

Insert 46-3

(q) "Regional body" means the body consisting of the governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin and the premiers of Ontario and Quebec, Canada, or their designees, as established by the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement.

Insert 46-21

(c) *Water loss.* The department shall promulgate rules for determining the amount of water loss from consumptive uses.

***NOTE: This is just a start on what has to be done concerning water loss.

Insert 54-23

* b. If an approval under s. 30.12, 30.18, 281.34 or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

Insert 55-18

* 2. If an approval under s. 30.12, 30.18, 281.34 or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

Insert 56-9

(h) *Suspension and revocation.* After an opportunity for a hearing, the department may suspend or revoke coverage under a general permit issued under this subsection for cause, including obtaining coverage under the permit by misrepresentation or failure to disclose relevant facts or violating the terms of the permit.

Insert 58-21



INS 58-21

* b. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

Insert 59-14

* 2. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

Insert 59-23

(h) *Suspension and revocation.* After an opportunity for a hearing, the department may suspend or revoke a permit issued under this subsection for cause, including obtaining the permit by misrepresentation or failure to disclose relevant facts or violating the terms of the permit.

Insert 60-10

NO
The department shall specify goals and objectives for the waters of the Great Lakes basin that are consistent with the goals under s. 281.343 (4b) (a) and the objectives identified by the regional body under Article 304 (1) of the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement. NO
#

Insert 61-2

NO
In specifying the measures, the department shall consider the results of any pilot water conservation program conducted by the department in cooperation with the regional body. NO
#

Insert 67-12

(c) *Water loss.* The department shall promulgate rules for determining the amount of water loss from consumptive uses.

(d) *County boundaries.* For the purposes of sub. (1) (d) and (t), a county's boundaries as of December 13, 2005, shall be used to determine whether a county lies partly within the Great Lakes basin.

Insert 68-2

* ~~NO~~ for which the department has issued a permit under s. 281.344 (4) before the compact's effective date is the interbasin transfer amount specified in the permit on the compact's effective date. There is no baseline for any other diversion.

Insert 72-4

***NOTE: I am unsure how this provision should be modified.

Insert 78-12

* 4m. If water will be returned to the source watershed through a stream tributary to one of the Great Lakes, the physical, chemical, and biological integrity of the receiving water under par. (f) 3. ^{subd.} will be protected and sustained, considering the state of the receiving water before the proposal is implemented and considering both low flow conditions.

***NOTE: I am uncertain exactly what should be included for this provision.

Insert 79-11

* (4m) WATER USE PERMITS REQUIRED IN THE GREAT LAKES BASIN. (a) A person may not make a withdrawal from the Great Lakes basin that averages 100,000 gallons per day or more in any 30-day period unless the withdrawal is covered under a general permit issued under sub. (4s) or s. 281.344 (4s) or an individual permit issued under sub. (5) or s. 281.344 (5).

(4s) GENERAL WATER USE PERMITS FOR GREAT LAKES BASIN. (a) Department to issue. The department shall issue one or more general permits to cover withdrawals from the Great Lakes basin that average 100,000 gallons per day or more in any 30-day period but that do not equal at least 1,000,000 gallons per day for any 30 consecutive days. The department shall include all of the following in a general permit:



1. Reference to the database[✓] of withdrawal amounts under par. (i).
2. Requirements for reporting, metering, and surveillance, as provided in rules promulgated by the department.[✓]
3. Requirements for water conservation, as provided in rules promulgated by the department under sub. (8) (d).[✓]
4. Other conditions, limitations, or restrictions, as provided in rules promulgated by the department, that the department determines are necessary to protect the environment or public health and safety or to ensure the conservation and proper management of the waters of the Great Lakes basin.[✓]

***NOTE: Should this also mention waters of the state?

(am) *Term of general permit.*[✓] The term of a general permit issued under par. (a)[✓] is 10 years, except that, if at the end of 10[✓] years the department has not issued a new general permit that covers a type of withdrawal covered by the general permit, the term of the general permit continues, until the department issues such a new general permit, for a person making that type of withdrawal who complied with par.

*

(g).[✓]

***NOTE: *I am still considering how to deal with the issue of expired permits.* If the added language here is acceptable, it should ^{*This issue*} also be added to the *must be dealt with in* precompact statute.

(b) *General requirement.*[✓] A person who does not hold an individual permit under sub. (5)[✓] may not make 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, unless the withdrawal is covered under a general permit issued under this subsection[✓] or s. 281.344[✓] (4s). A person to whom the department has issued a notice of coverage under a general permit shall comply with the general permit.



(d) *Coverage under general permit for new or increased withdrawals.* 1. A person who proposes to begin a withdrawal from the Great Lakes basin that will average 100,000 gallons per day or more in any 30-day period, or to increase an existing withdrawal so that it will average 100,000 gallons per day or more in any 30-day period, but who does not propose to withdraw at least 1,000,000 gallons per day for any 30 consecutive days, shall apply to the department for coverage under a general permit, unless the person applies for an individual permit under sub. (5). In the application, the person shall provide the information required by the department by rule.

***NOTE: I changed this to reflect the possibility that the person would instead get an individual permit.

2. After receiving an application under subd. 1., the department shall, within the time limit established by the department by rule, determine whether the withdrawal qualifies for coverage under a general permit or notify the applicant of any additional information needed to determine whether the withdrawal qualifies for coverage under a general permit.

3. If the department determines that a withdrawal qualifies for coverage under a general permit and the department has issued any approvals under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., that are required for the withdrawal, the department shall issue a notice of coverage. In the notice, the department shall specify a withdrawal amount that is equal to the smallest of the following amounts:

a. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of



the water supply system, the maximum hydraulic capacity of the most restrictive component that the person proposes to use in the water supply system.

* b. If an approval under s. 30.12, 30.18, 281.34 or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

4. If the department determines that a withdrawal does not qualify for coverage under a general permit, the department shall notify the applicant in writing of the reason for that determination.

(dm) *Requiring individual permit.* The department may require a person who is making or proposes to make 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, to obtain an individual permit under sub. (5) if the withdrawal is located in a groundwater protection area, as defined in s. 281.34 (1)

(a), or if coverage under an individual permit is necessary to protect public health or safety or to ensure the conservation and proper management of the waters of the state.

issue is under review by DNR
***NOTE: Please review this language. Should this also refer to waters of the Great Lakes basin? Whatever standard is settled on, it seems that the same kind of language should be added to the precompact statute.

(e) *Increase in withdrawal amount.* If a person making a withdrawal that is covered under a general permit issued under this subsection or s. 281.344 (4s) proposes to increase the amount of the withdrawal over the withdrawal amount specified in the database under par. (i) for the withdrawal, but does not propose to withdraw at least 1,000,000 gallons per day for any 30 consecutive days, the person shall apply to the department for a modification of the withdrawal amount. If the department has issued any approvals under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., that are required for modifying the withdrawal, the department



shall modify the withdrawal amount to an amount equal to the smallest of the following amounts:

✓ 1. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, the maximum hydraulic capacity of the most restrictive component that the person proposes to use in the water supply system. ✓

* 2. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount. ✓

(f) *Term of coverage.* ✓ Coverage under a general permit ends on the date that the term of the general permit under par. (am) ends.

(g) *Redetermination.* ✓ A person to whom the department has issued a notice of coverage under a general permit issued under this subsection or s. 281.344 (4s) shall apply to the department for redetermination of coverage under a new general permit issued under this subsection ✓ at least 180 days before the end of the term of the current ✓ general permit if the person intends to continue to withdraw from the Great Lakes basin an average of 100,000 ✓ gallons per day or more in any ✓ 30-day period but does not intend to withdraw at least 1,000,000 ✓ gallons per day for any ✓ 30 consecutive days. If the person is in compliance with the current ✓ general permit and the withdrawal qualifies for coverage under the ✓ new general permit, the department shall issue a notice of coverage under the ✓ new general permit. ✓

(h) *Suspension and revocation.* ✓ After an opportunity for a hearing, the department may suspend or revoke coverage under a general permit issued under this subsection or s. 281.344 (4s) ✓ for cause, including obtaining coverage under the



permit by misrepresentation or failure to disclose relevant facts or violating the terms of the permit. ✓

(i) *Database.* ✓ The department shall maintain a database of the withdrawal amounts ✓ for all withdrawals that are covered under general permits issued under this subsection and s. 281.344 (4s).

(5) INDIVIDUAL WATER USE PERMITS FOR GREAT LAKES ✓ BASIN. (a) ✓ *Requirement.* A person may not make a withdrawal from the Great Lakes basin that equals at least 1,000,000 ✓ gallons per day for any ✓ 30 consecutive days unless the withdrawal is covered by an individual permit issued under this ✓ subsection or s. 281.344 (5). A person to whom the department has issued an individual permit shall comply with the individual permit.

(b) *Content of individual permits.* ✓ The department shall include all of the following in an individual permit:

1. A withdrawal amount as determined under par. (d) 3., (g) 3., or (j) 3. or s. 281.344 (4e). ✓

2. An allowable water loss in gallons per day, if applicable.

****NOTE: This will need to tie in with regulation of consumptive uses.

3. Requirements for reporting, metering, and surveillance, as provided in rules promulgated by the department. ✓

4. Requirements for water conservation, as provided in rules promulgated by the department under sub. (8) (d). ✓

5. Limits on the location and dates or seasons of the withdrawal and on the allowable uses of the water, as provided in rules promulgated by the department. ✓

6. Conditions on any diversion approved under sub. (4) ✓ made by the person making the withdrawal.



7. 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 that the withdrawal does not cause significant adverse environmental impact.

***NOTE: This relocates the material that was at page 80, lines 18 to 22 in the /P5 version.

~~*~~

8. Other conditions, limitations, or restrictions, as provided in rules promulgated by the department, that the department determines are necessary to protect the environment or public health and safety or to ensure the conservation and proper management of the waters of the Great Lakes basin.

(d) *Initial individual permit.* 1. A person who proposes to begin a withdrawal from the Great Lakes basin that will equal at least 1,000,000 gallons per day for any 30 consecutive days or to modify an existing withdrawal so that it will equal at least 1,000,000 gallons per day for any 30 consecutive days shall apply to the department for an individual permit.

2. After receiving an application under subd. 1., the department shall, within the time limit established by the department by rule, determine whether to approve the application or notify the applicant of any additional information needed to determine whether to approve the application.

3. If the department approves an application under subd. 1. and the department has issued any approvals under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., that are required for the withdrawal, the department shall issue an individual permit. In the permit, the department shall specify a withdrawal amount that is equal to the smallest of the following amounts:



a. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, the maximum hydraulic capacity of the most restrictive component that the person proposes to use in the water supply system.

* b. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

c. Any limit on the amount of the withdrawal necessary to ensure compliance with a decision-making standard applicable under par. (e) or (f).

4. If the department disapproves an application under subd. 1., the department shall notify the applicant in writing of the reason for the disapproval.

(e) *Standards for approval of certain unpermitted withdrawals.* 1. The department may not approve an application under par. (d) 1. for a new withdrawal that will equal at least 1,000,000 gallons per day for any 30 consecutive days, or for an existing withdrawal that is not covered by a general permit under sub. (4s) or s. 281.344 (4s) and that is proposed to be modified so that it will equal at least 1,000,000 gallons per day for any 30 consecutive days, but to which subd. 2. does not apply, unless the withdrawal meets the state decision-making standard under sub. (5m) and, if the withdrawal will result in a water loss that averages more than 2,000,000 gallons per day in any 30-day period, the withdrawal meets the consumptive use decision-making standard under sub. (6m).

2. The department may not approve an application under par. (d) 1. for a new withdrawal that will equal at least 10,000,000 gallons per day for any 30 consecutive days, or for an existing withdrawal that is not covered by a general permit under sub.



(4s) or s. 281.344 (4s) and that is proposed to be modified so that it will equal at least 10,000,000 gallons per day for any 30 consecutive days, unless the withdrawal meets the compact decision-making standard under sub. (6) and, if the withdrawal will result in a water loss that averages more than 2,000,000 gallons per day in any 30-day period, the withdrawal meets the consumptive use decision-making standard under sub. (6m).

(f) *Standards for approval of withdrawals covered by general permits.* 1. The department may not approve an application under par. (d) 1. for a withdrawal that is covered under a general permit under sub. (4s) or s. 281.344 (4s) if the applicant proposes to modify the withdrawal so that it equals 1,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the date that the department issued the current notice of coverage under the general permit or as of the compact's effective date, whichever is later, and if subd. 2. does not apply, unless the withdrawal meets the state decision-making standard under sub. (5m) and, if the withdrawal will result in a water loss that averages more than 2,000,000 gallons per day in any 30-day period, the withdrawal meets the consumptive use decision-making standard under sub. (6m).

2. The department may not approve an application under par. (d) 1. for a withdrawal that is covered under a general permit under sub. (4s) or s. 281.344 (4s) if the applicant proposes to modify the withdrawal so that it equals 10,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the date that the department issued the current notice of coverage under the general permit or as of the compact's effective date, whichever is later, unless the withdrawal meets the compact decision-making standard under sub. (6) and, if the withdrawal will result in a water loss that averages more than 2,000,000 gallons per day in any



30-day period, the withdrawal meets the consumptive use decision-making standard under sub. (6m). ✓

(g) *Modification of individual permit for increased withdrawal.* ✓ 1. If a person making a withdrawal that is covered under an individual permit ✓ issued under this subsection or s. 281.344 (5) ✓ proposes to increase, during the term of the permit, the amount of the withdrawal over the withdrawal amount specified in the permit, the person shall apply to the department for a modification of the permit to increase the withdrawal amount. ✓

2. After receiving an application under subd. 1. ✓, the department shall, within the time limit established by the department by rule, ✓ determine whether to approve the application for modification of the permit or notify the applicant of any additional information needed to determine whether to approve the application. ✓

3. If the department approves an application under subd. 1. ✓ and the department has issued any approvals under s. 30.12, 30.18, 281.34, ✓ or 281.41 or s. 281.17, 2001 stats., that are required for the modification of the withdrawal, the department shall modify the individual permit. ✓ In the modified permit, the department shall specify a withdrawal amount that is equal to the smallest of the following amounts:

a. ✓ The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, ✓ or 281.41 or s. 281.17, 2001 stats., ✓ or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, ✓ the maximum hydraulic capacity of the most restrictive component that the person proposes to use in the water supply system. ✓



*

b. If an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

c. Any limit on the amount of the withdrawal necessary to ensure compliance with a decision-making standard applicable under par. (e) or (f).

4. If the department disapproves an application under subd. 1., the department shall notify the applicant in writing of the reason for the disapproval.

(h) *Standards for approval of certain modifications.* 1. The department may not approve an application under par. (g) 1., if the person proposes to increase the amount of the withdrawal so that it equals 1,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the beginning of the current permit term, the compact's effective date, or the date that the department issued a modified permit for the withdrawal if the modification was subject to the state decision-making standard under sub. (5m) or the compact decision-making standard under sub. (6), whichever is latest, and if subd. 2. does not apply, unless the increased withdrawal meets the state decision-making standard under sub. (5m) and, if the current permit does not include a water loss amount and the withdrawal will result in a water loss that averages more than 2,000,000 gallons per day in any 30-day period, or, if the current permit includes a water loss amount, an increase over that water loss amount that averages more than 2,000,000 gallons per day in any 30-day period, the withdrawal meets the consumptive use decision-making standard under sub. (6m).

2. The department may not approve an application under par. (g) 1., if the person proposes to increase the amount of the withdrawal so that it equals at least 10,000,000 gallons per day for any 30 consecutive days over the withdrawal amount as of the beginning of the current permit term, the compact's effective date, or the



date that the department issued a modified permit for the withdrawal if the
 * modification was subject to the compact decision-making standard, ^{under sub. (6)} whichever is
 latest, unless the withdrawal meets the compact decision-making standard under
 sub. (6) and, if the current permit does not include a water loss amount and the
 withdrawal will result in a water loss that averages more than 2,000,000 gallons per
 day in any 30-day period or, if the current permit includes a water loss amount, an
 increase over that water loss amount that averages more than 2,000,000 gallons per
 day in any 30-day period, the withdrawal meets the consumptive use
 decision-making standard under sub. (6m).

CS
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NOTE: The language concerning increased consumptive ^{uses} here and in par. (k) has not been
 modified to reflect my new understanding of DNR's proposal.

(i) Term of permit. The term of an individual permit is 10 years.

(j) Reissuance. 1. A person to whom the department has issued an individual
 permit under this subsection or s. 281.344 (5) shall apply to the department for
 reissuance of the individual permit at least 180 days before the end of the term of the
 permit if the person intends to continue to withdraw from the Great Lakes basin at
 least 1,000,000 gallons per day for any 30 consecutive days.

2. After receiving an application under subd. 1., the department shall, within
 the time limit established by the department by rule, determine whether to approve
 the application or notify the applicant of any additional information needed to
 determine whether to approve the application.

3. If the department approves an application under subd. 1., determines that
 the person is in compliance with the current individual permit, and has issued any
 approvals under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., that are
 required for the withdrawal, the department shall reissue the individual permit. In
 the permit, the department shall specify a withdrawal amount that is equal to the
 amount in the current permit, except that, if the person proposes in the application



to increase the amount of the withdrawal, the department shall specify a withdrawal amount equal to the smallest of the following amounts:

a. The maximum hydraulic capacity of the most restrictive component of the water supply system used for the withdrawal for which the person has approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., or, if an approval under one of those provisions is not required for the most restrictive component of the water supply system, the maximum hydraulic capacity of the most restrictive component that the person proposes to use in the water supply system.

*

b. If an approval under s. 30.12, 30.18, 281.34 or 281.41 or s. 281.17, 2001 stats., specifies a maximum amount of water that may be withdrawn, that amount.

c. Any limit on the amount of the withdrawal necessary to ensure compliance with a decision-making standard applicable under par. (e) or (f).

4. If the department disapproves an application under subd. 1., the department shall notify the applicant in writing of the reason for the disapproval.

(k) *Standards for reissuance in certain cases.* 1. The department may not approve an application under par. (j) 1., if the person proposes in the application to increase the amount of the withdrawal so that it equals 1,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the beginning of the current permit term, the compact's effective date, or the date that the department issued a modified permit for the withdrawal if the modification was subject to the state decision-making standard under sub. (5m) or the compact decision-making standard under sub. (6), whichever is latest, and if subd. 2. does not apply, unless the increased withdrawal meets the state decision-making standard under sub. (5m) and, if the current permit does not include a water loss amount and the withdrawal will result in a water loss that averages more than 2,000,000 gallons



per day in any 30-day[✓] period or, if the current permit includes a water loss amount, an increase over that water loss amount that averages more than 2,000,000[✓] gallons per day in any 30-day period, the withdrawal meets the consumptive use decision-making standard under sub. (6m)[✓].

2. The[✓] department may not approve an application under par.[✓](j) 1., if the person proposes in the application to increase the amount of the withdrawal so that it equals at least 10,000,000[✓] gallons per day for any 30[✓] consecutive days over the withdrawal amount as of the beginning of the current permit term, the compact's effective date, or the date that the department issued a modified permit for the withdrawal if the modification was subject to the compact decision-making

* ^{under sub. (6)} standard, whichever is latest, unless the withdrawal meets the compact decision-making standard under sub. (6)[✓] and, if the current permit does not include a water loss amount and the withdrawal will result in a water loss that averages more than 2,000,000[✓] gallons per day in any 30[✓]-day period, or, if the current permit includes a water loss amount, an increase over that water loss amount that averages more than 2,000,000 gallons per day in any 30-day period, the withdrawal meets the consumptive use decision-making standard under sub. (6m)[✓].

Insert 81-16

¹ Information ~~required~~ to be provided.

(n) A person who submits an application under par.[✓](d) 1., (g) 1., or (j) 1.[✓] shall provide the information required by the department by rule. If a decision-making standard under sub. (5m)[✓], (6)[✓], or (6m)[✓] applies, the person shall provide information about the potential impacts of the withdrawal on the waters of the[✓] Great Lakes basin and water dependent natural resources. If the compact decision-making standard under sub. (6)[✓] applies, the person shall provide an assessment of the individual



impacts of the proposal for the purposes of sub. (6) (b). The person may also include a cumulative impact assessment.

(o) *Departmental modifications.* After an opportunity for a hearing, the department may modify a permit issued under this subsection as necessary to ensure that a withdrawal complies with any applicable requirement under sub. (5m), (6), or (6m).

***NOTE: Should a provision like this be added to the precompact statute?

(p) *Suspension and revocation.* The department may suspend or revoke a permit issued under this subsection or s. 281.344 (5) for cause, including obtaining the permit by misrepresentation or failure to disclose relevant facts or violating the terms of the permit.

(q) *Permits not transferable.* An individual water use permit is not transferable.

Insert 81-14

(6m) CONSUMPTIVE USE DECISION-MAKING STANDARD. A proposal meets the consumptive use decision-making standard if all of the following apply:

(a) No public water rights in navigable waters will be adversely affected.

(b) The proposed withdrawal does not conflict with any applicable plan for future uses of the waters of the state, including plans developed under sub. (10) and ss. 281.12 (1) and 283.83.

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

***NOTE: Should this reference sub. (8)?



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CONT

(d) If the water loss averages 5,000,000[✓] gallons or more during any[✓] 90-day period, the proposed withdrawal and uses will not have a significant[✓] adverse impact on the environment and ecosystem of the Great Lakes basin[✓] or the state.

(e) The proposed withdrawal and consumptive use[✓] are consistent with the protection of public health, safety, and welfare and will not be detrimental to the public interest.[✓]

* (f) The proposed withdrawal^{and consumptive use} will not have a significant detrimental effect on the quantity or quality of the waters of the state.[✓]

some more, in part
****NOTE: This is based on current s. 281.35 (5) (d).[✓] Does any of this^{may} need to be modified because in some cases the applicant (withdrawer) will not be the one making the consumptive use?^o

Insert 90-6

NO A regional planning commission may prepare plans for persons owning or operating public water supply systems.[✓]

Insert 90-note

NO I understand that there is at least one entity that does not own or operate a public water supply system but that withdraws water and provides it to public water supply systems. This provision must be modified if it is desired to require a plan covering the public water supply systems that receive the water provided by this entity.[✓]

Insert 90-11-A

NO before the plan is submitted to the department *NO*

Insert 90-11-B

2m. Approval of a plan by the department.[✓]

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3207/P6dn

RCT:.....

date

Jld

Representative Mason:

This is another preliminary version of the implementing legislation for the Great Lakes Water Resources Compact. Again, there are some notes in the draft concerning specific provisions.

Changes in this version

The largest addition to the draft is language relating to postcompact water supply permitting for withdrawals by sources other than public water systems covered by water supply plans. This language appears in proposed s. 281.346(4m), (4s), and (5). The consumptive use decision-making standard is added and there are refinements to various parts of the /P5 version based on discussions with Chuck Ledin, Judy Ohm, and Lee Boushon, of DNR, and John Stolzenberg. This version also responds to decisions made at the meeting of January 24, although not all of the issues raised at that meeting have been resolved.

Remaining matters

The main provisions that still must be added to the draft relate to the precompact regulation of interbasin transfers, as well as water supply planning and the related differences in the regulation of public water supply systems from others who withdraw water. The provisions relating to regulation of consumptive uses also must be completed, as well as the needed changes to current law.

Water supply planning and approval of diversions

Under the DNR proposal related to water supply planning for public water systems, the approval of a water supply plan would constitute the approval of all new and increased withdrawals and of any new or increased diversions proposed to take place during the 20-year term of the plan. I feel that some issues related to this approach should be raised before the drafting proceeds much further.

As I understand the DNR proposal, if a water supply plan being reviewed by DNR after the compact takes effect included a proposed diversion for which Great Lakes council approval is required (most likely a diversion to a community in a straddling county) DNR would conduct the required technical review, present the proposal for the diversion for regional review, and ask the council for its approval, all before DNR

approved the water supply plan and as many as 20 years before the diversion would begin. I want to be sure that you and the other legislators with whom you are working are comfortable with this.

It seems to me that upon being asked to vote on a diversion up to 20[✓] years in advance another state's governor might vote to disapprove on the grounds that he or she could not conclude that the diversion would satisfy the exception standard, and the other applicable requirements, so far in advance. Someone also might argue that the whole approach is not consistent with the compact. I think that there is some support in the compact for those positions.

The compact contemplates improvements over time in the understanding of the impacts of withdrawals, diversions, and consumptive uses[✓]. It provides for evaluating proposed diversions in the context of other existing and potential diversions and withdrawals. The compact also indicates that review of proposed diversions will recognize uncertainties with respect to future demands that may be placed on basin water, future changes in environmental conditions, and the reliability of existing data[✓]. To approve a diversion, one must conclude that the diversion would not have significant individual or cumulative adverse impacts. It might be argued that an evaluation of cumulative impacts cannot be made so far in advance. It might also be argued, for example, that it is not possible to make some of the other, specific determinations required by the compact years in advance, such as what conservation measures are economically feasible for the applicant or what other water supplies are reasonable. In evaluating this approach, it might be useful to consider whether a Wisconsin governor might be comfortable with another state taking this approach.

The DNR proposal would also allow a person operating a public water supply to adopt a water supply plan before the compact takes effect. We do not know when the compact will take effect. It is my opinion that, if a plan approved before the compact takes effect provides for a new interbasin transfer or an increase in an existing interbasin transfer but the compact happens to take effect before the transfer or increase in the transfer is begun, approval by the Great Lakes council must be obtained before the transfer or increase in the transfer (diversion) may be begun. In other words, in this situation, it is not consistent with the compact to have approval of the plan constitute approval of the diversion. I have conveyed this opinion to DNR staff. *

[✓] **Precompact water supply planning and approval of withdrawals**

As I understand DNR's proposal, before the compact's effective date, in determining whether to approve a water supply plan that contained a large new withdrawal or a large increase in a withdrawal, DNR would not apply the[✓] state decision-making standard or the compact decision-making standard[✓]. Again, we do not know when the compact will take effect, but it is possible that such a new withdrawal or increase in a withdrawal would begin after the compact's effective date without either decision-making standard applying. After the compact takes effect, a large withdrawal not covered by a plan approved before the compact takes effect would be subject to a decision-making standard while another withdrawal of the same size and starting at the same time, but covered by a[✓] precompact water supply plan, would not be subject to a decision-making standard[✓].

Please let me know if you have any questions or would like additional information related to the draft or the issues in this note.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

Nonsubmittal Form

LPSes: DO NOT FORWARD THIS DRAFT FOR SUBMITTAL, UNLESS INSTRUCTED TO DO SO BY THE DRAFTING ATTORNEY.

|1| Return everything to the primary drafting attorney.

After you have completed typing this draft, return the camera-ready copy to the primary drafting attorney, along with the drafting file. Also, forward the electronic file to the primary drafting attorney for the task of drafting.

or

|2| Return only the camera-ready copy to the primary drafting attorney.

After you have completed typing this draft, clip this form to the camera-ready copy and return these materials to the primary drafting attorney. Place the drafting file in the HOLD basket in the LPS room. Forward the electronic file to Typing — lrb_lps, so that the electronic file can be viewed by all LPSes.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3207/P6dn
RCT:jld:rs

February 4, 2008

*I was asked not to submit
the IP6, so this note was
not provided to the requester.*

Representative Mason:

This is another preliminary version of the implementing legislation for the Great Lakes Water Resources Compact. Again, there are some notes in the draft concerning specific provisions.

Changes in this version

The largest addition to the draft is language relating to postcompact water supply permitting for withdrawals by sources other than public water systems covered by water supply plans. This language appears in proposed s. 281.346 (4m), (4s), and (5). The consumptive use decision-making standard is added and there are refinements to various parts of the /P5 version based on discussions with Chuck Ledin, Judy Ohm, and Lee Boushon, of DNR, and John Stolzenberg. This version also responds to decisions made at the meeting of January 24, although not all of the issues raised at that meeting have been resolved.

Remaining matters

The main provisions that still must be added to the draft relate to the precompact regulation of interbasin transfers, as well as water supply planning and the related differences in the regulation of public water supply systems from others who withdraw water. The provisions relating to regulation of consumptive uses also must be completed, as well as the needed changes to current law.

Water supply planning and approval of diversions

Under the DNR proposal related to water supply planning for public water systems, the approval of a water supply plan would constitute the approval of all new and increased withdrawals and of any new or increased diversions proposed to take place during the 20-year term of the plan. I feel that some issues related to this approach should be raised before the drafting proceeds much further.

As I understand the DNR proposal, if a water supply plan being reviewed by DNR after the compact takes effect included a proposed diversion for which Great Lakes council approval is required (most likely a diversion to a community in a straddling county) DNR would conduct the required technical review, present the proposal for the diversion for regional review, and ask the council for its approval, all before DNR

approved the water supply plan and as many as 20 years before the diversion would begin. I want to be sure that you and the other legislators with whom you are working are comfortable with this.

It seems to me that upon being asked to vote on a diversion up to 20 years in advance another state's governor might vote to disapprove on the grounds that he or she could not conclude that the diversion would satisfy the exception standard, and the other applicable requirements, so far in advance. Someone also might argue that the whole approach is not consistent with the compact. I think that there is some support in the compact for those positions.

The compact contemplates improvements over time in the understanding of the impacts of withdrawals, diversions, and consumptive uses. It provides for evaluating proposed diversions in the context of other existing and potential diversions and withdrawals. The compact also indicates that review of proposed diversions will recognize uncertainties with respect to future demands that may be placed on basin water, future changes in environmental conditions, and the reliability of existing data. To approve a diversion, one must conclude that the diversion would not have significant individual or cumulative adverse impacts. It might be argued that an evaluation of cumulative impacts cannot be made so far in advance. It might also be argued, for example, that it is not possible to make some of the other, specific determinations required by the compact years in advance, such as what conservation measures are economically feasible for the applicant or what other water supplies are reasonable. In evaluating this approach, it might be useful to consider whether a Wisconsin governor might be comfortable with another state taking this approach.

The DNR proposal would also allow a person operating a public water supply to adopt a water supply plan before the compact takes effect. We do not know when the compact will take effect. It is my opinion that, if a plan approved before the compact takes effect provides for a new interbasin transfer or an increase in an existing interbasin transfer but the compact happens to take effect before the transfer or increase in the transfer is begun, approval by the Great Lakes council must be obtained before the transfer or increase in the transfer (diversion) may be begun. In other words, in this situation, it is not consistent with the compact to have approval of the plan constitute approval of the diversion. I have conveyed this opinion to DNR staff.

Precompact water supply planning and approval of withdrawals

As I understand DNR's proposal, before the compact's effective date, in determining whether to approve a water supply plan that contained a large new withdrawal or a large increase in a withdrawal, DNR would not apply the state decision-making standard or the compact decision-making standard. Again, we do not know when the compact will take effect, but it is possible that such a new withdrawal or increase in a withdrawal would begin after the compact's effective date without either decision-making standard applying. After the compact takes effect, a large withdrawal not covered by a plan approved before the compact takes effect would be subject to a decision-making standard while another withdrawal of the same size and starting at the same time, but covered by a precompact water supply plan, would not be subject to a decision-making standard.

Please let me know if you have any questions or would like additional information related to the draft or the issues in this note.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

e.d. = effective date

281.34 WATER AND SEWAGE

department is authorized under ch. 280 to require the well to be abandoned because of issues regarding public health.

(9) GROUNDWATER MANAGEMENT AREAS. (a) The department shall, by rule, designate 2 groundwater management areas including and surrounding Brown County and Waukesha County consisting of the entire area of each city, village, and town at least a portion of which is within the area in which, on May 7, 2004, the groundwater potentiometric surface has been reduced 150 feet or more from the level at which the potentiometric surface would be if no groundwater had been pumped.

(b) The department shall assist local governmental units and regional planning commissions in groundwater management areas designated under par. (a) by providing advice, incentives, and funding for research and planning related to groundwater management.

(c) If the groundwater advisory committee created under 2003 Wisconsin Act 310, section 15 (2) (b) does not issue the report under 2003 Wisconsin Act 310, section 15 (2) (e) by January 1, 2007, the department shall promulgate rules using its authority under ss. 281.12 (1) and 281.35 to address the management of groundwater in groundwater management areas.

(d) If the department promulgates rules under par. (c) and the rules require mitigation in the same or a similar manner as under sub. (8) (d), the department may not require mitigation for a well under the rules unless the department provides funding for the full cost of the mitigation, except that full funding is not required if the department is authorized under ch. 280 to require the well to be abandoned because of issues regarding public health.

(10) RESEARCH AND MONITORING. To aid in the administration of this section the department shall, with the advice of the groundwater coordinating council, conduct monitoring and research related to all of the following:

- (a) Interaction of groundwater and surface water.
- (b) Characterization of groundwater resources.
- (c) Strategies for managing water.

History: 2003 a. 310.
Cross Reference: See also ch. NR 820, Wis. adm. code.

281.35 Water resources conservation and management. (1) DEFINITIONS. In this section:

(a) "Approval" means a permit issued under s. 30.18 or an approval under s. 281.17 (1), 2001 stats., or s. 281.34 or 281.41.

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

1. The maximum 30-day average water loss authorized as a condition of an approval.
2. If subd. 1. 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 sub. (3) (c) or s. 30.18 (6) (c), 196.98, 281.34, or 281.41 or s. 281.17 (1), 2001 stats.
3. If there is no water loss from an existing withdrawal, zero gallons per day.

(c) "Consumptive use" means a use of waters of the state, other than an interbasin diversion, that results in a failure to return any or all of the water to the basin from which it is withdrawn. "Consumptive uses" include, but are not limited to, evaporation and incorporation of water into a product or agricultural crop.

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

(e) "Great Lakes charter" means the document establishing the principles for the cooperative management of Great Lakes water resources, signed by the governors and premiers of the Great Lakes region on February 11, 1985.

(f) "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.

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

(h) "International joint commission" means the commission established by the boundary water agreement of 1909 between the United States and Canada.

(i) "Person" has the meaning given in s. 281.01 (9) and also includes special purpose districts established under s. 66.0827, other states and provinces and political subdivisions of other states and provinces.

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

(k) "Upper Mississippi River region" means the geographic region composed of the states of Illinois, Iowa, Minnesota, Missouri and Wisconsin.

(L) "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.

(m) "Withdrawal" means the removal or taking of water from the waters of the state.

(2) AGGREGATION OF MULTIPLE WITHDRAWALS. (a) In calculating the total amount of an existing or proposed withdrawal for purposes of determining the applicability of sub. (3), a person shall include all separate withdrawals which the person makes or proposes to make for a single use or for related uses.

(b) In calculating the total amount of an existing or proposed water loss for purposes of determining the applicability of sub. (4), 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 or for related uses.

(3) REGISTRATION REQUIRED. (a) 1. Except as provided in par. (b), any person who, on January 1, 1986, is making a withdrawal averaging more than 100,000 gallons per day in any 30-day period shall register the withdrawal with the department before July 1, 1987.

2. Except as provided in par. (b), any person who, on or after January 1, 1986, proposes to begin a withdrawal that will average more than 100,000 gallons per day in any 30-day period shall register the proposed withdrawal with the department.

(am) A registration under par. (a) shall contain a statement of and supporting documentation for all of the following:

1. The source of the proposed or existing withdrawal.
2. The location of any discharge or return flow.
3. The location and nature of the proposed or existing water use.
4. The actual or estimated average annual and monthly volumes and rates of withdrawal.
5. The actual or estimated average annual and monthly volumes and rates of water loss from the withdrawal.

(b) Paragraph (a) does not apply to any of the following:

1. A person making a withdrawal who has been issued an approval and, as a condition of the approval, is reporting the volume and rate of withdrawal and, if applicable, the volume and rate of water loss from the withdrawal to the department or, if the person is a public utility, to the public service commission.
2. A person who is required to comply with sub. (4) before beginning the proposed withdrawal.
3. A person holding a permit under s. 283.31 or the federal water pollution control act, as amended, 33 USC 1251 to 1376, for whom the department has established a water loss coefficient, based on flow diagrams and other water use information provided by the permittee, that the department uses to calculate the permittee's water loss.

(c) Each person who registers a withdrawal under par. (a) shall report the volume and rate of withdrawal and, if applicable, the volume and rate of water loss from the withdrawal to the department in the form and at the times required by the department.

Repeal on compact's e.d.

Repeal par. (a) on bill's e.d.

Keep par. (b)

Repeal sub. (3), on bill's e.d.

change title on compact's e.d.?
keep sub. (1), except as noted
created by compact's effective date

Repeal on compact's e.d.
except keep par. (1) if retain sub. (2)/(c)

Apply sub. (4) only to withdrawals in Upper Miss. R. Basin after compact's e.d.

WATER LOSS APPROVAL REQUIRED. (a) This subsection applies to all of the following:

1. A person to whom a permit has been issued under s. 30.18 or who is required to obtain a permit under that section before beginning or increasing a withdrawal.
2. A person who is operating a well under an approval issued under s. 281.17 (1), 2001 stats.
- 2m. A person who is operating a well under an approval issued under s. 281.34 or who is required to obtain an approval under that section before constructing a well.
3. An owner who is operating a system or plant under plans approved under s. 281.41 or who is required to submit plans and obtain an approval under that section before construction or extension of a proposed system or plant.

(b) Before any person specified in par. (a) may begin a new withdrawal or increase the amount of an existing withdrawal, the person shall apply to the department under s. 30.18, 281.34, or 281.41 for a new approval or a modification of its existing approval if either of the following conditions applies:

1. The person proposes to begin a new withdrawal that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period.
2. The person proposes to increase an existing withdrawal 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.

Keep sub. (5) except as noted

(5) APPLICATION; APPROVAL; DENIAL. (a) Application. An application under sub. (4) (b) shall contain a statement of and documentation for all of the following:

1. The current operating capacity of the withdrawal system, if the proposed increase requires the expansion of an existing system.
2. The total new or increased operating capacity of the withdrawal system.
3. The place and source of the proposed withdrawal.
4. The place of the proposed discharge or return flow.
5. The place and nature of the proposed water use.
6. The estimated average annual and monthly volumes and rates of withdrawal.
7. The estimated average annual and monthly volumes and rates of water loss.
8. The anticipated effects, if any, that the 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.
9. Any land acquisition, equipment, energy consumption or the relocation or resiting of any existing community, facility, right-of-way or structure that will be required.
10. The total anticipated costs of any proposed construction.
11. A list of all federal, state, provincial and local approvals, permits, licenses and other authorizations required for any proposed construction.
13. A statement 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 and the requirements specified in any water quantity resources plan under sub. (8).
14. A description of other ways the applicant's need for water may be satisfied if the application is denied or modified.
15. A description of the conservation practices the applicant intends to follow.
16. Any other information required by the department by rule.

Delete ref. to Great Lakes Basin on compact's e.d.

Limit to s. 283.83 plans on bill's e.d.

Repeal par. (8) on compact's e.d.

gallons per day in any 30-day period, or an increase in an existing withdrawal 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 water agreement of 1909, the international joint commission. The department shall also request each state and province that has cooperated in establishing the regional consultation procedure under sub. (11) (f) to comment on the application. In making its determination on an application, the department shall consider any comments that are received within the time limit established under par. (c).

(c) Department response. Within the time limit established by the department by rule, which shall be consistent with the time limit, if any, established by the governors and premiers of the Great Lakes states and provinces, the department shall do one of the following in writing:

Delete "which" clause on compact's e.d.

1. Notify the applicant that the application is approved or denied, and if it is denied, the reason for the denial.
2. Notify the applicant of any modifications necessary to qualify the application for approval.

(d) Grounds for approval. Before approving an application, the department shall determine all of the following:

1. That no public water rights in navigable waters will be adversely affected.
2. 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 and any water quantity resources plan prepared under sub. (8).
3. 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.
4. 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.
5. 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.
6. That the proposed withdrawal will not have a significant detrimental effect on the quantity and quality of the waters of the state.
7. If the proposed withdrawal will result in an interbasin diversion, all of the following:
 - 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 impracticable 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 or upper Mississippi River basin to meet its own water needs.
 - c. That the interbasin diversion alone, or in combination with other 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.
 - d. That the proposed withdrawal is consistent with all applicable federal, regional and interstate water resources plans.

Limit to s. 283.83 plans on bill's e.d.

Delete ref. to Great Lakes basin on compact's e.d.

Ref. to province ok.

Delete ref. to Great Lakes basin on compact's e.d.

281.35 WATER AND SEWAGE

moneys collected under this paragraph shall be credited to the general fund.

Keep sub. (6)

(6) APPROVAL. (a) *Issuance; contents.* If an application is approved under sub. (5), the department shall modify the applicant's existing approval or shall issue a new approval that specifies all of the following:

1. The location of the withdrawal.
 2. The authorized base level of water loss from the withdrawal.
 3. The dates on which or seasons during which water may be withdrawn.
 4. The uses for which water may be withdrawn.
 5. The amount and quality of return flow required and the place of discharge.
 6. The requirements for reporting volumes and rates of withdrawal and any other date specified by the department.
 7. Any other conditions, limitations and restrictions that the department determines are necessary to protect the environment and the public health, safety and welfare and to ensure the conservation and proper management of the waters of the state.
 8. Any requirements for metering, surveillance and reporting that the department determines are necessary to ensure compliance with other conditions, limitations or restrictions of the approval.
 9. If the department determines that a time limit is necessary, the date on which approval for the withdrawal expires.
- (b) *Review.* The department shall review each approval prior to the expiration date specified under par. (a) 9., if any, or within 5 years from the date of issuance and at least every 5 years thereafter.

(c) *Modification by department.* The department may at any time propose modifications of the approval or additional conditions, limitations or restrictions determined to be necessary to ensure continued compliance with this section or with any other applicable statute or rule.

(d) *Revocation.* If the department determines that a person to whom an approval has been issued would be unable under any conditions, limitations or restrictions to comply with this section or another applicable statute or rule, it shall revoke the approval.

(e) *Request for modification.* A person to whom an approval has been issued or any person adversely affected by a condition, limitation or restriction of an approval may request that the department modify a condition, limitation or restriction of an approval.

(f) *Notice; right to hearing.* The department shall notify the person to whom the approval has been issued and any other person who has in writing requested notice of the receipt of a request to modify an approval or of the department's intent to modify or revoke an approval. The person to whom the approval is issued is entitled to a contested case hearing under ch. 227 before a revocation or modification takes effect. Any other person who may be adversely affected by a proposed modification is entitled to a contested case hearing under ch. 227 before a modification takes effect.

(g) *Fees.* The department shall periodically collect from each person whose application under this subsection is approved the fee established under sub. (10) (a) 5. All moneys collected under this paragraph shall be credited to the general fund.

Keep sub. (7)

(7) EMERGENCY ORDER. The department may, without a prior hearing, order a person to whom an approval is issued to immediately stop a withdrawal if the department determines that there is a danger of imminent harm to the public health, safety or welfare, to the environment or to the water resources or related land resources of this state. The order shall specify the date on which the withdrawal must be stopped and the date, if any, on which it may be resumed. The order shall notify the person that the person may request a contested case hearing under ch. 227. The hearing shall be held as soon as practicable after receipt of a request for a

hearing. An emergency order remains in effect pending the result of the hearing.

(8) PREPARATION OF WATER QUANTITY RESOURCES PLAN. The natural resources board shall, before August 1, 1988, adopt and submit to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a long-term state water quantity resources plan for the protection, conservation and management of the waters of the state. The plan shall include, but need not be limited to, the following:

- (a) The description of a system for allocating this state's water resources during a water shortage or other emergency.
- (b) Identification of the existing uses of the waters of the state.
- (c) An estimate of future trends in water use.
- (d) Recommendations for the use, management and protection of the waters of the state and related land resources that will affect persons subject to sub. (4).

(9) AMENDMENT OF COASTAL MANAGEMENT PROGRAM. (a) The Wisconsin coastal management council, established under executive order number 62, dated August 2, 1984, shall amend this state's coastal management program submitted to the U.S. secretary of commerce under 16 USC 1455, to incorporate the requirements of this section and the findings and purposes specified in 1985 Wisconsin Act 60, section 1, as they apply to the water resources of the Great Lakes basin, and shall formally submit the proposed amendments to the U.S. secretary of commerce.

(b) After approval of the amendments submitted to the U.S. secretary of commerce under par. (a), the Wisconsin coastal management council shall, when conducting federal consistency reviews under 16 USC 1456 (c), consider the requirements, findings and purposes specified under par. (a), if applicable.

(c) If the department issues an approval for a withdrawal to which this section applies, and the withdrawal is subject to a federal consistency review under 16 USC 1456 (c), the Wisconsin coastal management council shall certify that the withdrawal is consistent with this state's coastal management program.

(10) RULE MAKING; FEES. (a) The department shall promulgate rules establishing all of the following:

1. The procedures for reviewing and acting on applications under subs. (4) and (5).
2. Requirements for reporting volumes and rates of withdrawals.
3. The method for determining what portion of a withdrawal constitutes a consumptive use.
4. Procedures for implementing the plan adopted under sub. (8).
5. A graduated schedule for the fees required under subs. (5) (f) and (6) (g) and a schedule for collecting the fees under sub. (6) (g) periodically.

(b) The department may promulgate any other rule necessary to implement this section.

(11) COOPERATION WITH OTHER STATES AND PROVINCES. The department shall do all of the following:

- (a) Cooperate with the other Great Lakes states and provinces to develop and maintain a common base of information on the use and management of the water resources of the Great Lakes basin and to establish systematic arrangements for the exchange of such information.
- (b) Collect and maintain information regarding the locations, types and quantities of water use, including water losses, in a form that is comparable to the form used by the other Great Lakes states and provinces.
- (c) Collect, maintain and exchange information on current and projected future water needs with the other Great Lakes states and provinces.
- (d) Cooperate with the other Great Lakes states and provinces in developing a long-term plan for developing, conserving and managing the water resources of the Great Lakes basin.

Delete sub. (8) on bill's e.d.

Add reqs of s. 281.344 on bill's e.d. then

Repeal all of sub. (9) as amended on compact's e.d.

[This Council Repealed by E.O. #1, 1/27/03]

+ Need similar provision for compact

Keep sub. (10)

OK as is see sub. (6) (g)

Repeal sub. (11) on compact's e.d.

(c) As provided in the Great Lakes charter, participate in the development of a regional consultation procedure for use in exchanging information on effects of proposed interbasin diversions and consumptive uses.

(f) Participate in the development of an upper Mississippi River basin regional consultation procedure for use in exchanging information on the effects of proposed water losses from that basin.

(12) MISCELLANEOUS PROVISIONS. (a) The enumeration of any remedy under this section does not limit the right to any other remedy available in an action under the statutory or common law of this state or any other state or province, federal law or Canadian law.

(b) Proof of compliance with this section is not a defense in any action not founded on this section.

(c) This state reserves the right to seek, in any state, federal or provincial forum, an adjudication of the equitable apportionment of the water resources of the Great Lakes basin or upper Mississippi River basin, and the protection and determination of its rights and interests in those water resources, in any manner provided by law.

History: 1985 a. 60; 1987 a. 27, 186; 1987 a. 403 s. 256; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 32; 1991 a. 39; 1995 a. 227 s. 400; Stats., 1995 s. 281.35; 1999 a. 150 s. 672; 2003 a. 310.

NOTE: Section 1 of 1985 Act 60, which created this section is entitled "Legislative findings; purpose."

Cross Reference: See also ch. NR 142, Wis. adm. code.

281.36 Water quality certification for nonfederal wetlands. (1) DEFINITIONS. In this section:

(a) "Additional federal law or interpretation" means any of the following:

1. An amendment to 33 USC 1344 (f) that becomes effective after January 9, 2001.

2. Any other federal statutory provision that affects the exemptions under 33 USC 1344 (f) and that becomes effective after January 9, 2001.

3. A regulation, rule, memorandum of agreement, guidance letter, interpretive document, or other provision established by a federal agency that is promulgated or adopted pursuant to 33 USC 1344 (f) or that is used to interpret or implement 33 USC 1344 (f), that applies to wetlands located in this state, and that becomes effective after January 9, 2001.

4. A decision issued by a federal district or federal appellate court that affects the application of a federal amendment or provision described in subds. 1. to 3., that applies to wetlands located in this state, and that is issued after January 9, 2001.

(am) "Area of special natural resource interest" has the meaning given in s. 281.37 (1) (a).

(b) "Existing federal law or interpretation" means any of the following:

1. 33 USC 1344 (f), as amended to January 8, 2001.

2. A regulation, rule, memorandum of agreement, guidance letter, interpretive document, or other provision established by a federal agency that is promulgated or adopted pursuant to 33 USC 1344 (f) or that is used to interpret or implement 33 USC 1344 (f), that applies to wetlands located in this state, and that is in effect on January 8, 2001.

3. A decision issued by a federal district or federal appellate court that affects the application of a federal statute or provision described in subd. 1. or 2., that applies to wetlands located in this state, and that is issued on or before January 8, 2001.

(bg) "Federal transportation agency" means the federal aviation administration, the federal highway administration, or the federal railroad administration.

(c) "Nonfederal wetland" means a wetland that is identified as such under sub. (1m).

(cm) "Political subdivision" means a city, village, town, or county.

(cr) "State transportation agency" means the department of transportation or the office of the commissioner of railroads.

(d) "Water quality standards" means water quality standards set under rules promulgated by the department under s. 281.15.

(1m) DETERMINATION OF NONFEDERAL WETLANDS. (a) A wetland is identified as a nonfederal wetland if either of the following applies:

1. Any discharges of dredged or fill material into the wetland are determined not to be subject to regulation under 33 USC 1344 due to the decision in Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, No. 99-1178 (U.S. Jan. 9, 2001) or any subsequent interpretations of that decision by a federal agency or by a federal district or federal appellate court that applies to wetlands located in this state.

2. The wetland is determined to be a nonnavigable, intrastate, and isolated wetland under the decision in Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, No. 99-1178 (U.S. Jan. 9, 2001) or any subsequent interpretations of that decision by a federal agency or by a federal district or federal appellate court that applies to wetlands located in this state.

(b) For the purpose of identifying wetlands under par. (a):

1. If the U.S. army corps of engineers issues a determination as to whether a wetland is a nonfederal wetland, the department shall adopt that determination.

2. If the U.S. army corps of engineers does not issue a determination as to whether a wetland is a nonfederal wetland, the department shall determine whether the wetland is a nonfederal wetland.

(2) CERTIFICATION REQUIREMENT. (a) No person may discharge dredged or fill material into a nonfederal wetland unless the discharge is authorized by a water quality certification issued by the department under this section. No person may violate any condition imposed by the department in a water quality certification under this section. The department may not issue a water quality certification under this section unless it determines that the discharge will comply with all applicable water quality standards.

(b) 1. The department shall approve or deny a complete application for a water quality certification under this section within 120 days after the date the department determines that a complete application for the certification has been submitted unless the applicant and the department agree to extend the time period. The department may not determine an application to be complete until the requirements under s. 1.11 have been met and until all of the items of information for the water quality certification and for any associated permits or other approvals have been submitted to the department. If the department fails to approve or deny the complete application within the applicable time period, the applicant may bring an action for mandamus to compel the department to approve or deny the application. If the court grants the mandamus, the department shall approve or deny the application within 30 days after the mandamus is granted and the court shall award the applicant reasonable attorney fees and court costs incurred in bringing the action.

2. For purposes of subd. 1., the department shall initially determine whether a complete application has been submitted and, no later than 30 days after the application is submitted, notify the applicant in writing about the initial determination of completeness. If the department determines that the application is incomplete, the notice shall state the reason for the determination and the specific items of information necessary to make the application complete. An applicant may supplement and resubmit an application that the department has determined to be incomplete. There is no limit on the number of times that an applicant may resubmit an application that the department has determined to be incomplete under this subdivision. The department may not demand items of information that are not specified in the notice as a condition for determining whether the application is complete unless both the department and the applicant agree or unless the

Tradewell, Becky

From: Stolzenberg, John
Sent: Saturday, February 16, 2008 12:01 PM
To: Tradewell, Becky
Subject: s. 281.35 internal cross-references

I've bolded below the provisions in s. 281.35 that contain a reference to another provision in s. 281.35 that the insert repeals, and that themselves are not repealed by the insert. The references in these bolded provisions thus needs treatment.

In addition, do I recall correctly that DNR staff ultimately said there may be some withdrawals that are not subject to an approval under ss. 30.18, 281.34, or 281.41, or s. 281.17 (1), 2001 stats.? If so, I think that a new subdivision should be added to sub. (4) (a) that lists individual permits issued under s. 281.344 (5) (d) or (e).

We decided not.

281.35 - 196.49 (2), 196.98, 281.34 (5) (e) 1., (9) (c)
281.35 (1)(b) - 30.01 (1b)
281.35 (1)(b)1. - 281.35 (1) (b) 2.
281.35 (1)(h) - 281.66 (6), 281.81 (1)
281.35 (1)(L) - 30.01 (7m), 196.98, 281.41 (1) (c)
281.35 (1)(m) - 30.01 (9), 196.98, 281.41 (1) (c), 281.94 (1), 281.95
281.35 (2) - 30.21 (3) (a)
281.35 (3) - 281.35 (2) (a)
281.35 (3)(a) - 281.35 (3) (am) (intro.), (b) (intro.), (c), 281.94 (1), 281.95
281.35 (3)(b) - 281.35 (3) (a) 1., 2.
281.35 (3)(c) - **281.35 (1) (b) 2.**
281.35 (4) to (6) - 281.94 (1), 281.95
281.35 (4) - 281.35 (2) (b), (3) (b) 2., (8) (d), (10) (a) 1.
281.35 (4)(a) - 281.35 (4) (b) (intro.)
281.35 (4)(b) - 281.35 (5) (a) (intro.)
281.35 (5) - 281.35 (6) (a) (intro.), (10) (a) 1.
281.35 (5)(a) - 30.18 (3) (b), 281.41 (1) (a)
281.35 (5)(b) - 30.18 (4) (a), 293.43 (3) (a)
281.35 (5)(c) - 281.35 (5) (b), (e), 281.41 (1) (b)
281.35 (5)(d) - 30.18 (5) (b), 281.41 (1) (c)
281.35 (5)(f) - 281.35 (10) (a) 5.
281.35 (6) - 30.18 (6) (a), (6m) (c)
281.35 (6)(a) - 281.94 (1), 281.95
281.35 (6)(a)9. - 281.35 (6) (b)
281.35 (6)(b) - 30.18 (6) (d)
281.35 (6)(f) - 30.18 (4) (a), 293.43 (3) (a)
281.35 (6)(g) - 281.35 (10) (a) 5.
281.35 (8) - **281.35 (5) (a) 13., (d) 2., (10) (a) 4.**
281.35 (9)(a) - 281.35 (9) (b)
281.35 (10)(a)5. - 281.35 (5) (f), (6) (g)
281.35 (11)(f) - 281.35 (5) (b)

Cross-references to s. 281.35 (Partial list)

From John Stelzenberg

Cross-references in s. 30.01

30.01(1b)

(1b) "Authorized base level of water loss" has the meaning given under s. 281.35 (1) (b).

No change, ok as is

30.01(7m)

(7m) "Water loss" has the meaning given under s. 281.35 (1) (L).

No change, ok as is

30.01(9)

(9) "Withdrawal" has the meaning given under s. 281.35 (1) (m).

No change, ok as is

Cross-references in s. 30.18

General treatment - Instead of revising the specific references that involve a permit under sub. (2)(b), I'd suggest amending (2)(b) to apply in the G.C. Basin only pre compact & not post compact. Todd (Echuck?) have said that (2)(a) permits don't require water loss approval.

30.18(3)(b)

(b) Application; streams or lakes. An application for a permit required under sub. (2) (b) shall be submitted in the form required under s. 281.35 (5) (a). If the diversion also meets either condition specified under sub. (2) (a), the application shall also comply with par. (a).

30.18(4)(a)

(a) Upon receipt of a complete application, the department shall follow the notice and hearing procedures under s. 30.208 (3) to (5). In addition to providing notice as required under s. 30.208 (3) to (5), the department shall mail a copy of the notice to every person upon whose land any part of the canal or any other structure will be located, to the clerk of the next town downstream, to the clerk of any village or city in which the lake or stream is located and which is adjacent to any municipality in which the diversion will take place and to each person specified in s. 281.35 (5) (b) or (6) (f), if applicable.

Reference to (5)(b) should only apply pre compact (change needed?)

30.18(5)(b)

(b) Streams or lakes. The department shall approve an application for a permit required under sub. (2) (b) if the grounds for approval specified under s. 281.35 (5) (d) are met and, if the permit is also required under sub. (2) (a), if the department makes the determinations specified under par. (a).

30.18(6)(a)

(a) Contents of permit. The department shall specify on each permit issued under this section the quantity of water that may be diverted and the times during which water may be diverted. In addition, if the permit is one which is required under sub. (2) (b), the permit shall comply with s. 281.35 (6).

30.18(6)(d)

(d) Review of permits. If the permit is one that is required under sub. (2) (a), but not under sub. (2) (b), and the permit was issued on or after August 1, 1957, the department shall review the permit at least once every 5 years. If the permit is one that is required under sub. (2) (b), the department shall review the permit as required under s. 281.35 (6) (b).

30.18(6m)(c)

(c) The department may revoke a permit issued under sub. (5) (b) only as provided under s. 281.35 (6).

I think this will only apply to sub. (2)(b) permits.

Cross-references in s. 30.21

Comment: The reference to s. 281.35(2) in s. 30.21(3)(a) has me stumped.

Taking it on its face, the reference should be changed to 281.35(2)(b) (though I don't know what that means), as 11 draft repeats (2)(a) on the bill's effective date

Noneed to change

30.21(3)(a)

(a) Each public utility operating under a permit under this section on January 1, 1986, shall comply with s. 281.35 (2), if applicable.

to s. 281.35

Cross-references in s. 196.49

Comment: Not clear if reference to 281.35 is for registration & reporting of water loss or both. Based on my understanding of s. 196.49, I'd say at least the water loss. That means the reference should only apply in basin during pre compact period. Post compact, in basin, the reference

196.49(2)

(2) No public utility may begin the construction, installation or operation of any new plant, equipment, property or facility, nor the construction or installation of any extension, improvement or addition to its existing plant, equipment, property, apparatus or facilities unless the public utility has complied with any applicable rule or order of the commission and with s. 281.35, if applicable. If a cooperative association has been incorporated under ch. 185 for the production, transmission, delivery or furnishing of light or power and has filed with the commission a map of the territory to be served by the association and a statement showing that a majority of the prospective consumers in the area are included in the project, no public utility may begin any such construction, installation or operation within the territory until after the expiration of 6 months from the date of filing the map and notice. If the cooperative association has entered into a loan agreement with any federal agency for the financing of its proposed system and has given written notice of the agreement to the commission, no public utility may begin any construction, installation or operation within the territory until 12 months after the date of the loan agreement.

should be to s. 281.35(4m) (which picks up withdrawal & consumption use & is consistent with s. 196.49's focus on construction of a T.T.S. facility). I'll check on this tomorrow. I don't think water supply plan is relevant here.

Delete cross-ref. per Chuck Leebie

existing plant, equipment, property, apparatus or facilities unless the public utility has complied with any applicable rule or order of the commission and with s. 281.35, if applicable. If a cooperative association has been incorporated under ch. 185 for the production, transmission, delivery or furnishing of light or power and has filed with the commission a map of the territory to be served by the association and a statement showing that a majority of the prospective consumers in the area are included in the project, no public utility may begin any such construction, installation or operation within the territory until after the expiration of 6 months from the date of filing the map and notice. If the cooperative association has entered into a loan agreement with any federal agency for the financing of its proposed system and has given written notice of the agreement to the commission, no public utility may begin any construction, installation or operation within the territory until 12 months after the date of the loan agreement.

In basin, after 3 yrs after bill; e.d. change to s. 281.344(3) or 281.346(6), which ever applies

196.98

Not clear if includes registration as well as regular reporting. If included registration.

196.98 Water reporting required. The commission shall ensure that each public utility to which s. 281.35 applies shall comply with the requirements of that section and shall report its volume and rate of withdrawal, as defined under s. 281.35 (1) (m), and its volume and rate of water loss, as defined under s. 281.35 (1) (L), if any, to the commission in the form and at the times specified by the department of natural resources. The commission shall provide the information reported under this section to the department of natural resources.

- Add appropriate definitions in s. 281.344 & 281.346.

↑ Repeal - per DNR. It's not having date.

281.35 Water resources conservation and management.

281.34(5)(e)1.

→ Appears limited to water loss approvals.

1. If s. 281.35 applies to a proposed high capacity well, the department shall include in the approval conditions that ensure that the high capacity well complies with s. 281.35. ← Apply in basin pre compact,

* Add to 281.34(5) new approval reqt - if well

if well not covered in water supply plan.

281.34(9)(c) is covered by a water supply plan under s. 281.348, the well must be consistent with the plan.

(c) If the groundwater advisory committee created under 2003 Wisconsin Act 310, section 15 (2) (b) does not issue the report under 2003 Wisconsin Act 310, section 15 (2) (e) by January 1, 2007, the department shall promulgate rules using its authority under ss. 281.12 (1) and 281.35 to address the management of groundwater in groundwater management areas. The committee issued this report on time. Delete or ignore this par.

281.36(10)(a)

(a) Regulate the discharge of dredged or fill material in a nonfederal wetland under ss. 59.692, 61.351, 62.231, 87.30, 281.11 to 281.35, 281.41 to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299. No change, appears OK as is.

281.41(1)(a)

leave as is

No need to change because of IF applicable

(a) Except as provided under sub. (2), every owner within the time prescribed by the department, shall file with the department a certified copy of complete plans of a proposed system or plant or extension thereof, in scope and detail satisfactory to the department, and, if required, of existing systems or plants, and any other information concerning maintenance, operation and other details that the department requires, including the information specified under s. 281.35 (5) (a), if applicable. Material changes with a statement of the reasons shall be likewise submitted. Before plans are drawn, a statement concerning the improvement may be made to the department and the department may, if requested, outline generally what it will require. Upon receipt of the plans for approval, the department or its authorized representative shall notify the owner of the date of receipt.

→ require in basin, precompact, if not covered in a water supply plan. In basin post compact, not covered under a plan; reference not appropriate. see our discussion.

281.41(1)(b)

(b) Within 90 days from the time of receipt of complete plans or within the time specified in s. 281.35 (5)

Apply pre compact, in basin, not covered by water supply plan

Post compact

(c), if applicable, the department or its authorized representative shall examine and take action to approve, approve conditionally or reject the plans and shall state in writing any conditions of approval or reasons for rejection. Approval or disapproval of the plans and specifications may not be contingent upon eligibility of the proposed project for federal aid. The time period for review may be extended by agreement with the owner if the plans and specifications cannot be reviewed within the specified time limitation due to circumstances beyond the control of the department or in the case of extensive installation involving expenditures of \$350,000 or more. The extension may not exceed 6 months. Failure of the department or its authorized representative to act before the expiration of the time period allowed for review shall constitute an approval of the plans, and upon demand a written certificate of approval shall be issued. Approval may be subject to modification by the department upon due notice.

281.41(1)(c) *Add consistency with applicable water supply plan under s. 281.348*
(c) Construction or material change shall be according to approved plans only. The department may disapprove plans that are not in conformance with any existing approved areawide waste treatment management plan prepared pursuant to the federal water pollution control act, P.L. 92-500, as amended, and shall disapprove plans that do not meet the grounds for approval specified under s. 281.35 (5) (d), if applicable. The department shall require each person whose plans are approved under this section to report that person's volume and rate of water withdrawal, as defined under s. 281.35 (1) (m), and that person's volume and rate of water loss, as defined under s. 281.35 (1) (L), if any, in the form and at the times specified by the department.

Apply per compact, in basin, No need to change. No water supply plan

281.66(6)
(6) **Grants for campuses.** Notwithstanding subs. (3) and (4), the department may distribute a grant to the board of regents of the University of Wisconsin System for practices, techniques or measures to control storm water discharges on a University of Wisconsin System campus that is located in a municipality that is required to obtain a permit under s. 283.33 and that is located in a priority watershed, as defined in s. 281.65 (2) (c), a priority lake area, as defined in s. 281.65 (2) (bs), or an area that is identified as an area of concern by the International Joint Commission, as defined in s. 281.35 (1) (h), under the Great Lakes Water Quality Agreement.

OK, no change

281.81(1)
(1) "International joint commission" has the meaning given in s. 281.35 (1) (h).

Repealed on bill's e.d.; new registration OK in s. 281.344(3)(a) & 281.346(3)(a)

281.94(1)
(1) Any 6 or more residents of this state may petition for an investigation of a withdrawal, as defined under s. 281.35 (1) (m), alleged to be in violation of s. 281.35 (3) (a), in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 281.35 (6) (a) or in violation of any rule promulgated under s. 281.35 (3) (a) or (4) to (6) 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 this 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.

just add refs. to new sub. (3)

Not changed by draft, need to change to new definitions in s. 281.344 & 281.346 for in basin. Keep for out of basin. definition

I'm checking w/ Miller on 6/10 & (4) to (6) references

281.95
281.95 Remedies; water withdrawal violations. Any person who makes a withdrawal, as defined under s. 281.35 (1) (m), in violation of s. 281.35 (3) (a), in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 281.35 (6) (a) or in violation of any rule promulgated

** comments on s. 281.94(1) references apply to references in s. 281.95*

under s. 281.35 (3) (a) or (4) to (6) is liable to any person who is adversely affected by the withdrawal for damages or other appropriate relief. Any person who is or may be adversely affected by an existing or proposed withdrawal, as defined under s. 281.35 (1) (m), which is in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 281.35 (6) (a) or in violation of any rule promulgated under s. 281.35 (4) to (6) may bring an action in the circuit court to restrain or enjoin the withdrawal.

293.43(3)(a) → Mining law

(a) If it is determined that a statement under s. 1.11 is not required, the hearing shall be scheduled for a date not less than 60 days nor more than 90 days after the announcement of that determination, and the scheduling and providing of notice shall be completed not later than 10 days following the announcement. Notice of the hearing shall be given by mailing a copy of the notice to any known state agency required to issue a permit for the proposed operation, to the regional planning commission for the affected area, to the county, city, village and town within which any part of the affected area lies, to all persons who have requested this notification and, if applicable, to all persons specified under par. (b) 3. and s. 281.35 (5) (b) and (6) (f). Written comments may be submitted to the department within 30 days of the date of notice.

No change needed
because of
"if applicable."

Limit to precompact.
Doesn't apply
post compact;
s. 281.346(5)(L)
will apply.