

Chapter NR 860

WATER USE PERMITTING

Subchapter I — General Provisions

NR 860.10	Purpose.
NR 860.11	Definitions.
NR 860.12	Responsible Parties and Eligible Permittees.
NR 860.13	Interim Approvals.
NR 860.14	Open Records Requests.
NR 860.15	Required Permit Conditions.
NR 860.16	Amendments and Transfers.
NR 860.17	Terminations.
NR 860.18	Enforcement.

Subchapter II — General Water Use Permits

NR 860.20	Applicability.
NR 860.21	General Water Use Permits.
NR 860.22	Application and Review Process for Notice of Coverage.

NR 860.23	Notice of Coverage Decisions.
NR 860.24	Modifications to the Withdrawal Amount — Notice of Coverage.
NR 860.25	Redetermination of Coverage.

Subchapter III — Individual Water Use Permits

NR 860.30	Applicability.
NR 860.31	Application and Review Process for Individual Water Use Permits.
NR 860.32	Individual Water Use Permit Decisions.
NR 860.33	Modifications to the Withdrawal Amount — Individual Water Use Permits.
NR 860.34	Individual Water Use Permit Reissuance.

Subchapter IV — Public Participation

NR 860.40	Applicability.
NR 860.41	Public Notice and Comment.
NR 860.42	Public Hearings.

Subchapter I — General Provisions

NR 860.10 Purpose. The purpose of this chapter is to implement s. 281.346 c4md, c4sd, c5d, c5md, c6d, and c9d, Stats. This chapter establishes the process, requirements, and criteria for water use permitting.

History: CR 10-109; cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.11 Definitions. In this chapter:

c1d XBaselineY means the amount of a preexisting withdrawal, as determined by the department under s. 281.346 c4ed, Stats.

c2d XConsumptive useY has the meaning specified in s. 281.346 c1d ced, Stats.

Note: Section 281.346 c1d ced, Stats., defines Xconsumptive useY to mean Xa use of water that results in the loss of or failure to return some or all of the water to the basin from which the water is withdrawn due to evaporation, incorporation into products, or other processes.Y

c3d XDaysY means calendar days unless otherwise specified.

c4d XDepartmentY means the department of natural resources.

c5d XGreat Lakes basinY has the meaning specified in s. 281.346 c1d cjed, Stats.

Note: Section 281.346 c1d cjed, Stats., defines XGreat Lakes basinY to mean Xthe watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec, within the jurisdiction of the parties.Y

c6d XOne propertyY has the meaning specified in s. NR 812.07 c68d.

Note: Section NR 812.07 c68d, Wis. Adm. Code, defines Xone propertyY to mean Xall 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.Y

c7d XOwner,Y for water supply systems other than public water supply, means a person who owns property on which a water supply system is located or proposed to be located or the designated representative of such a person. For public water supply, XownerY means a person who owns the public water supply or designated representative of such a person.

c8d XPermitteeY means an owner that is issued a permit.

c9d XPersonY has the meaning specified in s. 281.346 c1d cnmd, Stats.

Note: Section 281.346 c1d cnmd, Stats., defines XpersonY to mean Xan individual or other entity, including a government or a nongovernmental organization, including any scientific, professional, business, nonprofit, or public interest organiza-

tion or association that is neither affiliated with nor under the direction of a government.Y

c10d XPreexisting withdrawalY means a withdrawal that started prior to December 8, 2008.

c11d XPropertyY has the same meaning as Xone property,Y as specified in sub. c6d.

c12d XPublic water supplyY has the meaning specified in s. 281.346 c1d cpmd, Stats.

Note: Section 281.346 c1d cpmd, Stats., defines Xpublic water supplyY to mean Xwater 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.Y

c13d XSignificant adverse environmental impactY means alteration of groundwater levels, groundwater discharge, surface water levels, surface water discharge, groundwater temperature, surface water temperature, groundwater chemistry, surface water chemistry, or other factors to the extent such alterations cause significant degradation of environmental quality including biological and ecological aspects of the affected water resource.

c14d XSourceY means an individual location where water is withdrawn from groundwater or surface water, such as a well or surface water intake.

c15d XWater lossY has the meaning specified in s. 281.346 c1d cwmd, Stats.

Note: Section 281.346 c1d cwmd, Stats., defines Xwater lossY to mean Xthe amount of water that is withheld from or not returned to the basin from which it is withdrawn as a result of a diversion or consumptive use or both.Y

c16d XWater supply system,Y has the meaning specified in s. 281.346 c1d cwpd, Stats.

Note: Section 281.346 c1d cwpd, Stats., defines Xwater supply systemY, when not preceded by XpublicY, to mean Xone 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.Y

Note: The water supply system includes all points of intake of water into a water supply system.

c17d XWater use intensityY has the meaning specified in s. NR 852.03 c29d.

Note: Section NR 852.03 c29d, Wis. Adm. Code, defines Xwater use intensityY to mean Xa measure of water use per unit production, sales unit, or customer served.Y

c18d XWaters of the stateY has the meaning specified in s. 281.01 c18d, Stats.

Note: Section 281.01 c18d, Stats., defines Xwaters of the stateY to include Xthose portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reser-

voirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.Y

c19d XWithdrawY has the meaning specified in s. 281.346 c1d cyd, Stats.

Note: Section 281.346 c1d cyd, Stats., defines XwithdrawY to mean Xto take water from surface water or groundwater.Y

c20d XWithdrawalY has the meaning specified in s. 281.346 c1d czd, Stats.

Note: Section 281.346 c1d czd, Stats., defines XwithdrawalY to mean Xthe taking of water from surface water or groundwater, including the taking of surface water or groundwater for the purpose of bottling the water.Y

c21d XWithdrawal amountY means the permitted amount of a withdrawal in a notice of coverage under a general permit or an individual permit as specified by the department under s. 281.346 c4gd, c4sd, or c5d, Stats. The withdrawal amount for an automatically issued notice of coverage under a general permit or an individual permit shall not be less than the baseline unless specifically requested by the owner.

c22d XWellY has the meaning specified in s. 281.34 c1d chd, Stats.

Note: Section 281.34 c1d chd, Stats., defines XwellY to mean Xany drillhole or other excavation or opening deeper than it is wide that extends more than 10 feet below the ground surface and is constructed for the purpose of obtaining groundwater.Y

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.12 Responsible Parties and Eligible Permittees. **c1d** The owner is the person responsible for obtaining, modifying, terminating, and complying with notice of coverage under a general permit or with an individual permit.

c2d The department shall issue notice of coverage under a general permit or issue an individual permit only to the responsible party under sub. c1d.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.13 Interim Approvals. All interim approvals issued under s. 281.344 c5md, Stats., expire on December 8, 2011. Any person regulated under this chapter shall obtain notice of coverage under a general permit or an individual permit no later than December 7, 2011.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.14 Open Records Requests. **c1d** The locations of withdrawals are sensitive information that may impact domestic security.

c2d Open records requests received by the department under ss. 19.21 to 19.39, Stats., that request information on the locations of withdrawals may be subject to greater scrutiny by the department because of domestic security concerns, as allowed under s. 281.346 c3d ccmd and c9d ced, Stats. The department may request all of the following with respect to open records requests seeking information on the locations of withdrawals, in order to address domestic security concerns:

cad That the request be put in writing.

cbd The name, mailing address, telephone number, and email address of the requester and the company or organization that the requester represents.

ccd The specific information requested.

cdd The reason the information is requested and how it will be used.

c3d In considering the public[s] interest in domestic security when reviewing requests submitted under sub. c2d, the department may place conditions on the use of the information, or may provide the requested information in a different format, when necessary to protect the public[s] interest in domestic security.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.15 Required Permit Conditions. All general

and individual water use permits issued by the department shall at a minimum contain all of the following conditions:

c1d The permittee shall comply with all conditions of the permit. Permit noncompliance is a violation of the permit and may be grounds for enforcement action, permit suspension or revocation, or denial of a redetermination or reissuance. If a permittee violates any terms of the permit, the permittee is subject to the penalties established in ch. 281, Stats.

c2d The permit does not convey any property or water rights of any sort, or any exclusive privilege. The permit does not authorize any injury or damage to private property or any invasion of personal rights, or any infringement of federal, state, or local laws, rules, or regulations.

c3d The permittee shall allow an authorized representative of the department, upon presentation of credentials, to do all of the following:

cad Enter, upon reasonable notice, the owner[s] premises where a regulated withdrawal is located or conducted, or where records are required under the conditions of the permit.

cbd Have access to and copy, at reasonable times, any records that are required under the conditions of the permit.

ccd Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices or operations regulated or required under the permit.

c4d The permittee shall measure and record the amounts of withdrawal and annually report to the department following the requirements in ss. NR 856.30 and 856.31. Annual reporting is required each calendar year for all permittees.

c5d An individual permit is not transferable without prior approval from the department.

c6d The permittee shall by March 1 notify the department of changes made in the previous calendar year to the information submitted in the application that require amendment following the requirements in s. NR 860.16.

c7d A modification to the permit or notice of coverage is required to increase the established withdrawal amount set forth in the permit or notice of coverage.

c8d The permittee shall implement the applicable water conservation and water use efficiency requirements of an approved water conservation plan under ch. NR 852.

c9d If a water supply service area plan is required by s. 281.346 or 281.348, Stats., the withdrawal shall be consistent with the approved water supply service area plan.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.16 Amendments and Transfers. **c1d** A permit amendment is required when changes or modifications are made to any of the following:

cad Property boundaries.

cbd Property ownership or public water supply ownership of withdrawals covered by a general permit.

Note: Changes in property ownership or public water supply ownership for withdrawals authorized by an individual permit require an approved transfer meeting the requirements of sub. c4d.

ccd The name, mailing address, telephone number, and email address of the owner and operator, if applicable.

cdd The locations and sources of the withdrawal.

ced The daily withdrawal capacity of the water supply system or individual source or sources.

cfid The uses made of the water.

cgd The places at which the water is used.

chd The places at which any of the water is discharged.

c2d The owner shall amend the permit using the method pre-

scribed by the department by March 1 of the year following the change or modification.

Note: Permit amendments may be completed as part of the annual reporting process.

c3d An owner is not required to amend a permit when replacing equipment with equipment of the same capacity and operating parameters.

c4d Department approval is required for the transfer of an individual permit to a new property owner or public water supply owner. A person who proposes to assume responsibility for an individual permit for a permitted withdrawal, shall submit an application meeting the requirements of s. NR 860.31 c3d cad and a statement acknowledging acceptance of the terms of the current permit. The department shall review the request for a transfer and make a decision to either approve the transfer or require a new permit, following the requirements of s. NR 860.31 c3d.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.17 Terminations. c1d A permittee may request termination of an individual permit or coverage under a general permit if the withdrawal amount decreases below the thresholds requiring a permit or notice of coverage under this chapter.

c2d Terminating a water use registration under ch. NR 856 constitutes a termination of an individual permit or coverage under a general permit.

c3d Terminating an individual permit or coverage under a general permit terminates the baseline established under s. 281.346 c2d ced, Stats., for persons with preexisting withdrawals.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.18 Enforcement. c1d Violations of this chapter may be prosecuted by the department under s. 281.346 c14d, Stats.

c2d Any violation of this chapter shall be treated as a violation of the statutes they interpret or under which they are promulgated.

c3d Persons violating this chapter are subject to penalties as specified in s. 281.346 c14d, Stats.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

Subchapter II — General Water Use Permits

NR 860.20 Applicability. c1d Unless authorized by an individual permit or unless exempted under sub. c2d, all of the following persons who withdraw water from the Great Lakes basin shall obtain coverage under a general water use permit:

cad Any person who on December 8, 2011, has a water supply system or systems on one property or a public water supply that withdraws an amount averaging 100,000 gallons per day or more in any 30-day period but that does not equal at least 1,000,000 gallons per day for any 30 consecutive days.

cbd Any person who after December 7, 2011, proposes a withdrawal with a water supply system or systems on one property or a public water supply that averages 100,000 gallons per day or more in any 30-day period but that does not equal at least 1,000,000 gallons per day for any 30 consecutive days.

Note: Pursuant to s. 281.346 c4sd cdmd, Stats., the department may require a person who is making or proposes to make a withdrawal at the general permit level listed in sub.c1d cad or cbd to obtain an individual permit if the withdrawal is located in a groundwater protection area, as defined in s. 281.34 c1d camd, Stats., or a groundwater management area designated under s. 281.34 c9d, Stats.

Note: Persons with a permit under s. 30.18, Stats., must also obtain a water use permit, if applicable.

c2d This chapter does not apply to withdrawals for any of the following purposes:

cad To supply vehicles, including vessels and aircraft, for the

needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

cbd To use in a noncommercial project that lasts no more than 3 months for fire fighting, humanitarian, or emergency response purposes.

c3d Separate coverage under a general water use permit is required for each property and each public water supply.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.21 General Water Use Permits. c1d The department may issue a general water use permit that applies only to certain categories or groups of water withdrawals, or only to withdrawals located in a designated area of the Great Lakes basin, or both.

c2d For purposes of this section, a category or group of withdrawals may be defined by amount of withdrawal, water use sector, type of withdrawal or water use, geographic or watershed area, or other attribute that the department determines is appropriate for defining a category of coverage. There shall be a reasonable commonality among members of a category or group that is related to water withdrawal or use.

c3d The department shall solicit public comment following the public participation procedures in subch. IV prior to issuing a general water use permit.

c4d All general water use permits shall identify the criteria that must be met in order to qualify for coverage under the general permit. The criteria shall be limited to the requirements and authority provided under s. 281.346 c4sd, Stats.

c5d All general water use permits shall contain the permit conditions in s. NR 860.15 and any additional conditions necessary to meet the requirements of ch. 281, Stats.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.22 Application and Review Process for Notice of Coverage. c1d APPLICABLE PROCESS. A person required to have coverage under a general water use permit under this subchapter shall obtain a notice of coverage decision following the applicable process under sub. c2d or c3d.

c2d AUTOMATIC NOTICE OF COVERAGE FOR PREEXISTING WITHDRAWALS. cad The department shall issue automatic notice of coverage no later than December 8, 2011, to persons with a preexisting withdrawal that qualify for automatic notice of coverage as set forth in s. 281.346 c4sd ccd, Stats., and that have one of the following:

1. An interim approval under s. 281.344 c5md, Stats.
2. A registration under ch. NR 856 completed no later than November 1, 2011.

Note: Persons with a preexisting withdrawal that made a withdrawal that averaged 100,000 gallons per day or more in any 30-day period but did not equal 1,000,000 gallons per day for any 30 consecutive days before December 8, 2008 qualify for automatic notice of coverage under a general permit.

Note: The department can not guarantee that automatic notice of coverage will be issued in time to meet the December 8, 2011 deadline for registrations received after November 1, 2011 for preexisting withdrawals that qualify for automatic notice of coverage.

cbd The department may request any missing information required by sub. c3d cad from persons that qualify for automatic notice of coverage.

cdd Persons with a preexisting withdrawal that do not receive automatic notice of coverage on or before December 8, 2011, shall apply for notice of coverage following the process in sub. c3d.

Note: Applications and information should be sent to: DNR Water Use Program DG[5, P.O. Box 7921, Madison, WI 53707-7921.

c3d NOTICE OF COVERAGE. cad Any person required to obtain notice of coverage under a general water use permit under this subchapter that did not receive automatic notice of coverage

under sub. **c2d** shall submit an application to the department using the method prescribed by the department, and the application shall include all of the following information about the existing or proposed withdrawal:

1. The name, mailing address, telephone number, and email address of the owner and operator.
2. The locations and sources of the withdrawal.
3. The daily withdrawal capacity of the water supply system, the daily withdrawal capacity from each source, identification of the most restrictive component of the water supply system or systems, and an estimate of the maximum hydraulic capacity of the most restrictive component of the water supply system or systems.
4. The uses made of the water.
5. The places at which the water is used.
6. The places at which any of the water is discharged.
7. Whether the person holds an approval or permit under s. [30.12](#), [30.18](#), [281.34](#), [281.35](#), [281.41](#), or [283.31](#), Stats., or s. [281.17](#), 2001 Stats., or other statutes and any specified withdrawal conditions set forth in the approval or permit.
8. A map showing the location of the property or public water supply, sources, and discharges if the applicant is submitting an application using a paper form.
9. If required by ch. [NR 852](#), a water conservation plan.

Note: A water conservation plan is required by ch. [NR 852](#) for new and increased withdrawals in the Great Lakes basin and withdrawals statewide that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period.

cbd If the application does not include all of the information under par. **cad**, it may be deemed incomplete. Within 30 days of receipt, the department shall notify the applicant in writing that the application is incomplete and shall describe the information that must be submitted in order for the application to be complete.

ccd The department may dismiss an application if the information needed to complete the application is not received within 30 days after the department notifies an applicant that its application is incomplete.

cdd The department shall determine if the withdrawal qualifies for coverage under a general water use permit and issue notice of coverage or dismiss the application within 45 days of receipt of a complete application. A withdrawal qualifies for coverage under a general water use permit when the requirements of s. [NR 860.23 c1d](#) are completed and the withdrawal meets the criteria established in the general permit.

ced If the department determines that an activity does not qualify for coverage under a general permit, the department shall dismiss the application in writing and state the reasons why the project does not qualify for coverage under the general permit.

cfid The department may investigate or visit a property and facility to determine whether a withdrawal qualifies for coverage under a general permit.

Note: Applications and information should be sent to: DNR Water Use Program DG(5, P.O. Box 7921, Madison, WI 53707-7921.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11; cited created in c1d under s. [13.92 c4d cbd 2.](#), Stats., Register September 2011 No. 669.

NR 860.23 Notice of Coverage Decisions. c1d The department shall issue notice of coverage only when all of the following have been completed:

cad The department has received a complete application containing all of the information in s. [NR 860.22 c3d cad](#).

cbd The applicant has received all the necessary permits or approvals for the withdrawal under s. [30.12](#), [30.18](#), [281.34](#), or [281.41](#), Stats., or s. [281.17](#), 2001 Stats.

ccd The applicant receives department approval of a water conservation plan under ch. [NR 852](#), if applicable.

cdd The applicant has complied with an approved water supply service area plan under s. [281.348](#), Stats., if applicable.

c2d The department shall specify a withdrawal amount for each notice of coverage. The department shall also specify a baseline for each automatically issued notice of coverage under s. [NR 860.22 c2d](#). The withdrawal amount and baseline shall be determined by following the procedures in s. [281.346](#), Stats. The withdrawal amount for an automatically issued notice of coverage shall not be less than the baseline unless specifically requested by the owner.

c3d The department may suspend or revoke coverage under a general permit issued under this subchapter for cause, including obtaining coverage under the permit by misrepresentation or failure to disclose material facts or substantially violating the terms of the permit, after the opportunity for a hearing following the procedures in s. [NR 860.42](#).

Note: An applicant or permit holder may challenge a modification, suspension, or revocation in whole or part of a notice of coverage under a general permit following the requirements under s. [281.93](#), Stats.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.24 Modifications to the Withdrawal Amount — Notice of Coverage. c1d If a permittee proposes to increase the amount of a withdrawal over the established withdrawal amount in the notice of coverage but does not propose to withdraw at least 1,000,000 gallons per day for any 30 consecutive days, the permittee shall apply to the department using the method prescribed by the department for a modification to the withdrawal amount.

c2d The department shall review the application following the requirements under s. [NR 860.22 c3d](#) and approve the requested modification if the increased withdrawal meets the requirements of s. [NR 860.23](#) and s. [281.346 c4sd ced](#), Stats.

c3d If the department determines that the application does not qualify for continued coverage under a general permit, the department shall dismiss the request in writing and state the reasons why the requested modification does not qualify for coverage under the general permit.

c4d The department shall keep records in a database of all approved modifications to the withdrawal amount.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.25 Redetermination of Coverage. c1d Coverage under a general permit ends on the date that the term of the general permit ends.

Note: Under s. [281.346 c4sd camd](#), Stats., the term of a general permit is 25 years.

c2d The department shall send notification to owners at least 365 days prior to the expiration of the general permit that the general permit will expire and that redetermination of coverage is required. The department shall send notification to owners using the most economical communication tool available and the most recent contact information submitted by the owner.

Note: The most economical communication tool used by the department on October 1, 2011 is email.

c3d Owners that have received notice of coverage under a general permit that intend to continue a withdrawal that averages 100,000 gallons per day or more in any 30-day period but that does not equal at least 1,000,000 gallons per day for any 30 consecutive days, shall apply to the department using the method prescribed by the department for redetermination of coverage under a new general permit at least 180 days before the end of the term of the general permit. The failure of an owner to apply for redetermination at least 180 days prior to the expiration of the

general permit shall not result in the loss of an established base-line or specified withdrawal amount.

Note: Applications and information should be sent to: DNR Water Use Program DG(5, P.O. Box 7921, Madison, WI 53707-7921.

c4d If the owner applying for a redetermination is in substantial compliance with the current general permit and qualifies for coverage under a new general permit, the department shall issue notice of coverage under the new general permit.

c5d The department shall follow the requirements of s. NR 860.22 c3d, when reviewing the request for redetermination of coverage.

c6d A redetermination of coverage shall specify a withdrawal amount equal to the withdrawal amount of the previous issuance of coverage unless the owner requests a reduced amount.

Note: For proposed increases to a withdrawal amount, the owner must apply to the department following s. NR 860.24.

History: CR 10-109; cr. Register September 2011 No. 669, eff. 10-1-11.

Subchapter III — Individual Water Use Permits

NR 860.30 Applicability. c1d Unless exempted under sub. c3d, all of the following persons who withdraw water from the Great Lakes basin shall obtain an individual water use permit:

cad Any person who on December 8, 2011, has a water supply system or systems on one property or a public water supply that withdraws at least 1,000,000 gallons of water per day for any 30 consecutive days.

cbd Any person who after December 7, 2011, proposes a withdrawal with a water supply system or systems on one property or a public water supply that equals at least 1,000,000 gallons per day for any 30 consecutive days.

c2d The department may require a person who is making or proposes to make a withdrawal at the general permit level under s. NR 860.20 c1d to obtain an individual permit if the withdrawal is located in a groundwater protection area, as defined in s. 281.34 c1d camd, Stats., or a groundwater management area designated under s. 281.34 c9d, Stats.

c3d This subchapter does not apply to withdrawals for any of the following purposes:

cad To supply vehicles, including vessels and aircraft, for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

cbd To use in a noncommercial project that lasts no more than 3 months for fire fighting, humanitarian, or emergency response purposes.

c4d A separate individual water use permit is required for each property and each public water supply.

History: CR 10-109; cr. Register September 2011 No. 669, eff. 10-1-11; correction in c2d made under s. 13.92 c4d cbd 7., Stats., Register February 2017 No. 734.

NR 860.31 Application and Review Process for Individual Water Use Permits. c1d APPLICABLE PROCESS. A person required to have an individual water use permit under this subchapter shall obtain a permit decision following the applicable process under sub. c2d or c3d.

c2d AUTOMATIC ISSUANCE OF AN INDIVIDUAL WATER USE PERMIT FOR PRE-EXISTING WITHDRAWALS. cad The department shall issue an automatic individual water use permit no later than December 8, 2011, to persons with a preexisting withdrawal that qualify for automatic issuance of an individual water use permit as set forth in s. 281.346 c5d ccd, Stats., and that have one of the following:

1. An interim approval under s. 281.344 c5md, Stats.
2. A registration under ch. NR 856 completed no later than November 1, 2011.

Note: Persons with a preexisting withdrawal that are required to obtain an individual permit and that made a withdrawal that averaged 100,000 gallons per day or more in any 30-day period before December 8, 2008 qualify for automatic issuance of an individual permit.

Note: The department can not guarantee that automatic issuance of an individual permit will be issued in time to meet the December 8, 2011 deadline for registrations received after November 1, 2011 for preexisting withdrawals that qualify for issuance of an individual permit.

cbd The department may request any missing information required by sub. c3d cad from persons that qualify for automatic issuance of an individual permit.

cdd Persons with a preexisting withdrawal that do not receive automatic issuance of an individual water use permit on or before December 8, 2011, shall apply for an individual permit under sub. c3d.

c3d INDIVIDUAL WATER USE PERMITS. cad Any person required to obtain an individual permit under this subchapter that did not receive automatic issuance of an individual water use permit under sub. c2d shall submit an application to the department using the method prescribed by the department, and the application shall include all of the following information about the existing or proposed withdrawal:

1. The name, mailing address, telephone number, and email address of the owner and operator.

2. The locations and sources of the withdrawal.

3. The daily withdrawal capacity of the water supply system, the daily withdrawal capacity from each source, identification of the most restrictive component of the water supply system or systems, and an estimate of the maximum hydraulic capacity of the most restrictive component of the water supply system or systems.

4. The projected withdrawal schedule including the average and maximum amounts and rates of the withdrawal per month and a description of any expected peak use in terms of gallons per day.

5. The uses made of the water.

6. The places at which the water is used.

7. The places at which any of the water is discharged.

8. An estimate and the method or methods used to determine the estimate, of the water loss from consumptive use from the property or a public water supply. Water loss and consumptive use estimations and calculations shall follow the procedures set forth in department rules and guidelines.

9. Whether the person holds an approval or permits under s. 30.12, 30.18, 281.34, 281.35, 281.41, or 283.31, Stats., or s. 281.17, 2001 Stats., or other statutes and any specified withdrawal conditions set forth in the approval or permit.

10. A map showing the location of the property or public water supply, sources, and discharges, if the applicant is submitting an application using a paper form.

11. If required by ch. NR 852, a water conservation plan.

Note: A water conservation plan is required by ch. NR 852 for new and increased withdrawals in the Great Lakes basin and withdrawals statewide that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period.

12. For withdrawals that require compliance with the state decision-making standard under s. 281.346 c5md, Stats., all of the following information is required, in addition to the information in subs. 1. to 11.:

- a. Documentation that the proposed withdrawal amount is needed to meet the applicant[s] projected needs.

Note: Public water systems that are required to have an approved water supply service area plan may use that plan as the required documentation.

- b. Documentation of compliance with the applicable provisions of ch. NR 852.

- c. An alternatives analysis comparing other potential water sources for cost-effectiveness and environmental effects.

d. A description of the baseline conditions of the source including hydrologic flow, water quality, and for surface water sources, habitat of the source. This information is not required if the department has issued a permit under s. 30.18, Stats.; an approval under s. 281.34, Stats., for the new or increased withdrawal; or has issued a permit under s. 30.12, Stats., for the structure that will be used for the new or increased withdrawal.

e. An assessment of the potential impacts of the withdrawal on the waters of the state. The department may require modeling to document the anticipated hydrologic impacts of the proposed withdrawal and any return flow or may require a water quality evaluation to determine if the withdrawal or return flow will meet established water quality standards, or may require both. This information is not required if the department has issued a permit under s. 30.18, Stats.; an approval under s. 281.34, Stats., for the new or increased withdrawal; or has issued a permit under s. 30.12, Stats., for the structure that will be used for the new or increased withdrawal.

13. For withdrawals that require compliance with the compact-decision making standard under s. 281.346 c6d, Stats., all of the following information is required, in addition to the information in subd. 1. to 11.:

a. An assessment of the potential impacts of the withdrawal on the waters of the state and water dependent natural resources including wetlands. The department may require modeling to document the anticipated hydrologic impacts of the proposed withdrawal and any return flow or may require a water quality evaluation to determine if the withdrawal or return flow will meet established water quality standards, or may require both.

b. Documentation of compliance with the applicable provisions of ch. NR 852.

c. Documentation of compliance with all applicable local, state, and federal laws, rules, and regulations, and interstate and international agreements, including the Boundary Waters Treaty of 1909.

d. An analysis of the efficiency of the proposed water use, and if there is an expected increase in water loss, an analysis of the efficiency of the use of existing water supplies. The analysis shall include a comparison of the proposed water use intensity with the water use intensity of similar facilities or operations. The analysis may include information from the water conservation plan prepared in compliance with s. NR 852.07.

Note: The water conservation plan contains a description and quantification of current water use and reuse as identified by a water use audit, a calculation of water use intensity, a description of the water conservation and water use efficiency goals, documentation of the implementation of conservation and efficiency measures, and a monitoring plan.

e. An analysis of the impacts of the withdrawal over the next ten years on economic development, social development, and environmental protection taking into consideration other existing and planned withdrawals from the same source. The analysis shall include the impact of the withdrawal on the quantity and quality of the water supply for existing withdrawers and the quantity and quality of the water supply for future users, the economic impact of the water use including the number of individuals that will be employed and potential tax revenues, the social impact of the project on people living in the area of the withdrawal including access to jobs, and whether or not the withdrawal is capable of being maintained at a steady level without exhausting natural resources or causing significant adverse environmental impact.

f. The supply potential of the water source including quality, quantity, and reliability taking into consideration interconnected water sources and water dependent natural resources.

g. A description of mitigation measures that will be implemented to prevent or eliminate significant impacts.

cbd If the application does not include the information required in par. cad, it may be deemed incomplete. Within 30 days of receipt, the department shall notify the applicant in writing that the application is incomplete and shall notify the applicant of the information that shall be submitted in order for the application to be complete.

ccd The department may dismiss an application if the information needed to complete the application is not received within 30 days after the department notifies an applicant that its application is incomplete.

cdd If the proposed withdrawal requires prior notice or regional review by the provinces of Ontario and Quebec, Canada and the states that are a party to the Great Lakes — St. Lawrence River Basin Water Resources Compact under s. 281.346 c5d cLd, Stats., or s. 281.346 c5d cmd, Stats., the department shall forward the application to the appropriate parties for review within 60 days after the end of the public comment period under subch. IV.

ced The department shall determine if the withdrawal meets the standards for an individual permit and issue a permit or disapprove the application within the following timeframes:

1. For individual permits that do not require public participation under s. NR 860.40, within 60 days of receipt of a complete application.

2. For individual permits that require public participation under s. NR 860.40, within 60 days after the end of the public comment period.

3. For individual permits that require prior notice under s. 281.346 c5d cLd, Stats., or regional review under s. 281.346 c5d cmd, Stats., within 90 days of the completion of the prior notice and regional review.

cfđ If the department determines that a withdrawal does not meet the requirements under s. NR 860.32 and s. 281.346 c5d, Stats., for the issuance of an individual permit, the department shall disapprove the application in writing and state the reasons for the disapproval.

cgd The department may investigate or visit a property and facility to determine whether a withdrawal meets the standards for an individual permit.

Note: Applications and information should be sent to: DNR Water Use Program DG{5, P.O. Box 7921, Madison, WI 53707-7921.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11; cilted created in c1d under s. 13.92 c4d cbd 2., Stats., Register September 2011 No. 669.

NR 860.32 Individual Water Use Permit Decisions.

c1d The department shall issue an individual water use permit under s. NR 860.31 c3d, only when all of the following have been completed:

cad The department has received a complete application containing the information required by s. NR 860.31 c3d cad.

Note: Applications and information should be sent to: DNR Water Use Program DG{5, P.O. Box 7921, Madison, WI 53707-7921.

cbd Public participation has been completed following the procedures in subch. IV, if applicable.

ccd The applicant has received all the necessary permits or approvals for the withdrawal under s. 30.12, 30.18, 281.34, or 281.41, Stats., or s. 281.17, 2001 Stats.

cdd The department determines that the withdrawal meets the state decision-making standard under s. 281.346 c5md, Stats., or the compact decision-making standard under s. 281.346 c6d, Stats., if applicable.

ced The applicant receives department approval of a water conservation plan under ch. NR 852, if applicable.

cfđ The applicant has complied with an approved water supply service area plan under s. 281.348, Stats., if applicable.

cgd Prior notice under s. 281.346 c5d cLd, Stats., and regional

review under s. 281.346 c5d cmd, Stats., has been completed, if applicable.

c2d All individual water use permits shall contain the permit conditions in s. NR 860.15 and additional permit conditions that may be required that include any of the following:

cad Requirements for estimating, and if necessary, monitoring substantial increases in water loss resulting from increases in withdrawal amounts and reporting the results to the department.

cbd Limitations on the location and dates or seasons of the withdrawal.

ccd The allowable uses of the withdrawal.

cdd Limits on the amount of the withdrawal necessary to ensure compliance with the decision-making standard under s. 281.346 c5md or c6d, Stats.

ced If the owner also has an approved diversion under s. 281.346 c4d, Stats., the conditions of that diversion approval.

cfđ If the withdrawal requires a water loss approval under s. 281.35 c4d, Stats., the conditions of that water loss approval as required under s. 281.35 c6d cad, Stats.

cgd If the withdrawal is from a surface water body tributary to one of the Great Lakes and would result in a water loss of more than 95 percent of the amount of water withdrawn, conditions that ensure the withdrawal does not cause significant adverse environmental impact.

c3d The department shall specify a withdrawal amount for each individual water use permit. The department shall also specify a baseline for each automatically issued individual water use permit under s. NR 860.31 c2d. The withdrawal amount and baseline shall be determined by following the procedures in s. 281.346, Stats. The withdrawal amount for an automatically issued individual permit shall not be less than the baseline unless specifically requested by the owner.

c4d The department may, after an opportunity for a hearing conducted following the procedures under s. NR 860.42, modify an individual permit to ensure compliance with the state or compact decision-making standard, if applicable.

c5d The department may suspend or revoke an individual water use permit for cause including obtaining the permit by misrepresentation or failure to disclose material facts or substantially violating the terms of the permit.

Note: An applicant or permit holder may challenge a modification, suspension or revocation in whole or part of an individual permit following the requirements under s. 281.93, Stats.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.33 Modifications to the Withdrawal Amount — Individual Water Use Permits. c1d If a permittee proposes to increase the amount of a withdrawal over the established withdrawal amount in the individual permit, the permittee shall apply to the department using the method prescribed by the department for a modification of the permit and submit any missing or outdated information required under s. NR 860.31 c3d cad.

Note: Applications and information should be sent to: DNR Water Use Program DG{5, P.O. Box 7921, Madison, WI 53707-7921.

c2d The department shall review the application following the requirements of s. NR 860.31 c3d and approve the modification if the increased withdrawal meets the requirements of s. NR 860.32 c1d.

Note: Department review of a proposed modification may require compliance with the state decision-making standard under s. 281.346 c5md, Stats., or the compact decision-making standard under s. 281.346 c6d, Stats.

c3d If the department determines that the requested modification does not meet the requirements of s. NR 860.32 c1d, the department shall disapprove the application in writing and state the reasons for the disapproval.

c4d The department shall keep records in a database of all approved modifications to withdrawal amounts.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.34 Individual Water Use Permit Reissuance. c1d Individual water use permits expire 10 years from the date of department issuance.

c2d The department shall send notification to owners at least 365 days prior to the expiration of the permit that the individual permit will expire and that reissuance of the permit is required. The department shall send notification to owners using the most economical communication tool available and the most recent contact information submitted by the owner.

Note: The most economical communication tool used by the department on October 1, 2011 is email.

c3d Permittees that intend to continue to withdraw at least 1,000,000 gallons of water per day for any 30 consecutive days shall apply to the department using the method prescribed by the department for reissuance of a permit at least 180 days before the expiration of the permit. The application shall include an update to the information originally submitted to the department for a permit. The failure of an owner to apply for reissuance at least 180 days prior to the expiration of the individual permit shall not result in the loss of an established baseline or specified withdrawal amount.

Note: Applications and information should be sent to: DNR Water Use Program DG{5, P.O. Box 7921, Madison, WI 53707-7921.

c4d If the permittee applying for a reissuance is in substantial compliance with the current permit, the department has completed the applicable public participation requirements under subch. IV, and the withdrawal meets the requirements under s. NR 860.32 c1d and s. 281.346 c5d cjd, Stats., the department shall issue a new permit.

c5d The department shall follow the requirements of s. NR 860.31 c3d, when reviewing the reissuance request.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

Subchapter IV — Public Participation

NR 860.40 Applicability. c1d The public participation requirements outlined in this subchapter apply to all of the following:

cad Individual water use permits under s. 281.346 c5d, Stats., that require the applicant to meet the state decision-making standard under s. 281.346 c5md, Stats., or compact decision-making standard under s. 281.346 c6d, Stats., except for a public water supply that has an approved water supply service area plan under s. 281.348, Stats.

cbd General water use permits under s. 281.346 c4sd, Stats.

Note: Public participation is only required for the department issuance of the general permit itself. The issuance of notice of coverage under a general permit to a withdrawer does not require public participation.

c2d The department shall not issue a decision regarding a permit covered under sub. c1d until the requirements of this subchapter have been met.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.41 Public Notice and Comment. c1d The department shall draft and provide a public notice regarding each general permit proposed by the department and each individual permit application under s. NR 860.40 c1d. The public notice shall allow 30 days for public comment. For individual water use permit applications specified in s. NR 860.40 c1d, the notice shall be provided within 90 days of the department receiving a complete application. For general permits, the department shall provide, publish, and deliver the public notice when a draft general permit has been completed.

c2d The public notice shall comply with all of the following:

cad Be published by the applicant as a class 1 notice under ch. 985, Stats., in the counties where water from the withdrawal will be used and in counties within five miles of the location of the withdrawal. For actions involving individual water use permits, the applicant shall provide proof of publication of the notice in the form of an affidavit from the newspaper certifying publication and documenting the date of publication.

Note: The department is responsible for publishing the required notice for general permits.

cbd Be delivered by the department or applicant to any person, group, local governmental unit, or state agency upon request. The applicant for an individual water use permit shall provide proof of delivery in the form of an affidavit or documentation from the delivery method or person.

ccd Be delivered by the department or applicant to persons or groups on a formal department water use permit application mailing list. The applicant for an individual water use permit shall provide proof of delivery in the form of an affidavit or documentation from the delivery method or person.

c3d The public notice shall include all of the following information:

cad For individual water use permits, the name and address of each applicant.

cbd For individual water use permits, a brief description of the proposal for which the application is made, including the amount of the proposed withdrawal and the amount of any water loss from consumptive use.

ccd For general permits, a description of the types of withdrawals and the waters of the state or areas of the state covered by the general permit.

cdd A brief description of the procedures to be used to formulate a final determination on the proposed action, including the 30-day period for public comment and the 30-day period for requesting a public hearing.

ced The process, location, and timeframes to obtain additional information, submit written comments, or request a public hearing.

c4d The public comment period is 30 days starting on the date the notice is published.

c5d Any person may submit written comments. All comments shall be submitted to the department at the address specified in the public notice by the end of the 30-day public comment period. Comments are submitted on the date they are postmarked using U.S. mail or on the date they are delivered to the address specified in the public notice.

c6d All comments shall address facts relevant to whether the proposed withdrawal complies with the applicable legal standards.

c7d The department shall retain all written comments submitted during the 30-day comment period and shall consider the comments in making its decisions on the application.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.

NR 860.42 Public Hearings. c1d Any interested person or group of persons, any affected local unit of government, or any state agency, may request a public hearing regarding a permit covered under s. NR 860.40 c1d.

c2d Requests for a public hearing under this section shall comply with all of the following:

cad Be in writing and dated and include the applicant name or number of the proposed permit or application.

cbd Be submitted to the department at the address specified in the public notice by the end of the 30-day public comment pe-

riod. A request is submitted on the date it is postmarked using U.S. mail or on the date it is delivered to the address specified in the public notice.

ccd Indicate the interests of the requestor and the reasons why a hearing is warranted. The reasons shall relate to the legal requirements for water use permits.

c3d The department shall schedule a public hearing if the request complies with sub. c2d and if the department determines that there is a significant public interest in holding a hearing.

c4d The department shall schedule the public hearing within 30 days after the completion of the 30-day public comment period.

c5d Public notice for a public hearing shall be issued by the department and follow the requirements of s. NR 860.41 c2d and include the information in s. NR 860.41 c3d and the time, date, and the location of the hearing.

c6d The applicant for an individual water use permit shall publish and provide the notice to persons or groups identified in s. NR 860.41 c2d cbd and ccd no later than 10 days before the scheduled hearing date.

c7d Whenever possible, public hearings shall be held in the area affected by the proposed withdrawal or general permit.

c8d Any interested members of the public or representatives of government agencies may participate in a public hearing with respect to the issuance of the proposed permit subject to the procedures in sub. c9d. Persons and government agencies participating need not be represented by legal counsel.

c9d Public hearings held under this subsection are not contested case hearings under ch. 227, Stats., and shall be conducted according to all of the following procedures:

cad Public informational hearings held under this section shall be conducted by a hearing examiner designated by the secretary or secretary[s] designee.

cbd The hearing examiner shall open the hearing by concisely stating the scope and purpose of the hearing and explaining the procedures to be used in the hearing. The hearing examiner shall explain how and to whom notice of the final decision approving or disapproving a permit or approval will be provided and how a person may seek administrative or judicial review of the final decision.

ccd Appearance slips shall be submitted by all persons that present an oral statement at the hearing.

cdd Any person may direct informational or clarifying questions through the hearing examiner to a person making oral statements, but cross-examination is not allowed at the hearing.

ced The hearing examiner may place time limits on individual oral statements to prevent undue repetition or insure that all persons who wish to make a statement can do so in a reasonable period of time.

cfid The hearing examiner may limit the number of representatives that may make oral statements on behalf of any individual or organized group.

cgd Even if oral statements are scheduled, unscheduled oral or written statements also shall be allowed at the hearing.

chd Any person submitting a written statement at the hearing shall submit at least one legible copy to the hearing examiner.

cid The hearing examiner may use additional or alternative procedures deemed necessary to insure that the hearing will be conducted in an orderly and expeditious manner, provided the measures are consistent with broad public participation in the hearing.

cjd The hearing examiner may exclude from the hearing a per-

son who engages in loud, noisy, disruptive or contemptuous conduct.

c10d When a public hearing is conducted, the public comment period shall be extended for 10 days starting from the date of the hearing.

c11d The department shall consider the comments received at the hearing and following the hearing in making its decision.

History: CR 10-109: cr. Register September 2011 No. 669, eff. 10-1-11.