

Report From Agency

REPORT TO LEGISLATURE

NR 851, Wis. Adm. Code

Board Order No. DG-03-22
Clearinghouse Rule No. CR 23-050

Basis and Purpose of the Proposed Rule

The Wisconsin Legislature ratified the Great Lakes Compact (Compact) in 2007 Wisconsin Act 227. Section 281.343, Stats., is the ratification and text of the Compact, and s. 281.346, Stats., is Wisconsin's program for managing and regulating new or increased water withdrawals, diversions and consumptive uses consistent with the provisions of the Compact. The proposed rule establishes department procedures for managing Great Lakes diversions, including intrabasin transfers.

Diversions are defined as a transfer of water from the Great Lakes basin into a watershed outside the Great Lakes basin, or from the watershed of one of the Great Lakes into that of another, by any means of transfer, including a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, tanker ship, tanker truck, or rail tanker, with few exceptions (s. 281.346(1)(h), Stats.). An intrabasin transfer is the transfer of water from the watershed of one of the Great Lakes into the watershed of another of the Great Lakes (s. 281.346(1)(jm), Stats.).

The proposed rule specifies:

- diversion and intrabasin transfer application requirements
- department application review processes
- department determinations related to approvals, conditional approvals, and denials of diversion applications
- public notice and participation; and
- reporting requirements.

The primary benefit of implementing the proposed rule is that it defines requirements for a more efficient application submittal and approval process for municipalities. Section 281.346(4), Stats., mirrors Compact requirements and this proposed rule helps provide more specifics, allowing for consistency and transparency in the application process. It is expected to reduce costs and time for applicants when preparing and submitting documents for department review. The rule provides flexibility for Wisconsin to comply with Compact rules and guidance, supports department decisions related to diversions, and provides consistency in the content of diversion approvals and annual reporting requirements.

Summary of Public Comments

See attached "Summary of Comments and DNR Responses, Natural Resources Board Order DG-03-22, Ch. NR 851 – Great Lakes Basin Water Diversions."

Modifications Made

The department made minor editorial changes to the proposed rule and also made modifications or changes based on public comments. The department notes all changes in the "Summary of Comments and DNR Responses, Natural Resources Board Order DG-03-22, Ch. NR 851 – Great Lakes Basin Water Diversions" document.

Appearances at the Public Hearing

At the department's October 5, 2023 hearing for proposed rule ch. NR 851, out of those who registered and attended the hearing:

- 1 person noted support of the rule
 - o Matt Carran, Village of Menomonee Falls
- 2 persons made oral comments:
 - o Cheryl Nenn, on behalf of Milwaukee River Keeper (registered in support)
 - o David Johnson, on behalf of Midwest Environmental Advocates (registered as 'for informational purposes only')

The following is list of people who registered to attend the meeting:

First Name	Last Name	Position Registered as:	Organization Represented:
Susan	Bence	attending for informational purposes only	Milwaukee Public Radio
Thomas	Kuenzli	attending for informational purposes only	
Mark	Piontek	attending for informational purposes only	
Mike	Aiken	attending for informational purposes only	
Matt	Carran	in support	Village of Menomonee Falls
Glenn	Coenen	in support	
Noah	Saperstein	attending for informational purposes only	
Lily	Koss	attending for informational purposes only	
Lois	Kallunki	attending for informational purposes only	
Marianne	Ewig	in opposition	
Lila	Johnson	attending for informational purposes only	
Jennifer	Breceda	none of the above	Milwaukee Riverkeeper
Helena	Volzer	attending for informational purposes only	Alliance for the Great Lakes
David	Johnson	none of the above	Midwest Environmental Advocates
Shannon	Roznoski	attending for informational purposes only	
Derek	Paulsen	none of the above	
Bill	Davis	attending for informational purposes only	
Pete	Holmgren	attending for informational purposes only	City of Madison Water Utility
Bill	McClenahan	attending for informational purposes only	Waukesha Water Utility
Alaina	Noll	attending for informational purposes only	
Cheryl	Nenn	in support	Milwaukee Riverkeeper
Evan	Miller	attending for informational purposes only	

Lily	Butler	attending for informational purposes only	
Laurie	Longtine	none of the above	Waukesha County Environmental Action League

Changes to Rule Analysis and Fiscal Estimate

The department did not make any changes to the Plain Language Rule Analysis, Fiscal Estimate or the final Economic Impact Analysis as a result of public comments or testimony given during the public hearing on the proposed rule. The Economic Impact Analysis was changed in response to comments received during the drafting phase of that document, during the public comment period that occurred from July 10-24, 2023.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on statutory authority; form, style and placement; adequacy of references; and clarity, grammar, punctuation and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for those discussed below.

Section 2 t. Comment: in the proposed title to subch. IV of ch. NR 851, it appears the plural word “diversions” should be revised to the singular “diversion.”

Response: Since all other chapters are in the plural form, for example “Straddling Community Diversions,” we chose to keep this subchapter title plural.

Final Regulatory Flexibility Analysis

This proposed rule has no economic impacts to small businesses.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.