determine the consumptive use portion of a facility's withdrawal.

(5) "Department" means the department of natural resources.

(6) "Existing withdrawal" means a lawful withdrawal from the waters of the state occurring on or before January 1, 1986.

(7) "Facility" means an operating plant or establishment serving water or electricity to the public or carrying on any manufacturing activity, trade or business on a common site, including similar plants under common ownership or control located on contiguous properties. Plants or establishments under common ownership or control located on separate sites shall be considered separate and individual facilities.

(8) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence river upstream from Trois Rivieres, Quebec, Canada.

(9) "Great Lakes region" means the geographic region composed of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin, the commonwealth of Pennsylvania and the provinces of Ontario and Quebec, Canada.

(10) "Interbasin diversion" means a transfer of waters of the state from either the Great Lakes basin or the upper Mississippi river basin to any other basin.

(11) "International joint commission" means the commission established by the boundary waters treaty of 1909 between the United States and Canada.

(12) "Person" means an individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency, federal agency and also includes special purpose districts established under s. 66.0827, Stats., other states and provinces and their political subdivisions.

(13) "Public water system" means a water system for the provision to the public of piped water for human consumption, if the system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

(14) "Registrant" means any person who registers a withdrawal.

(15) "Upper Mississippi river basin" means the watershed of the Mississippi river upstream from Cairo, Illinois.

(16) "Water loss" means a loss of water from the basin from which it is withdrawn as a result of interbasin diversion or consumptive use or both.

(17) "Water loss approval application fee" means the fee collected from each person who submits a water loss approval application to the department pursuant to s. 281.35 (5), Stats.

(18) "Water loss approval annual fee" means the fee collected from each person whose application is approved pursuant to s. 281.35 (6), Stats.

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

(20) "Withdrawal" means the removal or taking of water from the waters of the state. For the purposes of this chapter, the following are not considered to be a withdrawal:

(a) The passage of water through, or storage of water for, a hydroelectric generating facility, plant or structure.

(b) The diversion of surface water from any source for the purposes of cultivating or harvesting cranberries.

(21) "Withdrawal fee" means a fee assessed to persons making a withdrawal averaging more than 100,000 gallons per day in any 30–day period from the waters of the state.

History: Cr. Register, October, 1988, No. 394, eff. 11–1–88; corrections in (1), (2) (b), (3), (17) to (19) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2000, No. 531; corrections in (1), (2) (b), (12) made under s. 13.92 (4) (b) 7., Stats., Register December 2010 No. 660, **correction in (14) made under s. 13.92 (4) (b) 7., Stats., November, 2018, No. 755.**

NR 142.04 Determining consumptive use. (1) Persons required to provide volumes and rates of consumptive use to the department under s. NR 142.06 (2) (g) shall do so in the following manner:

(a) If a person is making a withdrawal for the purpose of irrigating agricultural crops, a golf course, or for any other nondomestic irrigation purposes; a coefficient of 70% of the total amount withdrawn shall be used to estimate consumptive use.

(b) If a person is making a withdrawal for the purpose of a nonirrigation agricultural activity, such as the watering and washing of livestock, or for any other agricultural purpose, a coefficient of

90% of the total amount withdrawn shall be used to estimate consumptive use.

(c) If a person is making a withdrawal for the purpose of operating a thermoelectric power generating facility, a coefficient to be determined by each person operating such a facility shall be used to determine consumptive use. By March 1, 1989, each person to which this paragraph applies shall provide the department written documentation specifically identifying the consumptive use rate, and the method, calculation, formula or device used in determining the coefficient. If the department does not receive a consumptive use coefficient within the time period specified for any facility to which this paragraph applies, then a coefficient of 1.2 acre feet per million kilowatt hours of electricity produced shall be used to estimate consumptive use for that facility.

(d) If a person is making a withdrawal for the purpose of operating a commercial facility, a coefficient to be determined by each person operating such a facility shall be used to determine consumptive use. By March 1, 1989, each person to which this paragraph applies shall provide the department written documentation specifically identifying the consumptive use coefficient, and the method, calculation, formula or device used in determining the coefficient.

(e) 1. If a person is making a withdrawal for the purpose of operating an industrial facility, the department, where possible, shall determine a consumptive use coefficient based on available flow diagrams or other water use information submitted to the department by each facility pursuant to s. 283.31, Stats., or the federal water pollution control act as amended 33 USC 1251 to 1376. By December 31, 1988 the department shall either:

a. Notify each person by mail of the consumptive use coefficient documented from a flow diagram or other water use information; or

b. Notify each person by mail that insufficient flow diagram or other water use information was available.

2. By 120 days after receipt of notification under subd. 1., each person shall either:

a. Provide written acceptance of the consumptive use coefficient documented by the department; or

b. Provide written documentation, supported by a flow diagram or other water use information, or a consumptive use coefficient appropriate for the facility in question.

(f) If a person is making a withdrawal for the purpose of mining, a coefficient to be determined by each person operating a mine shall be used to determine consumptive use. By March 1, 1989, each person to which this paragraph applies shall provide the department written documentation specifically identifying the consumptive use coefficient, and the method, calculation, formula or device used in determining the coefficient.

(g) If a person is making a withdrawal for the purpose of operating a public water system, a coefficient to be determined by each person operating such a facility shall be used to determine consumptive use. By March 1, 1989, each person to which this paragraph applies shall provide the department written documentation specifically identifying the consumptive use coefficient, and the method, calculation, formula or device used in determining the coefficient.

(2) No consumptive use coefficient determined under sub. (1) (c), (d), (e), (f) or (g) may be used without prior written approval by the department. Any approval or denial of approval of a consumptive use coefficient under sub. (1) (c), (d), (e), (f) or (g) is a final decision of the department.

(3) If any person fails to provide a consumptive use coefficient in the time specified under sub. (1) (d), (e), (f) or (g), the department shall determine a consumptive use coefficient for that person. The department shall notify the person in writing of the department's decision and the reason for that decision.

(4) Any person requesting a variance from the consumptive use coefficients established under sub. (1) (a) or (b) or modification of a consumptive use coefficient approved by the department under sub. (2). A person requesting a variance or modification shall submit a statement specifying the consumptive use coefficient currently in effect, the new consumptive use coefficient desired and documentation supporting the need for the change. Decisions by the department on variances or modifications requested under this section shall be final decisions of the department.

History: Cr. Register, October, 1988, No. 394, eff. 11–1–88; correction in (1) (e) 1., made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2000, No. 531; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., November, 2018, No. 755.**

NR 142.05 Determining water loss. In calculating the total amount of water loss from a withdrawal a person shall include all separate interbasin diversions and consumptive uses, or combinations thereof, which the person makes or proposes to make for a single use, facility or irrigated property under common ownership or control located on contiguous properties.

History: Cr. Register, October, 1988, No. 394, eff. 11–1–88.

NR 142.06 Water loss approval. (1) APPROVAL REQUIRED. Before a person may begin a new withdrawal or increase the amount of an existing withdrawal, the person shall apply to the department under s. 30.18 or 281.41, Stats., for a new approval or a modification of an existing approval if either of the following apply:

(a) The person proposes to begin a withdrawal that will result in a water loss averaging more than 2,000,000 gallons per day in any 30–day period.

(b) The person proposes to increase a withdrawal by an amount that will result in a water loss averaging more than 2,000,000 gallons per day in any 30–day period above the person's authorized base level of water loss.

(2) APPLICATION INFORMATION. A water loss approval application shall contain a statement of and documentation for the following:

(a) The current operating capacity of the withdrawal system, if the proposed increase requires the expansion of an existing system;

(b) The total proposed operating capacity of the withdrawal system;

(c) The location and source of the proposed withdrawal;

(d) The location of the proposed discharge or return flow;

(e) The location and nature of the proposed water use;

(f) The estimated average annual and monthly volumes and rates of the proposed withdrawal;

(g) The estimated average annual and monthly volumes and rates of the proposed water loss;

(h) The anticipated effects, if any, the proposed withdrawal will have on existing uses of water resources and related land uses both within and outside of the Great Lakes basin or the upper Mississippi river basin, including effects on:

1. Public and private potable water supplies.

2. Agricultural water use such as irrigation and livestock watering and washing.

3. Industrial and commercial water use.

4. Commercial navigation use, including the impact on the need for dredging of harbors and channels.

5. Hydroelectric and thermoelectric power production.

6. Fish and wildlife, including impacts on wetlands, fish spawning areas and threatened or endangered species.

7. Recreation, tourism and scenic beauty.

(i) Any land acquisitions, equipment, energy consumption or the relocation or resiting of any existing community, facility, right–of–way or structure that will be required;

(j) The total anticipated costs of any proposed construction;

(k) A list of all federal, state, provincial and local approvals, permits, licenses and other authorizations required for any proposed construction;

(L) A statement, with supporting materials, as to whether the proposed withdrawal complies with all applicable plans for the use, management and protection of the waters of the state and related land resources, including plans developed under ss. 281.12 (1) and 283.83, Stats., and the requirements specified in any water quantity resources plan under s. 281.35 (8), Stats.;

(m) A description of alternatives which may satisfy the applicant's needs for water if the application is denied or modified;

(n) A description of the conservation practices the applicant intends to follow.

(3) DEPARTMENT DETERMINATIONS. The department may approve an application if it finds:

(a) That no public or private water rights in navigable waters will be adversely affected;

(b) That the proposed withdrawal does not conflict with any applicable plan for future uses of the waters of the state, including plans developed under ss. 281.12 (1) and 283.83, Stats., and any water quantity resources plans prepared under s. 281.35 (8), Stats.

(c) That both the applicant's current water use, if any, and the applicant's proposed plans for withdrawal, transportation, development and use of water resources incorporate reasonable conservation practices;

(d) That the proposed withdrawal and uses will not have a significant adverse impact on the environment and ecosystem of the Great Lakes basin or the upper Mississippi river basin;

(e) That the proposed withdrawal and uses are consistent with the protection of public health, safety and welfare and will not be detrimental to the public interest; and

(f) That the proposed withdrawal will not have a significant detrimental effect on the quantity and quality of the waters of the state.

(4) DEPARTMENT DETERMINATIONS ON INTERBASIN DIVERSIONS. If the proposed withdrawal will result in an interbasin diversion, the department may approve an application if it finds in addition to the criteria of sub. (3):

(a) That each state or province to which the water will be diverted has developed and is implementing a plan to manage and conserve its own water quantity resources, and that further development of its water resources is impractical or would have a substantial adverse economic, social or environmental impact;

(b) That granting the application will not impair the ability of the Great Lakes basin states and provinces or upper Mississippi river basin states to meet their own needs;

(c) That the interbasin diversion alone, or in combination with other existing water losses, will not have a significant adverse impact on lake levels, water use, the environment or the ecosystem of the Great Lakes basin or upper Mississippi river basin; and

(d) That the proposed withdrawal is consistent with all applicable federal, regional and interstate water resources plans.

(5) REVIEW OF APPLICATIONS. (a) Within 60 days after receipt of an application, the department shall either determine the application is complete or shall notify the applicant in writing that the application is not complete and shall specify the information which is required to make the application complete.

(b) Within 10 business days after its determination that an application is complete, the department shall, at a minimum, provide notice of the receipt of the application to be published as a class 1 notice in the official state newspaper.

(c) Within 90 days after receipt of a complete application, the department shall notify the applicant in writing of the approval, conditional approval, or denial of the application. If the application is denied, the reason for denial shall be included in the notification. This time period may be extended for applications which require consultation under s. NR 142.07 or which require extension of the plan review time under s. 281.41, Stats.

(d) Except as provided in s. 227.42 (4), Stats., any person who receives notice of a denial or conditional approval under par. (c) is entitled to a contested case hearing under ch. 227, Stats., if the person requests the hearing within 30 days after receipt of the notice.

Note: Thirty days equals approximately 21 business days.

(6) PERMIT CONDITIONS AND REPORTING REQUIREMENTS. (a) *Permit conditions.* If a proposed application under this section is conditionally approved, the department may require the applicant to provide periodic reports or other evidence documenting how the applicant is meeting the conditions of the approval.

(b) *Reporting requirements.* Persons whose applications are approved or conditionally approved under sub. (5), shall, no later than March 1 of each calendar year, provide the department a statement of, and supporting documentation for, the following:

1. The actual or estimated average annual and monthly volumes and rates of withdrawal.

2. The actual or estimated average annual and monthly volumes and rates of water loss resulting from the withdrawal.

(7) PERMIT REVIEWS. (a) *Department review.* The department shall review each approval prior to the expiration date specified as a condition of approval under sub. (5) (c), if any, or within 5 years from the date of issuance and at least once every 5 years thereafter.

(b) *Permit modification.* 1. 'Department–initiated.' After notice and opportunity for hearing in accordance with the procedures of s. 227.51, Stats., the department may at any time propose modifications of the approval or additional conditions, limitations or restrictions it determines are necessary to ensure compliance with this chapter or with any other applicable statute or rule.

2. 'Others.' A person to whom an approval has been issued or any person adversely affected by a condition, limitation or a restriction of an approval may request that the department modify the condition, limitation or restriction of the approval.

(c) *Permit revocation.* If the department, after notice and hearing in accordance with the procedures of s. 227.51, Stats., determines that a person to whom an approval has been issued would be unable under any conditions, limitations or restrictions to comply with this chapter or other applicable statutes or rules, it shall revoke the approval.

(d) *Final decisions.* Decisions by the department on modifications or revocations issued under this subsection shall be final decisions of the department.

(8) TRANSFERABILITY. If an original applicant relinquishes control of a withdrawal authorized under a water loss approval, a new approval shall be obtained from the department by the new owner or operator before operating the withdrawal.

History: Cr. Register, October, 1988, No. 394, eff. 11–1–88; corrections in (1) (intro.), (2) (L), (3) (b), (5) (c), made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2000, No. 531; correction in (1) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register December 2010 No. 660.

NR 142.07 Great Lakes basin water loss. (1) CONSULTATION REQUIRED. If the department receives an application that, if approved, will result in a new water loss to the Great Lakes basin averaging more than 5,000,000 gallons per day in any 30–day period, or an increase in a withdrawal by an amount that will result in a water loss averaging 5,000,000 gallons per day in any 30–day period above the applicant's authorized base level of water loss, the department shall notify the office of the governor or premier and the agency responsible for management of water resources in each state and province of the Great Lakes region and, if required under the boundary waters treaty of 1909, the international joint commission. The department shall also request each state and province in the Great Lakes region to comment on the application.

(2) DEPARTMENT RESPONSE. (a) In making its determination on an application reviewed under this section, the department shall consider any comments that are received within 45 days after each state and province of the Great Lakes region has been notified of the proposed diversion.

(b) If a written request is received from a governor or premier, or designated representative of a state or province of the Great Lakes region, the department shall convene a consultation meeting of these states and provinces to discuss the application. The department shall provide at least 30 days notice of this consultation meeting to the governors or premiers, or their designated representatives.

(c) If a consultation meeting is convened, the department shall provide the states and provinces of the Great Lakes region a draft decision memorandum which shall include findings of fact and its proposed decision to deny, approve, or conditionally approve the application.

(d) Prior to issuing a final decision on the application, the department shall allow 30 days for the states and provinces of the Great Lakes region to provide written comments on the draft decision memorandum.

(e) The department's final notice of decision shall be distributed to the states and provinces of the Great Lakes region within 15 days after permit issuance or denial.

History: Cr. Register, October, 1988, No. 394, eff. 11–1–88.

NR 142.09 Department investigations. (1) COMPLAINT PROCEDURE. Any 6 or more residents of the state may petition for an investigation of a withdrawal alleged to be in violation of s. 281.35, Stats., this rule or an order issued by the department by submitting to the department a petition identifying the alleged violator and setting forth in detail the reasons for believing a violation occurred. The petition shall state the name and address of a person in the state authorized to receive service of answer and other papers on behalf of the petitioners and the name and address of a person authorized to appear at a hearing on behalf of the petitioners.

(2) PETITION PROCEDURE. Upon receipt of a petition, the department shall do one of the following:

(a) If the department determines that the allegations of the petitions are true, it shall order the alleged violator to take whatever action is necessary to achieve compliance with the statute, rule, condition, limitation or restriction; or

(b) If the department determines that the allegations are untrue, it shall dismiss the petition.

(3) FALSE PETITIONS. Any person who maliciously or in bad faith files a petition under sub. (1) is liable for attorney's fees and damages or other appropriate relief to the person who is the subject of the petition.

(4) APPEAL OF DECISIONS. Any person alleged to be in violation of s. 281.35, Stats., this rule or an order issued by the department, may request the department to conduct a contested case hearing in accordance with the procedures of ch. 227, Stats., on the allegations of the petition.

History: Cr. Register, October, 1988, No. 394, eff. 11–1–88; corrections in (1) and (4) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2000, No. 531.