CHAPTER 281

WATER AND SEWAGE

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Cross–reference: See also chs. NR 102, 103, 104, 105, 809, 811, 812, and 845, Wis. adm. code.

SUBCHAPTER I

DEFINITIONS

281.01 Definitions. In this chapter, unless the context requires otherwise:

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

(4) "Garbage" means discarded materials resulting from the handling, processing, storage and consumption of food.

(5) "Industrial wastes" includes liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.

(6) "Municipality" means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewage district.

(7) "Other wastes" includes all other substances, except industrial wastes and sewage, which pollute any of the surface waters of the state. The term also includes unnecessary siltation resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.

(8) "Owner" means the state, county, town, town sanitary district, city, village, metropolitan sewerage district, corporation, firm, company, institution or individual owning or operating any water supply, sewerage or water system or sewage and refuse disposal plant.

(9) "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

(10) "Pollution" includes contaminating or rendering unclean or impure the waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

(11) "Refuse" means all matters produced from industrial or community life, subject to decomposition, not defined as sewage.

(12) "Secretary" means the secretary of natural resources.

(13) "Sewage" means the water–carried wastes created in and to be conducted away from residences, industrial establishments, and public buildings as defined in s. 101.01 (12), with such surface water or groundwater as may be present.

(14) "Sewerage system" means all structures, conduits and pipe lines by which sewage is collected and disposed of, except

plumbing inside and in connection with buildings served, and service pipes from building to street main.

(15) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear material, as defined in s. 254.31 (11), or by–product material, as defined in s. 254.31 (1).

(16) "System or plant" includes water and sewerage systems and sewage and refuse disposal plants.

(17) "Wastewater" means all sewage.

(18) "Waters of the state" includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

(19) "Water supply" means the sources and their surroundings from which water is supplied for drinking or domestic purposes.

(20) "Waterworks" or "water system" means all structures, conduits and appurtenances by means of which water is delivered to consumers except piping and fixtures inside buildings served, and service pipes from building to street main.

(21) "Wetland" has the meaning given in s. 23.32 (1).

History: 1995 a. 227; 1999 a. 9; 2001 a. 6.

SUBCHAPTER II

WATER RESOURCES

Cross–reference: See also chs. NR 110 and 121, Wis. adm. code.

281.11 Statement of policy and purpose. The department shall serve as the central unit of state government to protect, maintain and improve the quality and management of the waters of the state, ground and surface, public and private. Continued pollution of the waters of the state has aroused widespread public concern. It endangers public health and threatens the general welfare. A comprehensive action program directed at all present and potential sources of water pollution whether home, farm, recreational, municipal, industrial or commercial is needed to protect human life and health, fish and aquatic life, scenic and ecological values and domestic, municipal, recreational, industrial, agricultural and other uses of water. The purpose of this subchapter is to grant necessary powers and to organize a comprehensive program under a single state agency for the enhancement of the quality management and protection of all waters of the state, ground and surface, public and private. To the end that these vital purposes may be accomplished, this subchapter and all rules and orders promulgated under this subchapter shall be liberally construed in favor of the policy objectives set forth in this subchapter. In order to achieve the policy objectives of this subchapter, it is the express policy of the state to mobilize governmental effort and resources at all levels, state, federal and local, allocating such effort and resources to accomplish the greatest result for the people of the state as a whole. Because of the importance of Lakes Superior and Michigan and Green Bay as vast water resource reservoirs, water quality standards for those rivers emptying into Lakes Superior and Michigan and Green Bay shall be as high as is practicable.

History: 1995 a. 227 s. 374.

Cross–reference: See also s. NR 103.05, Wis. adm. code.

A possessor of land who withdraws ground water for beneficial purposes is not liable for interference with another's water use unless the withdrawal causes unreasonable harm by lowering the water table or artesian pressure, the ground water forms an underground stream, or the withdrawal has a substantial effect on a watercourse or lake. State v. Michels Pipeline Construction, Inc., 63 Wis. 2d 278, 217 N.W.2d 339 (1974).

A municipality's supplying of water to its inhabitant is not a proprietary function immune from the provisions of ch. 144 [now chs. 280–299]. The protection of public health is a matter of state–wide concern over which the legislature may exercise its police powers to insure a healthful water supply. Village of Sussex v. DNR, 68 Wis. 2d 187, 228 N.W.2d 173 (1975).

The state intended to create a comprehensive program for well construction supervision through the Department of Natural Resources (DNR). Under a liberal construction of its powers, DNR cannot be limited to regulating how groundwater is obtained. If a municipal body could make well construction contingent upon its own permit, based on its own standards, a DNR permit would be wholly insignificant, and the legislature's stated goal of creating a uniform scheme to supervise the extraction of groundwater would be eviscerated. The state legislature's explicit grant of authority to DNR preempts a municipal ordinance regulating the withdrawal of groundwater. Lake Beulah Management District v. Village of East Troy, 2010 WI App 127, 329 Wis. 2d 641, 791 N.W.2d 385, 09–2021.

Through ss. 281.11 and 281.12, the legislature has delegated the state's public trust duties to the Department of Natural Resources (DNR) in the context of its regulation of high capacity wells and their potential effect on navigable waters. For all proposed high capacity wells, the legislature has expressly granted DNR the authority and a general duty to review all permit applications and to decide whether to issue the permit, to issue the permit with conditions, or to deny the application, which provides DNR with the discretion to undertake the review it deems necessary for all proposed high capacity wells, including the authority and a general duty to consider the environmental impact of a proposed high capacity well on waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08–3170.

Although the Department of Natural Resources' (DNR) public trust authority has been expanded by the courts beyond the plain language of the Wisconsin Constitution, s. 227.10 (2m) restricts that authority by withdrawing DNR's ability to implement or enforce any standard, requirement, or threshold, including as a term or condition of a permit issued by the agency, unless explicitly permitted in statute or rule. Neither s. 281.11 or 281.12 explicitly allows DNR to require any term or condition on high capacity well permits. Therefore, ss. 281.11 and 281.12 do not give DNR the authority to require or impose any term or condition absent explicit statutory or rule–based language sanctioning that specific term or condition. OAG 1–16.

The public trust doctrine. 59 MLR 787.

Theories of water pollution litigation. Davis. 1971 WLR 738.

Carrying capacity controls for recreation water uses. Kusler. 1973 WLR 1.

Groundwater: Diminishing Resource, Increasing Conflict. Westerberg. Wis. Law. July/Aug. 2015.

281.12 General department powers and duties. **(1)** The department shall have general supervision and control over the waters of the state. It shall carry out the planning, management and regulatory programs necessary for implementing the policy and purpose of this chapter. The department also shall formulate plans and programs for the prevention and abatement of water pollution and for the maintenance and improvement of water quality.

(2) The department, on behalf of and at the direction of the governor, may submit an application to the federal environmental protection agency under 33 USC 1344 (g) seeking the delegation of authority to this state to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters of this state. If the federal environmental protection agency delegates this authority to this state, the department may assume that authority.

(3) The department, upon request, shall consult with and advise owners who have installed or are about to install systems or plants, as to the most appropriate water source and the best method of providing for its purity, or as to the best method of disposing of wastewater, including operations and maintenance, taking into consideration the future needs of the community for protection of its water supply. The department is not required to prepare plans.

(5) The department may enter into agreements with the responsible authorities of other states, subject to approval by the governor, relative to methods, means and measures to be employed to control pollution of any interstate streams and other waters and to carry out such agreement by appropriate general and special orders. This power shall not be deemed to extend to the modification of any agreement with any other state concluded by direct legislative act, but, unless otherwise expressly provided, the department shall be the agency for the enforcement of any such legislative agreement.

History: 1995 a. 227 ss. 376, 383, 385, 987; 1995 a. 378 s. 42; 2017 a. 183.

Cross–reference: See also chs. NR 809, 811, 812, and 845, and ss. NR 1.50, 1.95, and 103.05, Wis. adm. code.

The Department of Natural Resources' general supervision and control over the state's waters is not so sweeping as to authorize the department to ban all activities

that might adversely affect water quality or to establish limitations for any one specific industry. Rusk County Citizen Action Group, Inc. v. DNR, 203 Wis. 2d 1, 552 N.W.2d 110 (Ct. App. 1996), 95–3125.

Through ss. 281.11 and 281.12, the legislature has delegated the state's public trust duties to the Department of Natural Resources (DNR) in the context of its regulation of high capacity wells and their potential effect on navigable waters. For all proposed high capacity wells, the legislature has expressly granted DNR the authority and a general duty to review all permit applications and to decide whether to issue the permit, to issue the permit with conditions, or to deny the application, which provides DNR with the discretion to undertake the review it deems necessary for all proposed high capacity wells, including the authority and a general duty to consider the environmental impact of a proposed high capacity well on waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08–3170.

Although the Department of Natural Resources' (DNR) public trust authority has been expanded by the courts beyond the plain language of the Wisconsin Constitution, s. 227.10 (2m) restricts that authority by withdrawing DNR's ability to implement or enforce any standard, requirement, or threshold, including as a term or condition of a permit issued by the agency, unless explicitly permitted in statute or rule. Neither s. 281.11 or 281.12 explicitly allows DNR to require any term or condition on high capacity well permits. Therefore, ss. 281.11 and 281.12 do not give DNR the authority to require or impose any term or condition absent explicit statutory or rule–based language sanctioning that specific term or condition. OAG 1–16.

281.13 Surveys and research. (1) (a) The department is authorized to act with the U.S. geological survey in determining the sanitary and other conditions and nature of the natural water sources in this state, for the following purposes:

1. To determine the nature and condition of the unpolluted natural water sources.

2. To determine to what extent the natural water sources are being contaminated by sewage from cities, villages and towns.

3. To determine to what extent the natural water sources are being polluted by other wastes.

4. To assist in determining the best sources of water.

(b) The department is hereby empowered and instructed to make the necessary rules and regulations, in conjunction with the U.S. geological department, to carry this subsection into effect.

(3) The department may conduct scientific experiments, investigations, waste treatment demonstrations and research on any matter under its jurisdiction. It may establish pilot plants, prototypes and facilities in connection therewith and lease or purchase land or equipment.

History: 1995 a. 227 ss. 372, 382; 1995 a. 378 s. 40; 1997 a. 35.

281.14 Wisconsin River monitoring and study. (1) In this section:

(a) "Nonpoint source" has the meaning given in s. 281.16 (1) (e).

(b) "Point source" has the meaning given in s. 283.01 (12).

(2) The department shall conduct a program to monitor and study the introduction of nutrients from point sources and nonpoint sources into the Wisconsin River from the headwaters of the river to the Castle Rock Flowage dam. The department shall seek to do all of the following under this subsection:

(a) Identify the amounts of nutrients being introduced into the river.

(b) Characterize and quantify the nutrients, in particular nitrogen and phosphorus, introduced into the river from nonpoint sources relative to climate, land use, soil type, elevation, and drainage.

(c) Collect water quality information for locations on the river itself and for major tributaries and major impoundments to use in evaluating the biological, physical, and chemical properties of the water and to use as data in watershed and river models.

(d) Use watershed and river models and the information collected under this subsection and from other sources to forecast the effect on water quality of different methods of reducing the amounts of nutrients introduced into the river.

(e) Develop tools to use in selecting and implementing methods of reducing the amounts of nutrients introduced into the river.

History: 2009 a. 28; 2013 a. 20.

281.145 River and stream monitoring and study. (1) In this section:

(a) "Nonpoint source" has the meaning given in s. 281.16 (1) (e).

(b) "Point source" has the meaning given in s. 283.01 (12).

(2) The department shall conduct a program to monitor and study the introduction of nutrients from point sources and nonpoint sources into the East and West Twin Rivers, the Manitowoc River, the Sheboygan River, and the streams that outlet to Lake Michigan and that lie in and between the Ahnapee River watershed and the Sauk Creek watershed. The department shall seek to do all of the following under this subsection:

(a) Identify the amounts of nutrients being introduced into these waters.

(b) Characterize and quantify the nutrients, in particular nitrogen and phosphorus, introduced into these waters from nonpoint sources relative to climate, land use, soil type, elevation, and drainage.

(c) Collect water quality information from locations on these waters and from major tributaries and major impoundments to use in evaluating the biological, physical, and chemical properties of the water and to use as data in watershed and river models.

(d) Use watershed and river models and the information collected under this subsection and from other sources to forecast the effect on water quality of different methods of reducing the amounts of nutrients introduced into these waters.

(e) Develop tools to use in selecting and implementing methods of reducing the amounts of nutrients introduced into these waters.

History: 2017 a. 59.

281.15 Water quality standards. (1) The department shall promulgate rules setting standards of water quality to be applicable to the waters of the state, recognizing that different standards may be required for different waters or portions thereof. Water quality standards shall consist of the designated uses of the waters or portions thereof and the water quality criteria for those waters based upon the designated use. Water quality standards shall protect the public interest, which include the protection of the public health and welfare and the present and prospective future use of such waters for public and private water systems, propagation of fish and aquatic life and wildlife, domestic and recreational purposes and agricultural, commercial, industrial and other legitimate uses. In all cases where the potential uses of water are in conflict, water quality standards shall be interpreted to protect the general public interest.

(2) In adopting or revising any water quality criteria for the waters of the state or any designated portion thereof, the department shall do all of the following:

(a) At least annually publish and provide public notice of water quality criteria to be adopted, revised or reviewed in the following year.

(b) Consider information reasonably available to the department on the likely social, economic, energy usage and environmental costs associated with attaining the criteria and provide a description of the economic and social considerations used in the establishment of the criteria.

(c) Establish criteria which are no more stringent than reasonably necessary to assure attainment of the designated use for the water bodies in question.

(d) Employ reasonable statistical techniques, where appropriate, in interpreting the relevant water quality data.

(e) Develop a technical support document which identifies the scientific data utilized, the margin of safety applied and any facts and interpretations of those data applied in deriving the water quality criteria, including the persistence, degradability and nature and effects of each substance on the designated uses, and which provides a summary of the information considered under this section.

(3) Subsection (2) does not apply to rules promulgated under this section by the department for any substance before November 10, 1987.

(4) By April 1, 1989, the department shall review, in accordance with sub. (2), and as necessary revise all water quality criteria, except those for dissolved oxygen, temperature, pH and ammonia, adopted under this section before November 10, 1987.

(5) The department shall comply with this section with respect to all water quality criteria adopted or revised after November 10, 1987.

(6) Every 3 years, as part of the review required by 33 USC 1313 (c) (1), the department shall review the water quality standards promulgated under this section and determine whether any existing standards should be modified or new standards should be adopted. The department shall hold a public hearing to receive information and public comment regarding water quality standards promulgated under this section. The department shall publish notice of the hearing on the department's Internet site at least 45 days before the hearing date. The department shall submit the results of a review under this subsection to the federal environmental protection agency.

History: 1995 a. 227 s. 377; 1995 a. 378 s. 41; 2015 a. 205.

Cross–reference: See also chs. NR 102, 103, 104, 105, 106, 207, and 213 Wis. adm. code.

281.16 Water quality protection; nonpoint sources. **(1)** DEFINITIONS. In this section:

(a) "Agricultural facility" means a structure associated with an agricultural practice.

(b) "Agricultural practice" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising.

(bg) "Artificial water body" has the meaning given in s. 30.19 (1b) (a).

(br) "Covered municipality" means a municipality that has been issued an individual municipal separate storm sewer permit under s. 283.33 or that is covered by a general municipal separate storm sewer permit under s. 283.35.

(c) "Livestock operation" means a feedlot or other facility or a pasture where animals are fed, confined, maintained or stabled.

(d) "Navigable waters" has the meaning given in s. 281.31 (2) (d).

(e) "Nonpoint source" means a facility or practice that causes, or has the potential to cause, nonpoint source water pollution.

(f) "Nonpoint source water pollution" means pollution of waters of the state that does not result from a point source, as defined in s. 283.01 (12).

(g) "Water quality management area" means any of the following:

1. The area within 1,000 feet from the ordinary high–water mark of navigable waters that consist of a lake, pond or flowage, except that, for a navigable water that is a glacial pothole lake, "water quality management area" means the area within 1,000 feet from the high–water mark of the lake.

2. The area within 300 feet from the ordinary high–water mark of navigable waters that consist of a river or stream.

3. A site that is susceptible to groundwater contamination or that has the potential to be a direct conduit for contamination to reach groundwater.

(h) Notwithstanding s. 281.01 (18), "waters of the state" has the meaning given in s. 283.01 (20).

(2) NONPOINT SOURCES THAT ARE NOT AGRICULTURAL. (a) The department shall, by rule, prescribe performance standards for nonpoint sources that are not agricultural facilities or agricultural practices. The performance standards shall be designed to achieve water quality standards by limiting nonpoint source water pollution.

(am) 1. In this paragraph:

c. "New development" means development resulting from the conversion of previously undeveloped land or agricultural land.

d. "Redevelopment" means development that replaces older development.

2. Except as provided in subd. 3., the department may not enforce a provision in a rule that establishes a date by which a covered municipality must implement methods to achieve a specified reduction in the level of total suspended solids carried by runoff, if the provision requires the covered municipality to achieve a reduction of more than 20 percent. This subdivision does not apply to total suspended solids carried by runoff from new development or redevelopment in a covered municipality.

3. If a covered municipality has achieved, on July 1, 2011, a reduction of more than 20 percent of total suspended solids carried by runoff, the municipality shall, to the maximum extent practicable, maintain all of the best management practices that the municipality has implemented on or before July 1, 2011, to achieve that reduction.

(b) The department shall, by rule, specify a process for the development and dissemination of technical standards to implement the performance standards under par. (a).

(c) If a covered municipality has obtained all permits required for the construction of a storm water management pond in an artificial water body, whether navigable or nonnavigable, the department may not prohibit the construction of the storm water management pond as a method by which the covered municipality may achieve compliance with performance standards under par. (a) or with an approved total maximum daily load under 33 USC 1313 (d) (1) (C). The department shall give credit to the covered municipality for any pollutant reduction achieved by the storm water management pond in determining compliance with performance standards specified in a permit under s. 283.33 (1) (b), (c), (cg), or (cr) or an approved total maximum daily load under 33 USC 1313 (d).

(3) NONPOINT SOURCES THAT ARE AGRICULTURAL. (a) The department of natural resources, in consultation with the department of agriculture, trade and consumer protection, shall promulgate rules prescribing performance standards and prohibitions for agricultural facilities and agricultural practices that are nonpoint sources. The performance standards and prohibitions shall be designed to achieve water quality standards by limiting nonpoint source water pollution. At a minimum, the prohibitions shall include all of the following:

1. That a livestock operation may have no overflow of manure storage structures.

2. That a livestock operation may have no unconfined manure pile in a water quality management area.

3. That a livestock operation may have no direct runoff from a feedlot or stored manure into the waters of the state.

4. That a livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod cover.

(b) The department of agriculture, trade and consumer protection, in consultation with the department of natural resources, shall promulgate rules prescribing conservation practices to implement the performance standards and prohibitions under par. (a) and specifying a process for the development and dissemination of technical standards to implement the performance standards and prohibitions under par. (a).

(c) Using the process specified under par. (b), the department of agriculture, trade and consumer protection shall develop and disseminate technical standards to implement the performance standards and prohibitions under par. (a). The department of agri-

culture, trade and consumer protection shall disseminate alternative technical standards for situations in which more than one method exists to implement the performance standards and prohibitions.

(d) The conservation practices and technical standards under pars. (b) and (c) shall at a minimum cover animal waste management, nutrients applied to the soil and cropland sediment delivery.

(e) An owner or operator of an agricultural facility or practice that is in existence before October 14, 1997, may not be required by this state or a municipality to comply with the performance standards, prohibitions, conservation practices or technical standards under this subsection unless cost–sharing is available, under s. 92.14 or 281.65 or from any other source, to the owner or operator. For the purposes of this paragraph, sub. (4) and ss. 92.07 (2), 92.15 (4) and 823.08 (3) (c) 2., the department of natural resources shall promulgate rules that specify criteria for determining whether cost–sharing is available under s. 281.65 and the department of agriculture, trade and consumer protection shall promulgate rules that specify criteria for determining whether cost–sharing is available under s. 92.14 or from any other source. The rules may not allow a determination that cost–sharing is available to meet local regulations under s. 92.07 (2) or 92.15 that are consistent with or that exceed the performance standards, prohibitions, conservation practices or technical standards under this subsection unless the cost–sharing is at least 70 percent of the cost of compliance or is from 70 percent to 90 percent of the cost of compliance in cases of economic hardship, as defined in the rules.

(4) APPLICATION TO ANIMAL FEEDING OPERATIONS. If the department issues a notice of discharge under ch. 283 for an animal feeding operation, the performance standards, prohibitions, conservation practices and technical standards under sub. (3) apply to the animal feeding operation, except that if the animal feeding operation is in existence before October 14, 1997, the performance standards, prohibitions, conservation practices and technical standards only apply if the department determines that cost–sharing is available to the owner or operator of the animal feeding operation under s. 92.14 or 281.65 or from any other source.

History: 1997 a. 27; 1999 a. 9; 2009 a. 28; 2011 a. 32; 2015 a. 387.
Cross–reference: See also chs. NR 151 and 243, Wis. adm. code.

281.165 Compliance with water quality standards for wetlands. (1) COMPLIANCE; EXEMPTION. An activity shall be considered to comply with the water quality standards that are applicable to wetlands and that are promulgated as rules under s. 281.15 and is exempt from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice, hearing, procedure or penalty specified under s. 29.601 (3) or chs. 30, 31, 281, 283, 289 to 292 or 299 or specified under any rule promulgated, order issued or ordinance adopted under any of those sections or chapters, if the activity meets all of the requirements under sub. (2), (3), or (4).

(2) TREMPEALEAU COUNTY. Subsection (1) applies to an activity that meets all of the following requirements:

(a) The wetland area that will be affected by the activity is less than 15 acres in size.

(b) The site of the activity is zoned for industrial use and is in the vicinity of a manufacturing facility.

(c) The site of the activity is within the corporate limits of a city on January 1, 1999.

(d) The governing body of the city adopts a resolution stating that the exemption under this section is necessary to protect jobs that exist in the city on the date of the adoption of the resolution or is necessary to promote job creation.

(e) The site of the activity is located in Trempealeau County.

(3) DUNN COUNTY. (a) Subsection (1) applies to an activity that meets the requirements under sub. (2) (c) and (d) and all of the following requirements:

1. The wetland area that will be affected by the activity is no more than 4.2 acres in size.

2. The site of the activity is zoned for technology park use and is in the vicinity of a manufacturing facility.

3. The site of the activity is located in Dunn County.

(b) Before any person engages in the activity described in par. (a), the U.S. army corps of engineers shall have issued a permit for the activity that contains a mitigation plan that requires the creation of at least 1.5 acres of wetland for each acre of wetland affected by the activity.

(4) VILLAGE OF ASHWAUBENON. (a) Subsection (1) applies to an activity that meets all of the following requirements:

1m. The wetland area is not subject to federal jurisdiction under 33 USC 1344, and the activity will affect less than 3 acres of that wetland area.

2. The site of the activity is zoned for community business use and is part of a tax incremental district.

3m. The site of the activity is located in the village of Ashwaubenon in the vicinity of a professional football stadium.

4m. The person who will engage in the activity shall have provided wetland mitigation at the ratio of at least 1.5 acres of wetland for each acre of wetland affected by the activity. Evidence of the mitigation can be provided by a written affidavit demonstrating a purchase of credits from any of the wetland mitigation banks that are located in the state and that are approved by the department or by an alternative mitigation project approved by the department.

History: 1999 a. 9; 2011 a. 6, 118; 2015 a. 196.

281.17 Water quality and quantity; specific regulations. (2) The department shall supervise chemical treatment of waters for the suppression of nuisance–producing organisms that are not regulated by the program established under s. 23.24 (2). It may purchase equipment and may make a charge for the use of the same and for materials furnished, together with a per diem charge for any services performed in such work. The charge shall be sufficient to reimburse the department for the use of the equipment, the actual cost of materials furnished, and the actual cost of the services rendered.

(2m) In permitting under its authority under sub. (2) the chemical treatment of water for the suppression of mosquito larvae in the cities of Brookfield and La Crosse, the department may not impose as a condition to that permission a requirement that monitoring or additional testing be conducted as to the effectiveness or the impact of the treatment.

(3) The department shall promulgate rules establishing an examining program for the certification of operators of water systems, wastewater treatment plants and septage servicing vehicles operated under a license issued under s. 281.48 (3), setting such standards as the department finds necessary to accomplish the purposes of this chapter and chs. 285 and 289 to 299, including requirements for continuing education. The department may charge applicants a fee for certification, except that the department may not require an individual who is eligible for the veterans fee waiver program under s. 45.44 to pay a fee. All moneys collected under this subsection for the certification of operators of water systems, wastewater treatment plants and septage servicing vehicles shall be credited to the appropriation under s. 20.370 (4) (bL). No person may operate a water systems, wastewater treatment plant or septage servicing vehicle without a valid certificate issued under this subsection. The department may suspend or revoke a certificate issued under this subsection for a violation of any statute or rule relating to the operation of a water system or wastewater treatment plant or to septage servicing, for failure to fulfill the continuing education requirements or as provided under s. 145.20 (5). The owner of any wastewater treatment plant shall be, or shall employ, an operator certified under this subsection who shall be responsible for plant operations, unless the department by rule provides otherwise. In this subsection, "wastewater treatment plant" means a system or plant used to treat industrial wastewater, domestic wastewater or any combination of industrial wastewater and domestic wastewater.

(5) The department may prohibit the installation or use of septic tanks in any area of the state where the department finds that the use of septic tanks would impair water quality. The department shall prescribe alternate methods for waste treatment and disposal in such prohibited areas.

(6) On and after December 31, 1965, the sale and use of nondegradable detergents containing alkyl benzene sulfonate is prohibited in this state.

(7) Discharge of mercury compounds and metallic mercury into the waters of this state by any person shall be limited to fifteen–hundredths of a pound of mercury per day averaged over a 30–day period, and not more than one–half pound in any one day. The department may establish lower maximum discharge limits by rule.

(8) (a) The department may establish, administer and maintain a safe drinking water program no less stringent than the requirements of the safe drinking water act, 42 USC 300f to 300j–26.

(b) Notwithstanding par. (a) and s. 280.11 (1), the department may not require a municipal water system to provide continuous disinfection of the water that it provides, unless one of the following applies:

1. Continuous disinfection is required under federal law.

2. Water quality data, well construction, or water system construction indicate a potential health hazard.

(9) The department may require owners of water systems to demonstrate the technical, managerial and financial capacity to comply with national primary drinking water regulations under 42 USC 300g–1 and may assist owners of water systems to develop that capacity.

(10) (a) No person may conduct an activity for which the department denies a water quality certification required by rules promulgated under this subchapter to implement 33 USC 1341 (a).

(b) No person may violate a condition imposed by the department in a water quality certification required by rules promulgated under this subchapter to implement 33 USC 1341 (a).

(c) This subsection does not apply to discharges into wetlands that are subject to regulation under s. 281.36.

History: 1995 a. 227 ss. 380, 384, 387, 389, 392, 418, 420; 1995 a. 378 s. 43; 1997 a. 27, 35; 1999 a. 147; 2001 a. 16, 109; 2003 a. 310; 2005 a. 347; 2011 a. 19, 118, 209.

Cross–reference: See also chs. NR 100, 107, 114, 142 and 815, Wis. adm. code.

Madison's power to forbid chemical treatment of Madison lakes was withdrawn by s. 144.025 (2) (i) [now sub. (2)]. Wisconsin Environmental Decade, Inc. v. DNR, 85 Wis. 2d 518, 271 N.W.2d 69 (1978).

A municipality has no jurisdiction over chemical treatment of waters to suppress aquatic nuisances. The department is granted statewide supervision over aquatic nuisance control under s. 144.025 (2) (i) [now sub. (2)]. Applications for permits to chemically treat aquatic nuisances under s. 144.025 (2) (i) may be denied even though statutory and regulatory requirements have been met if such chemical treatment would be counter–productive in achieving the goals set out in s. 144.025 (1). 63 Atty. Gen. 260.

281.19 Orders. **(1)** The department may issue general orders, and adopt rules applicable throughout the state for the construction, installation, use and operation of practicable and available systems, methods and means for preventing and abating pollution of the waters of the state. Such general orders and rules shall be issued only after an opportunity to be heard thereon has been afforded to interested parties.

(2) (a) The department may issue special orders directing particular owners to remedy violations of the safe drinking water program under s. 281.17 (8) and (9) or to secure such operating results toward the control of pollution of the waters of the state as the department prescribes, within a specified time. Pending efforts to comply with any order, the department may permit continuance of operations on such conditions as it prescribes. If any owner cannot comply with an order within the time specified, the owner may, before the date set in the order, petition the department to modify the order. The department may modify the order, specifying in writing the reasons therefor. If any order is not complied with within the time period specified, the department shall immediately notify the attorney general of this fact. After receiving the notice, the attorney general shall commence an action under s. 299.95.

(b) The department may issue temporary emergency orders without prior hearing when the department determines that the protection of the public health necessitates such immediate action. Such emergency orders shall take effect at such time as the department determines. As soon as is practicable, the department shall hold a public hearing after which it may modify or rescind the temporary emergency order or issue a special order under par. (a).

(3) The department shall make investigations and inspections to insure compliance with any general or special order or rule which it issues. In the exercise of this power the department may require the submission and approval of plans for the installation of systems and devices for handling, treating or disposing of any wastes.

(4) The department may, under s. 254.59, order or cause the abatement of any nuisance affecting the waters of the state.

(5) If the department finds that a system or plant tends to create a nuisance or menace to health or comfort, it shall order the owner or the person in charge to secure such operating results as the department prescribes, within a specified time. If the order is not complied with, the department may order designated changes in operation, and if necessary, alterations or extension to the system or plant, or a new system or plant. If the department finds that the absence of a municipal system or plant tends to create a nuisance or menace to health or comfort, it may order the city, village, town or town sanitary district embracing the area where such conditions exist to prepare and file complete plans of a corrective system as provided by s. 281.41, and to construct such system within a specified time.

(6) Orders issued by the department shall be signed by the person designated by the board.

(7) In cases of noncompliance with any order issued under sub. (2) or (5) or s. 281.20 (1), the department may take the action directed by the order, and collect the costs thereof from the owner to whom the order was directed. The department shall have all the necessary powers needed to carry out this subsection including powers granted municipalities under ss. 66.0821 and 200.01 to 200.15. It shall also be eligible for financial assistance under ss. 281.55, 281.57, 281.58 and 281.59.

(8) Any owner or other person in interest may secure a review of the necessity for and reasonableness of any order of the department under this section or s. 281.20 in the following manner:

(a) They shall first file with the department a verified petition setting forth specifically the modification or change desired in such order. Such petition must be filed within 60 days of the issuance of the orders sought to be reviewed. Upon receipt of such a petition the department shall order a public hearing thereon and make such further investigations as it shall deem advisable. Pending such review and hearing, the department may suspend such orders under terms and conditions to be fixed by the department on application of any such petitioner. The department shall affirm, repeal or change the order in question within 60 days after the close of the hearing on the petition.

(b) The determination of the department shall be subject to review as provided in ch. 227.

History: 1995 a. 227 ss. 378, 379, 381, 386, 388, 390, 391, 397, 987; 1997 a. 27, 193; 1999 a. 32; 1999 a. 150 s. 672.

The Department of Natural Resources is authorized, not required, to set standards for sewer extension approvals and may process sewer extension applications on a case by case basis under s. 144.025 (2) (c) [now sub. (1)]. Wisconsin Environmental Decade, Inc. v. DNR, 82 Wis. 2d 97, 260 N.W.2d 674 (1978).

The Department of Natural Resources has the authority to order a municipality to construct a public water supply upon a finding that the absence of a public water supply constitutes a nuisance or menace to health or comfort, even if the electors of the municipality vote against construction in a referendum. 60 Atty. Gen. 523.

281.20 Orders; nonpoint source pollution. (1) Under the procedure specified in sub. (3), the department may do any of the following:

(a) Order or cause the abatement of pollution which the department, in consultation with the department of agriculture, trade and consumer protection if the source is agricultural, has determined to be significant and caused by a nonpoint source, as defined in s. 281.65 (2) (b), including pollution which causes the violation of a water quality standard, pollution which significantly impairs aquatic habitat or organisms, pollution which restricts navigation due to sedimentation, pollution which is deleterious to human health or pollution which otherwise significantly impairs water quality, except that under this paragraph the department may not order or cause the abatement of any pollution caused primarily by animal waste or of pollution from an agricultural source that is located in a priority watershed or priority lake area unless the source is designated as a critical site in a priority watershed or priority lake plan under s. 281.65 (5m) or a modification to such a plan under s. 281.65 (5s).

(b) If it provided notice under s. 281.65 (5w), order the owner or operator of a source that is designated as a critical site in a priority watershed or priority lake plan under s. 281.65 (5m) or in a modification to such a plan under s. 281.65 (5s) to implement best management practices, but not with respect to any pollution caused primarily by animal waste.

(3) (a) 1. If the department determines that it is authorized to issue an order under sub. (1) (a) to abate pollution caused by a nonpoint source, the department shall send a written notice of intent to issue the order to abate the pollution to the person whom the department determines to be responsible for the nonpoint source.

2. If the department determines under sub. (1) (b) that an owner or operator is required to implement best management practices in a priority watershed or priority lake area, the department shall send a written notice of intent to issue an order to implement the designated best management practices to the owner or operator.

3. The notice of intent to issue an order shall describe the department's findings and intent, and shall include a date by which that person is required to abate the pollution or implement the best management practices. That date shall be at least one year after the date of the notice unless the department determines that the pollution is causing or will cause severe water quality degradation that could be mitigated or prevented by abatement action taken in less than one year. In its determination under this subsection, the department shall consider the nature of the actual or potential damage caused by the pollution and the feasibility of measures to abate that pollution.

(b) If the nonpoint source that is the subject of a notice under par. (a) is agricultural, the department shall send the notice to the land conservation committee created under s. 92.06 of any county in which the source is located. If the notice is issued under par. (a) 2., the land conservation committee may disapprove issuance of an order within 60 days after the department issues the notice of intent to issue the order.

(c) If the nonpoint source which is the subject of a notice under par. (a) is agricultural, the department shall send the notice to the department of agriculture, trade and consumer protection. The department of agriculture, trade and consumer protection shall do all of the following:

1. Upon receipt of the notice and in cooperation with the land conservation committee, provide to the person whom the department has determined to be responsible for the nonpoint source under sub. (1) (a) a listing of management practices which, if followed, would reduce pollution to an amount determined to be acceptable by the department, in consultation with either the department of agriculture, trade and consumer protection or the land conservation committee. The list shall, with reasonable limits, set forth all of the options which are available to the person to reduce pollution to that amount of pollution. The department of agriculture, trade and consumer protection shall provide to each person receiving a notice an explanation of financial aids and technical assistance which may be available to the person for the abatement of pollution or the implementation of best management practices from the department of agriculture, trade and consumer protection under s. 92.14 and from other sources.

2. Issue a report to the department within one year after the date of the notice describing the actions taken by the person receiving the notice and a recommendation as to whether the department should issue an order to abate the pollution or implement the best management practices. Notwithstanding par. (a), the department may not issue an order until the department receives that report unless the department determines that the pollution is causing or will cause severe water quality degradation which could be mitigated or prevented by abatement action taken in less than one year and unless the department of agriculture, trade and consumer protection files a concurring determination in writing with the department within 30 days after receiving notice of the department's determination.

(d) The department may issue a temporary emergency order prior to issuing a notice under par. (a) if all of the following apply:

1. The department determines that the pollution is causing or will cause severe water quality degradation.

2. The abatement action required by the order does not involve a capital expenditure.

3. If the nonpoint source is agricultural, the department provides a copy of the temporary emergency order to the department of agriculture, trade and consumer protection and to the land conservation committee created under s. 92.06 in every county in which the nonpoint source is located.

4. As soon as practicable after issuing the temporary emergency order, the department issues a written notice of intent to issue an order under pars. (a) and (b) or rescinds the temporary emergency order.

(5) (a) Except as provided in par. (c), if the department issues a notice under sub. (3) (a) 2., the source is agricultural and no land conservation committee disapproves the proposed order under sub. (3) (b), the owner or operator of the critical site may obtain a review of the proposed order by filing a written request with the land and water conservation board within 60 days after the expiration of the time limit under sub. (3) (b). If the land conservation committee of any county in which a source is located disapproves of a proposed order under sub. (3) (b), the department may obtain a review of that disapproval by filing a written request with the land and water conservation board within 60 days after receiving the decision of the land conservation committee.

(b) The owner or operator of a critical site may request a contested case hearing under ch. 227 to review the decision of the land and water conservation board under par. (a) by filing a written request with the department within 60 days after receiving an adverse decision of the land and water conservation board.

(c) The owner or operator of a critical site who obtains review of the critical site determination under any or all of the review procedures in s. 281.65 (7) may not obtain review of a proposed order under this subsection.

History: 1995 a. 227 ss. 393, 394, 395.

Cross–reference: See also ch. NR 120, Wis. adm. code.

SUBCHAPTER III

WATER QUALITY AND QUANTITY; GENERAL REGULATIONS

281.31 Navigable waters protection law. (1) To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans and authorize municipal shoreland zoning regulations for the efficient use, conservation, develop-

ment and protection of this state's water resources. The regulations shall relate to lands under, abutting or lying close to navigable waters. The purposes of the regulations shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.

(2) In this section, unless the context clearly requires otherwise:

(c) "Municipality" or "municipal" means a county, village or city.

(d) "Navigable water" or "navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within this state and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state.

(e) "Regulation" means ordinances enacted under ss. 59.692, 61.351, 61.353, 62.23 (7), 62.231, and 62.233 and refers to subdivision and zoning regulations which include control of uses of lands under, abutting, or lying close to navigable waters for the purposes specified in sub. (1), pursuant to any of the zoning and subdivision control powers delegated by law to cities, villages, and counties.

(f) "Shorelands" means the lands specified under par. (e) and s. 59.692 (1) (b).

(g) "Water resources," where the term is used in reference to studies, plans, collection of publications on water and inquiries about water, means all water whether in the air, on the earth's surface or under the earth's surface. "Water resources" as used in connection with the regulatory functions under this section means navigable waters.

(2m) Notwithstanding any other provision of law or administrative rule, a shoreland zoning ordinance required under s. 59.692, a construction site erosion control and storm water management zoning ordinance authorized under s. 59.693, 60.627, 61.354, or 62.234, or a wetland zoning ordinance required under s. 61.351 or 62.231 does not apply to any of the following:

(a) Lands adjacent to farm drainage ditches if all of the following apply:

1. The lands are not adjacent to a natural navigable stream or river.

2. Those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching.

(bg) Lands adjacent to artificially constructed drainage ditches, ponds, or storm water retention basins that are not hydrologically connected to a natural navigable water body.

(c) Lands adjacent to an impoundment described under s. 30.10 (2) (b) that does not discharge directly into a natural navigable waterway.

(3) (a) The department shall coordinate the activities of the several state agencies in managing and regulating water resources.

(b) The department shall make studies, establish policies and make plans for the efficient use, conservation, development and protection of the state's water resources and:

1. On the basis of these studies and plans make recommendations to existing state agencies relative to their water resource activities.

2. Locate and maintain information relating to the state's water resources. The department shall collect pertinent data available from state, regional and federal agencies, the University of Wisconsin, local units of government and other sources.

3. Serve as a clearinghouse for information relating to water resources including referring citizens and local units of government to the appropriate sources for advice and assistance in connection with particular water use problems.

(5) (a) The department shall prepare a comprehensive plan as a guide for the application of municipal ordinances regulating navigable waters and their shorelands as defined in this section for the preventive control of pollution. The plan shall be based on a use classification of navigable waters and their shorelands throughout the state or within counties and shall be governed by the following general standards:

1. Domestic uses shall be generally preferred.

2. Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source.

3. Areas in which the existing or potential economic value of public, recreational or similar uses exceeds the existing or potential economic value of any other use shall be classified primarily on the basis of the higher economic use value.

4. Use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility.

5. Use dispersions within an area shall be preferred over concentrations of uses or their undue proximity to each other.

(b) The department shall apply to the plan the standards and criteria set forth in sub. (6).

(6) Within the purposes of sub. (1) the department shall prepare and provide to municipalities general recommended standards and criteria for navigable water protection studies and planning and for navigable water protection regulations and their administration. Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations.

(7) The department, the municipalities and all state agencies shall mutually cooperate to accomplish the objective of this section. To that end, the department shall consult with the governing bodies of municipalities to secure voluntary uniformity of regulations, so far as practicable, and shall extend all possible assistance therefor.

(8) This section and ss. 59.692, 61.351, 61.353, 62.231, and 62.233 shall be construed together to accomplish the purposes and objective of this section.

(9) Sections 30.50 to 30.80 are not affected or superseded by this section.

(10) A person aggrieved by an order or decision of the department under this section may cause its review under ch. 227.

History: 1975 c. 232; 1977 c. 29; 1981 c. 330, 339; 1983 a. 189, 416; 1993 a. 246; 1995 a. 201; 1995 a. 227 s. 432; Stats. 1995 s. 281.31; 2013 a. 80; 2013 a. 151 s. 28; 2015 a. 55; 2017 a. 164.

Cross–reference: See also chs. NR 115 and 117, Wis. adm. code.

A prohibition against filling in wetlands pursuant to an ordinance adopted under ss. 59.971 and 144.26 [now this section and s. 59.692] does not amount to an unconstitutional taking of property. Police powers and eminent domain are discussed. Just v. Marinette County, 56 Wis. 2d 7, 201 N.W.2d 761 (1972).

The concept that an owner of real property can, in all cases, do as he or she pleases with his or her property is no longer in harmony with the realities of society. The "reasonable use" rule codified in the second Restatement of the Law of Torts is adopted. State v. Deetz, 66 Wis. 2d 1, 224 N.W.2d 407 (1974).

By enactment of this section and s. 59.692, the legislature intended that towns would not have authority to regulate shorelands except where such regulation fell within the language of s. 59.692 (2) (b) [now s. 59.692 (2) (b), (bg), and (bm)]. That statutory scheme does not distinguish between towns with village powers and those without. Hegwood v. Town of Eagle Zoning Board of Appeals, 2013 WI App 118, 351 Wis. 2d 196, 839 N.W.2d 111, 12–2058.

Ch. 236 provides separate and independent enabling legislation as compared to zoning legislation for local governments to enact subdivision control regulations. In this case, s. 236.45 gave the town authority to enact its minimum shoreland frontage requirement even though the legislature removed shoreland zoning authority for towns through the enactment of this section and s. 59.692. State ex rel. Anderson v. Town of Newbold, 2019 WI App 59, 389 Wis. 2d 309, 935 N.W.2d 856, 18–0547.

A drainage board is subject to shoreland zoning ordinances, as is any other person. Navigable drainage ditches are within the jurisdiction of the Department of Natural Resources under s. 144.26 (2) (d) [now sub. (2) (d)]. 63 Atty. Gen. 355.

The necessity of zoning variance or amendments notice to the Wisconsin department of natural resources under the shoreland zoning and navigable waters protection acts. Whipple. 57 MLR 25.

The public trust doctrine. 59 MLR 787.

Water quality protection for inland lakes in Wisconsin; a comprehensive approach to water pollution. Kusler. 1970 WLR 35.

Land as property; changing concepts. Large. 1973 WLR 1039.

Wisconsin's Shoreland Management Program: An Assessment With Implications for Effective Natural Resources Management and Protection. Kuczenski. 1999 WLR 273.

281.33 Construction site erosion control and storm water management. (1) OBJECTIVES. To aid in the fulfillment of the state's role as trustee of its navigable waters, to promote public health, safety and general welfare and to protect natural resources, it is declared to be in the public interest to make studies, establish policies, make plans, authorize municipal construction site erosion control and storm water management zoning ordinances for the efficient use, conservation, development and protection of this state's groundwater, surface water, soil and related resources and establish a state storm water management plan for the efficient use, conservation, development and protection of this state's groundwater, surface water, soil and related resources while at the same time encouraging sound economic growth in this state. The purposes of the municipal ordinances and state plan shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; prevent and control the adverse effects of storm water; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.

(2) STATE STORM WATER MANAGEMENT PLAN. The department, in consultation with the department of safety and professional services, shall promulgate by rule a state storm water management plan. This state plan is applicable to activities contracted for or conducted by any agency, as defined under s. 227.01 (1) but also including the office of district attorney, unless that agency enters into a memorandum of understanding with the department of natural resources in which that agency agrees to regulate activities related to storm water management. The department shall coordinate the activities of agencies, as defined under s. 227.01 (1), in storm water management and make recommendations to these agencies concerning activities related to storm water management.

(3) STANDARDS RELATED TO STORM WATER AND CERTAIN CONSTRUCTION ACTIVITIES. (a) 1. Except as restricted under subd. 2., the department shall establish by rule uniform statewide standards for all of the following:

a. Activities related to construction site erosion control at sites that have a land disturbance that is one acre or more in area.

b. Activities related to construction site erosion control at sites that have a land disturbance that is less than one acre and to which ss. 101.1206 and 101.653 do not apply.

c. Storm water management.

2. The department, in cooperation with the department of transportation, shall establish by rule uniform statewide standards for activities related to construction site erosion control and storm water management if those activities concern street, highway, road or bridge construction, enlargement, relocation or reconstruction.

3. Uniform statewide standards for storm water management established under this paragraph are applicable to the state plan under sub. (2). The department shall require a city, village, town, or county to comply with uniform statewide standards established under this paragraph for any construction site erosion control and storm water management zoning ordinance enacted under s. 59.693, 60.627, 61.354 or 62.234.

4. The department shall identify low–cost practices which would enable a person to comply with these uniform statewide standards.

(b) The uniform statewide standards for construction site erosion control at sites described in par. (a) 1. a. and b. shall provide for the regulation of any construction activity, at such a site, that:

1. Involves the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity which affects an area of 4,000 square feet or more.

2. Involves the excavation or filling or a combination of excavation and filling which affects 400 cubic yards or more of dirt, sand or other excavation or fill material.

3. Involves street, highway, road or bridge construction, enlargement, relocation or reconstruction.

4. Involves the laying, repairing, replacing or enlarging of an underground pipe or facility for a distance of 300 feet or more.

5. Requires a subdivision plat approval or a certified survey.

(c) The uniform statewide standards for storm water management shall provide for the regulation of any construction activity which:

1. Is a residential development with a gross aggregate area of 5 acres or more.

2. Is a residential development with a gross aggregate area of 3 acres or more with at least 1.5 acres of impervious surfaces.

3. Is a development other than a residential development with a gross aggregate area of 3 acres or more.

4. Is likely to result in storm water runoff which exceeds the safe capacity of the existing drainage facilities or receiving body of water, which causes undue channel erosion, which increases water pollution by scouring or the transportation of particulate matter or which endangers downstream property.

(d) If the department determines that rules promulgated under s. 281.16 (2) prescribe performance standards that meet the requirements for establishing uniform statewide standards under this subsection, the department's rules promulgated under s. 281.16 (2) satisfy the rule–making requirements under this subsection and shall apply as if they were promulgated under this subsection.

(3m) REQUIREMENTS FOR ORDINANCES. A city, village, town, or county may enact an ordinance regulating the conduct regulated under this section only if the ordinance strictly conforms with uniform statewide standards established under sub. (3).

(4) MODEL ORDINANCES; STATE PLAN; DISTRIBUTION. The department shall prepare a model zoning ordinance for construction site erosion control at sites described in sub. (3) (a) 1. a. and b. and for storm water management in the form of an administrative rule. The model ordinance is subject to s. 227.19 and other provisions of ch. 227 in the same manner as other administrative rules. Following the promulgation of the model ordinance as a rule, the department shall distribute a copy of the model ordinance to any city, village, town or county that submits a request. The department shall distribute a copy of the state plan to any agency which submits a request.

(5) COOPERATION. The department, the municipalities, and all state agencies shall cooperate to accomplish the objective of this section. To that end, the department shall consult with the governing bodies of municipalities to secure uniformity of regulations, shall prepare model ordinances under sub. (4), shall extend assistance to municipalities under this section, shall prepare the plan under sub. (2), shall obtain uniformity through the implementation of this plan and the utilization of memoranda of understanding which are substantially similar to the plan, and shall extend assistance to agencies under this section.

(6) EXCEPTIONS. (a) Notwithstanding subs. (3) and (3m), a city, village, town, or county may enact and enforce provisions of an ordinance that are stricter than the uniform standards for storm water management established by the department under this section if the stricter provisions are necessary to do any of the following:

1. Control storm water quantity or peak flow to address existing flooding problems or prevent future flooding problems, except that an ordinance under this subdivision may not require more than 90 percent of the difference between the pre–development annual runoff volume at a site and the post–development annual runoff volume at that site to be retained on site.

2. Comply with federally approved total maximum daily load requirements.

(b) Subsection (3m) does not apply to provisions of an ordinance enacted by a city, village, town, or county if the provisions of the ordinance regulate storm water management relating to existing development or redevelopment, as defined in NR 151.002, Wis. Adm. Code.

History: 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 9116 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33; 2009 a. 28 ss. 2075d to 2075j, 2576n, 2576p; 2011 a. 32; 2013 a. 20; 2017 a. 243.

Cross–reference: See also chs. NR 152 and 216, Wis. adm. code.

281.34 Groundwater withdrawals. (1) DEFINITIONS. In this section:

(ae) "Fire protection well" means a well used primarily for fire protection purposes.

(am) "Groundwater protection area" means an area within 1,200 feet of any of the following:

1. An outstanding resource water identified under s. 281.15 that is not a trout stream.

2. An exceptional resource water identified under s. 281.15 that is not a trout stream.

3. A class I, class II, or class III trout stream, other than a class I, class II, or class III trout stream that is a farm drainage ditch with no prior stream history, as identified under sub. (8) (a).

(b) "High capacity well" means a well, except for a residential well or fire protection well, that, together with all other wells on the same property, except for residential wells and fire protection wells, has a capacity of more than 100,000 gallons per day.

(c) "Local governmental unit" means a city, village, town, county, town sanitary district, utility district under s. 66.0827 that provides water, public inland lake protection and rehabilitation district that has town sanitary district powers under s. 33.22 (3), joint local water authority created under s. 66.0823, or municipal water district under s. 198.22.

(d) "Owner" means a person who owns property on which a well is located or proposed to be located or the designated representative of such a person.

(e) "Potentiometric surface" means a measure of pressure of groundwater in an aquifer based on the level to which groundwater will rise in a well placed in the aquifer.

(ek) "Reconstruct" means to modify original construction including deepening, lining, installing or replacing a screen, and underreaming.

(em) "Residential well" means a well that has a capacity of 100,000 gallons per day or less and that is used primarily to provide water to a single–family or multifamily residence.

(f) "Spring" means an area of concentrated groundwater discharge occurring at the surface of the land that results in a flow of at least one cubic foot per second at least 80 percent of the time.

(g) "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.

(h) "Well" means any drillhole or other excavation or opening deeper than it is wide that extends more than 10 feet below the ground surface and is constructed for the purpose of obtaining groundwater.

(2) APPROVAL REQUIRED FOR HIGH CAPACITY WELLS. Except as provided under sub. (2g), an owner shall apply to the department for approval before construction of a high capacity well begins. Except as provided under sub. (2g), no person may construct or withdraw water from a high capacity well without the approval of the department under this section or under s. 281.17 (1), 2001 stats. An owner applying for approval under this subsection shall pay a fee of $500.

(2g) REPAIR, REPLACEMENT, RECONSTRUCTION, AND TRANSFER OF OWNERSHIP OF AN APPROVED HIGH CAPACITY WELL. (a) Except as provided in par. (e), if a high capacity well has been approved under this section or under s. 281.17 (1), 2001 stats., the owner of that well may take any of the following actions without obtaining an additional approval under this section:

1. Repair and maintain the high capacity well.

2. Construct a new high capacity well to replace the existing high capacity well if the new high capacity well will be constructed in accordance with department standards that apply to the construction of new high capacity wells on the date that construction of the replacement high capacity well begins, if the existing high capacity well is filled and sealed as provided in rules promulgated by the department, and if any of the following applies:

a. The purpose of replacement is to remedy or prevent contamination. The owner of the well shall submit documentation of the contamination to the department in the manner and form required by the department.

b. The replacement high capacity well will be drilled to substantially the same depth as the existing high capacity well and either will be located within a 75–foot radius of the existing high capacity well or will be located farther from the nearest groundwater protection area than the existing high capacity well and not be located within any other groundwater protection area.

3. Reconstruct the high capacity well, if the reconstructed high capacity well is constructed to substantially the same depth and specifications as the existing high capacity well.

4. Transfer the approval, concurrent with transferring the land on which the high capacity well is located, to the person to whom the land is transferred.

(b) The department may not impose a fee for any action taken under this subsection.

(c) No later than 90 days after taking any action under par. (a) 2., 3., or 4., the owner of the high capacity well shall notify the department of the action taken on a form prescribed by the department. For any action taken under par. (a) 2., the owner shall, on the same form, notify the department of the location of the replacement high capacity well and the method by which the existing well was filled and sealed.

(d) Except as provided in sub. (7), the conditions included in the approval for the high capacity well continue to apply after an owner takes any of the actions under par. (a).

(e) An owner of a well may not take an action under par. (a) if the action would be inconsistent with the conditions included in the approval for the high capacity well.

(2m) TEMPORARY DEWATERING WELLS. The department shall issue a single approval under sub. (2) for all high capacity wells constructed for one project, as determined by the department, for temporary dewatering of a construction site, including a construction site for a building, road, or utility. The department shall provide for amendments to a project under this subsection. A person applying for approval of high capacity wells for a project under this subsection is only required to pay one $500 fee.

(3) NOTIFICATION REQUIRED FOR OTHER WELLS. (a) An owner shall notify the department of the location of a well that is not a high capacity well before construction of the well begins. An owner notifying the department under this subsection shall pay a fee of $50.

(b) The department may appoint any person who is not an employee of the department as the department's agent to accept and process notifications and collect the fees under par. (a).

(c) Any person, including the department, who accepts and processes a well notification under par. (a) shall collect in addition to the fee under par. (a) a processing fee of 50 cents. An agent appointed under par. (b) may retain the processing fee to compen-

sate the agent for the agent's services in accepting and processing the notification.

(4) ENVIRONMENTAL REVIEW. (a) The department shall review an application for approval of any of the following using the environmental review process in its rules promulgated under s. 1.11:

1. A high capacity well that is located in a groundwater protection area.

2. A high capacity well with a water loss of more than 95 percent of the amount of water withdrawn.

3. A high capacity well that may have a significant environmental impact on a spring.

(b) If, under sub. (5) (b), (c), or (d), the department requests an environmental impact report under s. 23.11 (5) for a proposed high capacity well, the department may only request information in that report that relates to the decisions that the department makes under this section related to the proposed high capacity well.

(5) STANDARDS AND CONDITIONS FOR APPROVAL. (a) *Public water supply.* If the department determines that a proposed high capacity well may impair the water supply of a public utility engaged in furnishing water to or for the public, the department may not approve the high capacity well unless it is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that will ensure that the water supply of the public utility will not be impaired.

(b) *Groundwater protection area.* 1. Except as provided in subd. 2., if the department determines, under the environmental review process in sub. (4), that an environmental impact report under s. 23.11 (5) must be prepared for a proposed high capacity well located in a groundwater protection area, the department may not approve the high capacity well unless it is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that ensure that the high capacity well does not cause significant environmental impact.

2. Subdivision 1. does not apply to a proposed high capacity well that is located in a groundwater protection area and that is a water supply for a public utility engaged in supplying water to or for the public, if the department determines that there is no other reasonable alternative location for a well and is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that ensure that the environmental impact of the well is balanced by the public benefit of the well related to public health and safety.

(c) *High water loss.* If the department determines, under the environmental review process in sub. (4), that an environmental impact report under s. 23.11 (5) must be prepared for a proposed high capacity well with a water loss of more than 95 percent of the amount of water withdrawn, the department may not approve the high capacity well unless it is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that ensure that the high capacity well does not cause significant environmental impact.

(d) *Impact on a spring.* 1. Except as provided in subd. 2., if the department determines, under the environmental review process in sub. (4), that an environmental impact report under s. 23.11 (5) must be prepared for a proposed high capacity well that may have a significant environmental impact on a spring, the department may not approve the high capacity well unless it is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that ensure that the high capacity well does not cause significant environmental impact.

2. Subdivision 1. does not apply to a proposed high capacity well that may have a significant environmental impact on a spring and that is a water supply for a public utility engaged in supplying water to or for the public, if the department determines that there is no other reasonable alternative location for a well and is able to include and includes in the approval conditions, which may include conditions as to location, depth, pumping capacity, rate of flow, and ultimate use, that ensure that the environmental impact of the well is balanced by the public benefit of the well related to public health and safety.

(dm) *Water supply service area plan.* If a proposed high capacity well is covered by an approved water supply service area plan under s. 281.348, the department may not approve the high capacity well unless it is consistent with that plan.

(e) *All high capacity wells.* 1. If s. 281.35 (4) 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 (4) to (6).

2. The department shall include in the approval for each high capacity well requirements that the owner identify the location of the high capacity well and submit an annual pumping report.

(5m) CONSIDERATION OF CUMULATIVE IMPACTS. No person may challenge an approval, or an application for approval, of a high capacity well based on the lack of consideration of the cumulative environmental impacts of that high capacity well together with existing wells.

(6) PREEXISTING HIGH CAPACITY WELLS. (a) The owner of a high capacity well for which the department issued an approval under s. 281.17 (1), 2001 stats., shall provide to the department information concerning the location of the well and an annual pumping report.

(b) The department shall promulgate rules specifying the date and method by which owners of high capacity wells shall comply with par. (a).

(7) MODIFYING AND RESCINDING APPROVALS FOR HIGH CAPACITY WELLS. The approval of a high capacity well issued under this section or under s. 281.17 (1), 2001 stats., remains in effect unless the department modifies or rescinds the approval because the high capacity well or the use of the high capacity well is not in conformance with standards or conditions applicable to the approval of the high capacity well.

(7m) DESIGNATED STUDY AREA. (a) In this subsection:

1. "Designated study area" means the area made up of the Fourteenmile Creek Watershed, the Ten Mile Creek Watershed, and the Lone Rock–Fourteenmile Creek Watershed, located in Adams, Portage, Waushara, and Wood counties, as designated by the U.S. Geological Survey.

2. "Qualified lake association" means an association that meets the qualifications under s. 281.68 (3m) (a).

(b) The department shall evaluate and model the hydrology of Pleasant Lake in Waushara County, Plainfield Lake and Long Lake in the designated study area, and any other navigable stream or navigable lake located in the designated study area for which the department seeks to determine whether existing and potential groundwater withdrawals are causing or are likely to cause a significant reduction of the navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels. The department may request, under s. 13.10, the joint committee on finance to provide funding and positions for the evaluation and modeling under this paragraph. The evaluation under this paragraph shall include all relevant factors that may affect groundwater and water levels and rates of flow of navigable waters, including topography, ground cover, annual and seasonal variations in precipitation, and plant life. The department shall begin the evaluation and modeling under this paragraph no later than June 3, 2018.

(c) If upon conclusion of the evaluation and modeling of the area under par. (b) the department determines that special measures relating to existing and potential groundwater withdrawal are necessary in all or part of that area to prevent or remedy a significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels, the department shall issue a decision on whether it recommends that

the legislature adopt, by statute, special measures relating to groundwater withdrawal in all or part of that area. If the department issues a decision recommending that the legislature adopt, by statute, special measures relating to groundwater withdrawal in all or part of that area, the decision shall contain all of the following information:

1. A description of the extent to which the department has determined that cumulative groundwater withdrawals in all or part of the area cause, or are expected to cause, a significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels.

2. A description of the concrete scientific information that the department used to establish that there is a hydrologic connection between the groundwater in all or part of the area and the navigable waters in all or part of the area and a causal relationship between groundwater withdrawal in all or part of the area and an existing or potential significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels, and the degree to which the department verified the connection and causal relationship by the use of field work or field study.

3. A description of the geographical boundaries of the area to which the department recommends special measures relating to groundwater withdrawal should apply. The department shall identify in the description the specific navigable water or part of the navigable water that is or may be affected by cumulative groundwater withdrawals and shall identify the location of the groundwater withdrawals that the department has determined are causing or may cause a significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels.

4. Any proposed special measures in the area described under subd. 3. that the department recommends that the legislature adopt, by statute, to prevent or remedy a significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels.

5. An economic impact analysis of the economic effect of the special measures recommended under subd. 4. on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole.

(d) The department shall hold a public informational hearing to solicit comments on the department's decision under par. (c). The department shall give notice of the hearing to each person who owns land in the area that would be affected by the proposed special measures under par. (c) 4. and to each owner of a well in that area if the well owner has notified the department of the location of that well.

(e) After holding the public hearing under par. (d), the department shall prepare a report on whether it recommends that the legislature adopt, by statute, special measures relating to groundwater withdrawal in the area described in its decision under par. (c) 3. No later than 3 years after beginning the evaluation and modeling under par. (b), the department shall submit the report to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution under s. 13.172 (3) to the appropriate legislative standing committees generally responsible for legislation related to environmental issues.

(f) If the department recommends in its report submitted under par. (e) that the legislature adopt, by statute, special measures relating to groundwater withdrawal in the area described in its decision under par. (c) 3., the department shall prepare an additional report specifying the special measures relating to groundwater withdrawal in that area that the department recommends that the legislature adopt, by statute, to prevent or remedy a significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels. No later than 3 years after beginning the evaluation and modeling under par. (b), the department shall submit the report to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution under s. 13.172 (3) to the appropriate legislative standing committees generally responsible for legislation related to environmental issues.

(g) Neither a decision of the department under par. (c) nor a recommendation of the department under par. (e) are final decisions. Notwithstanding ss. 227.42 (1) and 227.52, no person is entitled to administrative or judicial review of a department decision under par. (c) or a department recommendation under par. (e).

(h) The special measures relating to groundwater withdrawal recommended by the department under par. (c) 4. or (f) shall not be effective unless adopted by the legislature by statute. Notwithstanding par. (j), nothing in this subsection shall affect the department's review of applications and issuance of approvals for high capacity wells located in the area studied under par. (b).

(i) The owner of a high capacity well that is constructed in the area studied under par. (b) after June 3, 2017, or who takes any of the actions described in sub. (2g) (a) 2. to 4. in the area studied under par. (b) after June 3, 2017, shall provide to the department, with the owner's annual pumping report under sub. (5) (e) 2., readings of a water meter showing the volume of water usage of that high capacity well in gallons.

(j) 1. The department may issue an approval under this section to a qualified lake association or lake district to construct and operate a new high capacity well, or to operate an existing approved high capacity well, for the sole purpose of providing water to a lake that is located wholly or partially in the area studied under par. (b) to assist the department in evaluating and modeling the hydrology of that area under par. (b), if the department determines that the lake's water level has been significantly reduced below its average seasonal levels. For any approval application submitted by a qualified lake association or lake district under this paragraph, the department shall waive the application fee under sub. (2), expedite the review and approval process to the greatest extent possible, and include, as a condition of the approval, a limit on the water level of the lake that may be reached as a result of the water provided by the proposed well. The department may not issue an approval to a qualified lake association or lake district under this paragraph if it determines that providing water from the proposed high capacity well to a lake is likely to result in a violation of a water quality standard under s. 281.15 for that lake.

2. The department shall develop and administer a financial assistance program to provide assistance to qualified lake associations and lake districts for all or part of the cost of constructing or operating an approved high capacity well under this paragraph. The financial assistance program shall include provisions relating to cost–sharing from qualified lake associations and lake districts receiving assistance under the program.

3. The department shall consider, in its evaluation and modeling under par. (b), the effects of the groundwater withdrawal and the supply of water to a lake resulting from any high capacity well constructed under this paragraph.

(k) Paragraphs (i) and (j) cease to apply in, and, notwithstanding sub. (7), approvals shall expire that were issued under par. (j) in, any part of the area studied under par. (b) to which any of the following applies:

1. The department submits a report under par. (e) recommending that no special measures relating to groundwater withdrawal in that part of the area be adopted.

2. The department does not submit the report under par. (e) or (f) within 3 years after beginning the evaluation and modeling under par. (b).

3. The legislature does not adopt, by statute, special measures relating to groundwater withdrawal in that part of the area within 12 months after receiving a report from the department under par. (f).

4. The legislature adopts, by statute, special measures relating to groundwater withdrawal in that part of the area.

(8) GROUNDWATER PROTECTION AREAS. (a) The department shall promulgate rules identifying class I, class II, and class III trout streams for the purposes of this section. The department shall identify as a class I trout stream a stream or portion of a stream with a self−sustaining population of trout. The department shall identify as a class II trout stream a stream or portion of a stream that contains a population of trout made up of one or more age groups, above the age one year, in sufficient numbers to indicate substantial survival from one year to the next but in which stocking is necessary to fully utilize the available trout habitat or to sustain the fishery. The department shall identify as a class III trout stream a stream or portion of a stream that has marginal trout habitat with no natural reproduction of trout occurring, requiring annual stocking of trout to provide trout fishing, and generally without carryover of trout from one year to the next. In the rules under this paragraph, the department shall identify any class I, class II, or class III trout stream that is a farm drainage ditch with no prior stream history.

(b) The department shall create accurate images of groundwater protection areas.

(c) A person who proposes to construct a high capacity well may request the department to determine whether the proposed location of the high capacity well is within a groundwater protection area.

(d) The department shall administer a program to mitigate the effects of wells constructed before May 7, 2004, that are located in groundwater protection areas. Mitigation may include abandonment of wells and replacement of wells, if necessary, and management strategies. Under the mitigation program, the department may order the owner of a well constructed before May 7, 2004, that is located in a groundwater protection area to undertake mitigation but only if 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.

(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; 2007 a. 227; 2009 a. 28; 2013 a. 20; 2015 a. 177; 2017 a. 10.

Cross−reference: See also ch. NR 820, Wis. adm. code.

Through ss. 281.11 and 281.12, the legislature has delegated the state's public trust duties to the Department of Natural Resources (DNR) in the context of its regulation of high capacity wells and their potential effect on navigable waters. For all proposed high capacity wells, the legislature has expressly granted DNR the authority and a general duty to review all permit applications and to decide whether to issue the permit, to issue the permit with conditions, or to deny the application, which provides DNR with the discretion to undertake the review it deems necessary for all proposed high capacity wells, including the authority and a general duty to consider the environmental impact of a proposed high capacity well on waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08−3170.

There is nothing in either s. 281.34 or 281.35 that limits the Department of Natural Resources' (DNR) authority to consider the environmental impacts of a proposed high capacity well, nor is there any language in subch. II of this chapter that requires DNR to issue a permit for a well if the statutory requirements are met and no formal review or findings are required. There being no language expressly revoking or limiting DNR's authority and general duty to protect and manage waters of the state, DNR retains such authority and general duty to consider whether a proposed high capacity well may impact waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08−3170.

The Department of Natural Resources (DNR) is required to consider the environmental impact of a proposed high capacity well when presented with sufficient concrete, scientific evidence of potential harm to waters of the state. Upon what evidence, and under what circumstances, that duty is triggered is a highly fact−specific matter that depends upon the information submitted by the well owner in the well permit application and any other information submitted to DNR decision makers. DNR should use both its expertise in water resources management and its discretion to determine whether its duty as trustee of public trust resources is implicated by a proposed high capacity well permit application such that it has an obligation to consider environmental concerns. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08−3170.

Wisconsin's high capacity well regulatory structure set forth in this section, and related sections, does not explicitly require or explicitly permit monitoring wells or cumulative impact analysis as conditions for high capacity well permits. A monitoring well condition on a high capacity well permit is prohibited and unenforceable under s. 227.10 (2m). OAG 1−16.

Groundwater: Diminishing Resource, Increasing Conflict. Westerberg. Wis. Law. July/Aug. 2015.

281.343 Great Lakes — St. Lawrence River Basin Water Resources Compact. (1) LEGISLATIVE DETERMINATION. The legislature determines that it is in the interests of this state to ratify the Great Lakes — St. Lawrence River Basin Water Resources Compact. Nothing in this section may be interpreted to change the application of the public trust doctrine under article IX, section 1, of the Wisconsin Constitution or to create any new public trust rights.

(1b) RATIFICATION. The Great Lakes — St. Lawrence River Basin Water Resources Compact, contained in subs. (1e) to (9), is ratified and approved, as implemented and interpreted in ss. 14.95, 281.346, and 281.348.

(1e) DEFINITIONS. In this section, except as otherwise required by the context:

(a) "Adaptive management" means a water resources management system that provides a systematic process for evaluation, monitoring, and learning from the outcomes of operational programs and adjustment of policies, plans, and programs based on experience and the evolution of scientific knowledge concerning water resources and water dependent natural resources.

(am) "Agreement" means the Great Lakes — St. Lawrence River Basin Sustainable Water Resources Agreement.

(b) "Applicant" means a person who is required to submit a proposal that is subject to management and regulation under this compact. "Application" has a corresponding meaning.

(c) "Basin" or "Great Lakes — St. Lawrence River Basin" means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois−Rivieres, Quebec within the jurisdiction of the parties.

(cm) "Basin ecosystem" or "Great Lakes — St. Lawrence River Basin ecosystem" means the interacting components of air, land, water, and living organisms, including humankind, within the basin.

(d) "Community within a straddling county" means any incorporated city, town, or the equivalent thereof, that is located outside

the basin but wholly within a county that lies partly within the basin and that is not a straddling community.

(dm) "Compact" means this compact.

(e) "Consumptive use" means that portion of the water withdrawn or withheld from the basin that is lost or otherwise not returned to the basin due to evaporation, incorporation into products, or other processes.

(em) "Council" means the Great Lakes — St. Lawrence River Basin Water Resources Council, created by this compact.

(f) "Council review" means the collective review by the council members as described in subs. (4) to (4z).

(fm) "County" means the largest territorial division for local government in a state. The county boundaries shall be defined as those boundaries that exist as of December 13, 2005.

(g) "Cumulative impacts" means the impact on the basin ecosystem that results from incremental effects of all aspects of a withdrawal, diversion, or consumptive use in addition to other past, present, and reasonably foreseeable future withdrawals, diversions, and consumptive uses regardless of who undertakes the other withdrawals, diversions, and consumptive uses. Cumulative impacts can result from individually minor but collectively significant withdrawals, diversions, and consumptive uses taking place over a period of time.

(gm) "Decision−making standard" means the decision−making standard established by sub. (4r) for proposals subject to management and regulation in sub. (4p).

(h) "Diversion" means a transfer of water from the basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including but not limited to a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker ship, tanker truck, or rail tanker but does not apply to water that is used in the basin or a Great Lake watershed to manufacture or produce a product that is then transferred out of the basin or watershed. "Divert" has a corresponding meaning.

(i) "Environmentally sound and economically feasible water conservation measures" mean those measures, methods, technologies, or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use, or diversion that are environmentally sound, reflect best practices applicable to the water use sector, are technically feasible and available, are economically feasible and cost−effective based on an analysis that considers direct and avoided economic and environmental costs, and consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts, and other appropriate factors.

(im) "Exception" means a transfer of water that is excepted under sub. (4n) from the prohibition against diversions in sub. (4m).

(j) "Exception standard" means the standard for exceptions established in sub. (4n) (d).

(jm) "Intrabasin transfer" means the transfer of water from the watershed of one of the Great Lakes into the watershed of another Great Lake.

(k) "Measures" means any legislation, law, regulation, directive, requirement, guideline, program, policy, administrative practice, or other procedure.

(km) "New or increased diversion" means a new diversion, an increase in an existing diversion, or the alteration of an existing withdrawal so that it becomes a diversion.

(L) "New or increased withdrawal or consumptive use" means a new withdrawal or consumptive use or an increase in an existing withdrawal or consumptive use.

(Lm) "Originating party" means the party within whose jurisdiction an application or registration is made or required.

(n) "Party" means a state that is a party to this compact.

(nm) "Person" means a human being or a legal person, including a government or a nongovernmental organization, including any scientific, professional, business, nonprofit, or public interest organization or association that is neither affiliated with, nor under the direction of a government.

(o) 1. "Product" means something produced in the basin by human or mechanical effort or through agricultural processes and used in manufacturing, commercial, or other processes or intended for intermediate or end use consumers.

2. Water used as part of the packaging of a product shall be considered to be part of the product.

3. Other than water used as part of the packaging of a product, water that is used primarily to transport materials in or out of the basin is not a product or part of a product.

4. Except as provided in subd. 2., water that is transferred as part of a public or private supply is not a product or part of a product.

5. Water in its natural state such as in lakes, rivers, reservoirs, aquifers, or water basins is not a product.

(om) "Proposal" means a withdrawal, diversion, or consumptive use of water that is subject to this compact.

(p) "Province" means Ontario or Quebec.

(pm) "Public water supply purposes" means water distributed to the public through a physically connected system of treatment, storage, and distribution facilities serving a group of largely residential customers that may also serve industrial, commercial, and other institutional operators. Water withdrawn directly from the basin and not through such a system shall not be considered to be used for public water supply purposes.

(q) "Regional body" means the members of the council and the premiers of Ontario and Quebec or their designee as established by the agreement.

(qm) "Regional review" means the collective review by the regional body as described in sub. (4h).

(r) "Source watershed" means the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake or from the St. Lawrence River, then the source watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If water is withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the source watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was withdrawn.

(rm) "Standard of review and decision" means the exception standard, decision−making standard, and reviews as outlined in subs. (4) to (4z).

(s) "State" means one of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, or Wisconsin or the Commonwealth of Pennsylvania.

(t) "Straddling community" means any incorporated city, town, or the equivalent thereof, wholly within any county that lies partly or completely within the basin, whose corporate boundary existing as of the effective date of this compact is partly within the basin or partly within 2 Great Lakes watersheds.

(u) "Technical review" means a detailed review conducted to determine whether or not a proposal that requires regional review under this compact meets the standard of review and decision following procedures and guidelines as set out in this compact.

(v) "Water" means groundwater or surface water contained within the basin.

(w) "Water dependent natural resources" means the interacting components of land, water, and living organisms affected by the waters of the basin.

(x) "Waters of the basin" or "basin water" means the Great Lakes and all streams, rivers, lakes, connecting channels, and

other bodies of water, including tributary groundwater, within the basin.

(y) "Withdrawal" means the taking of water from surface water or groundwater. "Withdraw" has a corresponding meaning.

(1m) FINDINGS AND PURPOSES. The legislative bodies of the respective parties hereby find and declare:

(a) Findings:

1. The waters of the basin are precious public natural resources shared and held in trust by the states;

2. The waters of the basin are interconnected and part of a single hydrologic system;

3. The waters of the basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic, and cultural activities of native peoples, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem. And, other purposes are encouraged, recognizing that such uses are interdependent and must be balanced;

4. Future diversions and consumptive uses of basin water resources have the potential to significantly impact the environment, economy, and welfare of the Great Lakes — St. Lawrence River region;

5. Continued sustainable, accessible, and adequate water supplies for the people and economy of the basin are of vital importance; and

6. The parties have a shared duty to protect, conserve, restore, improve, and manage the renewable but finite waters of the basin for the use, benefit, and enjoyment of all their citizens, including generations yet to come. The most effective means of protecting, conserving, restoring, improving, and managing the basin waters is through the joint pursuit of unified and cooperative principles, policies, and programs mutually agreed upon, enacted, and adhered to by all parties.

(b) Purposes:

1. To act together to protect, conserve, restore, improve, and effectively manage the waters and water dependent natural resources of the basin under appropriate arrangements for intergovernmental cooperation and consultation because current lack of full scientific certainty should not be used as a reason for postponing measures to protect the basin ecosystem;

2. To remove causes of present and future controversies;

3. To provide for cooperative planning and action by the parties with respect to such water resources;

4. To facilitate consistent approaches to water management across the basin while retaining state management authority over water management decisions within the basin;

5. To facilitate the exchange of data, strengthen the scientific information base upon which decisions are made, and engage in consultation on the potential effects of proposed withdrawals and losses on the waters and water dependent natural resources of the basin;

6. To prevent significant adverse impacts of withdrawals and losses on the basin's ecosystems and watersheds;

7. To promote interstate and state–provincial comity; and

8. To promote an adaptive management approach to the conservation and management of basin water resources that recognizes, considers, and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the basin's waters and water dependent natural resources.

(1s) SCIENCE. (a) The parties commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound water management decision making under this compact.

(b) The strategy shall guide the collection and application of scientific information to support:

1. An improved understanding of the individual and cumulative impacts of withdrawals from various locations and water sources on the basin ecosystem and to develop a mechanism by which impacts of withdrawals may be assessed;

2. The periodic assessment of cumulative impacts of withdrawals, diversions, and consumptive uses on a Great Lake and St. Lawrence River watershed basis;

3. Improved scientific understanding of the waters of the basin;

4. Improved understanding of the role of groundwater in basin water resources management; and

5. The development, transfer, and application of science and research related to water conservation and water use efficiency.

(2) ORGANIZATION. (a) *Council created.* The Great Lakes — St. Lawrence River Basin Water Resources Council is hereby created as a body politic and corporate, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective parties.

(b) *Council membership.* The council shall consist of the governors of the parties, ex officio.

(c) *Alternates.* Each member of the council shall appoint at least one alternate who may act in his or her place and stead, with authority to attend all meetings of the council and with power to vote in the absence of the member. Unless otherwise provided by law of the party for which he or she is appointed, each alternate shall serve during the term of the member appointing him or her, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as an original appointment for the unexpired term only.

(d) *Voting.* 1. Each member is entitled to one vote on all matters that may come before the council.

2. Unless otherwise stated, the rule of decision shall be by a simple majority.

3. The council shall annually adopt a budget for each fiscal year and the amount required to balance the budget shall be apportioned equitably among the parties by unanimous vote of the council. The appropriation of such amounts shall be subject to such review and approval as may be required by the budgetary processes of the respective parties.

4. The participation of council members from a majority of the parties shall constitute a quorum for the transaction of business at any meeting of the council.

(e) *Organization and procedure.* The council shall provide for its own organization and procedure, and may adopt rules and regulations governing its meetings and transactions, as well as the procedures and timeline for submission, review, and consideration of proposals that come before the council for its review and action. The council shall organize, annually, by the election of a chairperson and vice chairperson from among its members. Each member may appoint an advisor, who may attend all meetings of the council and its committees, but shall not have voting power. The council may employ or appoint professional and administrative personnel, including an executive director, as it may deem advisable, to carry out the purposes of this compact.

(f) *Use of existing offices and agencies.* It is the policy of the parties to preserve and utilize the functions, powers, and duties of existing offices and agencies of government to the extent consistent with this compact. Further, the council shall promote and aid the coordination of the activities and programs of the parties concerned with water resources management in the basin. To this end, but without limitation, the council may:

1. Advise, consult, contract, assist, or otherwise cooperate with any and all such agencies;

2. Employ any other agency or instrumentality of any of the parties for any purpose; and

3. Develop and adopt plans consistent with the water resources plans of the parties.

(g) *Jurisdiction.* The council shall have, exercise, and discharge its functions, powers, and duties within the limits of the basin. Outside the basin, it may act in its discretion, but only to the extent such action may be necessary or convenient to effectuate or implement its powers or responsibilities within the basin and subject to the consent of the jurisdiction wherein it proposes to act.

(h) *Status, immunities, and privileges.* 1. The council, its members and personnel in their official capacity and when engaged directly in the affairs of the council, its property, and its assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by the parties, except to the extent that the council may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract.

2. The property and assets of the council, wherever located and by whomsoever held, shall be considered public property and shall be immune from search, requisition, confiscation, expropriation, or any other form of taking or foreclosure by executive or legislative action.

3. The council, its property and its assets, income, and the operations it carries out pursuant to this compact shall be immune from all taxation by or under the authority of any of the parties or any political subdivision thereof; provided, however, that in lieu of property taxes the council may make reasonable payments to local taxing districts in annual amounts that shall approximate the taxes lawfully assessed upon similar property.

(i) *Advisory committees.* The council may constitute and empower advisory committees, which may be comprised of representatives of the public and of federal, state, tribal, county, and local governments, water resources agencies, water−using industries and sectors, water−interest groups, and academic experts in related fields.

(3) GENERAL POWERS AND DUTIES. (a) *General.* 1. The waters and water dependent natural resources of the basin are subject to the sovereign right and responsibilities of the parties, and it is the purpose of this compact to provide for joint exercise of such powers of sovereignty by the council in the common interests of the people of the region, in the manner and to the extent provided in this compact. The council and the parties shall use the standard of review and decision and procedures contained in or adopted pursuant to this compact as the means to exercise their authority under this compact.

2. The council may revise the standard of review and decision, after consultation with the provinces and upon unanimous vote of all council members, by regulation duly adopted in accordance with par. (c) and in accordance with each party's respective statutory authorities and applicable procedures.

3. The council shall identify priorities and develop plans and policies relating to basin water resources. It shall adopt and promote uniform and coordinated policies for water resources conservation and management in the basin.

(b) *Council powers.* The council may plan; conduct research and collect, compile, analyze, interpret, report, and disseminate data on water resources and uses; forecast water levels; conduct investigations; institute court actions; design, acquire, construct, reconstruct, own, operate, maintain, control, sell, and convey real and personal property and any interest therein as it may deem necessary, useful, or convenient to carry out the purposes of this compact; make contracts; receive and accept such payments, appropriations, grants, gifts, loans, advances, and other funds, properties, and services as may be transferred or made available to it by any party or by any other public or private agency, corporation, or individual; and exercise such other and different powers as may be delegated to it by this compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers or that may be reasonably implied therefrom.

(c) *Rules and regulations.* 1. The council may promulgate and enforce such rules and regulations as may be necessary for the implementation and enforcement of this compact. The council may adopt by regulation, after public notice and public hearing, reasonable application fees with respect to those proposals for exceptions that are subject to council review under sub. (4n). Any rule or regulation of the council, other than one that deals solely with the internal management of the council or its property, shall be adopted only after public notice and hearing.

2. Each party, in accordance with its respective statutory authorities and applicable procedures, may adopt and enforce rules and regulations to implement and enforce this compact and the programs adopted by such party to carry out the management programs contemplated by this compact.

(d) *Program review and findings.* 1. Each party shall submit a report to the council and the regional body detailing its water management and conservation and efficiency programs that implement this compact. The report shall set out the manner in which water withdrawals are managed by sector, water source, quantity, or any other means, and how the provisions of the standard of review and decision and conservation and efficiency programs are implemented. The first report shall be provided by each party one year from the effective date of this compact and thereafter every 5 years.

2. The council, in cooperation with the provinces, shall review its water management and conservation and efficiency programs and those of the parties that are established in this compact and make findings on whether the water management program provisions in this compact are being met, and if not, recommend options to assist the parties in meeting the provisions of this compact. Such review shall take place:

a. Thirty days after the first report is submitted by all parties; and

b. Every 5 years after the effective date of this compact; and

c. At any other time at the request of one of the parties.

3. As one of its duties and responsibilities, the council may recommend a range of approaches to the parties with respect to the development, enhancement, and application of water management and conservation and efficiency programs to implement the standard of review and decision reflecting improved scientific understanding of the waters of the basin, including groundwater, and the impacts of withdrawals on the basin ecosystem.

(4) WATER MANAGEMENT AND REGULATION; WATER RESOURCES INVENTORY, REGISTRATION, AND REPORTING. (a) Within 5 years of the effective date of this compact, each party shall develop and maintain a water resources inventory for the collection, interpretation, storage, retrieval, exchange, and dissemination of information concerning the water resources of the party, including but not limited to information on the location, type, quantity, and use of those resources and the location, type, and quantity of withdrawals, diversions, and consumptive uses. To the extent feasible, the water resources inventory shall be developed in cooperation with local, state, federal, tribal, and other private agencies and entities, as well as the council. Each party's agencies shall cooperate with that party in the development and maintenance of the inventory.

(b) The council shall assist each party to develop a common base of data regarding the management of the water resources of the basin and to establish systematic arrangements for the exchange of those data with other states and provinces.

(c) To develop and maintain a compatible base of water use information, within 5 years of the effective date of this compact any person who withdraws water in an amount of 100,000 gallons per day or greater average in any 30−day period, including consumptive uses, from all sources, or diverts water of any amount, shall register the withdrawal or diversion by a date set by the council unless the person has previously registered in accordance with an existing state program. The person shall register the withdrawal or diversion with the originating party using a form prescribed by the originating party that shall include, at a minimum and without limitation: the name and address of the registrant and date of registration; the locations and sources of the withdrawal or

diversion; the capacity of the withdrawal or diversion per day and the amount withdrawn or diverted from each source; the uses made of the water; places of use and places of discharge; and such other information as the originating party may require. All registrations shall include an estimate of the volume of the withdrawal or diversion in terms of gallons per day average in any 30−day period.

(d) All registrants shall annually report the monthly volumes of the withdrawal, consumptive use, and diversion in gallons to the originating party and any other information requested by the originating party.

(e) Each party shall annually report the information gathered pursuant to this subsection to a Great Lakes — St. Lawrence River water use data base repository and aggregated information shall be made publicly available, consistent with the confidentiality requirements in sub. (8) (c).

(f) Information gathered by the parties pursuant to this subsection shall be used to improve the sources and applications of scientific information regarding the waters of the basin and the impacts of the withdrawals and diversions from various locations and water sources on the basin ecosystem and to better understand the role of groundwater in the basin. The council and the parties shall coordinate the collection and application of scientific information to further develop a mechanism by which individual and cumulative impacts of withdrawals, consumptive uses, and diversions shall be assessed.

(4b) WATER MANAGEMENT AND REGULATION; WATER CONSERVATION AND EFFICIENCY PROGRAMS. (a) The council commits to identify, in cooperation with the provinces, basin−wide water conservation and efficiency objectives to assist the parties in developing their water conservation and efficiency programs. These objectives are based on the goals of:

1. Ensuring improvement of the waters and water dependent natural resources;

2. Protecting and restoring the hydrologic and ecosystem integrity of the basin;

3. Retaining the quantity of surface water and groundwater in the basin;

4. Ensuring sustainable use of waters of the basin; and

5. Promoting the efficiency of use and reducing losses and waste of water.

(b) Within 2 years of the effective date of this compact, each party shall develop its own water conservation and efficiency goals and objectives consistent with the basin−wide goals and objectives and shall develop and implement a water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the party's goals and objectives. Each party shall annually assess its programs in meeting the party's goals and objectives, report to the council and the regional body, and make this annual assessment available to the public.

(c) Beginning 5 years after the effective date of this compact, and every 5 years thereafter, the council, in cooperation with the provinces, shall review and modify as appropriate the basin−wide objectives, and the parties shall have regard for any such modifications in implementing their programs. This assessment will be based on examining new technologies, new patterns of water use, new resource demands and threats, and cumulative impact assessment under sub. (4z).

(d) Within 2 years of the effective date of this compact, the parties commit to promote environmentally sound and economically feasible water conservation measures such as:

1. Measures that promote efficient use of water;

2. Identification and sharing of best management practices and state of the art conservation and efficiency technologies;

3. Application of sound planning principles;

4. Demand−side and supply−side measures or incentives; and

5. Development, transfer, and application of science and research.

(e) Each party shall implement in accordance with par. (b) a voluntary or mandatory water conservation program for all, including existing, basin water users. Conservation programs need to adjust to new demands and the potential impacts of cumulative effects and climate.

(4d) WATER MANAGEMENT AND REGULATION; PARTY POWERS AND DUTIES. (a) Each party, within its jurisdiction, shall manage and regulate new or increased withdrawals, consumptive uses, and diversions, including exceptions, in accordance with this compact.

(b) Each party shall require an applicant to submit an application in such manner and with such accompanying information as the party shall prescribe.

(c) No party may approve a proposal if the party determines that the proposal is inconsistent with this compact or the standard of review and decision or any implementing rules or regulations promulgated thereunder. The party may approve, approve with modifications, or disapprove any proposal depending on the proposal's consistency with this compact and the standard of review and decision.

(d) Each party shall monitor the implementation of any approved proposal to ensure consistency with the approval and may take all necessary enforcement actions.

(e) No party shall approve a proposal subject to council or regional review, or both, pursuant to this compact unless it shall have been first submitted to and reviewed by either the council or regional body, or both, and approved by the council, as applicable. Sufficient opportunity shall be provided for comment on the proposal's consistency with this compact and the standard of review and decision. All such comments shall become part of the party's formal record of decision, and the party shall take into consideration any such comments received.

(4f) WATER MANAGEMENT AND REGULATION; REQUIREMENT FOR ORIGINATING PARTY APPROVAL. No proposal subject to management and regulation under this compact shall hereafter be undertaken by any person unless it shall have been approved by the originating party.

(4h) WATER MANAGEMENT AND REGULATION; REGIONAL REVIEW. (a) *General.* 1. It is the intention of the parties to participate in regional review of proposals with the provinces, as described in this compact and the agreement.

2. Unless the applicant or the originating party otherwise requests, it shall be the goal of the regional body to conclude its review no later than 90 days after notice under par. (b) of such proposal is received from the originating party.

3. Proposals for exceptions subject to regional review shall be submitted by the originating party to the regional body for regional review and, where applicable, to the council for concurrent review.

4. The parties agree that the protection of the integrity of the Great Lakes — St. Lawrence River Basin ecosystem shall be the overarching principle for reviewing proposals subject to regional review, recognizing uncertainties with respect to demands that may be placed on basin water, including groundwater, levels and flows of the Great Lakes and the St. Lawrence River, future changes in environmental conditions, the reliability of existing data, and the extent to which diversions may harm the integrity of the basin ecosystem.

5. The originating party shall have lead responsibility for coordinating information for resolution of issues related to evaluation of a proposal and shall consult with the applicant throughout the regional review process.

6. A majority of the members of the regional body may request regional review of a regionally significant or potentially precedent setting proposal. Such regional review must be conducted, to the extent possible, within the time frames set forth in this subsection. Any such regional review shall be undertaken only after consulting the applicant.

(b) *Notice from originating party to the regional body.* 1. The originating party shall determine if a proposal is subject to regional review. If so, the originating party shall provide timely notice to the regional body and the public.

2. Such notice shall not be given unless and until all information, documents, and the originating party's technical review needed to evaluate whether the proposal meets the standard of review and decision have been provided.

3. An originating party may:

a. Provide notice to the regional body of an application, even if notification is not required; or

b. Request regional review of an application, even if regional review is not required. Any such regional review shall be undertaken only after consulting the applicant.

4. An originating party may provide preliminary notice of a potential proposal.

(c) *Public participation.* 1. To ensure adequate public participation, the regional body shall adopt procedures for the review of proposals that are subject to regional review in accordance with subs. (4) to (4z).

2. The regional body shall provide notice to the public of a proposal undergoing regional review. Such notice shall indicate that the public has an opportunity to comment in writing to the regional body on whether the proposal meets the standard of review and decision.

3. The regional body shall hold a public meeting in the state or province of the originating party in order to receive public comment on the issue of whether the proposal under consideration meets the standard of review and decision.

4. The regional body shall consider the comments received before issuing a declaration of finding.

5. The regional body shall forward the comments it receives to the originating party.

(d) *Technical review.* 1. The originating party shall provide the regional body with its technical review of the proposal under consideration.

2. The originating party's technical review shall thoroughly analyze the proposal and provide an evaluation of the proposal sufficient for a determination of whether the proposal meets the standard of review and decision.

3. Any member of the regional body may conduct the member's own technical review of any proposal subject to regional review.

4. At the request of the majority of its members, the regional body shall make such arrangements as it considers appropriate for an independent technical review of a proposal.

5. All parties shall exercise their best efforts to ensure that a technical review undertaken under subd. 3. or 4. does not unnecessarily delay the decision by the originating party on the application. Unless the applicant or the originating party otherwise requests, all technical reviews shall be completed no later than 60 days after the date the notice of the proposal was given to the regional body.

(e) *Declaration of finding.* 1. The regional body shall meet to consider a proposal. The applicant shall be provided with an opportunity to present the proposal to the regional body at such time.

2. The regional body, having considered the notice, the originating party's technical review, any other independent technical review that is made, any comments or objections including the analysis of comments made by the public and first nations and federally recognized tribes, and any other information that is provided under this compact shall issue a declaration of finding that the proposal under consideration:

a. Meets the standard of review and decision;

b. Does not meet the standard of review and decision; or

c. Would meet the standard of review and decision if certain conditions were met.

3. An originating party may decline to participate in a declaration of finding made by the regional body.

4. The parties recognize and affirm that it is preferable for all members of the regional body to agree whether the proposal meets the standard of review and decision.

5. If the members of the regional body who participate in the declaration of finding all agree, they shall issue a written declaration of finding with consensus.

6. In the event that the members cannot agree, the regional body shall make every reasonable effort to achieve consensus within 25 days.

7. Should consensus not be achieved, the regional body may issue a declaration of finding that presents different points of view and indicates each party's conclusions.

8. The regional body shall release the declarations of finding to the public.

9. The originating party and the council shall consider the declaration of finding before making a decision on the proposal.

(4j) WATER MANAGEMENT AND REGULATION; PROPOSALS SUBJECT TO PRIOR NOTICE. (a) Beginning no later than 5 years after the effective date of this compact, the originating party shall provide all parties and the provinces with detailed and timely notice and an opportunity to comment within 90 days on any proposal for a new or increased consumptive use of 5,000,000 gallons per day or greater average in any 90–day period. Comments shall address whether or not the proposal is consistent with the standard of review and decision. The originating party shall provide a response to any such comment received from another party.

(b) A party may provide notice, an opportunity to comment, and a response to comments even if this is not required under par. (a). Any provision of such notice and opportunity to comment shall be undertaken only after consulting the applicant.

(4L) WATER MANAGEMENT AND REGULATION; COUNCIL ACTIONS. (a) Proposals for exceptions subject to council review shall be submitted by the originating party to the council for council review, and where applicable, to the regional body for concurrent review.

(b) The council shall review and take action on proposals in accordance with this compact and the standard of review and decision. The council shall not take action on a proposal subject to regional review pursuant to this compact unless the proposal shall have been first submitted to and reviewed by the regional body. The council shall consider any findings resulting from such review.

(4m) WATER MANAGEMENT AND REGULATION; PROHIBITION OF NEW OR INCREASED DIVERSIONS. All new or increased diversions are prohibited, except as provided for in sub. (4n).

(4n) WATER MANAGEMENT AND REGULATION; EXCEPTIONS TO THE PROHIBITION OF DIVERSIONS. (a) *Straddling communities.* A proposal to transfer water to an area within a straddling community but outside the basin or outside the source Great Lake watershed shall be excepted from the prohibition against diversions and be managed and regulated by the originating party provided that, regardless of the volume of water transferred, all of the water so transferred shall be used solely for public water supply purposes within the straddling community, and:

1. All water withdrawn from the basin shall be returned, either naturally or after use, to the source watershed less an allowance for consumptive use. No surface water or groundwater from outside the basin may be used to satisfy any portion of this criterion except if it:

a. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the basin;

b. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the basin;

c. Maximizes the portion of water returned to the source watershed as basin water and minimizes the surface water or groundwater from outside the basin;

2. If the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90−day period, the proposal shall also meet the exception standard; and

3. If the proposal results in a new or increased consumptive use of 5,000,000 gallons per day or greater average over any 90−day period, the proposal shall also undergo regional review.

(b) *Intrabasin transfer.* A proposal for an intrabasin transfer that would be considered a diversion under this compact, and not already excepted pursuant to par. (a), shall be excepted from the prohibition against diversions, provided that:

1. If the proposal results from a new or increased withdrawal of less than 100,000 gallons per day average over any 90−day period, the proposal shall be subject to management and regulation at the discretion of the originating party.

2. If the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90−day period and if the consumptive use resulting from the withdrawal is less than 5,000,000 gallons per day average over any 90−day period:

a. The proposal shall meet the exception standard and be subject to management and regulation by the originating party, except that the water may be returned to another Great Lake watershed rather than the source watershed;

b. The applicant shall demonstrate that there is no feasible, cost−effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies; and

c. The originating party shall provide notice to the other parties prior to making any decision with respect to the proposal.

3. If the proposal results in a new or increased consumptive use of 5,000,000 gallons per day or greater average over any 90−day period:

a. The proposal shall be subject to management and regulation by the originating party and shall meet the exception standard, ensuring that water withdrawn shall be returned to the source watershed;

b. The applicant shall demonstrate that there is no feasible, cost−effective, and environmentally sound water supply alternative within the Great Lake watershed to which the water will be transferred, including conservation of existing water supplies;

c. The proposal undergoes regional review; and

d. The proposal is approved by the council. Council approval shall be given unless one or more council members vote to disapprove.

(c) *Straddling counties.* 1. A proposal to transfer water to a community within a straddling county that would be considered a diversion under this compact shall be excepted from the prohibition against diversions, provided that it satisfies all of the following conditions:

a. The water shall be used solely for the public water supply purposes of the community within a straddling county that is without adequate supplies of potable water;

b. The proposal meets the exception standard, maximizing the portion of water returned to the source watershed as basin water and minimizing the surface water or groundwater from outside the basin;

c. The proposal shall be subject to management and regulation by the originating party, regardless of its size;

d. There is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies;

e. Caution shall be used in determining whether or not the proposal meets the conditions for this exception. This exception should not be authorized unless it can be shown that it will not endanger the integrity of the basin ecosystem;

f. The proposal undergoes regional review; and

g. The proposal is approved by the council. Council approval shall be given unless one or more council members vote to disapprove.

2. A proposal must satisfy all of the conditions listed above. Further, substantive consideration will also be given to whether or not the proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to waters of the basin.

(d) *Exception standard.* Proposals subject to management and regulation in this subsection shall be declared to meet this exception standard and may be approved as appropriate only when the following criteria are met:

1. The need for all or part of the proposed exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies;

2. The exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed;

3. All water withdrawn shall be returned, either naturally or after use, to the source watershed less an allowance for consumptive use. No surface water or groundwater from outside the basin may be used to satisfy any portion of this criterion except if it:

a. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the basin; and

b. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the basin;

4. The exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources of the basin with consideration given to the potential cumulative impacts of any precedent−setting consequences associated with the proposal;

5. The exception will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures to minimize water withdrawals or consumptive use;

6. The exception will be implemented so as to ensure that it is in compliance with all applicable municipal, state, and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909; and

7. All other applicable criteria in this subsection have also been met.

(4p) WATER MANAGEMENT AND REGULATION; MANAGEMENT AND REGULATION OF NEW OR INCREASED WITHDRAWALS AND CONSUMPTIVE USES. (a) Within 5 years of the effective date of this compact, each party shall create a program for the management and regulation of new or increased withdrawals and consumptive uses by adopting and implementing measures consistent with the decision−making standard. Each party, through a considered process, shall set and may modify threshold levels for the regulation of new or increased withdrawals in order to assure an effective and efficient water management program that will ensure that uses overall are reasonable, that withdrawals overall will not result in significant impacts to the waters and water dependent natural resources of the basin, determined on the basis of significant impacts to the physical, chemical, and biological integrity of source watersheds, and that all other objectives of the compact are achieved. Each party may determine the scope and thresholds of its program, including which new or increased withdrawals and consumptive uses will be subject to the program.

(b) Any party that fails to set threshold levels that comply with par. (a) any time before 10 years after the effective date of this compact shall apply a threshold level for management and regula-

tion of all new or increased withdrawals of 100,000 gallons per day or greater average in any 90–day period.

(c) The parties intend programs for new or increased withdrawals and consumptive uses to evolve as may be necessary to protect basin waters. Pursuant to sub. (3) (d), the council, in cooperation with the provinces, shall periodically assess the water management programs of the parties. Such assessments may produce recommendations for the strengthening of the programs, including, without limitation, establishing lower thresholds for management and regulation in accordance with the decision–making standard.

(4r) WATER MANAGEMENT AND REGULATION; DECISION–MAKING STANDARD. Proposals subject to management and regulation in sub. (4p) shall be declared to meet this decision–making standard and may be approved as appropriate only when the following criteria are met:

(a) All water withdrawn shall be returned, either naturally or after use, to the source watershed less an allowance for consumptive use;

(b) The withdrawal or consumptive use will be implemented so as to ensure that the proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources and the applicable source watershed;

(c) The withdrawal or consumptive use will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures;

(d) The withdrawal or consumptive use will be implemented so as to ensure that it is in compliance with all applicable municipal, state, and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909; and

(e) The proposed use is reasonable, based upon a consideration of the following factors:

1. Whether the proposed withdrawal or consumptive use is planned in a fashion that provides for efficient use of the water and will avoid or minimize the waste of water;

2. If the proposal is for an increased withdrawal or consumptive use, whether efficient use is made of existing water supplies;

3. The balance between economic development, social development, and environmental protection of the proposed withdrawal and use and other existing or planned withdrawals and water uses sharing the water source;

4. The supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources;

5. The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed withdrawal and use, under foreseeable conditions, to other lawful consumptive or nonconsumptive uses of water or to the quantity or quality of the waters and water dependent natural resources of the basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts; and

6. If a proposal includes restoration of hydrologic conditions and functions of the source watershed, the party may consider that.

(4t) WATER MANAGEMENT AND REGULATION; APPLICABILITY. (a) *Minimum standard.* This standard of review and decision shall be used as a minimum standard. Parties may impose a more restrictive decision–making standard for withdrawals under their authority. It is also acknowledged that although a proposal meets the standard of review and decision it may not be approved under the laws of the originating party that has implemented more restrictive measures.

(b) *Baseline.* 1. To establish a baseline for determining a new or increased diversion, consumptive use, or withdrawal, each party shall develop either or both of the following lists for the party's jurisdiction:

a. A list of existing withdrawal approvals as of the effective date of the compact.

b. A list of the capacity of existing systems as of the effective date of this compact. The capacity of the existing systems should be presented in terms of withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factors. The capacity of the existing systems must represent the state of the systems. Existing capacity determinations shall be based upon approval limits or the most restrictive capacity information.

2. For all purposes of this compact, volumes of diversions, consumptive uses, or withdrawals of water set forth in the lists prepared by each party in accordance with this paragraph shall constitute the baseline volume.

3. The lists shall be furnished to the regional body and the council within one year of the effective date of this compact.

(c) *Timing of additional applications.* Applications for new or increased withdrawals, consumptive uses, or exceptions shall be considered cumulatively within 10 years of any application.

(d) *Change of ownership.* Unless a new owner proposes a project that shall result in a proposal for a new or increased diversion or consumptive use subject to regional review or council approval, the change of ownership in and of itself shall not require regional review or council approval.

(e) *Groundwater.* The basin surface water divide shall be used for the purpose of managing and regulating new or increased diversions, consumptive uses, or withdrawals of surface water and groundwater.

(f) *Withdrawal systems.* The total volume of surface water and groundwater resources that supply a common distribution system shall determine the volume of a withdrawal, consumptive use, or diversion.

(g) *Connecting channels.* The watershed of each Great Lake shall include its upstream and downstream connecting channels.

(h) *Transmission in water lines.* Transmission of water within a line that extends outside the basin as it conveys water from one point to another within the basin shall not be considered a diversion if none of the water is used outside the basin.

(i) *Hydrologic units.* The Lake Michigan and Lake Huron watersheds shall be considered to be a single hydrologic unit and watershed.

(j) *Bulk water transfer.* A proposal to withdraw water and to remove it from the basin in any container greater than 5.7 gallons shall be treated under this compact in the same manner as a proposal for a diversion. Each party shall have the discretion, within its jurisdiction, to determine the treatment of proposals to withdraw water and to remove it from the basin in any container of 5.7 gallons or less.

(4v) WATER MANAGEMENT AND REGULATION; EXEMPTIONS. Withdrawals from the basin for the following purposes are exempt from the requirements of subs. (4) to (4z):

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

(b) To use in a noncommercial project on a short–term basis for fire fighting, humanitarian, or emergency response purposes.

(4x) WATER MANAGEMENT AND REGULATION; U.S. SUPREME COURT DECREE IN WISCONSIN ET AL. V. ILLINOIS ET AL. (a) Notwithstanding any terms of this compact to the contrary, with the exception of par. (e), current, new, or increased withdrawals, consumptive uses, and diversions of basin water by the state of Illinois shall be governed by the terms of the United States Supreme Court decree in *Wisconsin et al. v. Illinois et al.* and shall not be subject to the terms of this compact nor any rules or regulations promulgated pursuant to this compact. This means that, with the exception of par. (e), for purposes of this compact, current, new, or increased withdrawals, consumptive uses, and diversions of basin water within the state of Illinois shall be allowed unless prohibited

by the terms of the United States Supreme Court decree in *Wisconsin et al. v. Illinois et al.*

(b) The parties acknowledge that the United States Supreme Court decree in *Wisconsin et al. v. Illinois et al.* shall continue in full force and effect, that this compact shall not modify any terms thereof, and that this compact shall grant the parties no additional rights, obligations, remedies, or defenses thereto. The parties specifically acknowledge that this compact shall not prohibit or limit the state of Illinois in any manner from seeking additional basin water as allowed under the terms of the United States Supreme Court decree in *Wisconsin et al. v. Illinois et al.*, any other party from objecting to any request by the state of Illinois for additional basin water under the terms of said decree, or any party from seeking any other type of modification to said decree. If an application is made by any party to the Supreme Court of the United States to modify said decree, the parties to this compact who are also parties to the decree shall seek formal input from the Canadian Provinces of Ontario and Quebec with respect to the proposed modification, shall use best efforts to facilitate the appropriate participation of said provinces in the proceedings to modify the decree, and shall not unreasonably impede or restrict such participation.

(c) With the exception of par. (e), because current, new, or increased withdrawals, consumptive uses, and diversions of basin water by the state of Illinois are not subject to the terms of this compact, the state of Illinois is prohibited from using any term of this compact, including sub. (4n), to seek new or increased withdrawals, consumptive uses, or diversions of basin water.

(d) With the exception of par. (e), because subs. (4d), (4f), (4h), (4j), (4L), (4m), (4n), (4p), (4r), (4t) (a), (b), (c), (d), (f), and (j), and (4v) all relate to current, new, or increased withdrawals, consumptive uses, and diversions of basin waters, said provisions do not apply to the state of Illinois. All other provisions of this compact not listed in the preceding sentence shall apply to the state of Illinois, including the water conservation programs provision of sub. (4b).

(e) In the event of a proposal for a diversion of basin water for use outside the territorial boundaries of the parties to this compact, decisions by the state of Illinois regarding such a proposal would be subject to all terms of this compact, except pars. (a), (c), and (d).

(f) For purposes of the state of Illinois' participation in this compact, the entirety of this subsection is necessary for the continued implementation of this compact and, if severed, this compact shall no longer be binding on or enforceable by or against the state of Illinois.

(4z) WATER MANAGEMENT AND REGULATION; ASSESSMENT OF CUMULATIVE IMPACTS. (a) The parties in cooperation with the provinces shall collectively conduct within the basin, on a lake watershed and St. Lawrence River basin basis, a periodic assessment of the cumulative impacts of withdrawals, diversions, and consumptive uses from the waters of the basin, every 5 years or each time the incremental basin water losses reach 50,000,000 gallons per day average in any 90−day period in excess of the quantity at the time of the most recent assessment, whichever comes first, or at the request of one or more of the parties. The assessment shall form the basis for a review of the standard of review and decision, council and party regulations, and their application. This assessment shall:

1. Utilize the most current and appropriate guidelines for such a review, which may include but not be limited to council on environmental quality and environment Canada guidelines;

2. Give substantive consideration to climate change or other significant threats to basin waters and take into account the current state of scientific knowledge, or uncertainty, and appropriate measures to exercise caution in cases of uncertainty if serious damage may result; and

3. Consider adaptive management principles and approaches, recognizing, considering, and providing adjustments for the uncertainties in, and evolution of, science concerning the basin's water resources, watersheds, and ecosystems, including potential changes to basin−wide processes, such as lake level cycles and climate.

(b) The parties have the responsibility of conducting this cumulative impact assessment. Applicants are not required to participate in this assessment.

(c) Unless required by other statutes, applicants are not required to conduct a separate cumulative impact assessment in connection with an application but shall submit information about the potential impacts of a proposal to the quantity or quality of the waters and water dependent natural resources of the applicable source watershed. An applicant may, however, provide an analysis of how the applicant's proposal meets the no significant adverse cumulative impact provision of the standard of review and decision.

(5) CONSULTATION WITH TRIBES. (a) In addition to all other opportunities to comment pursuant to sub. (6) (b), appropriate consultations shall occur with federally recognized tribes in the originating party for all proposals subject to council or regional review pursuant to this compact. Such consultations shall be organized in the manner suitable to the individual proposal and the laws and policies of the originating party.

(b) All federally recognized tribes within the basin shall receive reasonable notice indicating that they have an opportunity to comment in writing to the council or the regional body, or both, and other relevant organizations on whether the proposal meets the requirements of the standard of review and decision when a proposal is subject to regional review or council approval. Any notice from the council shall inform the tribes of any meeting or hearing that is to be held under sub. (6) (b) and invite them to attend. The parties and the council shall consider the comments received under this subsection before approving, approving with modifications, or disapproving any proposal subject to council or regional review.

(c) In addition to the specific consultation mechanisms described above, the council shall seek to establish mutually agreed upon mechanisms or processes to facilitate dialogue with, and input from, federally recognized tribes on matters to be dealt with by the council; and the council shall seek to establish mechanisms and processes with federally recognized tribes designed to facilitate ongoing scientific and technical interaction and data exchange regarding matters falling within the scope of this compact. This may include participation of tribal representatives on advisory committees established under this compact or such other processes that are mutually agreed upon with federally recognized tribes individually or through duly authorized intertribal agencies or bodies.

(6) PUBLIC PARTICIPATION. (a) *Meetings, public hearings, and records.* 1. The parties recognize the importance and necessity of public participation in promoting management of the water resources of the basin. Consequently, all meetings of the council shall be open to the public, except with respect to issues of personnel.

2. The minutes of the council shall be a public record open to inspection at its offices during regular business hours.

(b) *Public participation.* It is the intent of the council to conduct public participation processes concurrently and jointly with processes undertaken by the parties and through regional review. To ensure adequate public participation, each party or the council shall ensure procedures for the review of proposals subject to the standard of review and decision consistent with the following requirements:

1. Provide public notification of receipt of all applications and a reasonable opportunity for the public to submit comments before applications are acted upon.

2. Assure public accessibility to all documents relevant to an application, including public comment received.

3. Provide guidance on standards for determining whether to conduct a public meeting or hearing for an application, time and

place of such a meeting or hearing, and procedures for conducting of the same.

4. Provide the record of decision for public inspection including comments, objections, responses, and approvals, approvals with conditions, and disapprovals.

(7) DISPUTE RESOLUTION AND ENFORCEMENT; GOOD FAITH IMPLEMENTATION. Each of the parties pledges to support implementation of all provisions of this compact, and covenants that its officers and agencies shall not hinder, impair, or prevent any other party carrying out any provision of this compact.

(7g) DISPUTE RESOLUTION AND ENFORCEMENT; ALTERNATIVE DISPUTE RESOLUTION. (a) Desiring that this compact be carried out in full, the parties agree that disputes between the parties regarding interpretation, application, and implementation of this compact shall be settled by alternative dispute resolution.

(b) The council, in consultation with the provinces, shall provide by rule procedures for the resolution of disputes pursuant to this subsection.

(7r) DISPUTE RESOLUTION AND ENFORCEMENT; ENFORCEMENT. (a) Any person aggrieved by any action taken by the council pursuant to the authorities contained in this compact shall be entitled to a hearing before the council. Any person aggrieved by a party action shall be entitled to a hearing pursuant to the relevant party's administrative procedures and laws. After exhaustion of such administrative remedies, any aggrieved person shall have the right to judicial review of a council action in the United States district court for the District of Columbia or the district court in which the council maintains offices, provided such action is commenced within 90 days; and any aggrieved person shall have the right to judicial review of a party's action in the relevant party's court of competent jurisdiction, provided that an action or proceeding for such review is commenced within the time frames provided for by the party's law. For the purposes of this paragraph, a state or province is deemed to be an aggrieved person with respect to any party action pursuant to this compact.

(b) 1. Any party or the council may initiate actions to compel compliance with the provisions of this compact, and the rules and regulations promulgated hereunder by the council. Jurisdiction over such actions is granted to the court of the relevant party, as well as the United States district court for the District of Columbia and the district court in which the council maintains offices. The remedies available to any such court shall include, but not be limited to, equitable relief and civil penalties.

2. Each party may issue orders within its respective jurisdiction and may initiate actions to compel compliance with the provisions of its respective statutes and regulations adopted to implement the authorities contemplated by this compact in accordance with the provisions of the laws adopted in each party's jurisdiction.

(c) 1. Any aggrieved person, party, or the council may commence a civil action in the relevant party's courts and administrative systems to compel any person to comply with this compact should any such person, without approval having been given, undertake a new or increased withdrawal, consumptive use, or diversion that is prohibited or subject to approval pursuant to this compact.

2. No action under this paragraph may be commenced if:

a. The originating party or council approval for the new or increased withdrawal, consumptive use, or diversion has been granted; or

b. The originating party or council has found that the new or increased withdrawal, consumptive use, or diversion is not subject to approval pursuant to this compact.

3. No action under this paragraph may be commenced unless:

a. A person commencing such action has first given 60 days prior notice to the originating party, the council, and person alleged to be in noncompliance; and

b. Neither the originating party nor the council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance with this compact.

(d) The available remedies shall include equitable relief, and the prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.

(e) Each of the parties may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of this compact.

(8) ADDITIONAL PROVISIONS. (a) *Effect on existing rights.* 1. Nothing in this compact shall be construed to affect, limit, diminish, or impair any rights validly established and existing as of the effective date of this compact under state or federal law governing the withdrawal of waters of the basin.

2. Nothing contained in this compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective parties relating to common law water rights.

3. Nothing in this compact is intended to abrogate or derogate from treaty rights or rights held by any tribe recognized by the federal government of the United States based upon its status as a tribe recognized by the federal government of the United States.

4. An approval by a party or the council under this compact does not give any property rights, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to or held in trust by a party; neither does it authorize any injury to private property or invasion of private rights, nor infringement of federal, state, or local laws or regulations; nor does it obviate the necessity of obtaining federal assent when necessary.

(b) *Relationship to agreements concluded by the United States of America.* 1. Nothing in this compact is intended to provide nor shall be construed to provide, directly or indirectly, to any person any right, claim, or remedy under any treaty or international agreement nor is it intended to derogate any right, claim, or remedy that already exists under any treaty or international agreement.

2. Nothing in this compact is intended to infringe nor shall be construed to infringe upon the treaty power of the United States of America, nor shall any term hereof be construed to alter or amend any treaty or term thereof that has been or may hereafter be executed by the United States of America.

3. Nothing in this compact is intended to affect nor shall be construed to affect the application of the Boundary Waters Treaty of 1909 whose requirements continue to apply in addition to the requirements of this compact.

(c) *Confidentiality.* 1. Nothing in this compact requires a party to breach confidentiality obligations or requirements prohibiting disclosure or to compromise security of commercially sensitive or proprietary information.

2. A party may take measures, including but not limited to deletion and redaction, deemed necessary to protect any confidential, proprietary, or commercially sensitive information when distributing information to other parties. The party shall summarize or paraphrase any such information in a manner sufficient for the council to exercise its authorities contained in this compact.

(d) *Additional laws.* Nothing in this compact shall be construed to repeal, modify, or qualify the authority of any party to enact any legislation or enforce any additional conditions and restrictions regarding the management and regulation of waters within its jurisdiction.

(e) *Amendments and supplements.* The provisions of this compact shall remain in full force and effect until amended by action of the governing bodies of the parties and consented to and

approved by any other necessary authority in the same manner as this compact is required to be ratified to become effective.

(f) *Severability.* Should a court of competent jurisdiction hold any part of this compact to be void or unenforceable, it shall be considered severable from those portions of the compact capable of continued implementation in the absence of the voided provisions. All other provisions capable of continued implementation shall continue in full force and effect.

(g) *Duration of compact and termination.* 1. Once effective, the compact shall continue in force and remain binding upon each and every party unless terminated.

2. This compact may be terminated at any time by a majority vote of the parties. In the event of such termination, all rights established under it shall continue unimpaired.

(9) EFFECTUATION. (b) *Effectuation by chief executive.* The governor is authorized to take such action as may be necessary and proper in his or her discretion to effectuate the compact and the initial organization and operation thereunder, consistent with s. 281.346.

(c) *Entire agreement.* The parties consider this compact to be complete and an integral whole. Each provision of this compact is considered material to the entire compact, and failure to implement or adhere to any provision may be considered a material breach. Unless otherwise noted in this compact, any change or amendment made to the compact by any party in its implementing legislation or by the U.S. Congress when giving its consent to this compact is not considered effective unless concurred in by all parties.

(d) *Effective date and execution.* This compact shall become binding and effective when ratified through concurring legislation by the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin and the Commonwealth of Pennsylvania and consented to by the U.S. Congress.

NOTE: The compact became effective on December 8, 2008.

History: 2007 a. 227.

281.344 Water conservation, reporting, and supply regulation; when compact is not in effect. (1) DEFINITIONS. In this section:

(d) "Community within a straddling county" means any city, village, or town that is not a straddling community and that is located outside the Great Lakes basin but wholly within a county that lies partly within the Great Lakes basin.

(dm) "Compact" means the Great Lakes — St. Lawrence River Basin Water Resources Compact under s. 281.343.

(dr) "Compact's effective date" means the effective date of the compact under s. 281.343 (9) (d).

(e) "Consumptive use" means a use of water that results in the loss of or failure to return some or all of the water to the basin from which the water is withdrawn due to evaporation, incorporation into products, or other processes.

(g) "Cumulative impacts" means the impacts on the Great Lakes basin ecosystem that result from incremental effects of all aspects of a withdrawal, interbasin transfer, or consumptive use in addition to other past, present, and reasonably foreseeable future withdrawals, interbasin transfers, and consumptive uses regardless of who undertakes the other withdrawals, interbasin transfers, and consumptive uses, including individually minor but collectively significant withdrawals, interbasin transfers, and consumptive uses taking place over a period of time.

(i) "Environmentally sound and economically feasible water conservation measures" means those measures, methods, or technologies for efficient water use and for reducing water loss and waste or for reducing the amount of a withdrawal, consumptive use, or interbasin transfer that are, taking into account environmental impact, the age and nature of equipment and facilities involved, the processes employed, the energy impacts, and other appropriate factors, all of the following:

1. Environmentally sound.

2. Reflective of best practices applicable to the water use sector.

3. Technically feasible and available.

4. Economically feasible and cost−effective based on an analysis that considers direct and avoided economic and environmental costs.

(j) "Facility" means an operating plant or establishment providing electricity to the public or carrying on any manufacturing activity, trade, or business on one site, including similar plants or establishments under common ownership or control located on contiguous properties.

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

(ji) "Great Lakes basin ecosystem" means the interacting components of air, land, water, and living organisms, including humans, within the Great Lakes basin.

(k) "Interbasin transfer" means a transfer of water from the Great Lakes basin into a watershed outside of the Great Lakes basin or from the watershed of one of the Great Lakes into that of another, except that "interbasin transfer" does not include any of the following:

1. The transfer of a product produced in the Great Lakes basin or in the watershed of one of the Great Lakes, using waters of the Great Lakes basin, out of the Great Lakes basin or out of that watershed.

2. The transmission of water within a line that extends outside the Great Lakes basin as it conveys water from one point to another within the Great Lakes basin if no water is used outside the Great Lakes basin.

3. The transfer of bottled water from the Great Lakes basin in containers of 5.7 gallons or less.

(km) "Intrabasin transfer" means the transfer of water from the watershed of one of the Great Lakes into the watershed of another of the Great Lakes.

(o) "Product" means something produced by human or mechanical effort or through agricultural processes and used in manufacturing, commercial, or other processes or intended for intermediate or ultimate consumers, subject to all of the following:

1. Water used as part of the packaging of a product is part of the product.

2. Other than water used as part of the packaging of a product, water that is used primarily to transport materials in or out of the Great Lakes basin is not a product or part of a product.

3. Except as provided in subd. 1., water that is transferred as part of a public or private supply is not a product or part of a product.

4. Water in its natural state, such as in lakes, rivers, reservoirs, aquifers, or water basins, is not a product.

(pm) "Public water supply" means water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers.

(ps) "Reasonable water supply alternative" means a water supply alternative that is similar in cost to, and as environmentally sustainable and protective of public health as, the proposed new or increased interbasin transfer and that does not have greater adverse environmental impacts than the proposed new or increased interbasin transfer.

(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.

(r) "Source watershed" means the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake or from the St. Lawrence River, then the source watershed is the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If water is withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the source watershed is the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively.

(t) "Straddling community" means any city, village, or town that is partly within the Great Lakes basin or partly within the watersheds of 2 of the Great Lakes and that is wholly within any county that lies partly or completely within the Great Lakes basin.

(tm) "Straddling county" means a county that lies partly within the Great Lakes basin.

(w) "Water dependent natural resources" means the interacting components of land, water, and living organisms affected by the waters of the Great Lakes basin.

(wm) "Water loss" means the amount of water that is withheld from or not returned to the basin from which it is withdrawn as a result of an interbasin transfer or consumptive use or both.

(wp) "Water supply system," when not preceded by "public," means one of the following:

1. Except as provided in subd. 2., the equipment handling water from the point of intake of the water to the first point at which the water is used.

2. For a system for providing a public water supply, the equipment from the point of intake of the water to the first point at which the water is distributed.

(wr) "Water utility" means a public utility, as defined in s. 196.01 (5), that furnishes water.

(x) "Waters of the Great Lakes basin" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including tributary groundwater, within the Great Lakes basin.

(y) "Withdraw" means to take water from surface water or groundwater.

(z) "Withdrawal" means the taking of water from surface water or groundwater, including the taking of surface water or groundwater for the purpose of bottling the water.

(zm) "Without adequate supplies of potable water" means without a water supply that is economically and environmentally sustainable in the long term to meet reasonable demands for a water supply in the quantity and quality that complies with applicable drinking water standards, is protective of public health, is available at a reasonable cost, and does not have adverse environmental impacts greater than those likely to result from the proposed new or increased interbasin transfer.

(2) DETERMINATIONS CONCERNING APPLICABILITY OF REQUIREMENTS. (a) *Use of surface water divide.* For the purposes of this section, the surface water divide is used to determine whether a withdrawal or transfer of surface water or groundwater is from the Great Lakes basin.

(b) *Transfers and withdrawals from more than one source.* For the purposes of this section, the interbasin transfer or withdrawal of water from more than one source within the Great Lakes basin to supply a single facility or public water supply system is considered one interbasin transfer or withdrawal.

(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), (t), and (tm), a county's boundaries as of December 13, 2005, shall be used to determine whether a county lies partly within the Great Lakes basin.

(e) *Public trust doctrine.* Nothing in this section may be interpreted to change the application of the public trust doctrine under article IX, section 1, of the Wisconsin Constitution or to create any new public trust rights.

(f) *Water resources protection act.* 1. In this paragraph, "historic" means made before June 11, 2008.

2. The department may not change its historic interpretation or application of 42 USC 1962d–20 (d) to a public water supply for a community in this state until that provision is amended. The department shall evaluate all applications under sub. (4) (b) using the requirements in sub. (4) and shall apply those requirements uniformly.

(3) STATEWIDE REGISTRATION AND REPORTING. (a) 1. Any person who, on June 1, 2011, has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30–day period or is making any interbasin transfer shall register the withdrawal or interbasin transfer with the department by the deadline specified by the department by rule. A person may register a withdrawal or interbasin transfer before June 1, 2011.

2. Any person who, after June 1, 2011, proposes to begin a withdrawal from the waters of the state using a water supply system that will have the capacity to withdraw an average of 100,000 gallons per day or more in any 30–day period, to increase the capacity of a water supply system that existed on June 1, 2011, so that it will have the capacity to withdraw an average of 100,000 gallons per day or more in any 30–day period, or to begin an interbasin transfer shall register the withdrawal or interbasin transfer with the department.

(b) A person to whom par. (a) applies shall register on a form prescribed by the department and provide all of the following information:

1. The name and address of the registrant and the date of registration.

2. The locations and sources of the withdrawal or interbasin transfer.

3. The daily capacity of the withdrawal or interbasin transfer and the daily capacity to withdraw or transfer from each source.

4. An estimate of the volume of the withdrawal or interbasin transfer in terms of gallons per day average in any 30–day period.

4m. For a withdrawal from the Great Lakes basin that averages 100,000 gallons per day or more in any 30 day period, an estimate of the maximum hydraulic capacity of the most restrictive component in each water supply system used for the withdrawal.

5. The uses made of the water.

6. The places at which the water is used.

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

8. Whether the water use is continuous or intermittent.

9. Whether the person holds a permit under s. 283.31.

10. Other information required by the department by rule.

(c) The department shall maintain a registry containing the information provided under par. (b).

(cm) The department may consider domestic security concerns when determining whether information regarding locations of withdrawals and interbasin transfers contained in the registry under par. (c) may be released to the public.

(e) 1. Each person who makes a withdrawal from the waters of the state that averages 100,000 gallons per day or more in any 30–day period or transfers from the Great Lakes basin any amount and who has registered the withdrawal or interbasin transfer under par. (a) shall annually report to the department the monthly volumes of withdrawal, whether the person ever withdraws at least 1,000,000 gallons per day for 30 consecutive days, and, if applicable, the volumes of interbasin transfer and, subject to par. (em), water loss from consumptive use.

2. In addition to the information required under subd. 1., the department may, by rule, create different reporting frequencies or require additional information from a person who registers a withdrawal, or interbasin transfer under par. (a) based upon the type or category of water use.

(em) If a person to whom par. (e) 1. applies provides any of the water that the person withdraws to a public water supply system, the person who operates the public water supply system, rather than the person who withdraws the water, shall annually report to the department the volume of water loss from the consumptive use of the water provided to the public water supply system.

(f) The department may require additional information under par. (b) 10. or (e) 2. only if the information is necessary to effectuate this section.

(3e) DETERMINING INITIAL INTERBASIN TRANSFER AMOUNTS. (a) Before issuing an automatic approval under sub. (3m) (a) for an interbasin transfer to a person operating a public water supply system, the department shall determine the initial interbasin transfer amount for the interbasin transfer under par. (b).

(b) The department shall determine the initial interbasin transfer amount for a public water supply system to be the amount of water necessary to provide water for public water supply purposes in the area in at least part of which the public water supply system delivers water to customers before the compact's effective date that is all of the following:

1. Outside of the Great Lakes basin.

2. Within a sewer service territory that provides for return of wastewater to the Great Lakes basin and that is specified in the sewer service area provisions of an areawide water quality management plan under s. 283.83 approved by the department before December 31, 2007.

(c) The department shall use the population and related service projections in the sewer service area provisions described in par. (b) 2. in making the determination under par. (b).

(d) Before issuing an automatic approval under sub. (3m) (b) for an interbasin transfer to a person who does not operate a public water supply system, the department shall determine the initial interbasin transfer amount for the interbasin transfer. The department shall determine the interbasin transfer amount using the process and standards that it uses under sub. (4e) to determine an initial withdrawal amount.

(3m) AUTOMATIC APPROVAL FOR EXISTING INTERBASIN TRANSFERS. (a) Before the compact's effective date, the department shall automatically issue an approval for an interbasin transfer that begins before the compact's effective date, to a person who operates a public water supply system that receives water from the interbasin transfer and that delivers water to customers in an area that is outside of the Great Lakes basin and that is within a sewer service territory that provides for return of wastewater to the Great Lakes basin as specified in the sewer service area provisions of an areawide water quality management plan under s. 283.83 approved by the department before December 31, 2007. The department may not issue an automatic approval under this subsection before the interbasin transfer begins. In the automatic approval, the department shall specify an interbasin transfer amount equal to the amount determined under sub. (3e) (b) and an interbasin transfer area that is the area described in sub. (3e) (b).

(b) Before the compact's effective date, the department shall automatically issue an approval for an interbasin transfer that begins before June 11, 2008, and that is not for public water supply purposes to the person who makes the interbasin transfer. In the automatic approval, the department shall specify an interbasin transfer amount equal to the amount determined under sub. (3e) (d).

(4) NEW OR INCREASED INTERBASIN TRANSFERS. (a) *Prohibition.* Beginning on June 11, 2008, all of the following apply:

1. No person may begin an interbasin transfer, other than an interbasin transfer for which the department is required to issue an automatic permit under sub. (3m) (a), unless the interbasin transfer is covered by an approval under par. (c), (d), or (e).

2. No person may increase an interbasin transfer over the interbasin transfer amount in an approval issued under this subsection unless the department modifies the approval under par. (c), (d), or (e) to increase the interbasin transfer amount.

3. No person may increase an interbasin transfer over the interbasin transfer amount in an approval issued under sub. (3m) (a) or expand the interbasin transfer area beyond the area specified in an approval under sub. (3m) (a) unless the department modifies the approval under par. (c), (d), or (e) to increase the interbasin transfer amount or to expand the interbasin transfer area.

4. No person may increase an interbasin transfer over the interbasin transfer amount in an approval issued under sub. (3m) (b).

(b) *Application.* 1. A person who proposes to begin an interbasin transfer, increase the amount of an interbasin transfer, or expand the interbasin transfer area of an interbasin transfer covered by an approval issued under sub. (3m) (a) shall apply to the department for approval.

2. A person may apply under subd. 1. for approval of a new, increased, or expanded interbasin transfer under par. (c) or (e) only if the person operates a public water supply system that receives or would receive water from the new, increased, or expanded interbasin transfer.

3. Operators of 2 or more public water supply systems may submit a joint application under subd. 1. for a new, increased, or expanded interbasin transfer under par. (c) or (e).

4. A person who applies under subd. 1. shall provide information about the potential impacts of the interbasin transfer on the waters of the Great Lakes basin and water dependent natural resources and any other information required by the department by rule.

4m. If a person who applies under subd. 1. will not directly withdraw the water proposed to be transferred, the person shall identify any entities that may withdraw the water and provide evidence of support from each of those entities in the form of a letter or resolution.

4p. If the person who applies under subd. 1. will not directly return the water to the Great Lakes basin, the person shall identify any entities that may return the water and provide evidence of support from each of those entities in the form of a letter or resolution.

4s. If the proposal for which a person applies under subd. 1. is subject to the exception standard under par. (f), the person shall provide documentation of how the physical, chemical, and biological integrity of the receiving water under par. (f) 3. will be protected and sustained as required under ss. 30.12, 281.15, and 283.31, considering the state of the receiving water before the proposal is implemented and considering potential adverse impacts due to changes in temperature and nutrient loadings. If the receiving water is a surface water body that is tributary to one of the Great Lakes, the person shall include a description of the flow of the receiving water before the proposal is implemented, considering both low and high flow conditions.

5. If the proposal for which a person applies under subd. 1. is subject to the exception standard under par. (f), the person shall provide an assessment of the individual impacts of the proposal for the purposes of par. (f) 5. The person may also include a cumulative impact assessment.

(bg) *Determinations.* 1. The department shall determine whether a proposal under par. (b) is subject to par. (c) or (e) as follows:

a. If the proposal is to provide a public water supply within a single city, village, or town, the proposal is subject to par. (c) or (e) based on the boundaries of that city, village, or town.

b. If the proposal is to provide a public water supply within more than one city, village, or town, any portion of the proposal that provides a public water supply within a straddling community is subject to par. (c) and any portion of the proposal that provides a public water supply within a community described in par. (e) 1. (intro.) is subject to par. (e).

2. For the purposes of applying the requirements in pars. (c), (e), and (f) to a proposal under par. (b), the department shall use, as appropriate, the planned service area of the public water supply system receiving water under the proposal. The planned service

area is the service area of the system at the end of any planning period authorized by the department in the approved water supply service area plan under s. 281.348 that covers the public water supply system.

(c) *Straddling communities.* The department may approve a proposal under par. (b) to begin an interbasin transfer, increase an interbasin transfer, or expand an interbasin transfer area, to an area within a straddling community but outside the Great Lakes basin or outside the source watershed if the water transferred will be used solely for public water supply purposes in the straddling community and all of the following apply:

1. An amount of water equal to the amount of water withdrawn from the Great Lakes basin, less an allowance for consumptive use, will be returned to the source watershed.

2. No surface water or groundwater from outside the source watershed will be returned to the source watershed unless all of the following apply:

a. The returned water will be from a water supply or wastewater treatment system that combines water from inside and outside the Great Lakes basin.

b. The returned water will be treated to meet applicable permit requirements under s. 283.31 and to prevent the introduction of invasive species into the Great Lakes basin.

c. The proposal maximizes the amount of water withdrawn from the Great Lakes basin that will be returned to the source watershed and minimizes the amount of water from outside the Great Lakes basin that will be returned to the source watershed.

2m. The proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

3. If the proposal would result from a new withdrawal or an increase in a withdrawal that would average 100,000 gallons or more per day in any 90−day period, the proposal meets the exception standard under par. (f).

(d) *Intrabasin transfer.* 1. The department may approve a proposal under par. (b) for a new intrabasin transfer or an increase in an intrabasin transfer to which par. (c) does not apply that would average less than 100,000 gallons per day in every 90−day period, if the proposal meets the applicable requirements under s. 30.18, 281.34, or 281.41 or, if those sections do not apply, any requirements specified by the department by rule and, if the water will be used for public water supply purposes, the proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

2. The department may approve a proposal under par. (b) for a new intrabasin transfer or an increase in or expansion of an intrabasin transfer to which par. (c) does not apply that would average more than 100,000 gallons per day in any 90−day period with a new water loss or an increase in water loss that would average less than 5,000,000 gallons per day in every 90−day period, if all of the following apply:

a. The proposal meets the exception standard under par. (f), except that the water may be returned to a watershed within the Great Lakes basin other than the source watershed and par. (f) 3m. does not apply.

b. The applicant demonstrates that there is no feasible, cost−effective, and environmentally sound water supply alternative within the watershed to which the water will be transferred, including conservation of existing water supplies as determined under par. (g).

c. If the water will be used for public water supply purposes, the proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

3. The department may approve a proposal under par. (b) for a new intrabasin transfer or an increase in an intrabasin transfer to which par. (c) does not apply with a new water loss or an increase in water loss that would average 5,000,000 gallons per day or more in any 90−day period, if all of the following apply:

a. The proposal meets the exception standard under par. (f).

b. The applicant demonstrates that there is no feasible, cost−effective, and environmentally sound water supply alternative within the watershed to which the water will be transferred, including conservation of existing water supplies as determined under par. (g).

c. If the water will be used for public water supply purposes, the proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

(e) *Straddling counties.* 1. The department may approve a proposal under par. (b) for a new interbasin transfer or an increase in an interbasin transfer if the water transferred will be used solely for public water supply purposes in a community within a straddling county or, if a community is partly within a straddling county and partly within a county that lies entirely outside the Great Lakes basin, the water transferred will be used solely for public water supply purposes in the portion of the community that is within the straddling county and all of the following apply:

a. The community is without adequate supplies of potable water.

b. The proposal meets the exception standard under par. (f).

c. The proposal maximizes the amount of water withdrawn from the Great Lakes basin that will be returned to the source watershed and minimizes the amount of water from outside the Great Lakes basin that will be returned to the source watershed.

d. There is no reasonable water supply alternative within the watershed in which the community is located, including conservation of existing water supplies as determined under par. (g).

e. The proposal will not endanger the integrity of the Great Lakes basin ecosystem based upon a determination that the proposal will have no significant adverse impact on the Great Lakes basin ecosystem.

em. The proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

2. In determining whether to approve a proposal under this paragraph, the department shall give substantive consideration to whether the applicant provides sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to waters of the Great Lakes basin. The department may not use a lack of hydrological connection to the waters of the Great Lakes basin as a reason to disapprove a proposal.

(f) *Exception standard.* A proposal to which par. (fm) does not apply meets the exception standard if subds. 1. to 7. apply to the proposal. A proposal to which par. (fm) applies meets the exception standard if the department considers, under par. (fm), whether:

1. The need for the proposed interbasin transfer cannot reasonably be avoided through the efficient use and conservation of existing water supplies as determined under par. (g).

2. The interbasin transfer is limited to quantities that are reasonable for the purposes for which the interbasin transfer is proposed.

3. An amount of water equal to the amount of water withdrawn from the Great Lakes basin will be returned to the source watershed, less an allowance for consumptive use.

3m. The place at which the water is returned to the source watershed is as close as practicable to the place at which the water is withdrawn, unless the applicant demonstrates that returning the water at that place is one of the following:

a. Not cost−effective.

b. Not environmentally sound.

c. Not in the interest of public health.

4. No water from outside the Great Lakes basin will be returned to the source watershed unless all of the following apply:

a. The returned water is from a water supply or wastewater treatment system that combines water from inside and outside the Great Lakes basin.

b. The returned water will be treated to meet applicable permit requirements under s. 283.31 and to prevent the introduction of invasive species into the Great Lakes basin and the department has approved the permit under s. 283.31.

c. If the water is returned through a structure on the bed of a navigable water, the structure is designed and will be operated to meet the applicable permit requirements under s. 30.12 and the department has approved the permit under s. 30.12.

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 subd. 3. will be protected and sustained as required under ss. 30.12, 281.15, and 283.31, considering the state of the receiving water before the proposal is implemented and considering both low and high flow conditions and potential adverse impacts due to changes in temperature and nutrient loadings.

5. The interbasin transfer will result in no significant adverse individual impacts or cumulative impacts to the quantity or quality of the waters of the Great Lakes basin or to water dependent natural resources, including cumulative impacts that might result due to the proposed interbasin transfer, based upon a determination that the proposed interbasin transfer will not have any significant adverse impacts on the sustainable management of the waters of the Great Lakes basin.

6. The applicant commits to implementing the applicable water conservation measures under sub. (8) (d) that are environmentally sound and economically feasible for the applicant.

7. The interbasin transfer will be in compliance with all applicable local, state, and federal laws and interstate and international agreements, including the Boundary Waters Treaty of 1909.

(fm) *Approval of certain applications.* The department shall determine whether to grant an approval under par. (c) or (e) of an application under par. (b) 1. through the water supply service area planning process under s. 281.348, considering the items in par. (f) 1. to 7. as factors in the cost–effectiveness analysis under s. 281.348 (3) (d) 1.

(g) *Conservation and efficient use of existing water supplies.* The department shall promulgate rules specifying the requirements for an applicant for a new, increased, or expanded interbasin transfer subject to par. (f) to demonstrate the efficient use and conservation of existing water supplies for the purposes of pars. (d) 2. b. and 3. b., (e) 1. d., and (f) 1., including requiring the applicant to document the water conservation planning and analysis used to identify the water conservation and efficiency measures that the applicant determined were feasible.

(i) *Interbasin transfer amount.* In an approval issued under this subsection or a modification granted under this subsection to increase the amount of an interbasin transfer, the department shall specify an interbasin transfer amount equal to the quantity of water that is reasonable for the purposes for which the interbasin transfer is proposed.

(4e) DETERMINING INITIAL WITHDRAWAL AMOUNTS FOR WITHDRAWALS FROM THE GREAT LAKES BASIN. (a) Before issuing automatic notice of coverage under a general permit under sub. (4s) or an automatic individual permit under sub. (5) (c) for a withdrawal from the Great Lakes basin for which the department is required to issue automatic notice of coverage under a general permit or an automatic individual permit, the department shall determine the initial withdrawal amount for the withdrawal under this subsection.

(b) 1. Except as provided in subds. 2. and 3e. and par. (f), the department shall estimate the initial withdrawal amount for a withdrawal based on the maximum hydraulic capacity of the most restrictive component in the water supply system used for the withdrawal as of the date that the department makes the estimate, based on information available to the department.

2. Except as provided in subd. 3e., if the department has issued an approval under s. 30.12, 30.18, 281.34, or 281.41, or s. 281.17, 2001 stats., that is required for a withdrawal and the approval contains a limit on the amount of water that may be withdrawn, the department shall provide an estimate of the initial withdrawal amount equal to the limit in the approval.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the amount under subd. 1. for each of the water supply systems to which subd. 2. does not apply and shall determine the amount under subd. 2. for each of the water supply systems to which subd. 2. applies and shall provide an estimate of the initial withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

(c) The department shall provide the estimate under par. (b) for a withdrawal to the person making the withdrawal.

(d) After receiving an estimate under par. (c), a person making a withdrawal may provide the department with information relating to any of the following:

1. The components of the water supply system used for the withdrawal.

2. Seasonal variations in the amount of water supplied by the water supply system.

3. Plans for expanding the capacity of the water supply system submitted to the department no later than 2 years after June 11, 2008.

4. Amounts withdrawn during the 5 years before the year in which the person submits the information.

5. Successful water conservation efforts by persons using the water that is withdrawn.

6. Water loss from consumptive uses of similar types of users compared to the water loss from consumptive use of persons using the water that is withdrawn.

7. Other relevant information.

(e) Except as provided in par. (f), the department shall determine the initial withdrawal amount for a withdrawal based on the estimate under par. (b) and the department's evaluation of any information provided under par. (d). The department may not consider information provided by any other person.

(f) For a public water supply system that, on June 11, 2008, has approval under s. 281.41 to provide water from the Great Lakes basin for public water supply purposes outside of the Great Lakes basin and approval under s. 283.31 to return the associated wastewater to the Great Lakes basin, the department shall determine the initial withdrawal amount to be the amount of water necessary to provide water for public water supply purposes in the service territory specified in the sewer service area provisions of the areawide water quality management plan under s. 283.83 approved by the department before December 31, 2007, based on the population and related service projections in those provisions.

(g) The department's determination of an initial withdrawal amount under par. (e) or (f) is not subject to administrative review under ch. 227 except at the request of the person making the withdrawal.

(h) If 2 or more public water supply systems merge after the department determines their initial withdrawal amounts under par. (e) and before the department issues the initial individual permits under sub. (5) (c) for the systems, the initial withdrawal amount for the new system is the sum of the amounts determined under par. (e) for the individual systems.

(4m) WATER USE PERMITS REQUIRED IN THE GREAT LAKES BASIN. Beginning on June 1, 2015, except as provided in sub. (4s) (bm), 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 under sub. (4s) or an individual permit under sub. (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 estimating the amount withdrawn, monitoring the withdrawal, if necessary, and reporting the results of the estimating and monitoring, 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).

(am) *Term of general permit.* The term of a general permit issued under par. (a) is 25 years.

(b) *General requirement.* Beginning on the date under sub. (4m), 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, except as provided in par. (bm). A person to whom the department has issued a notice of coverage under a general permit shall comply with the general permit.

(bm) *Waiver.* The department may waive the requirement to obtain coverage under a general permit for a person making a withdrawal that is covered by a permit under s. 30.18 (2) (a).

(c) *Automatic notice of coverage for existing withdrawals.* The department shall automatically issue a notice of coverage under a general permit to a person who makes a withdrawal from the Great Lakes basin and who reports under sub. (3) (e) before the date under sub. (4m), if the withdrawal averages 100,000 gallons per day or more in any 30–day period but does not equal at least 1,000,000 gallons per day for any 30 consecutive days. If necessary, the department may request additional information before issuing a notice under this paragraph. The department shall issue a notice under this paragraph no later than the date under sub. (4m). The department may promulgate a rule under which the department issues automatic notices of coverage under a general permit on a staggered schedule before the date under sub. (4m). In the notice provided under this paragraph for a withdrawal, the department shall specify a withdrawal amount equal to the initial withdrawal amount determined under sub. (4e) for the withdrawal.

(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, after June 1, 2011, and to whom the department is not required to issue automatic notice of coverage under a general permit under par. (c), 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. In the application, the person shall provide the information required by the department by rule.

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. Except as provided in subd. 3m., if the department determines that a withdrawal qualifies for coverage under a general permit and the department has issued any approvals that are required for the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall issue a notice of coverage. In the notice, the department shall specify a withdrawal amount that is, except as provided in subd. 3e., 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.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smallest amounts under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. a. The department may not approve an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, unless the withdrawal is consistent with the water supply service area plan.

b. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall issue a notice of coverage. In the notice of coverage the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

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) (am), or a groundwater management area designated under s. 281.34 (9).

(e) *Increase in withdrawal amount.* 1. Before the compact's effective date, if a person making a withdrawal that is covered under a general permit 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.

3. Except as provided in subd. 3m., if the department has issued any approvals that are required for modifying the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall modify the withdrawal amount to an amount that is, except as provided in subd. 3e., 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.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. a. The department may not approve an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, unless the withdrawal is consistent with the water supply service area plan.

b. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall modify the withdrawal amount to an amount equal to the withdrawal amount in the water supply service area plan.

(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 shall apply to the department for redetermination of coverage under a new general permit 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 substantial 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 for cause, including obtaining coverage under the permit by misrepresentation or failure to disclose material facts or substantially 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 under this subsection.

(5) INDIVIDUAL WATER USE PERMITS FOR GREAT LAKES BASIN. (a) *Requirement.* Beginning on the date under sub. (4m), 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. 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., 3e., or 3m. or (e) 3., 3e., or 3m. or sub. (4e).

3. Requirements for estimating the amount withdrawn, monitoring the withdrawal, if necessary, and reporting the results of the estimating and monitoring, 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 interbasin transfer under sub. (4) made by the person making the withdrawal.

6m. If s. 281.35 (4) applies to the withdrawal, the matters under s. 281.35 (6) (a).

(c) *Automatic issuance of individual permits for existing withdrawals.* The department shall automatically issue an individual permit to a person who makes a withdrawal from the Great Lakes basin and who reports under sub. (3) (e) before the date under sub. (4m), if the withdrawal equals at least 1,000,000 gallons per day for any 30 consecutive days. If necessary, the department may request additional information before issuing a permit under this paragraph. The department shall issue a permit under this paragraph no later than the date under sub. (4m). In the permit, the department shall specify a withdrawal amount equal to the initial withdrawal amount determined under sub. (4e) for the withdrawal. The department may promulgate a rule under which the department issues automatic individual permits on a staggered schedule before the date under sub. (4m).

(d) *Individual permit for new or increased unpermitted withdrawals.* 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, after June 1, 2011, and to whom the department is not required to issue an automatic individual permit under par. (c), shall apply to the department for an individual permit. In the application, the person shall provide the information required by the department by rule.

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. Except as provided in subd. 3m., if the department approves an application under subd. 1. and the department has issued any approvals that are required for the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall issue an individual permit. In the permit, the department shall specify a withdrawal amount that is, except as provided in subd. 3e., 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.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smaller of the amounts under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. a. The department may not approve an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, unless the withdrawal is consistent with the water supply service area plan.

b. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall issue an individual permit. In the permit, the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

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) *Increase in withdrawal amount.* 1. Before the compact's effective date, if a person making a withdrawal that is covered under an individual permit proposes to increase 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.

3. Except as provided in subd. 3m., if the department has issued any approvals that are required for modifying the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall modify the withdrawal amount to an amount that is, except as provided in subd. 3e., 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.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. a. The department may not approve an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, unless the withdrawal is consistent with the water supply service area plan.

b. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall modify the withdrawal amount to an amount equal to the withdrawal amount in the water supply service area plan.

(f) *Term of coverage.* The term of an individual permit is 10 years.

(g) *Reissuance.* A person to whom the department has issued an individual permit under this subsection 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. If the department determines that the person is in substantial compliance with the individual permit and that the withdrawal continues to qualify for an individual permit, the department shall reissue the permit.

(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 material facts or substantially violating the terms of the permit.

(i) *Transfer of control.* A permit is not transferable to any person except after notice to the department. A person who proposes to assume control over a permitted withdrawal shall file with the department a permit application and a statement of acceptance of the permit. The department may require modification or revocation and reissuance of the permit to change the name of the permittee.

(5m) INTERIM APPROVAL. If a person making a withdrawal that averages 100,000 gallons per day or more in any 30–day period registers the withdrawal under sub. (3) (a) 1. and reports as required under sub. (3) (e) and the department does not automatically issue a notice of coverage under sub. (4s) (c) or an individual permit under sub. (5) (c) for the withdrawal before the compact's effective date, the registration of the withdrawal constitutes an approval for the purposes of s. 281.343 (4t) (b) 1. The withdrawal amount is the total amount reported under sub. (3) (b) 4m., except that if there is a limit in an approval under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., on the amount of water that may be withdrawn by any water supply system used for the withdrawal and that limit is less than the amount reported under sub. (3) (b) 4m. for that water supply system, the withdrawal amount is the total amount reported under sub. (3) (b) 4m. reduced by the difference between the reported amount for that water supply system and the limit in the approval.

(7) EXEMPTIONS. Subsections (3) to (5) do not apply to withdrawals or interbasin transfers for any of the following purposes:

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

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

(7m) EMERGENCY ORDER. The department may, without a prior hearing, order a person to whom the department has issued an individual permit or notice of coverage under a general permit under this section 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) STATEWIDE WATER CONSERVATION AND EFFICIENCY. (a) *Goals and objectives.* The department shall specify water conservation and efficiency goals and objectives for the waters of the state. 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. In specifying these goals and objectives, the department shall consult with the department of safety and professional services and the public service commission.

(b) *Statewide program.* In cooperation with the department of safety and professional services and the public service commission, the department shall develop and implement a statewide water conservation and efficiency program that includes all of the following:

1. Promotion of environmentally sound and economically feasible water conservation measures through a voluntary statewide program.

1m. Mandatory and voluntary conservation and efficiency measures for the waters of the Great Lakes basin that are necessary to implement subs. (4), (4s), and (5) and s. 281.348.

2. Water conservation and efficiency measures that the public service commission requires or authorizes a water utility to implement under ch. 196.

3. Water conservation and efficiency measures that the department of safety and professional services requires or authorizes to be implemented under chs. 101 and 145.

(d) *Water conservation and efficiency measures.* The department shall promulgate rules specifying water conservation and efficiency measures for the purposes of implementing par. (b). In the rules, the department may not require retrofitting of existing fixtures, appliances, or equipment. 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.

(9) PUBLIC PARTICIPATION. (b) *Public notice.* 1. The department shall, by rule, create procedures for circulating to interested and potentially interested members of the public notices of each complete application that the department receives under sub. (4). The department shall include, in the rule, at least the following procedures:

a. Publication of the notice as a class 1 notice under ch. 985.

b. Mailing of the notice to any person, group, local governmental unit, or state agency upon request.

2. The department shall establish the form and content of a public notice by rule. The department shall include in every public notice concerning an application under sub. (4) at least the following information:

a. The name and address of each applicant.

b. A brief description of the proposal for which the application is made under sub. (4), including the amount of the proposed interbasin transfer.

c. A brief description of the procedures for the formulation of final determinations on applications, including the 30–day comment period required under par. (c).

(c) *Public comment.* The department shall receive public comments on a proposal for which it receives an application under sub. (4) for a 30–day period beginning when the department gives notice under par. (b) 1. The department shall retain all written comments submitted during the comment period and shall consider the comments in making its decisions on the application.

(d) *Public hearing.* 1. The department shall provide an opportunity for any interested person or group of persons, any affected local governmental unit, or any state agency to request a public hearing with respect to a proposal for which the department receives an application under sub. (4). A request for a public hearing shall be filed with the department within 30 days after the department gives notice under par. (b). The party filing a request for a public hearing shall indicate the interest of the party and the reasons why a hearing is warranted. The department shall hold a public hearing on a proposal for which the department receives an application under sub. (4) if the department determines that there is a significant public interest in holding a hearing.

2. The department shall promulgate, by rule, procedures for the conduct of public hearings held under this paragraph. A hearing held under this paragraph is not a contested case hearing under ch. 227.

3. The department shall circulate public notice of any hearing held under this paragraph in the manner provided under par. (b) 1.

(e) *Public access to information.* Any record or other information provided to or obtained by the department regarding a proposal for which an application under sub. (4) is received is a public record as provided in subch. II of ch. 19. The department shall make available to and provide facilities for the public to inspect and copy any records or other information provided to or obtained by the department regarding a proposal for which an application for a new or increased interbasin transfer under sub. (4) is received, except that any record or other information provided to the department may be treated as confidential upon a showing to the secretary that the record or information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), or upon a determination by the department that domestic security concerns warrant confidential treatment. Nothing in this subsection prevents the use of any confidential records or information obtained by the department in the administration of this section in compiling or publishing general analyses or summaries, if the analyses or summaries do not identify a specific owner or operator.

(11) WATER USE REPORT. Beginning no later than 8 years after June 11, 2008, and every 5 years thereafter, the department, using water use data reported under this section, shall publish a water use report to summarize water usage, identify related trends, identify areas of future water usage concerns, and recommend future actions to promote sustainable water use. The department shall also include in the report water resource information derived from reporting and data accumulation requirements under other water regulatory laws.

(13m) EXCEEDANCES. It is not a violation of this section to withdraw an amount of water that exceeds the withdrawal amount specified in a permit issued under sub. (5) or in the database under sub. (4s) (i).

(14) PENALTIES. (a) Any person who violates this section or any rule promulgated or approval issued under this section shall forfeit not less than $10 nor more than $10,000 for each violation. Each day of continued violation is a separate offense.

(c) In addition to the penalties under par. (a), the court may order the defendant to abate any nuisance, restore a natural resource, or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the violation.

(15) SUNSET. This section does not apply after the compact's effective date.

History: 2007 a. 227; 2009 a. 180; 2011 a. 32; 2015 a. 177.

281.346 Water conservation, reporting, and supply regulation; after the compact takes effect. (1) DEFINITIONS. In this section:

(d) "Community within a straddling county" means any city, village, or town that is not a straddling community and that is located outside the Great Lakes basin but wholly within a county that lies partly within the Great Lakes basin.

(dm) "Compact" means the Great Lakes — St. Lawrence River Basin Water Resources Compact under s. 281.343.

(dr) "Compact's effective date" means the effective date of the compact under s. 281.343 (9) (d).

(e) "Consumptive use" means a use of water that results in the loss of or failure to return some or all of the water to the basin from which the water is withdrawn due to evaporation, incorporation into products, or other processes.

(g) "Cumulative impacts" means the impacts on the Great Lakes basin ecosystem that result from incremental effects of all aspects of a withdrawal, diversion, or consumptive use in addition to other past, present, and reasonably foreseeable future withdrawals, diversions, and consumptive uses regardless of who undertakes the other withdrawals, diversions, and consumptive uses, including individually minor but collectively significant withdrawals, diversions, and consumptive uses taking place over a period of time.

(h) "Diversion" means 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 except that "diversion" does not include any of the following:

1. The transfer of a product produced in the Great Lakes basin or in the watershed of one of the Great Lakes, using waters of the Great Lakes basin, out of the Great Lakes basin or out of that watershed.

2. The transmission of water within a line that extends outside the Great Lakes basin as it conveys water from one point to another within the Great Lakes basin if no water is used outside the Great Lakes basin.

3. The transfer of bottled water from the Great Lakes basin in containers of 5.7 gallons or less.

(hm) "Divert" means to transfer 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 except that "divert" does not include any of the following:

1. To transfer a product produced in the Great Lakes basin or in the watershed of one of the Great Lakes, using waters of the Great Lakes basin, out of the Great Lakes basin or out of that watershed.

2. To transmit water within a line that extends outside the Great Lakes basin as it conveys water from one point to another within the Great Lakes basin if no water is used outside the Great Lakes basin.

3. To transfer bottled water from the Great Lakes basin in containers of 5.7 gallons or less.

(i) "Environmentally sound and economically feasible water conservation measures" means those measures, methods, or technologies for efficient water use and for reducing water loss and waste or for reducing the amount of a withdrawal, consumptive use, or diversion that are, taking into account environmental impact, the age and nature of equipment and facilities involved, the processes employed, the energy impacts, and other appropriate factors, all of the following:

1. Environmentally sound.

2. Reflective of best practices applicable to the water use sector.

3. Technically feasible and available.

4. Economically feasible and cost−effective based on an analysis that considers direct and avoided economic and environmental costs.

(j) "Facility" means an operating plant or establishment providing electricity to the public or carrying on any manufacturing activity, trade, or business on one site, including similar plants or establishments under common ownership or control located on contiguous properties.

(je) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois−Rivieres, Quebec, within the jurisdiction of the parties.

(ji) "Great Lakes basin ecosystem" means the interacting components of air, land, water, and living organisms, including humans, within the Great Lakes basin.

(jj) "Great Lakes council" means the Great Lakes — St. Lawrence River Basin Water Resources Council, created under s. 281.343 (2) (a).

(jm) "Intrabasin transfer" means the transfer of water from the watershed of one of the Great Lakes into the watershed of another of the Great Lakes.

(n) "Party" means a state that is a party to the compact.

(nm) Notwithstanding s. 281.01 (9), "person" means an individual or other entity, including a government or a nongovernmental organization, including any scientific, professional, business, nonprofit, or public interest organization or association that is neither affiliated with nor under the direction of a government.

(o) "Product" means something produced by human or mechanical effort or through agricultural processes and used in manufacturing, commercial, or other processes or intended for intermediate or ultimate consumers, subject to all of the following:

1. Water used as part of the packaging of a product is part of the product.

2. Other than water used as part of the packaging of a product, water that is used primarily to transport materials in or out of the Great Lakes basin is not a product or part of a product.

3. Except as provided in subd. 1., water that is transferred as part of a public or private supply is not a product or part of a product.

4. Water in its natural state, such as in lakes, rivers, reservoirs, aquifers, or water basins, is not a product.

(pm) "Public water supply" means water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers.

(ps) "Reasonable water supply alternative" means a water supply alternative that is similar in cost to, and as environmentally sustainable and protective of public health as, the proposed new or increased diversion and that does not have greater adverse environmental impacts than the proposed new or increased diversion.

(q) "Regional body" means the body consisting of the governors of the parties 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.

(qd) "Regional declaration of finding" means a declaration of finding issued by the regional body under s. 281.343 (4h) (e).

(qm) "Regional review" means review by the regional body as described in s. 281.343 (4h).

(r) "Source watershed" means the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake or from the St. Lawrence River, then the source watershed is the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If water is withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the source watershed is the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively.

(t) "Straddling community" means any city, village, or town that, based on its boundary existing as of the compact's effective date, is partly within the Great Lakes basin or partly within the watersheds of 2 of the Great Lakes and that is wholly within any county that lies partly or completely within the Great Lakes basin.

(tm) "Straddling county" means a county that lies partly within the Great Lakes basin.

(u) "Technical review" means a thorough analysis and evaluation conducted to determine whether a proposal that is subject to regional review under this section meets the criteria for approval under sub. (4), (5), or (6).

(w) "Water dependent natural resources" means the interacting components of land, water, and living organisms affected by the waters of the Great Lakes basin.

(wm) "Water loss" means the amount of water that is withheld from or not returned to the basin from which it is withdrawn as a result of a diversion or consumptive use or both.

(wp) "Water supply system," when not preceded by "public," means one of the following:

1. Except as provided in subd. 2., the equipment handling water from the point of intake of the water to the first point at which the water is used.

2. For a system for providing a public water supply, the equipment from the point of intake of the water to the first point at which the water is distributed.

(wr) "Water utility" means a public utility, as defined in s. 196.01 (5), that furnishes water.

(x) "Waters of the Great Lakes basin" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including tributary groundwater, within the Great Lakes basin.

(y) "Withdraw" means to take water from surface water or groundwater.

(z) "Withdrawal" means the taking of water from surface water or groundwater, including the taking of surface water or groundwater for the purpose of bottling the water.

(zm) "Without adequate supplies of potable water" means lacking a water supply that is economically and environmentally sustainable in the long term to meet reasonable demands for a water supply in the quantity and quality that complies with applicable drinking water standards, is protective of public health, is available at a reasonable cost, and does not have adverse environ-

mental impacts greater than those likely to result from the proposed new or increased diversion.

(2) DETERMINATIONS CONCERNING APPLICABILITY OF REQUIREMENTS. (a) *Use of surface water divide.* For the purposes of this section, the surface water divide is used to determine whether a withdrawal or transfer of surface water or groundwater is from the Great Lakes basin.

(b) *Diversions and withdrawals from more than one source.* For the purposes of this section, the diversion or withdrawal of water from more than one source within the Great Lakes basin to supply a single facility or public water supply system is considered one diversion or withdrawal.

(bm) *Subsequent withdrawals for aquacultural purposes.* If a fish farm withdraws water and places it in an aquacultural pond that is registered with the department of agriculture, trade and consumer protection, any subsequent use of that water from that pond is not a withdrawal for the purposes of this section, if the subsequent use is not, and does not result in, a diversion or an intrabasin transfer.

(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), (t), and (tm), a county's boundaries as of December 13, 2005, shall be used to determine whether a county lies partly within the Great Lakes basin.

(e) *Baseline.* 1g. The baseline for a withdrawal that before December 8, 2008, averaged 100,000 gallons per day or more in any 30–day period but to which subd. 1m. does not apply is the amount determined under sub. (4e).

1m. If a person making a withdrawal that averages 100,000 gallons per day or more in any 30–day period registered the withdrawal under s. 281.344 (3) (a) 1. and reported as required under s. 281.344 (3) (e) and the department did not automatically issue a notice of coverage under s. 281.344 (4s) (c) or an individual permit under s. 281.344 (5) (c) for the withdrawal, the baseline for the withdrawal is the amount determined under s. 281.344 (5m) for the withdrawal or, if the department determines a different amount under sub. (4e), the amount determined under sub. (4e).

1r. The baseline for a withdrawal not covered by subd. 1g. or 1m. is zero.

2. The baseline water loss for a consumptive use for which the department has specified an authorized base level of water loss under s. 281.35 (6) (a) 2. is the amount of that authorized base level on the compact's effective date.

4. The baseline volume for a diversion for which the department has issued an approval under s. 281.344 (3m) or (4) before the compact's effective date is the interbasin transfer amount specified in the approval on the compact's effective date.

6. The department shall provide a list of the baseline volumes determined under this paragraph to the Great Lakes council and the regional body no later than 12 months after the compact's effective date.

(em) *Change of ownership.* Regional review or Great Lakes council approval is not required when there is a change of ownership of a water supply system that withdraws, diverts, or consumptively uses waters of the Great Lakes basin unless the new owner proposes a change that is otherwise subject to regional review or Great Lakes council approval.

(f) *Hydrologic units.* The Lake Michigan and Lake Huron watershed shall be considered to be a single hydrologic unit and watershed.

(g) *Public trust doctrine.* Nothing in this section may be interpreted to change the application of the public trust doctrine under article IX, section 1, of the Wisconsin Constitution or to create any new public trust rights.

(3) STATEWIDE REGISTRATION AND REPORTING. (a) 1. Any person who proposes to begin a withdrawal from the waters of the state using a water supply system that will have the capacity to withdraw an average of 100,000 gallons per day or more in any 30–day period, to increase the capacity of a water supply system so that it will have the capacity to withdraw an average of 100,000 gallons per day or more in any 30–day period, or to begin a diversion shall register the withdrawal or diversion with the department.

2. Any person who, on July 1, 2009, has a water supply system with the capacity to make a withdrawal from the waters of this state averaging 100,000 gallons per day or more in any 30–day period and who has not registered the withdrawal under s. 281.344 (3) (a) shall register the withdrawal with the department.

(b) A person to whom par. (a) applies shall register on a form prescribed by the department and provide all of the following information:

1. The name and address of the registrant and the date of registration.

2. The locations and sources of the withdrawal or diversion.

3. The daily capacity of the withdrawal or diversion and the daily capacity to withdraw or divert from each source.

4. An estimate of the volume of the withdrawal or diversion in terms of gallons per day average in any 30–day period.

5. The uses made of the water.

6. The places at which the water is used.

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

8. Whether the water use is continuous or intermittent.

9. Whether the person holds a permit under s. 283.31.

10. Other information required by the department by rule.

(c) The department shall maintain a registry containing the information provided under par. (b) and s. 281.344 (3) (b).

(cm) The department may consider domestic security concerns when determining whether information regarding locations of withdrawals and diversions contained in the registry under par. (c) may be released to the public.

(e) 1. Each person who makes a withdrawal from the waters of the state that averages 100,000 gallons per day or more in any 30–day period or diverts any amount and who has registered the withdrawal or diversion under par. (a) or s. 281.344 (3) (a) shall annually report to the department the monthly volumes of withdrawal, whether the person withdraws at least 1,000,000 gallons per day for 30 consecutive days, and, if applicable, the volumes of diversion and, subject to par. (em), water loss from consumptive use.

2. In addition to the information required under subd. 1., the department may, by rule, create different reporting frequencies or require additional information from a person who registers a withdrawal, or diversion under par. (a) or s. 281.344 (3) (a) based upon the type or category of water use.

(em) If a person to whom par. (e) 1. applies provides any of the water that the person withdraws to a public water supply system, the person who operates the public water supply system, rather than the person who withdraws the water, shall annually report to the department the volume of water loss from the consumptive use of the water provided to the public water supply system.

(f) The department may require additional information under par. (b) 10. or (e) 2. only if the information is related to the purposes of the compact.

(4) DIVERSIONS. (a) *Prohibition.* Beginning on the compact's effective date, no person may begin a diversion, except as authorized under par. (c), (d), or (e) or an approval issued under s. 281.344 (4), and no person may increase the amount of a diversion over the diversion amount specified in an approval under this subsection or over the interbasin transfer amount specified in an approval issued under s. 281.344 (3m) or (4), except as authorized under par. (c), (d), or (e).

(b) *Application.* 1. A person who proposes to begin a diversion or to increase the amount of a diversion under par. (c), (d), or (e) shall apply to the department for approval.

2. A person may apply under subd. 1. for approval of a new or increased diversion under par. (c) or (e) only if the person operates a public water supply system that receives or would receive water from the new or increased diversion.

3. Operators of 2 or more public water supply systems may submit a joint application under subd. 1. for a new or increased diversion under par. (c) or (e).

4. A person who applies under subd. 1. shall provide information about the potential impacts of the diversion on the waters of the Great Lakes basin and water dependent natural resources and any other information required by the department by rule.

4m. If a person who applies under subd. 1. will not directly withdraw the water proposed to be diverted, the person shall identify any entities that may withdraw the water and provide evidence of support from each of those entities in the form of a letter or resolution.

4p. If the person who applies under subd. 1. will not directly return the water to the Great Lakes basin, the person shall identify any entities that may return the water and provide evidence of support from each of those entities in the form of a letter or resolution.

4s. If the proposal for which a person applies under subd. 1. is subject to the exception standard under par. (f), the person shall provide documentation of how the physical, chemical, and biological integrity of the receiving water under par. (f) 3. will be protected and sustained as required under ss. 30.12, 281.15, and 283.31, considering the state of the receiving water before the proposal is implemented and considering potential adverse impacts due to changes in temperature and nutrient loadings. If the receiving water is a surface water body that is tributary to one of the Great Lakes, the person shall include a description of the flow of the receiving water before the proposal is implemented, considering both low and high flow conditions.

5. If the proposal for which a person applies under subd. 1. is subject to the exception standard under par. (f), the person shall provide an assessment of the individual impacts of the proposal for the purposes of par. (f) 5. The person may also include a cumulative impact assessment.

(bg) *Determinations.* 1. The department shall determine whether a proposal under par. (b) is subject to par. (c) or (e) as follows:

a. If the proposal is to provide a public water supply within a single city, village, or town, the proposal is subject to par. (c) or (e) based on the boundaries of that city, village, or town.

b. If the proposal is to provide a public water supply within more than one city, village, or town, any portion of the proposal that provides a public water supply within a straddling community is subject to par. (c) and any portion of the proposal that provides a public water supply within a community described in par. (e) 1. (intro.) is subject to par. (e).

2. For the purposes of applying the requirements in pars. (c), (e), and (f) to a proposal under par. (b), the department shall use, as appropriate, the current or planned service area of the public water supply system receiving water under the proposal. The planned service area is the service area of the system at the end of any planning period authorized by the department in the approved water supply service area plan under s. 281.348 that covers the public water supply system.

(c) *Straddling communities.* The department may approve a proposal under par. (b) to begin a diversion, or to increase the amount of a diversion, to an area within a straddling community but outside the Great Lakes basin or outside the source watershed if the water diverted will be used solely for public water supply purposes in the straddling community and all of the following apply:

1. An amount of water equal to the amount of water withdrawn from the Great Lakes basin, less an allowance for consumptive use, will be returned to the source watershed.

2. No surface water or groundwater from outside the source watershed will be returned to the source watershed unless all of the following apply:

a. The returned water will be from a water supply or wastewater treatment system that combines water from inside and outside the Great Lakes basin.

b. The returned water will be treated to meet applicable permit requirements under s. 283.31 and to prevent the introduction of invasive species into the Great Lakes basin.

c. The proposal maximizes the amount of water withdrawn from the Great Lakes basin that will be returned to the source watershed and minimizes the amount of water from outside the Great Lakes basin that will be returned to the source watershed.

2m. The proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system unless the proposal is to provide water to a straddling community that includes an electronics and information technology manufacturing zone designated under s. 238.396 (1m).

3. If the proposal would result from a new withdrawal or an increase in a withdrawal that would average 100,000 gallons or more per day in any 90–day period, the proposal meets the exception standard under par. (f).

4. If the proposal would result in a new water loss or an increase in a water loss from consumptive use that would average 5,000,000 gallons or more per day in any 90–day period, all of the following apply:

a. The department conducts a technical review.

b. The department notifies the regional body as required in s. 281.343 (4h) (b) 1.

c. The proposal undergoes regional review.

d. The department considers the regional declaration of finding in determining whether to approve the proposal.

(d) *Intrabasin transfer.* 1. The department may approve a proposal under par. (b) for a new intrabasin transfer or an increase in an intrabasin transfer to which par. (c) does not apply that would average less than 100,000 gallons per day in every 90–day period, if the proposal meets the applicable requirements under s. 30.18, 281.34, or 281.41 or, if those sections do not apply, any requirements specified by the department by rule and, if the water will be used for public water supply purposes, the proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

2. The department may approve a proposal under par. (b) for a new intrabasin transfer or an increase in an intrabasin transfer to which par. (c) does not apply that would average more than 100,000 gallons per day in any 90–day period with a new water loss or an increase in water loss that would average less than 5,000,000 gallons per day in every 90–day period, if all of the following apply:

a. The proposal meets the exception standard under par. (f), except that the water may be returned to a watershed within the Great Lakes basin other than the source watershed and par. (f) 3m. does not apply.

b. The applicant demonstrates that there is no feasible, cost–effective, and environmentally sound water supply alternative within the watershed to which the water will be transferred, including conservation of existing water supplies as determined under par. (g).

c. If the water will be used for public water supply purposes, the proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

d. The department provides notice of the proposal to the other parties.

3. The department may approve a proposal under par. (b) for a new intrabasin transfer or an increase in an intrabasin transfer to which par. (c) does not apply with a new water loss or an increase in water loss that would average 5,000,000 gallons per day or more in any 90–day period, if all of the following apply:

a. The proposal meets the exception standard under par. (f).

b. The applicant demonstrates that there is no feasible, cost–effective, and environmentally sound water supply alternative within the watershed to which the water will be transferred, including conservation of existing water supplies as determined under par. (g).

c. If the water will be used for public water supply purposes, the proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

d. The department conducts a technical review.

e. The department notifies the regional body as required in s. 281.343 (4h) (b) 1.

f. The proposal undergoes regional review.

g. The department considers the regional declaration of finding in determining whether to approve the proposal.

h. The proposal is approved by the Great Lakes council.

(e) *Straddling counties.* 1. The department may approve a proposal under par. (b) for a new diversion or an increase in a diversion if the water diverted will be used solely for public water supply purposes in a community within a straddling county or, if a community is partly within a straddling county and partly within a county that lies entirely outside the Great Lakes basin, the water diverted will be used solely for public water supply purposes in the portion of the community that is within the straddling county and all of the following apply:

a. The community is without adequate supplies of potable water.

b. The proposal meets the exception standard under par. (f).

c. The proposal maximizes the amount of water withdrawn from the Great Lakes basin that will be returned to the source watershed and minimizes the amount of water from outside the Great Lakes basin that will be returned to the source watershed.

d. There is no reasonable water supply alternative within the watershed in which the community is located, including conservation of existing water supplies as determined under par. (g).

e. The proposal will not endanger the integrity of the Great Lakes basin ecosystem based upon a determination that the proposal will have no significant adverse impact on the Great Lakes basin ecosystem.

em. The proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

f. The department conducts a technical review.

g. The department notifies the regional body as required in s. 281.343 (4h) (b) 1.

h. The proposal undergoes regional review.

i. The department considers the regional declaration of finding in determining whether to approve the proposal.

j. The proposal is approved by the Great Lakes council.

2. In determining whether to approve a proposal under this paragraph, the department shall give substantive consideration to whether the applicant provides sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to waters of the Great Lakes basin. The department may not use a lack of hydrological connection to the waters of the Great Lakes basin as a reason to disapprove a proposal.

(f) *Exception standard.* A proposal meets the exception standard if all of the following apply:

1. The need for the proposed diversion cannot reasonably be avoided through the efficient use and conservation of existing water supplies as determined under par. (g).

2. The diversion is limited to quantities that are reasonable for the purposes for which the diversion is proposed.

3. An amount of water equal to the amount of water withdrawn from the Great Lakes basin will be returned to the source watershed, less an allowance for consumptive use.

3m. The place at which the water is returned to the source watershed is as close as practicable to the place at which the water is withdrawn, unless the applicant demonstrates that returning the water at that place is one of the following:

a. Not economically feasible.

b. Not environmentally sound.

c. Not in the interest of public health.

4. No water from outside the Great Lakes basin will be returned to the source watershed unless all of the following apply:

a. The returned water is from a water supply or wastewater treatment system that combines water from inside and outside the Great Lakes basin.

b. The returned water will be treated to meet applicable permit requirements under s. 283.31 and to prevent the introduction of invasive species into the Great Lakes basin and the department has approved the permit under s. 283.31.

c. If the water is returned through a structure on the bed of a navigable water, the structure is designed and will be operated to meet the applicable permit requirements under s. 30.12 and the department has approved the permit under s. 30.12.

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 subd. 3. will be protected and sustained as required under ss. 30.12, 281.15, and 283.31, considering the state of the receiving water before the proposal is implemented and considering both low and high flow conditions and potential adverse impacts due to changes in temperature and nutrient loadings.

5. The diversion will result in no significant adverse individual impacts or cumulative impacts to the quantity or quality of the waters of the Great Lakes basin or to water dependent natural resources, including cumulative impacts that might result due to any precedent–setting aspects of the proposed diversion, based upon a determination that the proposed diversion will not have any significant adverse impacts on the sustainable management of the waters of the Great Lakes basin.

6. The applicant commits to implementing the applicable water conservation measures under sub. (8) (d) that are environmentally sound and economically feasible for the applicant.

7. The diversion will be in compliance with all applicable local, state, and federal laws and interstate and international agreements, including the Boundary Waters Treaty of 1909.

(g) *Conservation and efficient use of existing water supplies.* The department shall promulgate rules specifying the requirements for an applicant for a new or increased diversion subject to par. (f) to demonstrate the efficient use and conservation of existing water supplies for the purposes of pars. (d) 2. b. and 3. b., (e) 1. d., and (f) 1., including requiring the applicant to document the water conservation planning and analysis used to identify the water conservation and efficiency measures that the applicant determined were feasible.

(i) *Diversion amount.* In an approval issued under this subsection or a modification granted under this subsection to increase the amount of a diversion, the department shall specify a diversion amount equal to the quantity of water that is reasonable for the purposes for which the diversion is proposed.

(4e) DETERMINING BASELINES FOR PREEXISTING WITHDRAWALS. (a) Before issuing automatic notice of coverage under a general permit under sub. (4s) or an automatic individual permit under sub. (5) (c) for a withdrawal from the Great Lakes basin for which

the department is required to issue automatic notice of coverage or an automatic individual permit, the department shall determine a baseline for the withdrawal under this subsection.

(b) 1. Except as provided in subds. 2. and 3e. and par. (f), the department shall estimate the baseline for a withdrawal based on the maximum hydraulic capacity of the most restrictive component in the water supply system used for the withdrawal as of December 8, 2008, based on information available to the department.

2. Except as provided in subd. 3e., if the department has issued an approval under s. 30.12, 30.18, 281.34, or 281.41, or s. 281.17, 2001 stats., that is required for a withdrawal and the approval contains a limit on the amount of water that may be withdrawn, the department shall provide an estimate of the baseline equal to the limit in the approval as of December 8, 2008.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the amount under subd. 1. for each of the water supply systems to which subd. 2. does not apply and shall determine the amount under subd. 2. for each of the water supply systems to which subd. 2. applies and shall provide an estimate of the baseline that is equal to the sum of the amounts determined for each of the water supply systems.

(c) The department shall provide the estimate under par. (b) for a withdrawal to the person making the withdrawal.

(d) After receiving an estimate under par. (c), a person making a withdrawal may provide the department with information relating to any of the following:

1. The components of the water supply system used for the withdrawal as of December 8, 2008.

2. Seasonal variations in the amount of water supplied by the water supply system.

3. Plans for expanding the capacity of the water supply system submitted to the department before December 8, 2008.

4. Amounts withdrawn during the 5 years before the year in which the person submits the information.

5. Successful water conservation efforts by persons using the water that is withdrawn.

6. Water loss from consumptive uses of similar types of users compared to the water loss from consumptive use of persons using the water that is withdrawn.

7. Other relevant information.

(e) Except as provided in par. (f), the department shall determine the baseline for a withdrawal based on the estimate under par. (b) and the department's evaluation of any information provided under par. (d). The department may not consider information provided by any other person.

(f) For a public water supply system that, on June 11, 2008, has approval under s. 281.41 to provide water from the Great Lakes basin for public water supply purposes outside of the Great Lakes basin and approval under s. 283.31 to return the associated wastewater to the Great Lakes basin, the department shall determine the baseline to be the amount of water necessary to provide water for public water supply purposes in the service territory specified in the sewer service area provisions of the areawide water quality management plan under s. 283.83 approved by the department before December 31, 2007, based on the population and related service projections in those provisions.

(g) The department's determination of a baseline under par. (e) or (f) is not subject to administrative review under ch. 227 except at the request of the person making the withdrawal.

(h) If 2 or more public water supply systems merge after the department determines their baselines under par. (e) and before the department issues the initial individual permits under sub. (5) (c) for the systems, the baseline for the new system is the sum of the amounts determined under par. (e) for the individual systems.

(4g) DETERMINING WITHDRAWAL AMOUNTS FOR PREEXISTING WITHDRAWALS. (a) Before issuing automatic notice of coverage under a general permit under sub. (4s) or an automatic individual permit under sub. (5) (c) for a withdrawal from the Great Lakes basin for which the department is required to issue automatic notice of coverage or an automatic individual permit, the department shall determine a withdrawal amount for the withdrawal under this subsection.

(b) Except as provided in par. (c), the withdrawal amount for a withdrawal under this subsection is the same as the baseline determined under sub. (4e).

(c) 1. Except as provided in subd. 3., if a person making a withdrawal has increased the amount of the withdrawal over the baseline before the department issues an automatic notice of coverage under a general permit under sub. (4s) or an automatic individual permit under sub. (5) (c), the department shall specify a withdrawal amount that is, except as provided in subd. 2., 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 in the water supply system used for the withdrawal.

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.

2. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smallest amount under subd. 1. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3. For a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

(4m) WATER USE PERMITS REQUIRED IN THE GREAT LAKES BASIN. Beginning on December 8, 2011, 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), an individual permit issued under sub. (5), or an interim approval under s. 281.344 (5m), except as provided in sub. (4s) (bm).

(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 under par. (i).

2. Requirements for estimating the amount withdrawn, monitoring the withdrawal, if necessary, and reporting the results of the estimating and monitoring, 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).

(am) *Term of general permit.* The term of a general permit issued under par. (a) is 25 years.

(b) *General requirement.* Beginning on December 8, 2011, 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, except as provided in par. (bm). A person to whom the

department has issued a notice of coverage under a general permit shall comply with the general permit.

(bm) *Waiver.* The department may waive the requirement to obtain coverage under a general permit for a person making a withdrawal that is covered by a permit under s. 30.18 (2) (a).

(c) *Automatic notice of coverage for preexisting withdrawals.* The department shall automatically issue a notice of coverage under a general permit to a person who makes a withdrawal that is covered by an interim approval under s. 281.344 (5m) and that averages 100,000 gallons per day or more in any 30–day period but does not equal at least 1,000,000 gallons per day for any 30 consecutive days, or who makes a withdrawal that is not covered by an interim approval and that before December 8, 2008, averaged 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. If necessary, the department may request additional information before issuing a notice under this paragraph. The department shall issue a notice under this paragraph no later than December 8, 2011. In the notice provided under this paragraph for a withdrawal, the department shall specify a baseline equal to the baseline determined under sub. (4e) for the withdrawal and a withdrawal amount equal to the withdrawal amount determined under sub. (4g) for the withdrawal.

(d) *Coverage under general permit for withdrawals not entitled to automatic notice of coverage.* 1. A person who proposes to begin a withdrawal from the Great Lakes basin after December 7, 2011, 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.

1m. A person who makes a withdrawal from the Great Lakes basin that, before December 8, 2011, averages at least 100,000 gallons per day in any 30–day period, but does not equal 1,000,000 gallons per day for any 30 consecutive days and who is not entitled to automatic issuance of notice of coverage under par. (c) 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.

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. Except as provided in subd. 3m., if the department determines that a withdrawal qualifies for coverage under a general permit and the department has issued any approvals that are required for the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall issue a notice of coverage. In the notice, the department shall specify a withdrawal amount that is, except as provided in subd. 3e., 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.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. a. The department may not approve an application under subd. 1. or 1m. for a withdrawal for the purpose of providing water to a public water supply system that serves a population of more than 10,000 unless the withdrawal is covered by an approved water supply service area plan under s. 281.348.

b. The department may not approve an application under subd. 1. or 1m. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, unless the withdrawal is consistent with the water supply service area plan.

c. If the department approves an application under subd. 1. or 1m. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall issue a notice of coverage. In the notice of coverage the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

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) (am), or a groundwater management area designated under s. 281.34 (9).

(e) *Increase in withdrawal amount.* 1. 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.

3. Except as provided in subd. 3m., if the department has issued any approvals that are required for modifying the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall modify the withdrawal amount to an amount that is, except as provided in subd. 3e., 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.

3e. If water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. a. The department may not approve an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that serves a population of more than

10,000 unless the withdrawal is covered by an approved water supply service area plan under s. 281.348.

b. The department may not approve an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, unless the withdrawal is consistent with the water supply service area plan.

c. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall issue a notice of coverage. In the notice of coverage the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

(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 substantial 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 material facts or substantially 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. Until December 8, 2021, the department shall include in the database the baselines for all withdrawals that are covered under general permits issued under this subsection.

(5) INDIVIDUAL WATER USE PERMITS FOR GREAT LAKES BASIN. (a) *Requirement.* Beginning on December 8, 2011, 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. 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., 3e., or 3m., (g) 3., 3e., or 3m., or (j) 3., 3e., or 3m., or sub. (4g).

2. Provisions for estimating and, if necessary, monitoring substantial increases in water loss resulting from increases in withdrawal amounts during the term of a permit and reporting the results of the estimating and monitoring, as provided in rules promulgated by the department.

3. Requirements for estimating the amount withdrawn, monitoring the withdrawal, if necessary, and reporting the results of the estimating and monitoring, 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.

5m. If a decision–making standard under sub. (5m) or (6) applies to the withdrawal, any limit on the amount of the withdrawal necessary to ensure compliance with the decision–making standard.

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

6m. If s. 281.35 (4) applies to the withdrawal, the matters under s. 281.35 (6) (a).

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.

(c) *Automatic issuance of individual permits for preexisting withdrawals.* The department shall automatically issue an individual permit to a person who makes a withdrawal from the Great Lakes basin that is covered by an interim approval under s. 281.344 (5m) and that equals at least 1,000,000 gallons per day for any 30 consecutive days, or who makes a withdrawal that is not covered by an interim approval, that equals at least 1,000,000 gallons per day for any 30 consecutive days, and that before December 8, 2008, averaged 100,000 gallons per day or more in any 30–day period. If necessary, the department may request additional information before issuing a permit under this paragraph. The department shall issue a permit under this paragraph no later than December 8, 2011. In the permit, the department shall specify a baseline equal to the baseline determined under sub. (4e) for the withdrawal and a withdrawal amount equal to the withdrawal amount determined under sub. (4g) for the withdrawal.

(cm) *Initial individual permit for existing withdrawals not entitled to automatic notice of coverage.* 1. A person who makes a withdrawal from the Great Lakes basin that, before December 8, 2011, equals at least 1,000,000 gallons per day for any 30 consecutive days and who is not entitled to automatic issuance of an individual permit under par. (c) 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. Except as provided in subd. 5., if the department approves an application under subd. 1. and the department has issued any approvals that are required for the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall issue an individual permit. In the permit, the department shall specify a withdrawal amount that is, except as provided in subd. 4., 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 in the water supply system used for the withdrawal.

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 water is withdrawn through more than one water supply system to serve a facility, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

5. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

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

(d) *Initial individual permit for withdrawal begun or increased after December 7, 2011.* 1. A person who proposes to begin a withdrawal from the Great Lakes basin after December 7, 2011, 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. Except as provided in subd. 3m., if the department approves an application under subd. 1. and the department has issued any approvals that are required for the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall issue an individual permit. In the permit, the department shall specify a withdrawal amount that is, except as provided in subd. 3e., 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).

3e. If water is withdrawn through more than one water supply system to serve a facility and subd. 3. c. does not apply, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall issue an individual permit. In the permit, the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

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

(dm) *Consistency with water supply plans.* 1. The department may not approve an application under par. (d) 1. for a withdrawal for the purpose of providing water to a public water supply system that serves a population of more than 10,000 unless the public water supply system is covered by an approved water supply service area plan under s. 281.348.

2. The department may not approve an application under par. (d) 1. for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348 unless the withdrawal is consistent with the water supply service area plan.

(e) *Standards for approval of certain unpermitted withdrawals.* 1. Except as provided in par. (dm), 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) 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).

2. Except as provided in subd. 3. or par. (dm), 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) 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).

3. A person who submits an application under par. (d) 1., to which subd. 2. would otherwise apply, may choose to demonstrate, using procedures specified in rules promulgated by the department, the water loss that will result from the withdrawal. If the person demonstrates that the water loss would average less than 5,000,000 gallons per day in every 90−day period, the state decision−making standard under sub. (5m), rather than the compact decision−making standard under sub. (6), applies to the withdrawal.

(f) *Standards for approval of withdrawals covered by general permits.* 1. Except as provided in par. (dm), the department may not approve an application under par. (d) 1. for a withdrawal that is covered under a general permit under sub. (4s) if the applicant proposes to modify the withdrawal before December 8, 2021, so that it equals 1,000,000 or more gallons per day for any 30 consecutive days over the baseline or if the applicant proposes to modify the withdrawal after December 7, 2021, 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 and if subd. 2. does not apply, unless the withdrawal meets the state decision−making standard under sub. (5m).

2. Except as provided in subd. 3. or par. (dm), the department may not approve an application under par. (d) 1. for a withdrawal that is covered under a general permit under sub. (4s) if the applicant proposes to modify the withdrawal before December 8, 2021, so that it equals 10,000,000 or more gallons per day for any 30 consecutive days over the baseline or if the applicant proposes to modify the withdrawal after December 7, 2021, 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, unless the withdrawal meets the compact decision−making standard under sub. (6).

3. A person who submits an application under par. (d) 1., to which subd. 2. would otherwise apply, may choose to demonstrate, using procedures specified in rules promulgated by the department, the water loss that will result from the increase in the withdrawal over the baseline or over the withdrawal amount, whichever is applicable under subd. 2. If the person demonstrates that the resulting increase in water loss would average less than 5,000,000 gallons per day in every 90−day period, the state decision−making standard under sub. (5m), rather than the compact decision−making standard under sub. (6), applies to the increase in the withdrawal.

(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 modifica-

tion of the permit or notify the applicant of any additional information needed to determine whether to approve the application.

3. Except as provided in subd. 3m., if the department approves an application under subd. 1. and the department has issued any approvals that are required for modifying the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., the department shall modify the individual permit. In the modified permit, the department shall specify a withdrawal amount that is, except as provided in subd. 3e., 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).

3e. If water is withdrawn through more than one water supply system to serve a facility and subd. 3. c. does not apply, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348, the department shall modify the individual permit. In the modified permit, the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

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

(gm) *Consistency with water supply plans.* 1. The department may not approve an application under par. (g) 1. for a withdrawal for the purpose of providing water to a public water supply system that serves a population of more than 10,000 unless the public water supply system is covered by an approved water supply service area plan under s. 281.348.

2. The department may not approve an application under par. (g) 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348 unless the withdrawal is consistent with the water supply service area plan.

(h) *Standards for approval of certain modifications.* 1. Except as provided in par. (gm), the department may not approve an application under par. (g) 1., if the person proposes to increase the amount of the withdrawal before December 8, 2021, and after the increase the withdrawal would equal 1,000,000 or more gallons per day for any 30 consecutive days over the baseline, or, if the department issued a modified permit for the withdrawal and the modification was subject to the state decision−making standard under sub. (5m) or the compact decision−making standard under sub. (6), the withdrawal would equal 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 that modified permit and if subd. 2. does not apply, unless the increased withdrawal meets the state decision−making standard under sub. (5m).

1m. Except as provided in par. (gm), the department may not approve an application under par. (g) 1., if the person proposes to increase the amount of the withdrawal after December 7, 2021, and after the increase the withdrawal would equal 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 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 later, and if subd. 2m. does not apply, unless the increased withdrawal meets the state decision−making standard under sub. (5m).

2. Except as provided in subd. 3. or par. (gm), the department may not approve an application under par. (g) 1., if the person proposes to increase the amount of the withdrawal before December 8, 2021, and after the increase the withdrawal would equal at least 10,000,000 gallons per day for any 30 consecutive days over the baseline, or, if the department issued a modified permit for the withdrawal and the modification was subject to the compact decision−making standard under sub. (6), over the withdrawal amount as of the date that the department issued that modified permit unless the withdrawal meets the compact decision−making standard under sub. (6).

2m. Except as provided in subd. 3. or par. (gm), the department may not approve an application under par. (g) 1., if the person proposes to increase the amount of the withdrawal after December 7, 2021, and after the increase the withdrawal would equal 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, 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 later, unless the withdrawal meets the compact decision−making standard under sub. (6).

3. A person who submits an application under par. (g) 1., to which subd. 2. or 2m. would otherwise apply, may choose to demonstrate, using procedures specified in rules promulgated by the department, the water loss that will result from the increase in the withdrawal over the baseline or over the applicable withdrawal amount, whichever applies under subd. 2. or 2m. If the person demonstrates that the resulting increase in water loss would average less than 5,000,000 gallons per day in every 90−day period, the state decision−making standard under sub. (5m), rather than the compact decision−making standard under sub. (6), applies to the increase in the withdrawal.

(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. Except as provided in subd. 3m., if the department approves an application under subd. 1., determines that the person is in substantial compliance with the current individual permit, and has issued any approvals that are required for the withdrawal under s. 30.12, 30.18, 281.34, or 281.41 or s. 281.17, 2001 stats., 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 that is, except as provided in subd. 3e., 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).

3e. If water is withdrawn through more than one water supply system to serve a facility and subd. 3. c. does not apply, the department shall determine the smallest amount under subd. 3. a. or b. for each of the water supply systems and shall specify a withdrawal amount that is equal to the sum of the amounts determined for each of the water supply systems.

3m. If the department approves an application under subd. 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348 and determines that the person is in substantial compliance with the current individual permit, the department shall reissue the individual permit. In the permit, the department shall specify a withdrawal amount that is equal to the withdrawal amount in the water supply service area plan.

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

(jm) *Consistency with water supply plans; reissuance.* 1. The department may not approve an application under par. (j) 1. for a withdrawal for the purpose of providing water to a public water supply system that serves a population of more than 10,000 if the person proposes to increase the amount of the withdrawal over the amount in the current permit, unless the public water supply system is covered by an approved water supply service area plan under s. 281.348.

2. The department may not approve an application under par. (j) 1. for a withdrawal for the purpose of providing water to a public water supply system that is covered by an approved water supply service area plan under s. 281.348 unless the withdrawal is consistent with the water supply service area plan.

(k) *Standards for reissuance in certain cases.* 1. Except as provided in par. (jm), 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 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 later, and if subd. 2. does not apply, unless the increased withdrawal meets the state decision–making standard under sub. (5m).

2. Except as provided in subd. 3. or par. (jm), 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 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 later, unless the withdrawal meets the compact decision–making standard under sub. (6).

3. A person who submits an application under par. (j) 1., to which subd. 2. would otherwise apply, may choose to demonstrate, using procedures specified in rules promulgated by the department, the water loss that will result from the increase in the withdrawal over the withdrawal amount as of the later of the dates under subd. 2. If the person demonstrates that the resulting increase in water loss would average less than 5,000,000 gallons per day in every 90–day period, the state decision–making standard under sub. (5m), rather than the compact decision–making standard under sub. (6), applies to the increase in the withdrawal.

(L) *Prior notice.* Beginning no later than 60 months after the compact's effective date, if a proposal for which approval is required under this subsection will result in a new water loss or an increase in a water loss that will average more than 5,000,000 gallons per day in any 90–day period, the department shall provide the other parties and the provinces of Ontario and Quebec, Canada, with detailed notice of the proposal and an opportunity to comment on the proposal. The department shall provide a response to any comment received under this paragraph. The department may not grant an approval under this subsection until at least 90 days after the day on which it provided notice under this paragraph.

(m) *Regional review.* If a majority of the members of the regional body request regional review of a proposal described in s. 281.343 (4h) (a) 6. for a withdrawal and the department determines under s. 281.343 (4h) (b) 1. that the proposal is subject to regional review, the department shall conduct a technical review of the proposal and submit the proposal for regional review. The department may not determine under s. 281.343 (4h) (b) 1. that the proposal is subject to regional review unless the proposal will result in a water loss that will average more than 5,000,000 gallons per day in any 90–day period. If the department submits the proposal for regional review, the department may not act on the proposal until the proposal has undergone regional review and the department has considered the regional declaration of finding in determining whether to approve the proposal or until 90 days after the department submits the proposal for regional review, whichever is sooner.

(n) *Information to be provided.* 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) or (6) 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) or (6).

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

(q) *Transfer of control.* A permit is not transferable to any person except after notice to the department. A person who proposes to assume control over a permitted withdrawal shall file with the department a permit application and a statement of acceptance of the permit. The department may require modification or revocation and reissuance of the permit to change the name of the permittee.

(5e) REQUIREMENTS FOR WATER SUPPLY SERVICE AREA PLANS FOR PUBLIC WATER SUPPLY SYSTEMS IN THE GREAT LAKES BASIN. (a) *Unpermitted withdrawals.* 1. Beginning on December 8, 2011, the department may not approve a water supply service area plan under s. 281.348 that provides for a new withdrawal from the Great Lakes basin of at least 1,000,000 gallons per day for any 30 consecutive days, or for modification of an existing withdrawal that is not covered by a general permit under sub. (4s) 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).

2. Beginning on December 8, 2011, except as provided in subd. 3., the department may not approve a water supply service area plan under s. 281.348 that provides for a new withdrawal from the Great Lakes basin of at least 10,000,000 gallons per day for any 30 consecutive days, or for modification of an existing withdrawal that is not covered by a general permit under sub. (4s) 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).

3. A person who submits a water supply service area plan under s. 281.348, that provides for a new withdrawal to which subd. 2. would otherwise apply, may choose to demonstrate, using procedures specified in rules promulgated by the department, the water loss that will result from the withdrawal. If the person demonstrates that the water loss would average less than 5,000,000 gallons per day in every 90–day period, the state decision–making standard under sub. (5m), rather than the compact decision–making standard under sub. (6), applies to the withdrawal.

(b) *Increased withdrawals covered by general permits.* 1. Beginning on December 8, 2011, the department may not approve a water supply service area plan under s. 281.348 that provides for modifying a withdrawal that is covered under a general permit under sub. (4s) before December 8, 2021, so that the withdrawal equals 1,000,000 or more gallons per day for any 30 consecutive days over the baseline or if the plan provides for modifying the withdrawal after December 7, 2021, 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 and if subd. 2. does not apply, unless the withdrawal meets the state decision–making standard under sub. (5m).

2. Beginning on December 8, 2011, except as provided in subd. 3., the department may not approve a water supply service area plan under s. 281.348 that provides for modifying a withdrawal that is covered under a general permit under sub. (4s) before December 8, 2021, so that the withdrawal equals 10,000,000 or more gallons per day for any 30 consecutive days over the baseline or if the plan provides for modifying the withdrawal after December 7, 2021, 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, unless the withdrawal meets the compact decision–making standard under sub. (6).

3. A person who submits a water supply service area plan under s. 281.348, that provides for an increase in a withdrawal to which subd. 2. would otherwise apply, may choose to demonstrate, using procedures specified in rules promulgated by the department, the water loss that will result from the increase in the withdrawal over the baseline or over the withdrawal amount, whichever is applicable under subd. 2. If the person demonstrates that the resulting increase in water loss would average less than 5,000,000 gallons per day in every 90–day period, the state decision–making standard under sub. (5m), rather than the compact decision–making standard under sub. (6), applies to the increase in the withdrawal.

(c) *Increased withdrawals covered by individual permits.* 1. Beginning on the December 8, 2011, the department may not approve a water supply service area plan under s. 281.348 that provides for increasing, before December 8, 2021, the amount of a withdrawal that is covered under an individual permit issued under sub. (5) if after the increase the withdrawal would equal 1,000,000 or more gallons per day for any 30 consecutive days over the baseline, or, if the department issued a modified permit for the withdrawal and the modification was subject to the state decision–making standard under sub. (5m) or the compact decision–making standard under sub. (6), the withdrawal would equal 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 that modified permit and if subd. 2. does not apply, unless the increased withdrawal meets the state decision–making standard under sub. (5m).

1m. Beginning on December 8, 2011, the department may not approve a water supply service area plan under s. 281.348 that provides for increasing, after December 7, 2021, the amount of a withdrawal that is covered under an individual permit issued under sub. (5) and after the increase the withdrawal would equal 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 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 later, and if subd. 2m. does not apply, unless the increased withdrawal meets the state decision–making standard under sub. (5m).

2. Beginning on December 8, 2011, except as provided in subd. 3., the department may not approve a water supply service area plan under s. 281.348 that provides for increasing, before December 8, 2021, the amount of a withdrawal that is covered under an individual permit issued under sub. (5) if after the increase the withdrawal would equal 10,000,000 or more gallons per day for any 30 consecutive days over the baseline, or, if the department issued a modified permit for the withdrawal and the modification was subject to the compact decision–making standard under sub. (6), the withdrawal would equal 10,000,000 gallons per day for any 30 consecutive days over the withdrawal amount as of the date that the department issued that modified permit, unless the increased withdrawal meets the compact decision–making standard under sub. (6).

2m. Beginning on December 8, 2011, except as provided in subd. 3., the department may not approve a water supply service area plan under s. 281.348 that provides for increasing, after December 7, 2021, the amount of a withdrawal that is covered under an individual permit issued under sub. (5) and after the increase the withdrawal would equal 10,000,000 or more gallons per day for any 30 consecutive days over the withdrawal amount as of the beginning of the current permit term 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 later, unless the increased withdrawal meets the compact decision–making standard under sub. (6).

3. A person who submits a water supply service area plan under s. 281.348, that provides for an increase in a withdrawal to which subd. 2. or 2m. would otherwise apply, may choose to demonstrate, using procedures specified in rules promulgated by the department, the water loss that will result from the increase in the withdrawal over the baseline or over the withdrawal amount, whichever is applicable under subd. 2. or 2m. If the person demonstrates that the resulting increase in water loss would average less than 5,000,000 gallons per day in every 90–day period, the state decision–making standard under sub. (5m), rather than the compact decision–making standard under sub. (6), applies to the increase in the withdrawal.

(d) *Providing prior notice.* The department may not approve a water supply service area plan under s. 281.348 that provides for a withdrawal described in sub. (5) (L) unless the department has provided notice as required under sub. (5) (L) at least 90 days before approving the water supply service area plan and has provided a response to any comment received.

(e) *Regional review.* The department may not approve a water supply service area plan under s. 281.348 if a majority of the members of the regional body request regional review of a withdrawal described in s. 281.343 (4h) (a) 6. provided for in the plan unless the department complies with sub. (5) (m).

(5m) STATE DECISION–MAKING STANDARD. A proposal meets the state decision–making standard if all of the following apply:

(a) The amount of the withdrawal or increase in the withdrawal is needed to meet the projected needs of the person who will use the water.

(b) For an increase in a withdrawal, cost–effective conservation practices have been implemented for existing uses of the water, as required under rules promulgated by the department under sub. (8) (d).

(c) The applicant has assessed other potential water sources for cost–effectiveness and environmental effects.

(d) Cost–effective conservation practices will be implemented to ensure efficient use of the water, for a new withdrawal, or of the increased amount of an existing withdrawal.

(e) One of the following applies:

1. No significant adverse environmental impacts to the waters of the state will result from the new or increased withdrawal.

2. If the withdrawal is from a surface water body, the applicant demonstrates that the withdrawal will not result in the violation of water quality standards under s. 281.15 or impair fish populations.

3. The department has issued a permit under s. 30.18 for the new or increased withdrawal or has issued a permit under s. 30.12 for a structure that will be used for the new or increased withdrawal.

4. The department has issued an approval under s. 281.34, or s. 281.17, 2001 stats., for the new or increased withdrawal.

(6) COMPACT DECISION–MAKING STANDARD. A proposal meets the compact decision–making standard if all of the following apply:

(a) All of the water withdrawn from the Great Lakes basin will be returned to the source watershed, less an allowance for consumptive use.

(b) The withdrawal will result in no significant adverse individual impacts or cumulative impacts to the quantity or quality of the waters of the Great Lakes basin, to water dependent natural resources, to the source watershed, or, if the withdrawal is from a stream tributary to one of the Great Lakes, to the watershed of that stream.

(c) The withdrawal will be implemented in a way that incorporates environmentally sound and economically feasible water conservation measures.

(d) The withdrawal will be in compliance with all applicable local, state, and federal laws and interstate and international agreements, including the Boundary Waters Treaty of 1909.

(e) The proposed use of the water is reasonable, based on a consideration of all of the following:

1. Whether the proposed withdrawal is planned in a way that provides for efficient use of the water and will avoid or minimize the waste of water.

2. If the proposal would result in an increased water loss, whether efficient use is made of existing water supplies.

3. The balance of the effects of the proposed withdrawal and use, and other existing or planned withdrawals and water uses from the water source, on economic development, social development, and environmental protection.

4. The supply potential of the water source, considering quantity, quality, reliability, and safe yield of hydrologically interconnected water sources.

5. The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed withdrawal and use, under foreseeable conditions, to other lawful consumptive uses or nonconsumptive uses of water or to the quantity or quality of the waters of the Great Lakes basin and water dependent natural resources, and the proposed plans and arrangements for avoidance or mitigation of those impacts.

6. Any provisions for restoration of hydrologic conditions and functions of the source watershed or, if the withdrawal is from the stream tributary to one of the Great Lakes, of the watershed of that stream.

(7) EXEMPTIONS. Subsections (3) to (6) do not apply to withdrawals from the Great Lakes basin or diversions for any of the following purposes:

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

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

(7m) EMERGENCY ORDER. The department may, without a prior hearing, order a person to whom the department has issued an individual permit or notice of coverage under a general permit under this section or s. 281.344 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) STATEWIDE WATER CONSERVATION AND EFFICIENCY. (a) *Goals and objectives.* The department shall specify water conservation and efficiency goals and objectives for the waters of the state and for the waters of the Great Lakes basin. 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 Great Lakes council under s. 281.343 (4b) (a) and (c). In specifying these goals and objectives, the department shall consult with the department of safety and professional services and the public service commission and consider the water conservation and efficiency goals and objectives developed in any pilot program conducted by the department in cooperation with the regional body.

(b) *Statewide program.* In cooperation with the department of safety and professional services and the public service commission, the department shall develop and implement a statewide water conservation and efficiency program that includes all of the following:

1. Promotion of environmentally sound and economically feasible water conservation measures through a voluntary statewide program.

1m. Mandatory and voluntary conservation and efficiency measures for the waters of the Great Lakes basin that are necessary to implement subs. (4), (4s), (5), (5m), and (6) and s. 281.348.

2. Water conservation and efficiency measures that the public service commission requires or authorizes a water utility to implement under ch. 196.

3. Water conservation and efficiency measures that the department of safety and professional services requires or authorizes to be implemented under chs. 101 and 145.

(c) *Great Lakes basin program.* No later than the 24th month beginning after the compact's effective date, the department shall implement a Great Lakes basin water conservation and efficiency program as part of the statewide program under par. (b), for all users of the waters of the Great Lakes basin, that is designed to achieve the goals and objectives for the waters of the Great Lakes basin that are specified under par. (a). The department shall include in the Great Lakes basin program the activities in par. (b) 1. to 3. applicable in the Great Lakes basin and application of the water conservation and efficiency measures specified under par. (d) in subs. (4) (f) 6. and (g) and (6) (c).

(d) *Water conservation and efficiency measures.* The department shall promulgate rules specifying water conservation and efficiency measures for the purposes of implementing par. (b). In the rules, the department may not require retrofitting of existing

fixtures, appliances, or equipment. The department shall specify measures based on all of the following:

1. The amount and type of diversion, withdrawal, or consumptive use and whether the diversion, withdrawal, or consumptive use exists on December 8, 2008, is expanded, or is new.

2. The results of any pilot water conservation program conducted by the department in cooperation with the regional body.

3. The results of any assessments under sub. (11) (d).

(9) TRIBAL CONSULTATION; PUBLIC PARTICIPATION. (a) *Tribal consultation.* The department shall consult with a federally recognized American Indian tribe or band in this state concerning a proposal that may affect the tribe or band and that is subject to regional review or Great Lakes council approval under sub. (4) or (5).

(b) *Public notice.* 1. The department shall, by rule, create procedures for providing to interested members of the public notices of each complete application that the department receives under sub. (5) to which the state decision–making standard under sub. (5m) or the compact decision–making standard under sub. (6) applies, other than an application from a person operating a public water supply system that is covered by an approved water supply service area plan under s. 281.348, and each complete application that the department receives under sub. (4) and of each general permit that the department proposes to issue under sub. (4s) (a). The department shall include, in the rule, at least the following procedures:

a. Publication of the notice as a class 1 notice under ch. 985.

b. Mailing of the notice to any person, group, local governmental unit, or state agency upon request.

c. Publication of the notice through an electronic notification system established by the department.

d. Publication of the notice on the department's Internet website.

2. The department shall establish the form and content of a public notice by rule. The department shall include in every public notice concerning an application to which subd. 1. applies at least the following information:

a. The name and address of each applicant.

b. A brief description of the proposal for which the application is made, including the amount of the proposed withdrawal or diversion.

c. A brief description of the procedures for the formulation of final determinations on applications, including the 30–day comment period required under par. (c).

d. Information indicating where the complete application may be viewed on the department's Internet website.

(bm) *Notice date.* For the purpose of determining the date on which public notice is provided under this subsection, the date on which the department first publishes the notice on its Internet website shall be considered the date of public notice.

(c) *Public comment.* The department shall receive public comments on a proposal for which it receives an application to which par. (b) 1. applies or on a proposed general permit under sub. (4s) (a) for a 30–day period beginning when the department gives notice under par. (b) 1. The department shall retain all written comments submitted during the comment period and shall consider the comments in making its decisions on the application.

(d) *Public hearing.* 1. The department shall provide an opportunity for any interested person or group of persons, any affected local governmental unit, or any state agency to request a public hearing with respect to a proposal for which the department receives an application to which par. (b) 1. applies or on a proposed general permit under sub. (4s) (a). A request for a public hearing shall be filed with the department within 30 days after the department gives notice under par. (b). The party filing a request for a public hearing shall indicate the interest of the party and the reasons why a hearing is warranted. The department shall hold a public hearing on a proposal for which the department receives an application to which par. (b) 1. applies or on a proposed general permit under sub. (4s) (a) if the department determines that there is a significant public interest in holding a hearing.

2. The department shall promulgate, by rule, procedures for the conduct of public hearings held under this paragraph. A hearing held under this paragraph is not a contested case hearing under ch. 227.

3. The department shall provide public notice of any hearing held under this paragraph in the manner provided under par. (b) 1. The notice shall include the time, date, and location of the hearing, a summary of the subject matter of the application or proposed general permit, and information indicating where a copy of the application or proposed general permit that is the subject of the hearing may be found on the department's Internet website. The summary shall contain a brief, precise, easily understandable, plain language description of the subject matter of the application or proposed general permit. If the hearing concerns an application received by the department, the notice shall also include the name and address of the applicant.

(e) *Public access to information.* Any record or other information provided to or obtained by the department regarding a proposal for which an application under sub. (4) or (5) is received is a public record as provided in subch. II of ch. 19. The department shall make available to and provide facilities for the public to inspect and copy any records or other information provided to or obtained by the department regarding a proposal for which an application for a new or increased diversion or withdrawal under sub. (4) or (5) is received, except that any record or other information provided to the department may be treated as confidential upon a showing to the secretary that the record or information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), or upon a determination by the department that domestic security concerns warrant confidential treatment. Nothing in this subsection prevents the use of any confidential records or information obtained by the department in the administration of this section in compiling or publishing general analyses or summaries, if the analyses or summaries do not identify a specific owner or operator.

(h) *Expediting review.* The department shall take appropriate measures to expedite, to the extent feasible, applicable reviews by the regional body, Great Lakes council, parties, and the provinces of Ontario and Quebec of applications under this section that are subject to regional review.

(10m) AMENDMENT OF COASTAL MANAGEMENT PROGRAM. (a) The Wisconsin coastal management council, created under s. 14.019, 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, 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 specified under par. (a), if applicable.

(c) If the department issues a permit 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.

(11) INFORMATION, REPORTS, AND ASSESSMENTS. (a) *Statewide inventory.* 1. The department shall develop and maintain a water resources inventory consisting of information about the waters of the state including information about the location, type, quantity, and uses of water resources and the location, and type of diversions, withdrawals, and consumptive uses and quantities of withdrawals and water losses. The department shall develop the inventory in cooperation with federal and local governmental entities, agencies of this state and of the other parties, tribal agen-

cies, and private entities. The department shall use information in the registry under sub. (3) (c) in creating the inventory.

2. The department shall create the water resources inventory under subd. 1. no later than June 1, 2014, or the first day of the 60th month beginning after the compact's effective date, whichever is later.

(b) *Annual report on water resources.* Beginning within 60 months after the compact's effective date, the department shall annually report to the Great Lakes council the information from par. (a) regarding withdrawals that average 100,000 gallons per day or more over a 30–day period, including consumptive uses, in the basin and any diversions, as well as the amounts of the withdrawals, water losses from consumptive uses, and diversions in the basin reported under sub. (3) (e).

(c) *Program report.* No later than 12 months after the compact's effective date, and every 5 years thereafter, the department shall submit a report to the Great Lakes council and the regional body describing the implementation of the program under this section, including the manner in which withdrawals from the Great Lakes basin are managed, how the criteria for approval under subs. (4), (5), and (6) are applied, and how conservation and efficiency measures are implemented.

(d) *Assessment of water conservation and efficiency program.* After the compact's effective date, the department shall annually assess the effectiveness of the water conservation and efficiency program under sub. (8) (c) in meeting the Great Lakes basin water conservation and efficiency goals under sub. (8) (a). In each assessment, the department shall consider whether there is a need to adjust the Great Lakes basin water conservation and efficiency program in response to new demands for water from the basin and the potential impacts of the cumulative effects of diversions, withdrawals, and consumptive uses and of climate. The department shall provide the assessment to the Great Lakes council and the regional body and make it available to the public.

(e) *Assessment of cumulative impacts.* The department shall participate in the periodic assessment of the impacts of withdrawals, diversions, and consumptive uses under s. 281.343 (4z) (a).

(f) *Report on threshold.* No later than the 60th month beginning after the compact's effective date, the department shall submit to the legislature under s. 13.172 (2) a report analyzing the impact of the threshold under sub. (5) (a) and providing any recommendations to change the threshold.

(g) *Water use report.* Beginning no later than 8 years after June 11, 2008, or 5 years after the last report published under s. 281.344 (11), whichever is earlier, and every 5 years thereafter, the department, using water use data reported under this section, shall publish a water use report to summarize water usage, identify related trends, identify areas of future water usage concerns, and recommend future actions to promote sustainable water use. The department shall also include in the report water resource information derived from reporting and data accumulation requirements under other water regulatory laws.

(12) FEES. (a) Subject to par. (am), a person who has a water supply system with the capacity to make a withdrawal from the waters of the state averaging 100,000 gallons per day or more in any 30–day period shall pay to the department an annual fee of $125, except that the department may promulgate a rule specifying a different amount and except that, notwithstanding the department's rule–making authority, no person is required to pay more than $1,000 per year under this paragraph.

(am) The following are not considered in determining the capacity of a water supply system for the purposes of par. (a):

1. The capacity of a well that has a capacity of less than 100,000 gallons per day and that is used primarily to provide water to a single–family or multifamily residence.

2. The capacity of a well used primarily for fire protection purposes.

(b) In addition to the fee under par. (a), a person who withdraws from the Great Lakes basin more than 50,000,000 gallons per year shall pay to the department an annual fee in an amount specified under par. (c).

(c) The department shall promulgate a rule specifying the amount of the fee under par. (b).

(d) A person who submits an application under sub. (4) shall pay to the department a review fee of $5,000 and shall pay to the department an amount equal to any fees imposed on this state related to review of the proposed diversion by the Great Lakes council or the regional body.

(13m) EXCEEDANCES. It is not a violation of this section to withdraw an amount of water that exceeds the withdrawal amount specified in a permit issued under sub. (5) or in the database under sub. (4s) (i), unless the amount by which the withdrawal exceeds the withdrawal amount would result in the application of the state decision–making standard under sub. (5m) or the compact decision–making standard under sub. (6).

(14) PENALTIES. (a) Any person who violates this section or any rule promulgated or approval issued under this section shall forfeit not less than $10 nor more than $10,000 for each violation. Each day of continued violation is a separate offense.

(c) In addition to the penalties under par. (a), the court may order the defendant to abate any nuisance, restore a natural resource, or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the violation.

History: 2007 a. 227; 2009 a. 28, 180, 276; 2011 a. 32, 167; 2015 a. 177; 2017 a. 21, 58; 2017 a. 365 s. 112.

Cross–reference: See also ch. NR 860, Wis. adm. code.

Diversions from the Great Lakes: Out of the Watershed and in Contravention of the Compact. Wabiszewski. 100 MLR 627 (2016).

281.348 Water supply service area plans for public water supply systems. (1) DEFINITIONS. In this section:

(a) "Compact's effective date" means the effective date of the Great Lakes — St. Lawrence River Basin Water Resources Compact under s. 281.343 (9) (d).

(b) "Cost–effectiveness analysis" means a systematic comparison of alternative means of providing a water supply in order to identify alternatives that will minimize total resources costs and maximize environmental benefits over a planning period.

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

(cm) "Great Lakes council" means the Great Lakes — St. Lawrence River Basin Water Resources Council, created under s. 281.343 (2) (a).

(d) "Public water supply" means water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers.

(e) "Total resources costs" includes monetary costs and direct and indirect environmental as well as other nonmonetary costs.

(f) "Withdraw" means to take water from surface water or groundwater.

(g) "Withdrawal" means the taking of water from surface water or groundwater, including the taking of surface water or groundwater for the purpose of bottling the water.

(2) DETERMINATIONS CONCERNING APPLICABILITY OF REQUIREMENTS. (a) For the purposes of this section, the surface water divide is used to determine whether a withdrawal of surface water or groundwater is from the Great Lakes basin.

(b) For the purposes of this section, the withdrawal of water from more than one source within the Great Lakes basin to supply a common distribution system is considered one withdrawal.

(3) REQUIREMENTS. (a) 1. The department shall establish, by rule, and administer a continuing water supply planning process for the preparation of water supply plans for persons operating public water supply systems. The period covered by a plan under this subsection may not exceed 20 years. A regional planning

commission may prepare plans for persons operating public water supply systems.

2. A person operating a public water supply system that serves a population of 10,000 or more and that withdraws water from the waters of the state shall have an approved plan under this section no later than December 31, 2025.

(b) The department shall include in the process under par. (a) procedures and requirements for all of the following:

1. Public review and comment on a proposed plan. For a plan submitted after the compact's effective date covering a public water supply system that withdraws water from the Great Lakes basin, the procedures and requirements under this subdivision shall be consistent with s. 281.343 (6) (b).

2. Approval of a plan by the governing body of each city, village, and town whose public water supply is addressed by the plan before the plan is submitted to the department.

2m. Approval of a plan by the department.

3. Ensuring that plans remain current.

4. Intergovernmental cooperation.

5. Reopening or reconsideration by the department of a previously approved plan.

(bm) A person preparing a plan under par. (a) shall consider existing regional water needs assessments and other regional water supply planning information.

(c) A person preparing a plan under par. (a) shall include all of the following in the plan:

1. Delineation of the area for which the plan is being prepared and proposed water supply service areas for each public water supply system making a withdrawal covered by the plan, except as provided in par. (cm) or (cr).

2. An inventory of the sources and quantities of the current water supplies in the area.

3. A forecast of the demand for water in the area over the period covered by the plan.

3m. Identification of the existing population and population density of the area for which the plan is prepared and forecasts of the expected population of the area during the period covered by the plan based on growth projections for the area and municipally planned population densities.

4. Identification of the options for supplying water in the area for the period covered by the plan that are approvable under other applicable statutes and rules and that are cost–effective based upon a cost–effectiveness analysis of regional and individual water supply and water conservation alternatives.

5. An assessment of the environmental and economic impacts of carrying out specific significant recommendations of the plan.

6. A demonstration that the plan will effectively utilize existing water supply storage and distribution facilities and wastewater infrastructure to the extent practicable.

7. Identification of the procedures for implementing and enforcing the plan and a commitment to using those procedures.

8. An analysis of how the plan supports and is consistent with any applicable comprehensive plans, as defined in s. 66.1001 (1) (a), and applicable approved areawide water quality management plans under s. 283.83.

9. Other information specified by the department.

(cm) For the purposes of plans under par. (a), and except as provided in par. (cr), an areawide water quality planning agency designated by the governor under ch. NR 121, Wis. Adm. Code, shall delineate the proposed water supply service areas for all of the public water supply systems in the planning area for which the agency is designated. An areawide water quality planning agency shall delineate proposed water supply service areas that are consistent with the approved areawide water quality management plan under s. 283.83 for the planning area and that permit the development of plans that are approvable under par. (d). An areawide water quality planning agency may also provide regional water needs assessments and other regional water supply planning information. The process for conducting regional activities under this subsection may be the same as the process for regional water supply planning for a groundwater management area designated under s. 281.34 (9).

(cr) For the purposes of plans under par. (a), if the Great Lakes council approves a diversion area for a public water supply system proposing to make a diversion from the Great Lakes basin under s. 281.346 (4) (e), that diversion area shall be the water supply service area for purposes of this section and does not need to be consistent with the approved areawide water quality management plan under s. 283.83 for the planning area.

(d) The department may not approve a plan under this subsection unless all of the following apply:

1. The plan provides for a water supply system that is approvable under this section and other applicable statutes and rules based on a cost–effectiveness analysis of regional and individual water supply and water conservation alternatives.

2. The plan will effectively utilize existing water supply storage and distribution facilities and wastewater infrastructure to the extent practicable.

3. The plan is consistent with any applicable comprehensive plans, as defined in s. 66.1001 (1) (a).

4. Except as provided in par. (cr), the plan is consistent with any applicable approved areawide water quality management plans under s. 283.83.

5. Beginning on December 8, 2011, if the plan covers a public water supply system that withdraws water from the Great Lakes basin, the plan complies with any applicable requirements in s. 281.346 (5e).

(e) The department shall specify in a plan under this section a water supply service area for each public water supply system making a withdrawal covered by the plan. The department may not limit water supply service areas based on jurisdictional boundaries, except as necessary to prevent waters of the Great Lakes basin from being transferred from a county that lies completely or partly within the Great Lakes basin into a county that lies entirely outside the Great Lakes basin, or except where the water supply service area is delineated by a diversion area approved by the Great Lakes council under par. (cr).

(f) A person applying for an approval under s. 281.344 (4) or 281.346 (4) may use elements of an approved plan under this subsection to show compliance with requirements under s. 281.344 (4) or 281.346 (4) to which the plan is relevant.

(4) WITHDRAWAL AMOUNT IN CERTAIN PLANS. In a plan under this section that covers a public water supply system making a withdrawal from the Great Lakes basin, the department shall specify a withdrawal amount for the public water supply system equal to the greatest of the following:

(a) The amount needed for the public water supply system to provide a public water supply in the water supply service area in the plan during the period covered by the plan, as determined using the population and related service projections in the plan.

(b) If the withdrawal is covered by an individual permit issued under s. 281.344 (5) or 281.346 (5) when the department approves the plan, the withdrawal amount in that permit when the department approves the plan or, if the withdrawal is covered by a general permit issued under s. 281.344 (4s) or 281.346 (4s) when the department approves the plan, the withdrawal amount for the public water supply system in the database under s. 281.346 (4s) (i) when the department approves the plan.

History: 2007 a. 227; 2009 a. 28; 2017 a. 38.

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

(a) "Approval" means a permit issued under s. 30.18, 281.344 (5), or 281.346 (5) 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 under s. 281.17, 2001 stats., or s. 30.18 (6) (c), 281.34, 281.344 (5), 281.346 (5), or 281.41.

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

(bm) "Compact's effective date" means the effective date of the Great Lakes — St. Lawrence River Basin Water Resources Compact under s. 281.343.

(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.

(cm) "Facility" means an operating plant or establishment providing electricity to the public or carrying on any manufacturing activity, trade, or business on one site, including similar plants or establishments under common ownership or control located on contiguous properties.

(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. 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 to supply a single facility or public water supply system.

(4) 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.

4. A person to whom a permit under s. 281.344 (5) or 281.346 (5) has been issued or who is required to obtain a permit under one of those provisions before beginning or increasing a withdrawal.

(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, 281.344 (5), 281.346 (5), 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.

(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 s. 283.83.

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.

(b) *Great Lakes basin; consultation required.* If the department receives an application before the compact's effective date that, if approved, will result in a new water loss to the Great Lakes basin averaging more than 5,000,000 gallons per day in any 30–day period, or an increase in 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. (11m) 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:

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.

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.

(e) *Right to hearing.* Any person who receives notice of a denial or modification requirement under par. (c) is entitled to a contested case hearing under ch. 227 if the person requests the hearing within 30 days after receiving the notice.

(f) The department shall charge each applicant for an approval under this subsection the fee established under sub. (10) (a) 5. All moneys collected under this paragraph shall be credited to the general fund.

(6) APPROVAL. (a) *Issuance; contents.* Subject to par. (am), 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.

(am) *Water loss permit.* If the department approves an application under sub. (5) for a withdrawal that is covered by a permit under s. 281.344 (5) or s. 281.346 (5) and another approval, the department shall modify the permit under s. 281.344 (5) or 281.346 (5), rather than the other approval, to specify the matters under par. (a).

(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.

(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.

(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.

(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, before the compact's effective date, s. 281.344 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.

(d) This subsection does not apply after the compact's effective date.

(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.

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. Before the compact's effective date, 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.

(e) 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.

(11m) UPPER MISSISSIPPI RIVER BASIN CONSULTATION. The department shall 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 upper Mississippi River basin and, before the compact's effective date, of the Great Lakes 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; 2007 a. 96, 227; 2009 a. 180; 2017 a. 134.

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.

Through ss. 281.11 and 281.12, the legislature has delegated the state's public trust duties to the Department of Natural Resources (DNR) in the context of its regulation of high capacity wells and their potential effect on navigable waters. For all proposed high capacity wells, the legislature has expressly granted DNR the authority and a general duty to review all permit applications and to decide whether to issue the permit, to issue the permit with conditions, or to deny the application, which provides DNR with the discretion to undertake the review it deems necessary for all proposed high capacity wells, including the authority and a general duty to consider the environmental impact of a proposed high capacity well on waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08–3170.

There is nothing in either s. 281.34 or 281.35 that limits the Department of Natural Resources' (DNR) authority to consider the environmental impacts of a proposed high capacity well, nor is there any language in subch. II of this chapter that requires DNR to issue a permit for a well if the statutory requirements are met and no formal review or findings are required. There being no language expressly revoking or limiting DNR's authority and general duty to protect and manage waters of the state, DNR retains such authority and general duty to consider whether a proposed high capacity well may impact waters of the state. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08–3170.

The Department of Natural Resources (DNR) is required to consider the environmental impact of a proposed high capacity well when presented with sufficient concrete, scientific evidence of potential harm to waters of the state. Upon what evidence, and under what circumstances, that duty is triggered is a highly fact–specific matter that depends upon the information submitted by the well owner in the well permit application and any other information submitted to DNR decision makers. DNR should use both its expertise in water resources management and its discretion to determine whether its duty as trustee of public trust resources is implicated by a proposed high capacity well permit application such that it has an obligation to consider environmental concerns. Lake Beulah Management District v. DNR, 2011 WI 54, 335 Wis. 2d 47, 799 N.W.2d 73, 08–3170.

281.36 Permits for discharges into wetlands; mitigation.

(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.

(ad) "Bank service area" means the geographic area corresponding to the HUC 6 within which impacts to a wetland from a discharge can be mitigated at a specific mitigation bank as determined in an agreement between the department and the U.S. army corps of engineers and referenced in a mitigation banking instrument under sub. (3w).

(ae) "Basin" means the Lake Michigan, Lake Superior, or Mississippi River basin.

(am) "Demonstrable economic public benefit" means an economic benefit to the community or region that is measurable, such as increased access to natural resources, local spending by the proposed project, employment, or community investment.

(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.

(bd) "Fill material" has the meaning given in 33 CFR 323.2 (e), as the meaning exists on July 1, 2012.

(bf) "HUC 6" means a watershed delineated by the U.S. geological survey using a nationwide system based on surface hydrologic features at the 6–digit basin scale (the hydrologic unit code 6).

(bg) "HUC 8" means a watershed delineated by the U.S. geological survey using a nationwide system based on surface hydrologic features at the 8–digit subbasin scale (the hydrologic unit code 8).

(bj) "Mitigation" means the restoration, enhancement, creation, or preservation of wetlands to compensate for adverse impacts to other wetlands.

(bL) "Mitigation bank" means a system of accounting for wetland loss and compensation that includes one or more sites where wetlands are restored, enhanced, created, or preserved to provide credits to be subsequently applied or purchased in order to compensate for adverse impacts to other wetlands.

(bn) "Mitigation project" means mitigation of the type specified in sub. (3r) (a) 3.

(br) "Nonfederal wetland" means a wetland that is not subject to federal jurisdiction under 33 USC 1344.

(cp) "Practicable" means reasonably available and capable of being implemented after taking into consideration cost, site availability, available technology, logistics, and proximity to the proposed project site, in light of the overall purpose and scope of the project.

(ct) "Small business" has the meaning given in s. 227.114 (1).

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

(2m) DELINEATION PROCEDURES. For purposes of delineating the boundary of a wetland under this section, the procedures contained in the wetlands delineation manual published by the U.S. army corps of engineers shall be used. The edition of the manual that shall be used shall be the 1987 edition of the manual and any document that the U.S. army corps of engineers issues interpreting that manual, unless the U.S. army corps of engineers publishes an edition of the manual after January 9, 2001, and the department designates that edition as the one to be used under this subsection.

(3b) PERMIT REQUIRED. (a) For purposes of this section, a wetland general or individual permit issued by the department constitutes water quality certification as required by 33 USC 1341 (a).

(b) No person may discharge dredged material or fill material into a wetland unless the discharge is authorized by a wetland general permit or individual permit issued by the department under this section or the discharge is exempt under sub. (4), (4m) (a), (4n), or (4r). No person may violate any condition contained in a wetland general or individual permit issued by the department under this section. The department may not issue a wetland general or individual permit under this section unless it determines that the discharge authorized pursuant to the wetland general or individual permit will comply with all applicable water quality standards.

(3g) WETLAND GENERAL PERMITS. (a) *Required permits.* The department shall issue a wetland general permit for each of the following types of discharges:

1. A discharge that is necessary for the treatment or disposal of hazardous waste or toxic pollutants, if the discharge does not contain hazardous waste or toxic pollutants and does not affect more than 2 acres of wetland.

2. A discharge that is necessary for temporary access and dewatering, if the discharge does not affect more than 2 acres of wetland.

3. A temporary or permanent discharge for routine utility construction and maintenance projects and activities.

4. A discharge that is part of a development for industrial purposes, if the discharge does not affect more than 10,000 square feet of wetland. For purposes of this subdivision, the development of a waste disposal site is considered to be a development for industrial purposes.

5. A discharge that is part of a development for commercial purposes, if the discharge does not affect more than 10,000 square feet of wetland.

6. A discharge that is part of a development for residential purposes, if the discharge does not affect more than 10,000 square feet of wetland.

7. A discharge that is part of a development for agricultural or aquacultural purposes, if the discharge does not affect more than 10,000 square feet of wetland.

8. A discharge that is part of a development for municipal purposes, if the discharge does not affect more than 10,000 square feet of wetland.

9. A discharge that is part of a development for recreational purposes, if the discharge does not affect more than 10,000 square feet of wetland.

10. A discharge that is necessary for the construction, reconstruction, or maintenance of a bridge or culvert that is part of a transportation project that is being carried out under the direction and supervision of a city, village, town, or county.

(b) *Additional required permits.* In addition to the wetland general permits required under par. (a), the department shall issue wetland general permits that are consistent with, and correspond to, any general permits that are issued under 33 USC 1344 (e) and that regulate discharges other than those regulated under the required wetland general permits issued under par. (a).

(c) *Additional permits.* The department may issue wetland general permits, in addition to those required under pars. (a) and (b), to regulate other discharges that affect wetlands located in this state.

(d) *Requirements; conditions; restrictions.* In issuing wetland general permits under this subsection, the department shall establish requirements, conditions, and exceptions to ensure that the discharges will cause only minimal adverse environmental effects, and a general permit may apply only to a single and complete project. As part of a general permit, the department may prohibit discharges into wetlands that are identified by the department as being one of the following:

1. Great Lakes ridge and swale complexes.

2. Interdunal wetlands.

3. Coastal plain marshes.

4. Emergent marshes containing wild rice.

5m. Sphagnum bogs that are located in the area located south of a horizontal line drawn across the state based on the routes of STH 16 and STH 21 west of Lake Winnebago and on USH 151 east of Lake Winnebago.

6. Boreal rich fens.

7. Calcareous fens.

(e) *Period of validity; subsequent actions.* A wetland general permit issued under this subsection is valid for a period of 5 years. Upon compliance with the requirements under pars. (f) to (g), the department may renew, modify, or revoke a wetland general permit issued under this subsection.

(f) *Public notice.* The department shall provide to interested members of the public notices of its intention to issue, renew, modify, or revoke a wetland general permit under this subsection. Procedures for providing public notices shall include all of the following:

1. Publication of a class 1 notice under ch. 985.

2. Providing a copy of the notice to any person or group upon request of the person or group.

3. Publication of the notice on the department's Internet website.

(fg) *Date of notice.* For the purpose of determining the date on which public notice is provided under this subsection, the date on which the department first publishes the notice on its Internet website shall be considered the date of public notice.

(fm) *Written comments.* The department shall provide a period of not less than 30 days after the date of the public notice during which time interested persons may submit their written comments on the department's intention to issue, renew, modify, or revoke a wetland general permit under this subsection. All written comments submitted during the period for comment shall be retained by the department and considered by the department in acting on the general permit.

(fr) *Description in notice.* Every public notice provided by the department under par. (f) shall include a description of the discharges to be authorized under the wetland general permit.

(g) *Public informational hearing.* 1. The department shall provide an opportunity for any interested state agency or federal agency or person or group of persons to request a public informational hearing with respect to the department's intention to issue, renew, modify, or revoke a wetland general permit under this subsection. The request for the hearing shall be filed with the department within 30 days after the provision of the public notice under par. (f) and shall indicate the interest of the party filing the request and the reasons why the hearing is warranted.

2. The department shall hold a public informational hearing upon a request under subd. 1. if the department determines that there is a significant public interest in holding such a hearing. Hearings held under this subsection are not contested cases under s. 227.01 (3).

3. Public notice of any hearing held under this subsection shall be circulated in accordance with the requirements under par. (f). The public notice shall include the time, date, and location of the hearing, a summary of the subject matter of the wetland general permit, and information indicating where additional information about the general permit may be viewed on the department's Internet website. The summary shall contain a brief, precise, easily understandable, plain language description of the subject matter of the general permit.

(h) *Authorizations for discharges under wetland general permits.* 1. A person wishing to proceed with a discharge that may be authorized under a wetland general permit shall apply to the department, with written notification of the person's wish to proceed, not less than 30 days before commencing the discharge authorized by the general permit unless subd. 4. applies. The application shall provide information describing the discharge in order to allow the department to determine whether the discharge is authorized by the wetland general permit and shall give the department consent to enter and inspect the site, subject to sub. (9). The application shall identify all activities affecting wetlands that will be conducted as part of the single and complete project. The application shall include a detailed explanation of why the impact to the wetland cannot be avoided and how the impact to the wetland will be minimized to the greatest extent practicable. The application shall be accompanied by the fee specified in sub. (12) (a). If the application is for authorization to proceed under a wetland general permit that is issued under sub. (3g) (a) 4., 5., or 6., the application shall be accompanied by a surcharge fee, as calculated under sub. (11). The department may make a request for additional information one time during this 30–day period.

2. If, within 30 days after an application under subd. 1. is received by the department, the department does not either request additional information or inform the applicant that a wetland individual permit will be required as provided in par. (i), the discharge shall be considered to be authorized under the wetland general permit and the applicant may proceed without further notice, hearing, permit, or approval if the discharge is carried out in compliance with all of the conditions of the general permit, except as provided in s. 295.60 (3) (b).

2m. If adverse weather conditions prevent the department from conducting an accurate on–site inspection during this 30–day period specified in subd. 1., the department shall give notice to the person wishing to proceed with the discharge that adverse weather conditions will prevent the department from complying with the 30–day deadline and shall complete the inspection as soon as weather conditions permit.

3. If the department requests additional information under subd. 1., the 30–day period is tolled from the date the person applying for authorization to proceed receives the request until the date on which the department receives all of the additional information.

4. As part of a wetland general permit issued under par. (b) or (c), the department may waive the requirement that a person wishing to proceed under the general permit apply to the department as required under this paragraph so that the person may proceed with the discharge without specific authorization from the department.

5. Authorization to proceed under a wetland general permit is valid for 5 years after the date on which the discharge is considered to be authorized or until the discharge is completed, whichever occurs first.

(i) *Wetland individual permit in lieu of wetland general permit.* For a proposed discharge for which an application has been received by the department under par. (h), the department may decide to require that a person who submitted the application apply for a wetland individual permit if the department has inspected the site as provided in par. (h) and has determined that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur.

(3m) WETLAND INDIVIDUAL PERMITS. (a) *When permit required.* Any person wishing to proceed with a discharge into any wetland shall submit an application for a wetland individual permit under this subsection unless the discharge has been authorized under a wetland general permit as provided in sub. (3g) or is exempt under sub. (4), (4m) (a), (4n), or (4r). Before submitting the application, the department shall hold a meeting with the applicant to discuss the details of the proposed discharge and the requirements for submitting the application and for delineating the wetland. An applicant may include in the application a request for a public informational hearing. The application shall be accompanied by the applicable fee specified in sub. (11) or (12) (a).

(b) *Analysis of practicable alternatives.* An applicant shall include in an application submitted under par. (a) an analysis of the practicable alternatives that will avoid and minimize the adverse impacts of the discharge on wetland functional values and that will not result in any other significant adverse environmental consequences, subject to the limitations in sub. (3n) (a).

(c) *Review; no additional information required.* In issuing wetland individual permits under this section, the department shall review an application, and within 30 days after the application is submitted, the department shall determine that either the application is complete or that additional information is needed. If the department determines that the application is complete, the department shall notify the applicant in writing of that fact within the 30–day period, and the date on which the notice under this paragraph is sent shall be considered the date of closure for purposes of par. (g) 1.

(d) *Additional information requested.* If the department determines that the application is incomplete, the department shall notify the applicant in writing and may make only one request for additional information during the 30–day period specified in par. (c). Within 10 days after receiving all of the requested information

from the applicant, the department shall notify the applicant in writing as to whether the application is complete. The date on which the 2nd notice under this paragraph is sent shall be set as the date of closure for purposes of par. (g) 1. The department may request additional information from the applicant to supplement the application, but the department may not request items of information that are outside the scope of the original request unless the applicant and the department both agree. A request for any such additional information may not affect the date of closure.

(e) *Specificity of notice; limits on information.* Any notice stating that an application has been determined to be incomplete or any other request for information that is sent under par. (d) shall state the reason for the determination or request and the specific items of information that are still needed.

(f) *Failure to meet time limits.* If the department fails to meet the 30–day time limit under par. (c) or 10–day time limit under par. (d), the application shall be considered to have a date of closure that is the last day of that 30–day or 10–day time period for purposes of par. (g) 1.

(g) *Notice of application.* 1. Within 15 days after the date of closure, as determined under par. (c) or (d), the department shall provide notice of pending application to interested members of the public. If the applicant has requested a public informational hearing as part of the submitted application, a notice of the public hearing shall be part of the notice of pending application.

2. If the notice of pending application does not contain a notice of public informational hearing, any person may request a public informational hearing in writing or the department may decide to hold a public informational hearing with or without a request being submitted if the department determines that there is a significant public interest in holding a hearing.

(h) *Request for hearing.* A request for a public informational hearing under par. (g) 2. must be submitted to the department or the department's decision to hold a public informational hearing must occur within 20 days after the department provides the notice of pending application. The department shall provide notice of public informational hearing within 15 days after the request for the public hearing is submitted or the department makes its decision to hold a public informational hearing.

(i) *Decision.* Within 20 days after the period for public comment under par. (j) has ended or if no public informational hearing is held, within 30 days after the 30–day comment period under par. (j) has ended, the department shall render a decision issuing or denying the wetland individual permit that is the subject of the application submitted under par. (a). If the decision issued by the department under this paragraph is a denial, the department shall include in the decision the specific grounds and reasons as to how the applicable provisions of this section were not met. If the denial is based on an incomplete application, the department shall inform the applicant of the areas of the application that were incomplete.

(j) *Public comment.* 1. The department shall provide a period for public comment after the department has provided a notice of pending application under par. (g) during which time any person may submit written comments with respect to the application for a wetland individual permit. The department shall retain all of the written comments submitted during this period and shall consider all of the comments in rendering a decision on the application. The period for public comment shall end on the 30th day following the date on which the department provides the notice of pending application except as provided in subd. 2.

2. If a public informational hearing is held, the period for public comment shall end on the 10th day following the date on which the hearing is completed.

(3n) REVIEW BY DEPARTMENT. (a) *Review limits.* For the purpose of issuing a wetland individual permit, during the period between the date on which the application under sub. (3m) (a) is submitted and the date on which a decision under sub. (3m) (i) is rendered, the department shall conduct its review under this subsection. The department shall review the analysis of practicable alternatives presented in the application under sub. (3m) (b). The department shall limit its review of practicable alternatives as follows:

1. The department shall limit its review to those practicable alternatives that are located at the site of the discharge and that are located adjacent to that site if the applicant has demonstrated any of the following:

a. That the proposed project causing the discharge will result in a demonstrable economic public benefit.

b. That the proposed project is necessary for the expansion of an existing industrial, commercial, agricultural, or aquacultural facility that is in existence at the time the application is submitted.

c. That the proposed project will occur in an industrial park that is in existence at the time the application is submitted.

2. Except as provided in par. (am), the department shall limit its review to those practicable alternatives that are located on the property owned by the applicant for a project involving fewer than 2 acres of wetland if the project is limited to one of the following:

a. The construction or expansion of a single–family home and attendant features.

b. The construction or expansion of a barn or farm buildings.

c. The expansion of a small business project.

3. The department shall limit its review to those practicable alternatives that are consistent with the overall purpose and scope of the project. The department shall impose a level of scrutiny and require an applicant to provide an amount of information that is commensurate with the severity of the environmental impact of the project, as determined by the department.

(am) *Exception to review limit.* A lot created as part of a subdivision, land division, or other development that is initiated after July 1, 2012, is not eligible for the limited review under par. (a) 2.

(b) *Factors used in review.* In its review under par. (a), the department shall consider all of the following factors when it assesses the impacts to wetland functional values:

1. The direct impacts of the proposed project to wetland functional values.

2. The cumulative impacts attributable to the proposed project that may occur to wetland functional values based on past impacts or reasonably anticipated impacts caused by similar projects in the area affected by the project.

3. Potential secondary impacts of the proposed project to wetland functional values.

4. The impact on functional values resulting from the mitigation that is required under sub. (3r).

5. The net positive or negative environmental impact of the proposed project.

(c) *Standards for issuing permits.* The department shall make a finding that a proposed project causing a discharge is in compliance with water quality standards and that a wetland individual permit may be issued if the department determines that all of the following apply:

1. The proposed project represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts.

2. All practicable measures to minimize the adverse impacts to wetland functional values will be taken.

3. The proposed project will not result in significant adverse impact to wetland functional values, in significant adverse impact to water quality, or in other significant adverse environmental consequences.

(d) *Mitigation required.* 1. Except as provided in subd. 2., the department shall require mitigation under the program established under sub. (3r) for wetland individual permits it issues under this subsection and for a discharge that is exempt from permitting requirements under sub. (4n) (b) that affects more than 10,000 square feet of wetland or under sub. (4n) (c) that affects more than 1.5 acres of wetland. This subsection does not entitle an applicant

to a wetland individual permit or any other approval in exchange for conducting mitigation.

2. If the department issues a wetland individual permit under sub. (3m) to a public utility, as defined in s. 196.01 (5), or a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, water, or power to its members only, the department may not require mitigation under the program established under sub. (3r) unless the discharge authorized by the wetland individual permit will result in a permanent fill of more than 10,000 square feet of wetland.

(3p) NOTICE REQUIREMENTS; WETLAND INDIVIDUAL PERMITS. (a) The department shall establish procedures for providing notices of pending applications and notices of public informational hearings to be provided under sub. (3m) and notices of administrative hearings under sub. (3q). The procedures shall require all of the following:

1. That the notice be published as a class 1 notice under ch. 985.

2. That the notice be provided to any person or group upon request of the person or group.

3. That the notice be published on the department's Internet website.

(b) The department shall prescribe the form and content of notices of pending applications and notices of public informational hearings to be provided under sub. (3m) and notices of administrative hearings under sub. (3q). Each notice shall include all of the following information:

1. The name and address of the applicant.

2. A brief description of the discharge that requires the permit and the project that includes the discharge.

3. For a notice of a public informational hearing, the time, date, and location of the hearing.

4. For a notice of pending application and a notice of a public informational hearing, a brief, precise, easily understandable, plain–language description of the discharge and information indicating where the pending application may be viewed on the department's Internet website.

5. For a notice of complete application and a notice of a public informational hearing, a statement of the tentative determination of the department on the permit.

6. For a notice of complete application and a notice of public informational hearing, a brief description of the procedures for the formulation of final determinations, including a description of the comment period required under sub. (3m) (j).

(c) For the purpose of determining the date on which notice is provided under this subsection, the date of the notice shall be the date on which the department first publishes the notice on its Internet website.

(d) 1m. The department may delegate the department's requirement to provide notice under sub. (3m) in the manner specified in par. (a) 1. and 2. by doing any of the following:

a. Requiring that the applicant for the permit provide by publication, mailing, or other distribution one or more of the notices.

b. Requiring that the applicant for the permit pay for the publication, mailing, or any other distribution costs of providing one or more of the notices.

2m. If, under subd. 1m., the department delegates to an applicant the requirement to provide notice under sub. (3m) by publishing a class 1 notice under ch. 985, the applicant may in lieu of publishing the class 1 notice request that the department publish the class 1 notice. The department shall charge the applicant a fee for publishing the class 1 notice in an amount that equals the average cost to the department for publishing under this chapter class 1 notices under ch. 985.

(3q) ADMINISTRATIVE AND JUDICIAL REVIEW. (a) *Definition.* In this subsection, "applicant" means any person applying for a wetland individual permit under this section or any person who has been issued such a permit under this section.

(b) *Request for administrative review.* Any interested person may file a petition with the department for administrative review within 30 days after any of the following decisions given by the department:

1. The issuance, denial, or modification of any wetland individual permit issued under this section.

2. The imposition of, or failure to impose, a condition on any wetland individual permit issued under this section.

(c) *Content of the petition.* If the petitioner is not the applicant, the petition shall describe the petitioner's objection to the wetland individual permit and shall contain all of the following:

1. A description of the objection that is sufficiently specific to allow the department to determine which provisions of this section may be violated if the proposed discharge under the wetland individual permit is allowed to proceed.

2. A description of the facts supporting the petition that is sufficiently specific to determine how the petitioner believes the discharge, as proposed, may result in a violation of the provisions of this section.

3. A commitment by the petitioner to appear at the administrative hearing and present information supporting the petitioner's objection.

(d) *Stays.* 1. The discharge shall be stayed pending an administrative hearing under this subsection if the petition contains a request for the stay showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

2. If a stay is requested under subd. 1., the stay shall be in effect until either the department denies the request for an administrative hearing or the hearing examiner determines that the stay is not necessary.

(e) *Filings.* The petitioner shall file a copy of the petition with the department. If the petitioner is not the applicant, the petitioner shall simultaneously provide a copy of the petition to the applicant. The applicant may file a response to the petition with the department. If the applicant files a response under this paragraph, it shall be filed within 15 days after the petition is filed.

(f) *Action on petition.* 1m. The department shall grant or deny the petition within 30 days after the petition is filed. The failure of the department to dispose of the petition within this 30–day period is a denial. The department shall deny the petition if any of the following applies:

a. The petitioner is not the applicant, and the petition does not comply with the requirements of par. (c).

b. The objection contained in the petition is not substantive. The department shall determine that an objection is substantive if the supporting facts contained in the objection appear to be substantially true and raise reasonable grounds to believe that the provisions of this section may be violated if the activity or project is undertaken.

3. If the department denies the petition, the department shall send the petitioner the denial in writing, stating the reasons for the denial.

4. If the department grants a petition under this subsection, the department shall refer the matter to the division of hearings and appeals in the department of administration within 15 days after granting the petition unless the petitioner and the applicant agree to an extension.

(g) *Administrative hearing.* 1. An administrative hearing under this subsection shall be treated as a contested case under ch. 227.

2. If a stay under par. (d) 1. is in effect, the hearing examiner shall, within 30 days after receipt of the referral under par. (f) 4., determine whether continuation of the stay is necessary to prevent significant adverse impacts or irreversible harm to the environment pending completion of the administrative hearing. The hear-

ing examiner shall make the determination based on the request under par. (d) 1., any response from the applicant under par. (e), and any testimony at a public hearing or any public comments. The determination shall be made without a hearing.

3. An administrative hearing under this subsection shall be completed within 90 days after receipt of the referral of the petition under par. (f) 4., unless all parties agree to an extension of that period. In addition, a hearing examiner may grant a one–time extension for the completion of the hearing of up to 60 days on the motion of any party and a showing of good cause demonstrating extraordinary circumstances justifying an extension.

4. Notwithstanding s. 227.44 (1), the department shall provide a notice of the administrative hearing at least 30 days before the date of the hearing to all of the following:

a. The applicant.

b. Each petitioner, if other than the applicant.

c. Any other persons required to receive notice as provided under sub. (3p).

5. In an administrative hearing under this subsection, the petitioner shall proceed first with the presentation of evidence and shall have the burden of proof.

(h) *Judicial review.* 1. Any person whose substantial interest is affected by a decision of the department under par. (b) 1. or 2. may commence an action in circuit court to review that decision.

2. Any party aggrieved by a decision of the hearing examiner under par. (g) may commence an action in circuit court to review that decision.

(3r) MITIGATION; IN LIEU FEE SUBPROGRAM. (a) The department shall establish a mitigation program that applies only to the issuance of wetland individual permits and, with respect to a discharge that is exempt from permitting requirements under sub. (4n) (b) that affects more than 10,000 square feet of wetland or under sub. (4n) (c) that affects more than 1.5 acres of wetland, the portion of the affected wetland that exceeds 10,000 square feet or 1.5 acres, respectively. Under the mitigation program, subject to par. (am), the department shall allow mitigation to be accomplished by any of the following methods:

1. a. Except as provided in subd. 1. b. and par. (ag), purchasing credits from a mitigation bank located in the same HUC 8 as the wetland impacted by the discharge.

b. Except as provided in subd. 1. c. and par. (ag), if credits are not available to be purchased as provided under subd. 1. a., credits may be purchased from a mitigation bank within the same bank service area as the wetland impacted by the discharge.

c. Except as provided in par. (ag), if credits are not available to be purchased as provided under subd. 1. b., credits may be purchased from a mitigation bank in the same basin as the wetland impacted by the discharge.

2. Participating in the in lieu fee subprogram under par. (e).

3. Completing mitigation within the same watershed or within one–half mile of the site of the discharge.

(ag) The department may, in consultation with the U.S. army corps of engineers, allow credits to be purchased from a different mitigation bank than the one prescribed under par. (a) 1. or allow mitigation to be done through the in lieu fee subprogram rather than by purchasing credits from a mitigation bank if the department determines it would better serve natural resource goals, such as retaining flood water, improving or restoring wildlife habitat, or more closely matching the impacted wetland type. The department may also consider economic factors when making this determination only if the HUC 8 has one approved mitigation bank and that bank is charging a price for credits in that watershed that is in excess of 150 percent of the price of a credit in that watershed under the in lieu fee subprogram.

(am) For a discharge that is exempt from permitting requirements under sub. (4n) (b) or (c), any off–site mitigation, including any mitigation conducted by a mitigation bank or under the in lieu fee subprogram, shall be completed within the same compensation search area, as defined by the department by rule, as the discharge.

(b) Under the mitigation program, mitigation as specified in par. (a) 1. and participation in the in lieu fee subprogram shall be the preferred types of mitigation.

(c) The department shall establish a system of service areas for the mitigation banks under the mitigation program that is geographically based on the locations of the major watersheds in the state. The system shall be consistent with federal regulations.

(cm) Before entering into an agreement with a sponsor of a mitigation bank to establish such a bank or before otherwise approving a mitigation bank, the department shall provide written notice that a mitigation bank may be established. The notice shall be given to each city, village, town, and county in which each proposed mitigation bank site will be located. Each city, village, town, and county receiving the notice shall be given an opportunity to submit comments regarding the establishment of the mitigation bank. The notice shall contain all of the following information:

1. The name of the sponsor of the proposed mitigation bank.

2. A brief description of the mitigation bank and all of its bank sites.

3. A date after which the department will not accept comments from the affected cities, villages, towns, or counties.

4. An address to which any comments shall be submitted.

(d) 1. The department shall establish under the mitigation program mitigation ratios that are consistent, to the greatest extent possible, with the federal regulations that apply to mitigation and mitigation banks but, unless subd. 2. applies, the minimum ratio shall be at least 1.2 acres for each acre affected by the discharge.

2. For mitigation that occurs within the same watershed in which the discharge is located or within one–half mile of the site of the discharge, the ratio established by the department shall equal 90 percent of the ratio that would apply if the mitigation were to occur outside the watershed or were to occur one–half mile or more from the site of the discharge, but the ratio established under this subdivision may be no less than 1.2 acres for each acre affected by the discharge.

(e) As part of the mitigation program established under par. (a), the department shall establish an in lieu fee subprogram, under which payments are made to the department or another entity for the purposes of restoring, enhancing, creating, or preserving wetlands or other water resource features. The subprogram must be approved by the U.S. army corps of engineers. The department shall establish requirements for calculating the in lieu fee payments. Under the in lieu fee subprogram, the wetlands that benefit from the subprogram shall be open to the public for hunting, fishing, trapping, cross–country skiing, or hiking or any combination thereof, but the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community. The subprogram shall be consistent with federal regulations.

(3t) RULES FOR MITIGATION. The department shall promulgate rules to establish a process for the mitigation program under sub. (3r). The rules shall address all of the following:

(a) Requirements for the analysis of practicable alternatives that is included in an application for a wetland individual permit under sub. (3m) (b).

(b) The conditions under which credits may be purchased from a mitigation bank to comply with the mitigation program under sub. (3r).

(c) Enforcement of requirements under the mitigation program under sub. (3r) that apply to mitigation projects and mitigation banks.

(d) Baseline studies of wetlands that will be affected by the discharges and of sites for mitigation projects.

(e) Plan and design requirements for mitigation projects and mitigation bank sites, which shall include requirements for relat-

ing the design of a mitigation project or a mitigation bank site to the hydrology of the watershed in which a mitigation project or mitigation bank site is located.

(f) Standards for comparing wetlands that will be restored, enhanced, created, or preserved as a mitigation project or at a mitigation bank site to the wetlands that will be adversely affected by discharges, including all of the following:

1. Consideration of the size, location, type and quality of the wetlands.

2. Consideration of the functional values performed by the wetlands.

(g) Financial assurance requirements for the construction of mitigation projects by mitigation banks.

(h) Standards for measuring the short–term and long–term success of mitigation projects and mitigation bank sites and requirements for the short–term and long–term monitoring of mitigation projects and mitigation bank sites.

(i) Remedial actions to be taken by holders of wetland individual permits for mitigation projects that are not successful and actions to be taken by mitigation banks for mitigation projects performed by the mitigation banks that are not successful.

(3w) RELEASE OF CREDITS. (a) In this subsection:

1. "Applicant" means the applicant for a wetland individual permit for which wetland mitigation is required under sub. (3n) (d) or the proponent of a wetland mitigation project required under sub. (3n) (d).

2. "Bank sponsor" means any public or private entity financially responsible for establishing or operating a mitigation bank.

3. "Compensation site plan" means a comprehensive document prepared by an applicant or bank sponsor that provides a thorough description of a proposed wetland mitigation project.

4. "Developing mitigation bank" means a mitigation bank that has not completed its mitigation project and that has not yet been established under an agreement between the bank sponsor and the department or otherwise approved by the department.

5. "Estimated credits" means the total number of credits that a developing mitigation bank estimates it will have once its mitigation project is constructed.

6. "Mitigation banking instrument" means the legal document that governs the establishment, operation, and use of a mitigation bank.

(b) A developing mitigation bank may sell its estimated credits under the mitigation program under sub. (3r) only if the mitigation bank has met the financial assurance requirements established by the department under sub. (3t) (g) and, except as provided under par. (c), only in accordance with the following schedule:

1. No more than 20 percent of the estimated credits after the department approves and executes the mitigation banking instrument.

2. No more than 65 percent of the estimated credits after the department issues a letter of compliance stating that construction and all corrective actions are complete.

3. No more than 85 percent of the estimated credits after the department approves a monitoring report for the mitigation bank or after 2 years have passed after construction of the mitigation project is completed, whichever is later.

4. One hundred percent of the estimated credits after the department approves the final monitoring report for the mitigation bank and determines that all performance standards identified in the compensation site plan are met.

(c) The department may authorize a developing mitigation bank to sell its estimated credits at a faster rate than the schedule under par. (b) allows if the bank provides an additional level of financial assurance or if the mitigation is of a type that is less prone to failure, such as wetland preservation or enhancement.

(d) After the department approves and executes a mitigation banking instrument establishing the specifications for a developing mitigation bank, the sponsor of the bank may not change the mitigation banking instrument without the approval of the department. After the sponsor of a developing mitigation bank submits to the department a proposed change to the mitigation banking instrument for review, the mitigation bank may not sell any estimated credits under par. (b) until one of the following occurs:

1. The department approves the change to the mitigation banking instrument, and the mitigation bank sponsor and the department adjust the estimated credits and make any necessary adjustments to the credit release schedule under par. (b), if the department believes these adjustments are necessary based on the change to the mitigation banking instrument.

2. The department rejects the changes submitted by the mitigation bank sponsor, in which case the existing mitigation banking instrument remains effective.

(4) EXEMPTIONS; CERTAIN ACTIVITIES. Except as provided in sub. (5), the permitting requirement under sub. (3b) does not apply to any discharge that is the result of any of the following activities:

(a) Normal farming, silviculture, or ranching activities.

(am) Normal aquaculture activities, if the discharge is to a wetland created for aquacultural purposes in an area without any prior wetland history. In this paragraph, "normal aquaculture activities" includes all of the following:

1. Construction, maintenance, or repair of ponds, raceways, or other similar retention structures used in fish farms.

2. The filling in or drawing down of ponds, raceways, or other similar retention structures used in fish farms.

3. Maintenance or improvement of swales or other drainage areas into or out of ponds used in fish farms.

4. Maintenance, repair, or replacement of drains, pipes, or other flowage controls used in fish farms.

(b) Maintenance, emergency repair, or reconstruction of damaged parts of structures that are in use in a wetland.

(c) Construction or maintenance of farm ponds, stock ponds, or irrigation ditches.

(d) Maintenance of drainage ditches.

(e) Construction or maintenance of farm roads, roads used in fish farms, forest roads, or temporary mining roads that is performed in accordance with best management practices, as determined by the department, to ensure all of the following:

1. That the flow and circulation patterns and chemical and biological characteristics of the affected wetland are not impaired.

2. That the reach of the affected wetland is not reduced.

3. That any adverse effect on the aquatic environment of the affected wetland is minimized to the degree required by the department.

(f) Maintenance, operation, or abandonment of a sedimentation or stormwater detention basin and associated conveyance features that were not originally constructed in a wetland.

(4m) EXEMPTION AND WAIVER; ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE. (a) The permitting requirement under sub. (3b) does not apply to any discharge into a wetland located in an electronics and information technology manufacturing zone designated under s. 238.396 (1m) if the discharge is related to the construction, access, or operation of a new manufacturing facility in the zone and all adverse impacts to functional values of wetlands are compensated at a ratio of 2 acres per each acre impacted through any of the following methods, consistent with the rules promulgated under this section:

1. Purchasing credits from a mitigation bank located in this state.

2. Participating in the in lieu fee subprogram under sub. (3r), under which the department shall identify and consider mitigation that could be conducted within the same watershed and may locate mitigation outside the watershed only upon agreement of the department and the person exempt from permitting under this subsection.

3. Completing mitigation within this state.

(b) The department shall waive water quality certification under 33 USC 1341 (a) (1) for a discharge under par. (a).

(4n) EXEMPTIONS; CERTAIN NONFEDERAL WETLANDS AND ARTIFICIAL WETLANDS. (a) In this subsection:

1. "Artificial wetland" means a landscape feature where hydrophitic vegetation may be present as a result of human modification to the landscape or hydrology and for which the department has no definitive evidence showing a prior wetland or stream history that existed before August 1, 1991, but does not include any of the following:

a. A wetland that serves as a fish spawning area or a passage to a fish spawning area.

b. A wetland created as a result of a mitigation requirement under sub. (3r).

2. "Definitive evidence" means documentary evidence such as any of the following:

a. Maps.

b. Aerial photographs.

c. Surveys that use a scale of not more than 100 feet per inch.

d. Wetland delineations.

3. "Rare and high quality wetland" means a wetland that is directly adjacent or contiguous to a class I or class II trout stream or that consists of 75 percent or more of any of the following wetland types:

a. Alder thicket.

b. Calcareous fen.

c. Coniferous swamp.

d. Coniferous bog.

e. Floodplain forest.

f. Hardwood swamp.

g. Interdunal wetland.

h. Open bog.

i. Ridge and swail complex.

j. Deep marsh.

k. Sedge meadow.

4. "Sewerage system" has the meaning given in s. 281.01 (14).

5. "Urban area" means any of the following:

a. An incorporated area.

b. An area within one–half mile of an incorporated area.

c. An area in a town that is served by a sewerage system.

(b) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into a nonfederal wetland that occurs in an urban area and to which all of the following apply:

1. The discharge does not affect more than one acre of wetland per parcel.

2. The discharge does not affect a rare and high quality wetland.

3. The development related to the discharge is carried out in compliance with any applicable storm water management zoning ordinance enacted under s. 59.693, 60.627, 61.354, or 62.234 or storm water discharge permit issued under s. 283.33.

(c) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into a nonfederal wetland that occurs outside an urban area and to which all of the following apply:

1. The discharge does not affect more than 3 acres of wetland per parcel.

2. The discharge does not affect a rare and high quality wetland.

3. The development related to the discharge is a structure, such as a building, driveway, or road, with an agricultural purpose.

(d) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into an artificial wetland.

(e) 1. A person who proposes a project that may affect a wetland or landscape feature under par. (b), (c), or (d) shall notify the department no fewer than 15 working days before initiating the project. The notice shall include one of the following to show that the wetland or landscape feature is eligible for the relevant exemption:

a. A statement issued by a professional who has investigated the wetland and who is qualified to give such an opinion.

b. A wetland delineation prepared by a qualified professional showing the exact location and boundaries of the wetland.

2. Except as provided in subd. 3., if the department receives the notice and information required under subd. 1., the department shall presume that the wetland or landscape feature is eligible for the exemption unless the department, within 15 working days after receiving notification of the proposed project under subd. 1., notifies the person that one of the following conditions applies:

a. The eligibility requirements are not met.

b. The location and boundaries of the wetland identified in a wetland delineation included with the notification under subd. 1. are not accurate.

c. With respect to an exemption under par. (d) only, the department determines that the landscape feature is providing significant functions that either protect adjacent or downstream property or infrastructure from flooding or significantly improve the water quality of an adjacent or downstream water body.

3. If the department receives the notice and information required under subd. 1. but is unable to determine based on that information whether the eligibility requirements are met, the department may, within 15 working days after the notification under subd. 1., notify the person one time to request additional information about the parcel of land. The person shall cooperate with the department's efforts to obtain information about the relevant parcel of land and may proceed with the project only upon notification that the department has determined the landscape feature to be eligible for the exemption based on the definitive evidence.

4. If, within 15 working days after the notification is delivered to the department, the department notifies the person that subd. 2. a., b., or c. applies, the person may not proceed with the project unless authorized by, or otherwise exempted from, a wetland general or individual permit under this section.

(4r) DRAINAGE DISTRICT ACTIVITY EXEMPTION. (a) The permitting requirement under sub. (3b) does not apply to any discharge that is the result of activity undertaken by a drainage district to maintain drainage district drains in accordance with plans and specifications approved by the department of agriculture, trade and consumer protection.

(b) The department shall waive any water quality certification requested under 33 USC 1341 (a) for a discharge described under par. (a).

(5) INAPPLICABILITY OF EXEMPTIONS. Notwithstanding sub. (4), a discharge that would be exempt under sub. (4) is subject to the permitting requirement under sub. (3b) if the discharge is incidental to an activity that has as its purpose bringing a wetland, or part of a wetland, into a use for which it was not previously subject and if the activity may do any of the following:

(a) Impair the flow or circulation of any wetland.

(b) Reduce the reach of any wetland.

(6) RULES FOR EXEMPTIONS. (a) The department shall promulgate rules to interpret and implement the provisions under subs. (4), (4n), (4r), and (5). In promulgating these rules, the department shall do all of the following:

1. Make the rules consistent with existing federal law or interpretation.

2. Incorporate any applicable additional federal law or interpretation into the rules.

(b) Whenever an additional federal law or interpretation is initially incorporated into the rules, the department may modify the

additional federal law or interpretation as it determines is necessary, but the department may not otherwise amend or modify any of the rules promulgated under this subsection.

(8m) SUBSEQUENT PROTECTION FOR WETLANDS. (a) 1. A person who is the holder of a wetland individual permit that authorizes a mitigation project shall grant a conservation easement under s. 700.40 to the department or shall execute a comparable legal instrument to ensure that a wetland that is being restored, enhanced, created, or preserved will not be destroyed or substantially degraded by any subsequent proprietor of or holder of interest in the property on which the wetland is located. The department shall revoke the wetland individual permit if the holder of the individual permit fails to take these measures.

2. A person who is restoring, enhancing, creating, or preserving a wetland to provide transferable credits as part of a wetlands mitigation bank shall grant a conservation easement under s. 700.40 to the department or shall execute a comparable legal instrument to ensure that the wetland will not be destroyed or substantially degraded by any subsequent proprietor of or holder of interest in the property on which the wetland is located.

(b) Notwithstanding par. (a), the department shall modify or release a conservation easement granted under par. (a) or shall void a comparable legal instrument executed under par. (a) if all of the following apply:

1. The department determines that part or all of the restored, enhanced or created wetland ceases to be a wetland.

2. The person who is required to grant the conservation easement or execute the legal instrument did not contribute to the loss of the wetland specified in subd. 1.

3. Any subsequent proprietor of or holder of interest in the property on which the wetland specified in subd. 1. is located did not contribute to the loss of the wetland.

(9) INSPECTION AUTHORITY. (a) For purposes of determining whether to issue a wetland individual permit, whether authorization to proceed as authorized under a wetland general permit is appropriate, or whether an exemption under sub. (4), (4n), or (4r) is appropriate, and for purposes of enforcing this section, any employee or other representative of the department, upon presenting his or her credentials, may do any of the following:

1. Enter and inspect any property on which is located a wetland or part of a wetland, for which an application has been submitted under sub. (3g) or (3m).

2. Enter and inspect any property on which is located a wetland to investigate a discharge that the department has reason to believe is in violation of this section.

3. Gain access to and inspect any records that a holder of a wetland individual permit or a person acting under the authority of a wetland general permit is required by the department to keep.

(d) The department shall provide reasonable advance notice to the property owner before entering and inspecting property as authorized under par. (a).

(e) If the owner of the property refuses to give consent for the entry and inspection, the department may do any of the following:

1. Apply for, obtain, and execute a special inspection warrant under s. 66.0119.

2. Deny an application for a wetland individual permit or deny authorization to proceed under a wetland general permit.

(10) ADDITIONAL REQUIREMENTS. The requirement of being issued a wetland individual permit or proceeding under the authority of a wetland general permit under this section is in addition to any permit or other approval required by the department for a project or activity that involves a discharge into a wetland. This section governs the determination of whether a discharge is in compliance with water quality standards but does not affect the authority of the department to otherwise regulate the discharge of dredged or fill material in a wetland under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 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.

(11) RESTORATION; SURCHARGE FEE. (a) The department shall set a surcharge fee to be charged for each application to proceed under a wetland general permit that is issued under sub. (3g) (a) 4., 5., or 6. The surcharge fee shall be set on an annual basis by the department and may not exceed more than 50 percent of the market price, as determined by the department, for the equivalent purchase of credits from a mitigation bank. These fees shall be credited to the appropriation account under s. 20.370 (9) (bm) for the restoration and creation of wetlands. The department may enter into agreements with other entities for the restoration and creation of such wetlands.

(b) Any wetland that is restored or created using funding from the appropriation under s. 20.370 (9) (bm) shall be open to the public for hunting, fishing, trapping, cross–country skiing, or hiking or any combination thereof, but the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community.

(12) APPLICATION FEES AND TIME LIMITS. (a) *Fees required.* The department shall charge a fee for reviewing, investigating, and making decisions on applications to proceed under wetland general permits under sub. (3g) and on applications for wetland individual permits under sub. (3m). For an authorization to proceed under a wetland general permit, the application fee shall be $500. For a wetland individual permit, the application fee shall be $800.

(b) *Additional fee.* The department may set and charge a fee in the amount necessary to meet the costs incurred by the department in reviewing mitigation that is conducted by mitigation banks.

(c) *Adjustments in fees.* 1. The department shall refund an application fee charged for a wetland individual permit under par. (a) if the applicant requests a refund before the department determines that the application is complete. The department may not refund a fee after the department determines that the application is complete unless required to do so under a rule promulgated under s. 299.05.

2. If the applicant submits an application for authorization to proceed under a wetland general or a wetland individual permit after the discharge is begun or after it is completed, the department shall charge an amount equal to twice the amount of the fee that it would have charged under this section.

3. The department may increase the fee specified in par. (a) only if the increase is necessary to meet the costs of the department in performing the activities for which the fee is charged.

(d) *Fee for expedited service.* 1. The department, by rule, may charge a supplemental fee that is in addition to a fee charged under this subsection if all of the following apply:

a. The applicant requests in writing that the decision on the application be issued within a time period that is shorter than the time limit promulgated under subd. 2. for the decision.

b. The department verifies that it will be able to comply with the request.

2. If the department promulgates a rule under subd. 1., the rule shall contain a time limit for making decisions on the application.

(e) *Exemptions from fees.* Paragraphs (a), (b), (c), and (d) do not apply to any federal agency or state agency.

(12m) LOCAL REGULATION OF NONFEDERAL OR ARTIFICIAL WETLANDS. A local government may not enact an ordinance or adopt a resolution regulating a matter regulated under sub. (3n) (d) 1. or (3r) (a) (intro.) or (am), with respect to a discharge exempt from permitting requirements under sub. (4n) (b) or (c), or a matter regulated under sub. (4n). If a local government has in effect on March 30, 2018, an ordinance or resolution regulating nonfederal wetlands or artificial wetlands, the ordinance or resolution does not apply and may not be enforced.

(13) PARTIES TO A VIOLATION. (a) Whoever is concerned in the commission of a violation of this section for which a forfeiture is imposed is a principal and may be charged and found in violation although he or she did not directly commit the violation and although the person who directly committed it has not been found in violation.

(b) A person is concerned in the commission of the violation if the person does any of the following:

1. Directly commits the violation.

2. Aids and abets the commission of the violation.

3. Is a party to a conspiracy with another to commit the violation or advises, hires, counsels, or otherwise procures any person to commit it.

(13m) REPORT TO LEGISLATURE. No later than January 31, 2003, and no later than January 31 of each subsequent odd–numbered year, the department shall submit to the legislature under s. 13.172 (2) a report that provides an analysis of the impact of the implementation of mitigation on wetland resources and on the issuance of permits or other approvals under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30, 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299. The department shall include in its report a discussion of proposals and projects under the property development grant program under s. 23.099.

(14) PENALTIES. (a) Except as provided in par. (b), any person who violates any provision of this section shall forfeit not less than $100 nor more than $10,000 for the first offense and shall forfeit not less than $500 nor more than $10,000 upon being found in violation of the same offense a 2nd or subsequent time.

(b) Any person who violates a wetland general permit issued under sub. (3g) shall forfeit not less than $10 nor more than $500 for the first offense and shall forfeit not less than $50 nor more than $500 upon being found in violation of the same offense a 2nd or subsequent time.

(c) A violation of any condition contained in a wetland general permit issued under sub. (3g) is a violation of the statute under which the general permit was issued.

(d) In addition to the forfeitures specified under pars. (a) and (b), a court may order a defendant to abate any nuisance, restore a natural resource, or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the defendant.

(e) Each day of a continuing violation is a separate offense.

(f) The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of this section.

History: 2001 a. 6; 2005 a. 253; 2011 a. 118, ss. 43, 45 to 47, 49 to 55, 57 to 118, 122, 123, 127 to 137, 141; 2013 a. 1, 20, 69, 80; 2013 a. 151 s. 27; 2013 a. 166 s. 77; 2013 a. 168, 173; 2015 a. 387; 2017 a. 21, 58, 59, 115, 118, 183; 2017 a. 365 s. 112; 2019 a. 59.

Cross–reference: See also ch. NR 300, 351, 352, and 353, Wis. adm. code.

Once a violation of sub. (2) (a) [now sub. (3b) (b)] is proven, *Forest County v. Goode*, 219 Wis. 2d 654, sets forth a rebuttable presumption that the court should grant an injunction. The state is not required to prove particular instances of environmental harm to obtain an injunction. Once a violation is proven, it is the defendant who must establish compelling equitable reasons not to grant injunctive relief. State v. CGIP Lake Partners, LLP, 2013 WI App 122, 351 Wis. 2d 100, 839 N.W.2d 136, 12–2346.

Wisconsin's Wetland Reform Act. Kent & Lamb. Wis. Law. Feb. 2013.

281.37 Wetland mitigation grant program. (1) In this subsection:

(a) "Department land" means land owned by or under easement to the state that is under the jurisdiction of the department and used for one of the purposes specified in s. 23.09 (2) (d).

(b) "Mitigation program" means the wetland mitigation grant program established under sub. (2).

(c) "Nonprofit organization" means an organization that is described in section 501 (c) (3) of the Internal Revenue Code and that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(2) The department shall establish a wetland mitigation grant program under which it awards grants to nonprofit organizations to conduct projects to create, restore, or enhance wetlands under the in lieu fee subprogram in s. 281.36 (3r) (e) on department land as provided in this subsection.

(3) No later than 6 months after March 30, 2018, the department shall identify department land that is appropriate to include in the mitigation program. The department shall identify no less than 25 percent of department land for this purpose. The land identified shall include land in every watershed in the state.

(4) (a) No later than 3 months after completion of the land identification stage under sub. (3) or at the beginning of the following fiscal year, whichever is earlier, and no later than July 1 of each subsequent year, the department shall issue a request for proposals from nonprofit organizations for grants to conduct wetland mitigation projects on department land identified under sub. (3). The issuance of each new request for proposal begins a new grant cycle.

(b) The department shall require applications for grants under this section to include all of the following:

1. The scope of the proposed project.

2. A project timeline.

3. If possible, a specification of the functional values or uses listed in s. NR 103.03 (1), Wis. Adm. Code, that the project area does not provide or only sparsely provides.

4. A specification of the functional values or uses listed in s. NR 103.03 (1), Wis. Adm. Code, that the proposed project would create, restore, or enhance.

5. All information required to be submitted for approval to the U.S. army corps of engineers under 33 CFR part 332 and the Wisconsin Wetland Conservation Trust program instrument.

(c) After issuing the request for proposals under par. (a), the department shall accept grant applications on a rolling basis over the course of a fiscal year. The department shall select and announce grant recipients under this subsection at the end of each quarter as funds are available.

(5) (a) If an application under sub. (4) is approved, the grantee and the department, in consultation, shall identify all department permits required for the grantee to conduct the project. The department shall waive all permit fees for the grantee in relation to department permits required to conduct the project.

(b) Notwithstanding timelines otherwise established for individual permits, within 60 days of receiving the grantee's application for an individual permit that is required to conduct the project, the department shall render a decision issuing, denying, or modifying the permit, and the department shall adjust all other deadlines relating to the review of the application accordingly.

(7) (a) The department shall pay out a grant under the mitigation program quarterly unless the department determines that more frequent payments are necessary to fulfill the objectives of the grant program. The department shall withhold the final payment until the grantee certifies that the project is complete.

(b) If the grantee fails to certify that the project is complete by the date indicated for completion in its application, the department shall use the remaining unpaid grant amount to either complete the project or contract with or issue a grant to another nonprofit organization to complete the project. An organization that fails to certify completion of a project by the date indicated in its application for completion is not eligible for a new grant under the mitigation program for 2 grant cycles.

(c) The department may agree to a modified deadline for the project if unusual or unforeseen circumstances cause a delay. If the department agrees to a modified deadline, the consequences under par. (b) apply only if the grantee fails to certify that a project is complete by the date indicated in that agreement.

(8) Before 6 months have elapsed after the 5th anniversary of the department's first issuance of a request for proposals under sub. (4), the department shall submit to the legislature under s.

13.172 (2) a report analyzing the effectiveness of the first 5 years of the mitigation program and making recommendations for changes to the program.

History: 2017 a. 183.

SUBCHAPTER IV

WATER AND SEWAGE FACILITIES; SEPTAGE DISPOSAL

281.41 Approval of plans. (1) (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.

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

(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 disapprove plans that are not in conformance with any applicable approved water supply service area plan under s. 281.348.

(2) The department may, by rule, exempt an owner of a specific type of system or plant from the requirements of sub. (1) or modify the requirements of sub. (1) for a specific type of system or plant.

(3) (a) In this subsection, "septage service area" means the area containing private on–site wastewater treatment systems served or anticipated to be served by a sewage disposal plant during the planning period.

(b) If an owner proposes a sewage disposal plant or an extension of an existing sewage disposal plant that increases the capacity of the existing plant by at least 20 percent, the department shall require that owner, in preparing a plan under this section, to address the need for, and include plans for, the disposal of septage, as defined in s. 281.48 (2) (d). The department shall require an owner to address all of the following under this paragraph:

1. The amount of septage produced throughout the septage service area and the expected increase in septage production during the planning period.

2. The capacity for the disposal of septage during the planning period on land within the septage service area, in the sewage disposal plant, and by other available methods.

3. The location of private on–site wastewater treatment systems within the septage service area, and the distances required to haul septage for disposal either on land or in the sewage disposal plant.

4. The potential for contracts with private on–site wastewater treatment system owners, licensed disposers, as defined in s. 281.49 (1) (b), or municipalities to assure delivery of septage to the sewage disposal plant.

(c) In addressing the need for the disposal of septage and the information required under par. (b), the owner is required only to use data or other information that has previously been collected, whether by the owner or by others, and the owner is not required to conduct new research.

(d) The information required under par. (b) is for the purpose of assuring that septage disposal needs are considered in the decision–making process for sewage disposal plant planning, but par. (b) does not require construction of facilities for the handling or disposal of septage.

(4) When the department receives for review a plan under sub. (1) that would result in returning water transferred from the Great Lakes basin to the source watershed through a stream tributary to one of the Great Lakes, the department shall provide notice of the plan or revision to the governing body of each city, village, and town through which the stream flows or that is adjacent to the stream downstream from the point at which the water would enter the stream.

(5) The department shall establish an expedited procedure for approval of plans under this section. The expedited procedure shall apply, in lieu of the procedure under sub. (1) (b), if the department determines that all of the following are satisfied:

(a) The plan design is of a common construction and size or is for a minor addition to an existing facility.

(b) The plan design is submitted by a registered professional engineer.

(c) The plan design is submitted by a person who has designed similar facilities and none of those similar facilities has caused adverse impacts to the environment.

(d) The plan design contains no unusual siting requirements or other unique design features.

(e) The plan design is not likely to have an adverse impact on the environment.

History: 1977 c. 418; 1985 a. 60; 1991 a. 39; 1995 a. 227 s. 405; Stats., 1995 s. 281.41; 1999 a. 85; 2005 a. 347; 2007 a. 227; 2011 a. 146, 167.

Cross–reference: See also chs. NR 108, 110, and 142, Wis. adm. code.

NOTE: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

281.43 Joint sewerage systems. (1) The department of natural resources may require the sewerage system, or sewage or refuse disposal plant of any governmental unit including any town, village or city, to be so planned and constructed that it may be connected with that of any other town, village or city, and may, after hearing, upon due notice to the governmental units order the proper connections to be made or a group of governmental units including cities, villages, town sanitary districts or town utility districts may construct and operate a joint sewerage system under this statute without being so required by order of the department of natural resources but following hearing and approval of the department.

(1m) An order by the department for the connection of unincorporated territory to a city or village system or plant under this section shall not become effective for 30 days following issuance. Within 30 days following issuance of the order, the governing body of a city or village subject to an order under this section may commence an annexation proceeding under s. 66.0219 to annex the unincorporated territory subject to the order. If the result of the referendum under s. 66.0219 (4) is in favor of annexation, the ter-

ritory shall be annexed to the city or village for all purposes, and sewerage service shall be extended to the territory subject to the order. If an application for an annexation referendum is denied under s. 66.0219 (2) or the referendum under s. 66.0219 (4) is against the annexation, the order shall be void. If an annexation proceeding is not commenced within the 30−day period, the order shall become effective.

(2) (a) When one governmental unit renders service to another under this section, reasonable compensation shall be paid. The officials in charge of the system, of the governmental unit furnishing the service shall determine the reasonable compensation and report to its clerk who shall, on or before August 1 of each year, certify a statement thereof to the clerk of the governmental unit receiving the service. The clerk of the governmental unit receiving the service shall extend the amount shown in the statement as a charge on the tax roll, in the following manner:

1. If the service rendered is available to substantially all improved real estate in the member governmental unit receiving the service, the charges shall be placed upon the tax roll of the member governmental unit as a general tax.

2. If the service rendered is for the benefit of public highways in, or real estate owned or operated by, the member governmental unit receiving the service, the charges for the service shall be placed upon the tax roll of the member governmental unit as a general tax.

3. If the service rendered does not come under the provisions of subd. 1. or 2., the charges for the service shall be placed upon the tax roll of the member governmental unit as a special tax upon each parcel of real estate benefited; and when collected it shall be paid to the treasurer of the member governmental unit rendering the service. Where the charges are to be extended on the tax roll under the provisions of this subdivision, the clerk of the member governmental unit furnishing the service shall itemize the statement showing separately the amount charged to each parcel of real estate benefited.

(b) If, due to delay in determination, a charge described in par. (a) cannot be extended on the tax roll of any particular year, it shall be extended as soon as possible.

(3) If the governing body of any governmental unit deems the charge unreasonable, it may by resolution within 20 days after the filing of the report with its clerk:

(a) Submit to arbitration by 3 reputable and experienced engineers, one chosen by each governmental unit, and the 3rd by the other 2. If the engineers are unable to agree, the vote of 2 shall be the decision. They may affirm or modify the report, and shall submit their decision in writing to each governmental unit within 30 days of their appointment unless the time be extended by agreement of the governmental units. The decision shall be binding. Election to so arbitrate shall be a waiver of right to proceed by action. Two−thirds of the expense of arbitration shall be paid by the governmental unit requesting it, and the balance by the other.

(b) Institute a proceeding for judicial review under ch. 227.

(4) (a) Any 2 or more governmental units, including cities, villages, town sanitary districts or town utility districts not wishing to proceed under sub. (2) may jointly construct, operate and maintain a joint sewerage system, inclusive of the necessary intercepting sewers and sewerage treatment works. Such joint action by 2 governmental units shall be carried out by a sewerage commission consisting of one member appointed by each of the governing bodies of such governmental units and a 3rd member to be selected by the 2 members so appointed, or in lieu thereof said sewerage commission may consist of 2 members appointed by the governing body of each governmental unit and a 5th member to be selected by the 4 members so appointed or where more than 2 governmental units act to form the commission, the representation on the commission shall be in accordance with a resolution approved by the member governmental units.

(b) 1. Where such sewerage commission shall consist of 3 members, the members chosen by the 2 members first appointed shall serve for 2 years, while the members appointed by the governing bodies of the 2 governmental units shall serve for terms of 4 and 6 years, respectively, the length of term of each to be determined by lot. All subsequent appointments, except for unexpired terms, shall be for 6 years. All such members shall serve until their successors shall have been appointed and shall have qualified.

2. Where such sewerage commission shall consist of 5 members, the member chosen by the 4 members first appointed shall serve for one year, while the members appointed by the governing bodies of the 2 governmental units shall serve for terms of 2, 3, 4 and 5 years respectively, the length of terms of each to be determined by lot. All subsequent appointments, except for unexpired terms, shall be for 6 years. All such members shall serve until their successors shall have been appointed and shall have qualified.

3. Where such sewerage commission representation shall be formed by approval of a resolution, the resolution shall state the method of appointing commissioners and the term of office of each commissioner.

(c) The sewerage commissioners shall project, plan, construct and maintain in the district comprising the member governmental units intercepting and other main sewers for the collection and transmission of house, industrial and other sewage to a site or sites for disposal selected by them, such sewers to be sufficient, in the judgment of the sewerage commissioners, to care for such sewage of the territory included in such district. The sewerage commissioners shall project, plan, construct and operate sewage disposal works at a site or sites selected by them which may be located within or outside of the territory included in the district. The sewerage commissioners may also project, plan, construct and maintain intercepting and other main sewers for the collection and disposal of storm water which shall be separate from the sanitary sewerage system. The sewerage commissioners may also project, plan, construct and operate solid waste disposal works at a site or sites selected by them which may be located within or outside of the territory included in the district or by contract with counties or municipalities which have solid waste disposal facilities. The sewerage commissioners may employ and fix compensation for engineers, assistants, clerks, employees and laborers, or do such other things as may be necessary for the due and proper execution of their duties. Such sewage disposal works may be used by the sewerage commissioners and by such governmental units for the disposal of garbage, refuse and rubbish.

(d) Such sewerage commission shall constitute a body corporate by the name of "(Insert name of governmental units or area) Sewerage Commission," by which in all proceedings it shall thereafter be known. It may purchase, take and hold real and personal property for its use and convey and dispose of the same. This grant of power shall be retroactive to September 13, 1935 for commissions formed prior to January 1, 1972. Except as provided in this subsection the sewerage commissioners shall have the power and proceed as a common council and board of public works in cities in carrying out the provisions of par. (c). All borrowing under s. 24.61 (3) (a) 5. and all bond issues and appropriations made by said sewerage commission shall be subject to the approval of the governing bodies of the respective governmental units.

(e) Each such governmental unit shall pay for its proportionate share of such sewerage system, including additions thereto, and also its proportionate share of all operation and maintenance costs as may be determined by the sewerage commission. Each governmental unit may borrow money and issue revenue or general obligation bonds therefor, for the acquisition, construction, erection, enlargement and extension of a joint sewage disposal plant or refuse or rubbish or solid waste disposal plant or system or any combination of plants provided under this section, and to purchase a site or sites for the same. Each governmental unit may, if it so desires, proceed under s. 66.0821 in financing its portion of the cost of the construction, operation and maintenance of the joint sewage disposal plant or plants provided for in this section, or system.

(f) Any such governmental unit being aggrieved by the determination of the sewerage commission on matters within its jurisdiction may appeal to the circuit court as provided in sub. (3) (b).

History: 1971 c. 89, 276; 1977 c. 187; 1979 c. 176; 1985 a. 49; 1995 a. 225; 1995 a. 227 s. 408; Stats. 1995 s. 281.43; 1997 a. 35; 1999 a. 150 s. 672.

Sub. (1m), which voids a Department of Natural Resources sewerage connection order if the electors in the affected town area reject annexation to the city ordered to extend sewerage service, represents a valid legislative balancing and accommodation of two statewide concerns: urban development and pollution control. City of Beloit v. Kallas, 76 Wis. 2d 61, 250 N.W.2d 342.

A joint sewerage commission may enact and enforce regulations required of it under the federal Clean Water Act of 1977, but it cannot make appropriations or issue bonds without approval of the governing bodies that established it. 68 Atty. Gen. 83.

281.45 House connections. To assure preservation of public health, comfort and safety, any city, village or town or town sanitary district having a system of waterworks or sewerage, or both, may by ordinance require buildings used for human habitation and located adjacent to a sewer or water main, or in a block through which one or both of these systems extend, to be connected with either or both in the manner prescribed. If any person fails to comply for more than 10 days after notice in writing the municipality may impose a penalty or may cause connection to be made, and the expense thereof shall be assessed as a special tax against the property. Except in 1st class cities, the owner may, within 30 days after the completion of the work, file a written option with the municipal clerk stating that he or she cannot pay the amount in one sum and asking that it be levied in not to exceed 5 equal annual installments, and the amount shall be so collected with interest at a rate not to exceed 15 percent per year from the completion of the work, the unpaid balance to be a special tax lien.

History: 1979 c. 110 s. 60 (13); 1979 c. 221; 1983 a. 150; 1995 a. 227 s. 407; Stats. 1995 s. 281.45.

281.47 Sewage drains; sewage discharge into certain lakes. (1) (a) When any city, village, town or owner has constructed or constructs a sewage system complying with s. 281.41, the outflow or effluent from such system may be discharged into any stream or drain constructed pursuant to law, but no such outflow of untreated sewage or effluent from a primary or secondary treatment plant from a city, village, town, town sanitary district or metropolitan sewage district in a county having a population of 240,000 or more, according to the latest U.S. bureau of census figures available including any special census of municipalities within the county, any part of which is located within a drainage basin which drains into a lake of more than 2 square miles and less than 16 square miles in area, shall be discharged directly into, or through any stream, or through any drain, into such a lake located within 18 miles of the system or plant of such city, village, town, town sanitary district or metropolitan sewage district. All necessary construction of plant, system or drains for full compliance with this subsection in the discharge of untreated sewage or sewage effluent from all existing primary or secondary plants shall be completed by September 1, 1970, and the plans for any new system or plant shall include provisions for compliance with this subsection. The department may at any time order and require any owner of an existing plant to prepare and file with it, within a prescribed time, preliminary or final plans or both, for proposed construction to comply with this subsection.

(b) Any municipality, which, on April 30, 1972, has an operating sewerage collection and treatment system and has an application for attachment to a metropolitan sewerage district pending in the county court, in such a county, any part of which is located within such a drainage basin and which is located within 10 miles of a metropolitan sewerage district on September 1, 1967, shall be added to the metropolitan sewerage district upon application of the governing body of the municipality as provided in s. 66.205 (1), 1969 stats., if such petitioning municipality pays its fair share of the cost of attachment as determined by mutual agreement or a court of competent jurisdiction.

(c) 1. Except as provided in subd. 2., in lieu of construction in compliance with par. (a) for diversion from lakes described in par. (a), any owner of an existing plant, on or before September 1, 1967, or any owner of a new system or plant prior to construction of the new system or plant, may file with the department plans for advanced treatment of effluent from primary or secondary treatment that in the judgment of the department will accomplish substantially the same results in eliminating nuisance conditions on a lake described in par. (a) as would be accomplished by diversion of secondary sewage effluent from the lake, without at the same time creating other objectionable or damaging results. The owner of the plant or system is exempt from par. (a) for diversion from the lakes described in par. (a) upon approval of the plans submitted under this paragraph and installation of advanced treatment facilities and procedures in compliance therewith.

2. Nothing in subd. 1. impairs the authority of the department to require at any time preliminary or final plans, or both, for diversion construction.

(d) Any person violating this subsection or any order issued in furtherance of compliance therewith shall forfeit to the state not less than $100 nor more than $500 for each violation, failure or refusal. Each day of continued violation is deemed a separate offense. No such penalty shall be invoked during the time that any petition for review of an order is pending under s. 281.19 (8) until final disposition thereof by the courts, if judicial review is sought under ch. 227.

(2) The city, village or town or the owner of land through which the drain is constructed may apply to the circuit court of the county in which the land is located to determine the damages, if any. No injunction against the use shall be granted until the damages are finally determined and payment refused. Unless within 6 months after the system is completed the owner of the land institutes such proceedings the owner is barred. The proceedings shall be according to ch. 32, so far as applicable.

History: 1971 c. 164, 276; 1979 c. 34 s. 2102 (39) (g); 1979 c. 176; 1981 c. 374 s. 150; 1993 a. 246; 1995 a. 227 s. 406; Stats. 1995 s. 281.47; 1997 a. 254; 1999 a. 85.

281.48 Servicing septic tanks, soil absorption fields, holding tanks, grease interceptors and privies. (2) DEFINITIONS. In this section:

(b) "Grease interceptor" means a receptacle designed to intercept and retain grease or fatty substances.

(bm) "Private on–site wastewater treatment system" has the meaning given in s. 145.01 (12).

(c) "Privy" means an enclosed nonportable toilet into which human wastes not carried by water are deposited to a subsurface storage chamber that may or may not be watertight.

(d) "Septage" means the scum, liquid, sludge or other waste in a septic tank, soil absorption field, holding tank, grease interceptor, privy, or other component of a private on–site wastewater treatment system.

(e) "Septic tank" means any watertight enclosure used for storage and anaerobic decomposition of human excrement or domestic or industrial wastewater.

(f) "Servicing" means removing septage from a septic tank, soil absorption field, holding tank, grease interceptor, privy, or other component of a private on–site wastewater treatment system and disposing of the septage.

(g) "Soil absorption field" means an area or cavity in the ground which receives the liquid discharge of a septic tank or similar component of a private on–site wastewater treatment system.

(2m) POWERS OF THE DEPARTMENT. The department has general supervision and control of servicing septic tanks, soil absorption fields, holding tanks, grease interceptors, privies, and other components of private on–site wastewater treatment systems.

(3) LICENSE; CERTIFICATION. (a) *License; application.* Every person before engaging in servicing in this state shall submit an application for a license on forms prepared by the department. Except as provided in ss. 299.07 and 299.08, if the department, after investigation, is satisfied that the applicant has the qualifications, experience, understanding of proper servicing practices, as demonstrated by the successful completion of an examination

given by the department, and equipment to perform the servicing in a manner not detrimental to public health it shall issue the license. The license fee shall accompany all applications.

(b) *Expiration date of license.* All licenses issued under this section for a period beginning before July 1, 1997, are for one year. All licenses issued under this section for a period beginning after June 30, 1997, are for 2 years. All licenses issued under this section expire on June 30. Application for renewal shall be filed on or before June 1 and if filed after that date a penalty shall be charged. The department shall promulgate a rule setting the amount of the penalty for late filing.

(c) *Wisconsin sanitary licensee.* Any person licensed under this section shall paint on the side of any vehicle that is used for servicing, the words "Wisconsin Sanitary Licensee" and immediately under these words "License No. ...." with the number of the license in the space so provided with letters and numbers at least 2 inches high; and all lettering and numbering shall be in distinct color contrast to its background.

(d) *License exception.* A farmer who disposes of septage on land is exempt from the licensing requirement under par. (a) if all of the conditions in sub. (4m) (b) apply.

(e) *Operator certification.* No person, except for a farmer exempted from licensing under par. (d), may service a private on–site wastewater treatment system or operate a septage servicing vehicle unless the person is certified as an operator of a septage servicing vehicle under s. 281.17 (3).

(4g) RULES ON SERVICING. The department shall promulgate rules relating to servicing septic tanks, soil absorption fields, holding tanks, grease interceptors, privies, and other components of private on–site wastewater treatment systems in order to protect the public health against unsanitary and unhealthful practices and conditions, and to protect the surface waters and groundwaters of the state from contamination by septage. The rules shall comply with ch. 160. The rules shall apply to all septage disposal, whether undertaken pursuant to a license or a license exemption under sub. (3). The rules shall require each person with a license under sub. (3) to maintain records of the location of private on–site wastewater treatment systems serviced and the volume of septage disposed of and location of that disposal.

(4m) SITE APPROVALS. (a) The department may require a soil test and shall require a site approval for any location where septage is disposed of on land.

(b) Notwithstanding par. (a), the department may not require a site approval for a location where septage is disposed of on land if the person who disposes of the septage is a farmer who owns or leases that location and if:

1. The septage is removed from a septic tank which is located on the same parcel where the septage is disposed of; and

3. The person complies with all applicable statutes and rules in removing and disposing of the septage.

(c) If a location is exempt from site approval under par. (b), the department may require the person who services the septic tank to provide the department with information to show that sufficient land area is available for disposal.

(d) A person seeking a site approval under par. (a) shall submit an application to the department at least 7 days prior to using the site. Upon receiving an application for site approval, the department may enter and inspect the site if the department determines that an inspection is necessary. Commencing 7 days after submitting the application, the applicant may use the site unless the department notifies the applicant that the site may not be used.

(4s) FEES. (a) The department shall collect the following fees:

1. For a license under sub. (3) (a) to a state resident, for each vehicle used for servicing, $25 if the license period begins before July 1, 1997, and $50 if the license period begins after June 30, 1997.

2. For a license under sub. (3) (a) to a nonresident, for each vehicle used for servicing, $50 if the license period begins before July 1, 1997, and $100 if the license period begins after June 30, 1997.

(d) In addition to the license fee under par. (a) 1. or 2., the department shall collect from each licensee a groundwater fee of $50 if the license period begins before July 1, 1997, and $100 if the license period begins after June 30, 1997. The moneys collected under this paragraph shall be credited to the environmental fund for environmental management.

(e) Notwithstanding pars. (a) and (d), an individual who is eligible for the veterans fee waiver program under s. 45.44 is not required to pay a license fee or groundwater fee.

(5) AUTHORITY TO SUSPEND OR REVOKE LICENSES. (a) The department may and upon written complaint shall make investigations and conduct hearings and may suspend or revoke any license if the department finds that the licensee has:

2. Made a material misstatement in the application for license or any application for a renewal thereof.

3. Demonstrated incompetency in conducting servicing.

4. Violated any provisions of this section or any rule prescribed by the department or falsified information on inspection forms under s. 145.20 (5).

(b) The department may not reissue a license for a period of one year after revocation under par. (a).

(c) The department may promulgate by rule a procedure for the temporary suspension of a license.

(5m) COUNTY REGULATION. (a) A county may submit to the department an application to regulate the disposal of septage on land. The county shall include in its application a complete description of the proposed county program, including a proposed ordinance and forms and information on plans for personnel, budget and equipment. The department shall investigate the capability of the county to implement a regulatory program under this subsection and shall approve or deny the application based on the county's capability. If the department approves the county application, the county may adopt and enforce a septage disposal ordinance.

(b) The county septage disposal ordinance shall apply uniformly to the entire area of the county. No city, village or town may adopt or enforce a septage disposal ordinance if the county has adopted such an ordinance. If a city, village or town adopts a septage disposal ordinance, the ordinance shall conform with requirements applicable to a county septage disposal ordinance under this section.

(c) The site criteria and disposal procedures in a county ordinance shall be identical to the corresponding portions of rules promulgated by the department under this section. The county shall require the person engaged in septage disposal to submit the results of a soil test conducted by a soil tester certified under s. 145.045 and to obtain a site approval for each location where the person disposes of septage on land. The county shall maintain records of soil tests, site approvals, county inspections and enforcement actions under this subsection. A county may not require licensing or registration for any person or vehicle engaged in septage disposal. The county may establish a schedule of fees for site approvals under this paragraph if the department determines that the fees are no more than is necessary to fund the county program under this paragraph. The county may require a bond or other method of demonstrating the financial ability to comply with the septage disposal ordinance. The county shall provide for the enforcement of the septage disposal ordinance by penalties identical to those in s. 281.98.

(d) The department shall monitor and evaluate the performance of any county adopting a septage disposal ordinance. If a county fails to comply with the requirements of this subsection or fails adequately to enforce the septage disposal ordinance, the department shall conduct a public hearing in the county seat upon 30 days' notice to the county clerk. As soon as practicable after the hearing, the department shall issue a written decision regarding compliance with this subsection. If the department determines

that there is a violation of this subsection, the department shall by order revoke the authority of the county to adopt and enforce a septage disposal ordinance. At any time after the department issues an order under this paragraph, a county may submit a new application under par. (a). The department may enforce this section and rules adopted under this section in any county which has adopted a septage disposal ordinance.

(5p) LIMIT ON LOCAL REGULATION. No city, village, town, or county may prohibit or regulate, through zoning or any other means, the disposal of septage on land if that disposal complies with this section and rules promulgated under this section or with an ordinance adopted under sub. (5m) (a) or (b).

(5s) CITATIONS. (a) The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of subs. (2) to (5).

(b) Notwithstanding s. 23.66 (4), the department shall promulgate rules establishing the basic amount of the deposit that may be made under s. 23.66 (1) by a person to whom a citation is issued under par. (a). The rules shall specify a different amount for each offense under subs. (2) to (5).

History: 1979 c. 34; 1981 c. 1 s. 47; 1983 a. 189, 410, 538; 1989 a. 31; 1991 a. 39; 1993 a. 344; 1995 a. 227 s. 841, 843; Stats. 1995 s. 281.48; 1997 a. 27, 191, 237; 2005 a. 347; 2007 a. 97; 2009 a. 180; 2011 a. 146, 209.

Cross–reference: See also ch. NR 113, Wis. adm. code.

NOTE: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

281.49 Disposal of septage in municipal sewage systems. (1) DEFINITIONS. In this section:

(b) "Licensed disposer" means a person engaged in servicing, as defined in s. 281.48 (2) (f), under a license issued under s. 281.48 (3) (a).

(m) "Septage" means the scum, liquid, sludge or other waste from a septic tank, soil absorption field, holding tank or privy. This term does not include the waste from a grease interceptor.

(2) REQUIREMENT TO TREAT SEPTAGE. A municipal sewage system shall accept and treat septage from a licensed disposer during the period of time commencing on November 15 and ending on April 15. The sewage system may, but is not required to, accept and treat septage at other times during the year.

(3) EXCEPTIONS. (a) Notwithstanding sub. (2), a municipal sewage system is not required to accept septage from a licensed disposer if:

1. Treatment of the septage would cause the sewage system to exceed its operating design capacity or to violate any applicable effluent limitations or standards, water quality standards or any other legally applicable requirements, including court orders or state or federal statutes, rules, regulations or orders;

2. The septage is not compatible with the sewage system;

3. The licensed disposer has not applied for and received approval under sub. (5) to dispose of septage in the sewage system or the licensed disposer fails to comply with the disposal plan; or

4. The licensed disposer fails to comply with septage disposal rules promulgated by the municipal sewage system.

(b) The municipal sewage system shall accept that part of the total amount of septage offered for disposal which is not within the exceptions in par. (a).

(4) PRIORITIES. If the municipal sewage system can accept some, but not all, of the septage offered for disposal, the municipal sewage system may accept septage which is generated within the sewage service area before accepting septage which is generated outside of the sewage service area.

(5) DISPOSAL PLAN. (a) Each year a licensed disposer may apply to the municipal sewage system, prior to September 1, for permission to dispose of septage in the sewage system.

(b) The municipal sewage system shall approve applications for septage disposal, or reject those applications which are within the exceptions in sub. (3), no later than October 1 of each year.

(c) The municipal sewage system may impose reasonable terms and conditions for septage disposal including:

1. Specific quantities, locations, times and methods for discharge of septage into the sewage system.

2. Requirements to report the source and amount of septage placed in the sewage system.

3. Requirements to analyze septage characteristics under sub. (6).

4. Reasonable disposal fees that meet the requirements in sub. (10).

(d) The municipal sewage system shall prepare a disposal plan for each licensed disposer whose application for septage disposal is approved. The disposal plan shall consist of the approved application and all terms and conditions imposed on the licensed disposer.

(6) ANALYSIS OF SEPTAGE. The municipal sewage system may require the licensed disposer to analyze representative samples of septage placed in the sewage system in order to determine the characteristics of the septage and the compatibility of the septage with the municipal sewage system. The municipal sewage system may not require the analysis of septage from exclusively residential sources.

(7) DISPOSAL FACILITIES. A municipal sewage system which is required to accept and treat septage shall provide adequate facilities for the introduction of septage into the sewage system.

(8) MODEL REGULATION. The department shall prepare a model septage disposal regulation which may be used by municipal sewage systems in the implementation of this section.

(9) LAND DISPOSAL NOT PROHIBITED. This section shall not be construed as a prohibition of the land disposal of septage. The land disposal of septage is governed by s. 281.48.

(10) SEPTAGE DISPOSAL FEES. (a) Disposal fees established by a municipal sewage system under sub. (5) (c) 4. for the disposal of septage introduced into the system by a licensed disposer may be based on only the following actual costs related to the disposal of the septage, as determined in accordance with a uniform cost accounting system applicable to all services provided by the system:

1. The cost of facilities at the system that receive and store septage.

2. The cost of any testing of septage conducted by the system.

3. The cost of treating septage by the system. This cost may vary based on the quantity and type of the septage.

4. The portion of the system's additional administrative and personnel costs for accepting the septage not reflected in the costs identified in subds. 2. and 3.

(b) In determining its actual costs under par. (a) 1. to 4., a municipal sewage system may include any associated cost of capital, debt service, operation, and maintenance, and any other type of cost used by a municipal sewage system in establishing fees for the treatment and disposal of sewage by its customers connected to the system.

(11) REVIEW OF SEPTAGE DISPOSAL FEES. (a) Each municipal sewage system shall establish a procedure to review a septage disposal fee charged by the system that is disputed by a licensed disposer.

(b) Upon the request of a licensed disposer, a municipal sewage system shall use the procedure established by the system under par. (a) to review whether a septage disposal fee charged by the system for the quantity and type of septage specified by the licensed disposer conforms with sub. (5) (c) 4.

(c) After pursuing the review of a septage disposal fee under par. (b), a licensed disposer may request the staff of the public service commission to informally review the disputed septage disposal fee. If the staff determine that there is sufficient basis for a dispute regarding the fee and that use of the procedure under par. (b) is not likely to resolve the dispute, the staff may agree to review

the disputed septage disposal fee. Based on its review, the staff may recommend a reasonable septage disposal fee that conforms with sub. (5) (c) 4.

(d) If the use of the procedure under par. (c) does not lead to resolution of the dispute, the licensed disposer requesting the review under par. (c) may make a written request to the public service commission for review of the disputed septage disposal fee under s. 66.0821 (5) or 200.59 (5).

(e) Upon the request of a licensed disposer, or the public service commission or its staff, a municipal sewage system shall provide information to the requester concerning the basis of its septage disposal fees. A municipal sewage system shall provide to the public service commission or its staff any other information that the commission or its staff requests related to a review under par. (c) or (d).

(12) NOTICE OF SEPTAGE DISPOSAL INCREASES. Each municipal sewage system shall notify each licensed disposer currently approved under sub. (5) (b) to dispose of septage in the system of any increase in a disposal fee applicable to the licensed disposer at least 60 days prior to imposing the increased disposal fee. The notice shall include a description of how the system calculated the new disposal fee.

History: 1983 a. 410; 1989 a. 31, 359; 1995 a. 227 s. 409; Stats. 1995 s. 281.49; 2005 a. 347; 2009 a. 180.

NOTE: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

SUBCHAPTER V

FINANCIAL ASSISTANCE

281.51 Financial assistance program; local water quality planning. (1) DEFINITIONS. As used in this section:

(a) "Designated local agency" means the designated local agency under section 208 of the federal act.

(b) "Federal act" means the federal water pollution control act amendments of 1972, P.L. 92–500, 86 Stat. 816.

(c) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

(2) STATE WATER QUALITY PLANNING ASSISTANCE PROGRAM; DESIGNATED LOCAL AGENCIES. (a) The department shall administer a program to provide state assistance to designated local agencies for water quality planning activities.

(b) The department shall establish grant eligibility criteria for designated planning agencies seeking state assistance for water quality planning activities. The department shall consider the capacity of an agency to conduct areawide planning activities in establishing these eligibility criteria.

(c) A designated planning agency may receive state assistance to conduct water quality planning activities if:

1. The designated planning agency agrees to provide planning matching funds. At a minimum, the department shall require the designated planning agency to agree to provide planning matching funds in an amount equal to the state assistance. The department may require the designated planning agency to agree to provide local matching funds in a higher amount.

2. The designated planning agency meets all grant eligibility criteria.

(3) STATE WATER QUALITY PLANNING ASSISTANCE; OTHER LOCAL GOVERNMENTAL UNITS. The department may provide financial assistance for water quality planning activities to local governmental units that are not designated local agencies.

History: 1979 c. 221; 1985 a. 29; 1991 a. 39; 1995 a. 227 s. 423; Stats. 1995 s. 281.51.

281.53 Municipal clean drinking water grants. (1) The department may award a municipal clean drinking water grant, from the appropriation under s. 20.866 (2) (tb), to a municipality for capital costs to achieve compliance with standards for contaminants established by the department by rule under the safe drinking water program under s. 281.17 (8), if the municipality is not in compliance with those standards on or after April 1, 1990, if the municipality incurs the capital costs after January 1, 1989, and if the violation of the standards for contaminants occurs in a public water system owned by the municipality.

(2) The department shall approve grants under this section equal to 90 percent of the amount by which the reasonable and necessary capital costs of achieving compliance with the standards for contaminants exceed an amount equal to $25 times the population that is served by the contaminated public water system for which a grant is sought if the reasonable and necessary capital costs of achieving compliance with those standards are an amount equal to an amount that is greater than $150 times the population that is served by the contaminated water system.

(3) The department shall rank applicants for grants under this section on the basis of the severity of risk to human health posed by each applicant's violation of the standards for contaminants. If insufficient funds are available for providing grants to eligible municipalities, the department shall allocate grants based on the severity of risk to human health.

(4) The department shall promulgate rules for the administration of the program under this section that include the establishment of which capital costs are eligible for reimbursement and the method for ranking applicants under sub. (3).

History: 1989 a. 366; 1991 a. 32; 1995 a. 227 s. 399; Stats. 1995 s. 281.53; 1995 a. 378 s. 44; 1997 a. 35.

281.55 Financial assistance program. (1) The legislature finds that state financial assistance for the construction and financing of pollution prevention and abatement facilities is a public purpose and a proper state government function in that the state is trustee of the waters of the state and that such financial assistance is necessary to protect the purity of state waters.

(2) In order that the construction of pollution prevention and abatement facilities necessary to the protection of state waters be encouraged, a state program of assistance to municipalities and school districts for the financing of such facilities is established and a program of state advances in anticipation of federal aid reimbursement is established to meet the state's water quality standards. These state programs shall be administered by the department of natural resources and the department shall make such rules as are necessary for the proper execution of the state program.

(2m) In this section "estimated reasonable costs" include the costs of preliminary planning to determine the economic and engineering feasibility of pollution prevention and abatement facilities, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary to the construction of pollution prevention and abatement facilities and the erection, building, acquisition, alteration, remodeling, improvement or extension of pollution prevention and abatement facilities and the inspection and supervision of the construction of pollution prevention and abatement facilities.

(3) (a) The department shall establish criteria to determine those municipalities and school districts and projects which are eligible for the state program and to determine appropriate priorities among the projects.

(c) All municipalities and school districts are eligible for agreements under sub. (6) (b) based on the criteria in this paragraph. The criteria shall consider the health hazards of existing conditions, the extent and nature of pollution, per capita costs of the project, property valuation of the municipalities or school districts as equalized by the state, income of the residents in the municipalities or school districts, the availability of federal funds for the project, soil conditions, the feasibility and practicality of the project, the borrowing capacity of the municipality or school

district and any other factors which the department considers important. Municipalities or school districts commencing projects but not completed prior to January 18, 1970, shall be deemed eligible for agreements under sub. (6) (b). School district projects are not eligible if the project is located within the corporate limits of a city or of a village with an operating municipal sewage system.

(4) Municipalities or school districts which desire to participate in the state program shall submit application for participation to the department. The application shall be in such form and include such information as the department prescribes.

(5) The department shall review applications for participation in the state program. It shall determine those applications which meet the criteria it established under sub. (3), and shall arrange the applications in appropriate priority order.

(6) The department may enter into agreement with municipalities and school districts to provide state assistance for the financing of those pollution prevention and abatement facilities projects it approves under sub. (5).

(b) The department may enter into agreements with municipalities and school districts to make payments to them from the appropriations made by s. 20.866 (2) (tm).

1. These payments shall not exceed 50 percent of the approved project in conjunction with the state program of advancement in anticipation of federal reimbursement under sub. (2). To provide for the financing of pollution prevention and abatement facilities, the natural resources board, with the approval of the governor, subject to the limits of s. 20.866 (2) (tm) may direct that state debt be contracted as set forth in subd. 2. and subject to the limits set therein. Said debts shall be contracted for in the manner and form as the legislature hereafter prescribes.

2. It is the intent of the legislature that state debt not to exceed $150,850,000 in the 10–year period from 1969 to 1979 may be incurred for state water pollution and abatement assistance.

(e) The department shall review and approve the plans and specifications of all facilities designed and constructed by agreement under this section.

(7) This section shall be construed liberally in aid of the purposes declared in sub. (1).

(8) After June 30, 1979, the department may not enter into any agreements or contracts under sub. (6) (b), but the department shall continue to make payments on existing agreements and contracts until the terms of the agreements and contracts are fully satisfied.

History: 1971 c. 95; 1975 c. 39 s. 734; 1977 c. 29; 1979 c. 34 ss. 974 to 976, 2102 (39) (a); 1987 a. 399; 1989 a. 31; 1991 a. 269; 1995 a. 227 s. 421; Stats. 1995 s. 281.55.
Cross–reference: See also ch. NR 125, Wis. adm. code.

281.56 Financial assistance program; sewerage systems. (1) The financial assistance program established under this section is to be used only if the applicant is unable to receive assistance in a timely manner from the federal government and supplementary funding program established under s. 281.55. Receipt of aid under this section makes the applicant ineligible for aid under s. 281.55.

(2) There is established a state program of assistance to municipalities and unincorporated areas for the purpose of financing the construction of water pollution abatement and sewage collection systems. The program shall be administered by the department which shall make such rules as are necessary for the proper execution of the program.

(3) (a) The department shall establish criteria to determine those municipalities and projects which are eligible for the state program and to determine appropriate priorities by rule among the projects.

(b) All municipalities having a population of less than 10,000 are eligible for agreements under sub. (6) based on the criteria in this paragraph. The criteria shall consider the health hazards of existing conditions, the adequacy of the existing water pollution abatement system, per capita costs of the project, property valuation of the municipalities as equalized by the state, income of the residents in the municipalities, the availability of federal funds for the project and the borrowing capacity of the municipality. Highest priority shall initially be given to projects which have completed all necessary planning and engineering and any other factors which the department considers important. Municipalities commencing projects not completed prior to June 29, 1974 are eligible for agreements under sub. (6).

(4) Municipalities which desire to participate in the state program shall submit application for participation to the department. The application shall be in such form and include such information as the department prescribes.

(5) The department shall review applications for participation in the state program. It shall determine those applications which meet the criteria it established under sub. (3) and shall arrange the applications in appropriate priority order.

(6) (a) Upon approval of an application, the department may enter into an agreement with the municipality to pay from the appropriation under s. 20.866 (2) (tm) an amount not to exceed 50 percent of the estimated reasonable costs of the approved project. The agreement shall be for such duration and subject to such terms as the department may prescribe. The department shall not grant any municipality more than 10 percent of the funds available under s. 20.866 (2) (tm) for a given year.

(b) In this subsection "estimated reasonable costs" include the costs of preliminary planning to determine the economic and engineering feasibility of a proposed sewerage system, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary to the construction of the project and the erection, building, acquisition, alteration, remodeling, improvement or extension of system facilities and the inspection and supervision of the construction of such facilities.

(7) The department shall review and approve the plans and specifications of all facilities designed and constructed by agreement under this section.

(8) After June 30, 1978, the department may not enter into any agreements or contracts under this section, but the department shall continue to make payments on existing agreements and contracts until the terms of the agreements and contracts are fully satisfied.

History: 1973 c. 333; 1977 c. 418; 1995 a. 227 s. 422; Stats. 1995 s. 281.56.
Cross–reference: See also ch. NR 126, Wis. adm. code.

281.57 Financial assistance program; point source pollution abatement. (1) LEGISLATIVE INTENT. The legislature finds that state financial assistance for facility planning, engineering design and construction of point source pollution abatement facilities is a public purpose and a proper state government function in that the state is the trustee of the waters of the state and that this financial assistance is necessary to protect the purity of state waters. In order that facility planning, engineering design and construction of point source pollution abatement facilities necessary to the protection of state waters be encouraged, a state program of assistance to municipalities for the financing of these activities is established. The legislature further finds that in order for the construction of point source pollution abatement facilities to proceed in an expeditious manner it is appropriate to meet the costs through the issuance of public debt, extending the financial obligation incurred over a generation of beneficiaries of these facilities.

(2) ADMINISTRATION; RULES. The state's point source pollution abatement program shall be administered by the department. The department shall make such rules as are necessary for the proper execution of the program.

(3) DEFINITIONS. In this section:

(a) "Federal act" means the federal water pollution control act P.L. 92–500, as amended.

(b) "Point source pollution abatement facilities" means those facilities eligible for financial assistance under title II of the federal act.

(c) "State program" means the program of financial assistance for point source pollution abatement established under this section.

(4) ELIGIBILITY. (a) The department shall, by rule, specify criteria for determining eligible municipalities and projects for funding by grants under this section. Where a municipality is serviced by more than one sewerage district for wastewater pollution abatement, each service area of the municipality shall be considered as a separate municipality for purposes of obtaining financial assistance under the state program. Except as provided in this subsection, the department shall promulgate rules which specify criteria for determining eligible participants and projects which comply with the federal act and rules promulgated under the federal act.

(b) 1. Eligible projects relating to collection systems include only the following:

a. A collection system in an unsewered municipality which is constructing a new wastewater treatment plant and collection system rehabilitation which is necessary to maintain the total integrity of a sewerage system.

b. A collection system which the department orders under s. 281.43 (1) notwithstanding the outcome of the annexation referendum under s. 281.43 (1m). Notwithstanding sub. (7) (a) and any rules promulgated under this section, the department shall award funding under this subd. 1. b. in an amount that totals 60 percent of all costs of the project, rather than of eligible costs of the project.

c. A collection system in an unsewered community which is being connected to an existing wastewater treatment plant if the municipality applied to the department under sub. (5) for financial assistance on or after January 1, 1986, and the municipality received, before January 1, 1987, a notice under sub. (6) that the department was ready to allocate funds to the municipality.

2. Funding may not be provided for that portion of any project related to industrial capacity that is defined under 33 USC 1284 (b) (1), as amended on May 16, 1978, as subject to industrial cost recovery. Notwithstanding the federal act and regulations promulgated under that act, the state program does not require an industrial cost recovery system.

3. The amount of reserve capacity for treatment works eligible for grant assistance is limited to that future capacity required to serve the users of the treatment works expected to exist within the service area of the project 10 years from the time the treatment works are estimated to become operational or, in the case of interceptor sewers and associated appurtenances, the estimated date of operation. The department, in consultation with the demographic services center in the department of administration under s. 16.96, shall promulgate rules defining procedures for projecting population used in determining the amount of reserve capacity.

(c) 1. Every applicant seeking grants for construction purposes under this section shall complete a staged facility planning, engineering design and environmental analysis sequence developed by the department. The department shall model the required sequence after the staged planning, design and environmental analysis sequence under title II of the federal act.

2. If sources of funding for the facility planning prescribed under this paragraph are not available for these activities, grants provided under this section may pay 50 percent of the cost of facility planning.

2m. Amendments or applications for facility planning grants received after March 1, 1987, shall be funded at 50 percent of the cost of the facility planning.

3. If sources of funding for the engineering design prescribed under this paragraph are not available for these activities, grants provided under this section may pay 75 percent of the cost of engineering design activities.

4. Engineering design cost grants made from the appropriation under s. 20.866 (2) (tn) shall be awarded at the time a construction grant is awarded and may be awarded only if an advance commitment for reimbursement is made under sub. (9m).

(d) If a project funded under this section fails, the department may not require the recipient of the grant to reimburse the department for costs determined to be eligible under this section if all of the following apply:

1. The applicant initiates legal action and pursues the action to completion, unless the department agrees otherwise, to recover costs from parties potentially liable for the project's failure and the legal action is not resolved before May 11, 1990.

2. The applicant agrees in writing to pay to the department, for the state–funded portion of the project, funds recovered under the legal action in excess of the cost of the legal action.

(5) APPLICATION. Municipalities which desire to participate in the financial assistance program under this section shall submit an application for participation to the department. The application shall be in such form and include such information as the department prescribes. The department shall review applications for participation in the state program. It shall determine those applications which meet the criteria it established under sub. (4).

(6) PRIORITIES. (a) Each municipality shall notify the department of its intent to apply for a grant under this section by January 1 of each year. For those municipalities that notify the department by January 1, the department shall annually compile a funding list which ranks these municipalities in the same order as they appear on the federal priority list, prepared under the federal act, as of January 1 of each year. Except as provided in sub. (7) (c) 4., if there is not sufficient funding available under this section to fund all grant applications in one year, the department shall allocate available funding to projects in the order in which they appear on the funding list. The department shall not allocate funds to a municipality that is on the funding list in a particular year if the municipality is not ready to begin construction within 3 months of the time when the department is ready to allocate the funds, and the municipality can reasonably expect to receive funds under the federal program within 12 months of the time when the department is ready to allocate the funds.

(b) For those municipalities that notify the department after January 1 but before April 1 of each year of their intent to apply for a grant under this section, the department shall compile a funding list as of April 1 of each year. If funding remains from the allocation under par. (a), the department shall allocate available funding to projects in the order in which they appear on the funding list compiled under this paragraph. The department shall not allocate funds to a municipality under this paragraph that is on the funding list in a particular year if the municipality is not ready to begin construction within 3 months after the department is ready to allocate the funds and the municipality can reasonably expect to receive funds under the federal program within 12 months after the department is ready to allocate the funds.

(c) If a municipality receives a notice that the department is ready to allocate funds under par. (a) or (b) and, prior to the initiation of construction, the department determines that revisions to the proposed project based upon significant newly discovered information or recent technological innovation will reduce anticipated project costs without impeding the achievement of discharge and effluent standards, the department may reserve the funds previously committed under par. (a) or (b) for that municipality for a period not to exceed one priority year after the funding list is compiled under par. (a) or (b).

(7) PAYMENT. (a) 1. Upon the completion by an applicant of all application requirements, the department may enter into an agreement with a municipality for a grant of up to 60 percent of the eligible costs of a project, except as provided under sub. (4) (c), if the municipality is awarded a grant before July 1, 1989.

2. Upon the completion by an applicant of all application requirements, the department may enter into an agreement with a

municipality for a grant of up to 55 percent of the eligible costs of the project, except as provided under sub. (4) (c), if the municipality is awarded a grant after June 30, 1989, but before July 1, 1990.

(b) No project funded under this section may receive state assistance that, combined with other nonlocal government assistance, exceeds 75 percent of the eligible cost of the project.

(c) 1. Metropolitan sewerage districts that serve 1st class cities are limited in each fiscal year to receiving total grant awards not to exceed 33 percent of the sum of the amounts in the schedule for that fiscal year for the appropriation under s. 20.165 (2) (ke) and the amount authorized under sub. (10) for that fiscal year plus the unencumbered balance at the end of the preceding fiscal year for the amount authorized under sub. (10). This subdivision is not applicable to grant awards provided during fiscal years 1985−86, 1986−87, 1988−89 and 1989−90.

NOTE: Subd. 1. is amended eff. 6−30−21 by 2017 Wis. Act 59 to read:

1. Metropolitan sewerage districts that serve 1st class cities are limited in each fiscal year to receiving total grant awards not to exceed 33 percent of the amount authorized under sub. (10) for that fiscal year plus the unencumbered balance at the end of the preceding fiscal year for the amount authorized under sub. (10). This subdivision is not applicable to grant awards provided during fiscal years 1985−86, 1986−87, 1988−89 and 1989−90.

2. Metropolitan sewerage districts that serve 1st class cities are limited to new project grant awards of not more than $29,900,000 in fiscal year 1985−86, of not more than $35,300,000 in fiscal year 1986−87, of not more than $70,000,000 in fiscal year 1988−89 and of not more than $45,600,000 in fiscal year 1989−90 from the amounts authorized under sub. (10), plus any unallocated balances from the previous fiscal year as listed in this subdivision which the department determines, in accordance with its rules establishing a priority funding list under sub. (6), will be available for obligation during the succeeding fiscal year.

3. Sewerage districts that do not serve 1st class cities are limited to new project grant awards that, in the aggregate for all those sewerage districts, are not more than $70,500,000 in fiscal year 1988−89 and not more than $48,338,400 in fiscal year 1989−90 from the amounts authorized under sub. (10), plus any unallocated balances from the previous fiscal year as listed in this subdivision which the department determines, in accordance with its rules establishing a priority funding list under sub. (6), will be available for obligation during the succeeding fiscal year.

4. Of the additional $11,938,400 authorized in subd. 3. by 1989 Wisconsin Act 366, for fiscal year 1989−90, the department shall allocate $5,969,200 to each of the first 2 municipalities, except a metropolitan sewerage district that serves a 1st class city, whose projects have the highest rankings on the funding list under sub. (6) (a). The department may not release the additional moneys authorized in subd. 3. to such municipalities until the secretary certifies in writing that each municipality has signed an agreement with the department under which the municipality agrees to waive any further challenge to the order of placement of any of its projects on a priority funding list established by the department under sub. (6).

(8) CONDITIONS OF PAYMENT. (a) *Water conservation.* Each municipality receiving state assistance under this section for the construction of a point source pollution abatement facility shall develop and adopt a program of water conservation no less stringent than the federal requirements.

(b) *Operation and maintenance.* Each municipality receiving state assistance under this section for the construction of a point source pollution abatement facility shall develop and adopt a program of systemwide operation and maintenance of the wastewater treatment plant, including the training of personnel, no less stringent than the federal requirements.

(c) *User charges; exception.* 1. Except as provided under subd. 2., each municipality receiving state assistance under this section for the construction of a point source pollution abatement facility shall develop and adopt a system of equitable user charges to ensure that each recipient of waste treatment services pays its proportionate share of the costs of the operation and maintenance of the point source pollution abatement facility. The user fee system shall be in compliance with title II of the federal act and the rules promulgated under the federal act.

2. The department may issue an exemption from the requirement imposed under subd. 1. if a city or village imposes a system of equitable dedicated charges based upon assessed property values, if the city or village does not operate a wastewater treatment plant but is served by a regional wastewater treatment plant operated by a metropolitan sewerage district created under ss. 200.21 to 200.65 and if the user charges imposed by that district are approved by the department and comply with the requirements of title II of the federal act.

(d) *Prior approval.* Payment in excess of two−thirds of the state assistance provided for the eligible costs of construction may not be made until the department approves the programs required under pars. (a) and (b) and any system required under par. (c).

(e) *Rules.* The department shall promulgate rules consistent with this subsection.

(8m) REPAYMENT. The department may not require a municipality that received a construction grant under this section for a wastewater treatment system that subsequently failed to repay any portion of the grant related to the costs of that failed system if all of the following apply:

(a) The municipality received the construction grant during fiscal year 1980−81.

(b) Prior to the construction of the wastewater treatment system funded by the grant under par. (a) the municipality was an unsewered municipality.

(c) The department directed the municipality to correct the failed wastewater treatment system and the municipality received construction grant funding during fiscal year 1987−88 to make the corrections.

(9) ADVANCE COMMITMENTS FOR REIMBURSEMENT FROM FUTURE APPROPRIATIONS. (a) The department shall, by rule, implement and administer reimbursement funding to municipalities as part of the financial assistance program under this section to encourage the participation of all municipalities.

(b) The department shall promulgate rules specifying reimbursement eligibility and procedures for commitments of financial assistance. The rules shall specify that reimbursement shall be made or committed:

1. To communities willing to apply for state assistance conditioned upon legislative appropriation of the amounts needed to reimburse municipalities.

2. To communities successfully completing all facility planning and engineering design requirements.

3. For all eligible costs consistent with sub. (4).

4. Prior to the start of construction of any reimbursable project if all required procedures have been complied with.

5. Subject to a priority determination system consistent with sub. (6) for reimbursable projects.

6. Subject to the same provisions of payment under sub. (7).

7. Subject to the same conditions of payment under sub. (8).

(c) The maximum state assistance the department may commit in each fiscal year before fiscal year 1989−90 for future reimbursement under this subsection is an amount equal to the amount authorized under sub. (7) (c) for the subsequent fiscal year.

(9m) ADVANCE COMMITMENTS FOR REIMBURSEMENT OF ENGINEERING DESIGN COSTS. The department may make an advance commitment to a municipality for the reimbursement of engineering design costs from funds appropriated under s. 20.866 (2) (tn) subject to all of the following requirements:

(a) For fiscal year 1989−90, the advance commitment shall include a provision making the reimbursement of engineering design costs conditional on the award or making of a construction grant under this section or a loan under ss. 281.58 and 281.59. If the financial assistance that the municipality receives for construction of a treatment work is a loan, the engineering design cost reimbursement shall be a loan. After June 30, 1990, and before

September 1, 1990, the department may enter into an agreement with a municipality to provide engineering design costs under this subsection if the department makes an advance commitment for the reimbursement of those costs before July 1, 1990, and the municipality receives financial assistance under this section and s. 281.59 for construction.

(b) The advance commitment may be made only for engineering design activities commenced after the department makes the advance commitment.

(c) The advance commitment may be made only if the municipality has completed all facility planning requirements.

(d) The advance commitment may be made only for engineering design projects and costs which are eligible under sub. (4) (a), (b) and (c) 3.

(e) The advance commitment shall be subject to a priority determination system consistent with sub. (6).

(10) EXPENDITURE AUTHORIZATION. The department may expend, from the appropriation under s. 20.866 (2) (tn), the total amount which is authorized under that paragraph to be contracted for public debt and has not been expended, for new grants under this section for engineering design costs, construction costs and other costs which can be funded from bond revenue.

(10e) LOAN FOR WATER TOWER IN THE VILLAGE OF ATHENS. Notwithstanding subs. (2), (4) to (10), and (12), during the 2001–03 fiscal biennium, the department shall provide a loan of $320,000 to the village of Athens for construction of a water tower and related costs, if the village applies for a loan. The department may not charge any interest on the loan.

(10f) LOAN FOR WATER TOWER IN THE VILLAGE OF WESTON. Notwithstanding subs. (2), (4) to (10), and (12), during the 2001–03 fiscal biennium, the department shall provide a loan of $400,000 to the village of Weston for construction of a water tower and related costs, if the village applies for a loan. The department may not charge any interest on the loan.

(10m) LOAN FOR MODIFICATION OR REPLACEMENT OF AN INNOVATIVE OR ALTERNATIVE PROJECT. Notwithstanding subs. (2), (4) to (10) and (12), during the 1997–99 fiscal biennium, the department shall provide a loan of $1,300,000 to a municipality for all of the planning, design and construction costs incurred after June 30, 1995, for the modification or replacement of a failed innovative or alternative point source pollution abatement facility for which the department issued written approval of eligibility under 40 CFR 35.2032 before December 10, 1996, and which requires additional construction to eliminate discharge of effluent to groundwater and to establish a new surface water outfall. The department may not charge any interest on the loan and may not require the municipality to repay the loan until the municipality receives a grant from the federal environmental protection agency for the modification or replacement of the point source pollution abatement facility. If the federal environmental protection agency denies the grant, the department shall forgive the loan.

(10r) LOAN FOR REPLACEMENT OF A FAILED SEQUENTIAL BATCH REACTOR. Notwithstanding subs. (2), (4) to (10) and (12), during the 1999–2001 biennium, the department shall provide a loan of $770,000 to a municipality for all of the administrative, planning, design and construction costs incurred after January 1, 1997, for the replacement of a failed sequential batch reactor point source pollution abatement facility for which the department has issued written concurrence on or before March 26, 1999, that the construction of a new wastewater treatment plant is the most cost–effective option, and for which the municipality has on or before March 26, 1999, committed to work with the department towards securing reimbursement of the loan from the federal environmental protection agency under 40 CFR 35.2032. The department may not charge any interest on the loan.

(10t) LOAN FOR A DRINKING WATER TREATMENT PLANT. Notwithstanding subs. (2), (4) to (10) and (12), during the 1999–2001 biennium, the department shall provide a loan of $1,100,000 to the village of Marathon for the upgrading or replacement of a drinking water treatment plant. The department may not charge any interest on the loan. The department may not require the municipality to repay the loan until the municipality receives a grant from the federal environmental protection agency for the upgrading or replacement of the drinking water treatment plant. If the federal environmental protection agency denies the grant or a portion of the grant, the village of Marathon shall repay the amount of the loan that exceeds the amount of the grant.

(11) CONSTRUCTION. This section shall be liberally construed in aid of the purposes declared in sub. (1).

(12) SUNSET. (a) Notwithstanding sub. (6), the department may not issue a grant award under the state program for a municipality that has not submitted to the department by January 2, 1989, a facility plan which meets the requirements of this section and is approvable by the department under this chapter.

(b) Notwithstanding sub. (6), the department may not issue a grant award under the state program for planning or construction work after June 30, 1990.

History: 1977 c. 418; 1979 c. 34 ss. 976g to 976wd, 2102 (39) (g); 1979 c. 221 ss. 626 to 626y, 2200 (20), 2202 (39); 1981 c. 1, 20, 174; 1983 a. 27; 1985 a. 29 ss. 1935 to 1938, 3202 (39); 1985 a. 120; 1987 a. 27, 399; 1989 a. 31, 336, 366; 1991 a. 39, 315; 1995 a. 27; 1995 a. 227 s. 424; Stats. 1995 s. 281.57; 1997 a. 27; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2011 a. 32; 2015 a. 55; 2017 a. 59.

281.58 Clean water fund program; financial assistance. (1) DEFINITIONS. In this section:

(ai) "Clean water fund program" means the program administered under this section with financial management provided under s. 281.59.

(am) "Effluent limitation" has the meaning designated in s. 283.01 (6).

(b) "Enforceable requirement" means any of the following:

1. Those conditions or limitations of a permit under ch. 283 which, if violated, could result in the initiation of a civil or criminal action under s. 283.89.

2. Those provisions of s. 281.19 (5) which, if violated could result in a departmental order under s. 281.19 (7).

3. If a permit under ch. 283 has not been issued, those conditions or limitations which, in the department's judgment, would be included in the permit when issued.

4. If no permit under ch. 283 applies, any requirement which the department determines is necessary for the best practicable waste treatment technology to meet applicable criteria.

(c) "Industrial user" means any of the following:

1. Any nongovernmental, nonresidential user of a publicly owned treatment work which discharges more than the equivalent of 25,000 gallons per day of sanitary wastes, other than domestic wastes or discharges from sanitary conveniences, or discharges a volume that has the weight of biochemical oxygen demand or suspended solids at least as great as the weight found in 25,000 gallons per day of sanitary waste from residential users, and which is identified in the standard industrial classification manual, 1972, federal office of management and budget, as amended and supplemented as of October 1, 1978, under one of the following divisions:

a. Division A: agriculture, forestry, and fishing.

b. Division B: mining.

c. Division D: manufacturing.

d. Division E: transportation, communications, electric, gas, and sanitary services.

e. Division I: services.

2. Any nongovernmental user of a publicly owned treatment work which discharges wastewater to the treatment work which contains toxic pollutants or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to contaminate the sludge of any municipal system, to injure or interfere with any sewage treatment process, to constitute a hazard to humans or animals, to create a public nuisance, or to

create any hazard in or have an adverse effect on the waters receiving any discharge from the treatment works.

3. All commercial users of an individual system constructed with grant assistance under s. 281.57.

(cg) "Market interest rate" has the meaning given in s. 281.59 (1) (b).

(cm) "Median household income" means median household income determined by the U.S. bureau of the census as adjusted by the department to reflect changes in household income since the most recent federal census.

(cs) "Residential user" means a structure or part of a structure, including a mobile home, that is used primarily as a home, residence or sleeping place by one person or 2 or more persons maintaining a common household and that uses a publicly owned treatment work. "Residential user" does not include an institutional, commercial, industrial or governmental facility.

(cv) "Septage" has the meaning given in s. 281.48 (2) (d).

(d) "Treatment work" has the meaning designated in s. 283.01 (18).

(e) "Violator of an effluent limitation" means a person or municipality that after May 17, 1988, is not in substantial compliance with the enforceable requirements of its permit issued under ch. 283 for a reason that the department determines is or has been within the control of the person or municipality.

(2) RULES. The department shall promulgate rules that are necessary for the proper execution of its responsibilities under this section. Notwithstanding s. 227.10 (1), the department and the department of administration are not required to promulgate rules for the purposes of providing financial assistance for pilot projects under sub. (7) (b) 7.

(2m) GENERAL DUTIES. The department shall:

(a) Administer its responsibilities under the clean water fund program.

(b) Have the lead state role with the U.S. environmental protection agency.

(c) Cooperate with the department of administration in administering the clean water fund program.

(d) Have the lead state role with municipalities in providing clean water fund program information, and cooperate with the department of administration in providing such information to municipalities.

(e) Inspect periodically clean water fund project construction to determine project compliance with construction plans and specifications and the requirements of this section and s. 281.59 and, if applicable, of 33 USC 1251 to 1376 and 33 USC 1381 to 1387 and the regulations promulgated thereunder.

(f) Submit a biennial budget request under s. 16.42 for the clean water fund program.

(3) ACCEPTANCE OF FEDERAL CAPITALIZATION GRANTS. The department may enter into an agreement under 33 USC 1382 with the U.S. environmental protection agency to receive a capitalization grant under 33 USC 1381 to 1387. The agreement may contain any provision required by 33 USC 1381 to 1387 and any regulation, guideline or policy adopted under 33 USC 1381 to 1387.

(3m) BIENNIAL NEEDS LIST. By May 1 of each even–numbered year, the department shall prepare and submit to the department of administration a biennial needs list that includes all of the following information:

(a) A list of wastewater treatment projects that the department estimates will apply for financial assistance under the clean water fund program during the next biennium.

(b) The estimated cost and estimated construction schedule of each project on the list, and the total of the estimated costs of all projects on the list.

(c) The estimated rank of each project on the priority list under sub. (8e).

(6) METHODS OF PROVIDING FINANCIAL ASSISTANCE. (a) The department may determine whether a municipality is eligible for financial assistance under the clean water fund program for any of the following:

1. Planning, designing and constructing or replacing a treatment work.

1m. Activities other than those specified in subd. 1. associated with achieving and maintaining compliance with a permit issued under ch. 283.

2. Implementing a management program established under 33 USC 1329 (b).

3. Developing and implementing a conservation and management plan under 33 USC 1330.

(b) The following methods of providing financial assistance may be used under the clean water fund program:

1. Purchasing or refinancing the obligation of a municipality if the obligation was incurred to finance the cost of constructing a water pollution control project located in this state.

3. Guaranteeing, or purchasing insurance for, municipal obligations for the construction or replacement of a treatment work if the guarantee or insurance would improve credit market access or reduce interest rates.

4. Making loans at or below the market interest rate.

5. Providing state financial hardship assistance under sub. (13) from the account under s. 25.43 (2) (b).

7. Making grants under sub. (13m).

8. Providing payments to the board of commissioners of public lands to reduce principal or interest payments, or both, on loans made to municipalities under subch. II of ch. 24 by the board of commissioners of public lands for projects that are eligible for financial assistance under the clean water fund program.

9. Using funds received as federal capitalization grants under sub. (3), any other method that is consistent with the federal program for state water pollution control revolving funds under 33 USC 1381 to 1387 or any other federal law providing funding for or otherwise relating to that program.

(7) ELIGIBILITY. (a) The department shall, by rule, establish criteria for determining which applicants and which projects are eligible to receive financial assistance under the clean water fund program. The primary criteria for eligibility shall be water quality and public health. The rules for clean water fund projects funded from the account under s. 25.43 (2) (a) shall be consistent with 33 USC 1251 to 1376 and 33 USC 1381 to 1387 and the regulations promulgated thereunder. The rules for clean water fund projects funded from the account under s. 25.43 (2) (b) may be consistent with 33 USC 1251 to 1376 and 33 USC 1381 to 1387 and the regulations promulgated thereunder.

(b) The department may determine whether a municipality is eligible for financial assistance under the clean water fund program for any of the following types of projects:

1. Projects that the department determines are necessary to prevent a municipality from significantly exceeding an effluent limitation contained in a permit issued under ch. 283, including projects or capacity for the receiving, storage, and treatment of septage.

2. Projects needed to provide treatment to achieve compliance with an enforceable requirement changed or established after May 17, 1988, if the project is for a municipality that is in substantial compliance with its permit, issued under ch. 283, in regard to the changed or established enforceable requirements.

4. Projects for unsewered municipalities.

5. Projects for the prevention or treatment of nonpoint source pollution or urban storm water runoff.

6. Projects for the planning, design, construction or replacement of treatment works that violate effluent limitations contained in a permit issued under ch. 283.

7. Pilot projects that are consistent with the federal program for state water pollution control revolving funds under 33 USC 1381 to 1387.

(8) INELIGIBILITY FOR AND LIMITATIONS ON FINANCIAL ASSISTANCE. (a) The following are not eligible for financial assistance from the clean water fund program:

1. A person or municipality that has failed to substantially comply, as specified by the rules promulgated under sub. (2), with the terms of a federal or state grant or loan used to pay the costs of studies, investigations, plans, designs or construction associated with wastewater collection, transportation, treatment or disposal or used to pay the cost of studies, investigations, plans, designs or construction associated with implementing a nonpoint source control management program.

2. Connection laterals and sewer lines that transport wastewater from structures to municipally owned or individually owned wastewater systems.

3. Public sanitary sewer mains, interceptors and individual systems which exclusively serve future development.

4. A planning, design or construction project which received financial assistance under 33 USC 1251 to 1376 or s. 281.57, except for any of the following:

a. The nonlocal share of a project which receives funding under s. 281.59 (13).

b. The portion of a project funded under s. 281.59 (13) relating to a collection system, even if the costs relating to the collection system were not eligible under s. 281.57.

5. During fiscal years 1989–90 to 1994–95, a person or municipality in violation of an effluent limitation contained in a permit issued under ch. 283, unless that person or municipality is eligible under s. 281.59 (13).

(b) 1. Except as provided in subd. 2. and par. (k), the amount of reserve capacity for a project eligible for financial assistance through a method specified under sub. (6) (b) is limited to that future capacity required to serve the users of the project expected to exist within the sewer service area of the project and that future capacity required to serve the need expected to exist outside of the sewer service area of the project for septage that is reasonably likely to be disposed of in the project 10 years after the project is estimated to become operational. The department, in consultation with the demographic services center in the department of administration under s. 16.96, shall promulgate rules defining procedures for projecting population used in determining the amount of reserve capacity.

2. Except as provided in par. (k), the department may not determine that a municipality is eligible for financial assistance through a method specified under sub. (6) (b) for reserve capacity for a collection system, interceptors or an individual system project in an unsewered municipality.

(c) Except as provided in par. (k), financial assistance may be provided for the design, planning and construction of a collection system, interceptor or individual system project in an unsewered municipality or an unsewered area of a municipality, only if the department finds that at least two–thirds of the initial flow will be for wastewater originating from residences in existence for at least 20 years prior to the submission of the application under sub. (9) (a).

(d) An unsewered municipality that is not constructing a treatment work and will be disposing of wastewater in the treatment work of another municipality is not eligible for financial assistance under the clean water fund program until it executes an agreement under s. 66.0301 with another municipality to receive, treat and dispose of the wastewater of the unsewered municipality.

(e) Financial assistance may be provided to a municipality for a project only if the financial assistance is used for a project that is the most cost–effective alternative for the municipality without regard to financial assistance from the federal government and this state.

(f) Except as provided in par. (k), the department may not determine that a municipality is eligible for financial assistance through a method specified under sub. (6) (b) for the portion of a project that treats wastes from industrial users.

(g) The sum of all of the financial assistance to a municipality approved under the clean water fund program for a project may not result in the municipality paying less than 30 percent of the cost of the project.

(h) Except as provided in par. (k), a municipality that is a violator of an effluent limitation at the time that the application for a treatment work project is approved under sub. (9m) may not receive financial assistance of a method specified under sub. (6) (b) 1., 3., 4. or 5. for that part of the treatment work project that is needed to correct the violation. This paragraph does not apply to a municipality that after May 17, 1988, is in compliance with a court or department order to correct a violation of the enforceable requirements of its ch. 283 permit, and that is applying for financial assistance under s. 281.59 (13) to correct that violation.

(i) After June 30, 1991, no municipality may receive for projects in a biennium an amount that exceeds 35.2 percent of the amount that the department of administration projects will be available to provide financial assistance for projects under this section for that biennium.

(j) The amount of a payment under sub. (6) (b) 8. may not exceed the amount necessary to reduce the interest rate on the loan from market rate to the interest rate that would have been charged on a loan to the municipality under sub. (6) (b) 4.

(k) The restrictions specified under par. (b) 1. and 2., (c), (f) or (h) do not apply to any of the following methods of financial assistance:

1. A loan at the market interest rate.

2. A purchase or refinancing of an obligation at fair market value and at the market interest rate.

3. A guarantee or a purchase of insurance for a municipal obligation which will permit the municipality credit market access not otherwise available or which will reduce the interest rate on the obligation to not less than the market rate.

(8e) PRIORITY. The department shall establish a priority list in accordance with 33 USC 1381 to 1387 which ranks each project. The ranking on the priority list shall be based on all of the following:

(a) The type of project and the order in which it is listed under sub. (7) (b) 1. to 6.

(b) The impact of the project on groundwater and surface water quality.

(c) The impact of the project on public health.

(cm) A factor that gives higher priority than would otherwise be given to a project to serve more than one municipality if all of the following apply:

1. Each municipality to be served by the project has a population of 2,500 or less.

2. At least one of the municipalities to be served by the project has a wastewater treatment system that is unusable because of failures of the system.

3. The municipalities to be served by the project are submitting an application for a new joint treatment work.

4. At least one of the municipalities to be served by the treatment work has been ordered to upgrade a current system.

(d) Any other factor determined by the department.

(8m) NOTICE OF INTENT TO APPLY. (a) A municipality shall submit notice to the department of its intent to apply for financial assistance under this section and s. 281.59. A municipality shall submit the notice at least 6 months before the beginning of the fiscal year in which it will request to receive financial assistance. The notice shall be in a form prescribed by the department and the department of administration.

(c) The department may waive par. (a) upon the written request of a municipality.

(8s) FACILITY PLAN. A municipality seeking financial assistance for a project under this section shall complete a facility plan as required by the department by rule.

(9) APPLICATION. (a) After the department approves a municipality's facility plan submitted under sub. (8s), the municipality shall submit an application for participation to the department. The application shall be in such form and include such information as the department and the department of administration prescribe and shall include design plans and specifications. The department shall review applications for participation in the clean water fund program. The department shall determine which applications meet the eligibility requirements and criteria under subs. (6), (7), (8), (8m) and (13).

(ae) A municipality that submits an application under par. (a) without design plans and specifications may obtain an initial determination of financial eligibility from the department of administration. The department of natural resources may not approve a municipality's application until the municipality submits design plans and specifications.

(am) A municipality may not submit more than one application under par. (a) for any single project in any 12–month period except that this paragraph does not apply to applications for financial assistance for additional costs of an approved project.

(b) A municipality seeking financial assistance for a project under the clean water fund program shall complete an environmental analysis sequence as required by the department by rule.

(c) If a municipality is serviced by more than one sewerage district for wastewater pollution abatement, each service area of the municipality shall be considered a separate municipality for purposes of obtaining financial assistance under the clean water fund program.

(d) The department of administration and the department jointly may charge and collect service fees, established by rule, which shall cover the estimated costs of reviewing and acting upon the application and servicing the financial assistance agreement. No service fee established by rule under this paragraph may be charged to or collected from an applicant for financial assistance under s. 281.59 (13).

(e) If the department of natural resources and the department of administration determine that the total amount that the department of administration projects will be available to provide financial assistance for projects under this section for a biennium, as set forth in the biennial finance plan under s. 281.59 (3) (a) 2. and as updated under s. 281.59 (3) (bm) 2., is insufficient to provide funding for all projects for which applications will be approved during that biennium, the department shall inform municipalities that, if the governor's recommendations are approved, clean water fund program assistance during a fiscal year of that biennium will be available only to municipalities that submit financial assistance applications by September 30 of that fiscal year.

(f) The fees collected under par. (d) shall be credited to the environmental improvement fund.

(9m) ACCEPTANCE OF APPLICATION; ALLOCATION OF FUNDING. (a) Subject to par. (d), the department shall approve an application after all of the following occur:

1. The department determines that the project meets the eligibility requirements and criteria under subs. (7), (8), (8m) and (8s).

2. The department of administration initially determines that the municipality will meet the requirements of s. 281.59 (9) (b).

(d) The department may not approve an application under par. (a) for a project that is not on the priority list under sub. (8e).

(e) 1. Except as provided under par. (f) and sub. (13), if a sufficient amount of financial assistance under this section is available for the municipality's project when the department approves the application under par. (a), the department of administration shall allocate that amount to the project.

2. If a sufficient amount of financial assistance under this section is not available for the municipality's project when the department approves the application under par. (a), the department shall place the project on a list for allocation when additional financial assistance becomes available.

(f) If the department of natural resources and the department of administration determine that the amount available to provide financial assistance for projects under this section for a biennium is insufficient to provide funding for all projects for which applications will be approved during that biennium, all of the following apply:

1. The department shall establish a funding list for each fiscal year of the biennium that ranks projects of municipalities that submit financial assistance applications under sub. (9) (a) no later than September 30 of the fiscal year in the same order that they appear on the priority list under sub. (8e).

2. The department of administration shall allocate funding to projects in the order in which they appear on the funding list under subd. 1.

(fm) The department, in consultation with the department of administration, shall promulgate, by rule, methods to establish deadlines for actions that must be taken by a municipality to which financial assistance has been allocated. The methods may provide for extending deadlines under specified circumstances. If a municipality fails to meet a deadline, including any extension, the department of administration shall rescind the allocation of financial assistance for the municipality's project.

(11) TYPE OF FINANCIAL ASSISTANCE. (a) Except as provided in par. (b), the department of administration shall specify the method by which financial assistance is to be provided for each approved application.

(b) For municipalities meeting the financial hardship assistance requirements under sub. (13), the department of natural resources may approve financial hardship assistance.

(12) LOAN INTEREST RATES. (a) 1. Except as modified under par. (f) and except as restricted by sub. (8) (b), (c), (f) or (h), the interest rate for projects specified in sub. (7) (b) 1. to 5. is one of the following:

a. For a municipality that has a population of less than 1,000, and in which the median household income is 65 percent or less of the median household income in this state, zero percent of market interest rate.

b. For a municipality that has a population of less than 10,000, and in which the median household income is 80 percent or less of the median household income in this state, 33 percent of market interest rate.

c. For a municipality that does not meet the requirements specified in subd. 1. a. or b., 75 percent of market interest rate for projects for which the subsidy was allocated from the amount under s. 281.59 (3e) (b), 2013 stats., for a biennium before the 2015–17 biennium and 70 percent of market interest rate for projects for which the financial assistance is allocated under this section for the 2015–17 biennium, and 55 percent of market interest rate for projects for which the financial assistance is allocated under this section for the 2017–19 biennium or later.

4. The interest rate for projects specified in sub. (7) (b) 6. and for those portions of projects under subd. 1. that are restricted by sub. (8) (b), (c), (f) or (h) is market interest rate.

5. Notwithstanding subd. 1., the interest rate for the portion of a project that provides facilities for receiving and storing septage and capacity for treating septage is zero percent.

(c) The department and the department of administration shall attempt to ensure all of the following:

1. That increases in all state water pollution abatement general obligation debt service costs do not exceed 4 percent annually.

2. That state water pollution abatement general obligation debt service costs are not greater than 50 percent of all general obligation debt service costs in any fiscal year.

(f) The department and the department of administration jointly may request the joint committee on finance to take action under s. 13.101 (11) to modify the percentage of market interest rate established in par. (a) 1.

(13) FINANCIAL HARDSHIP ASSISTANCE. (b) A municipality with an application that is approved under sub. (9m) is eligible for state financial hardship assistance for the project costs that are eligible under the clean water fund program, except for costs to which sub. (8) (b), (c), (f) or (h) applies, if the initial application was submitted on or before June 30, 2017, the application, including the facility plan and the design plans and specifications, was completed on or before June 30, 2018, and the municipality meets all of the following criteria:

1. The median household income in the municipality is 80 percent or less of the median household income in this state.

2. The estimated total annual charges per residential user in the municipality that relate to wastewater treatment would exceed 2 percent of the median household income in the municipality without assistance under this subsection.

(c) The department shall provide assistance so that estimated total annual charges per residential user in the municipality that relate to wastewater treatment do not exceed 2 percent of the median household income in the municipality, if possible. The department may not reduce the amount of financial hardship assistance for a municipality's project due to the municipality receiving assistance for the project from another source unless the combination of financial hardship assistance plus the assistance from the other source would reduce the estimated total annual charges per residential user in the municipality that relate to wastewater treatment to less than 2 percent of the median household income in the municipality.

(cm) The amount and type of assistance to be provided to a municipality that receives state financial hardship assistance shall be determined under rules promulgated by the department.

(d) The department shall establish a financial hardship assistance funding list for each fiscal year that ranks projects of municipalities that are eligible under par. (b), and that submit complete financial assistance applications under sub. (9) (a) no later than June 30 of the preceding fiscal year, in the same order that they appear on the priority list under sub. (8e).

(e) In each fiscal year, the department shall allocate financial hardship assistance under this subsection in the following order:

2. Assistance under par. (b) for projects that were on a funding list under par. (d) for a prior fiscal year, that have not previously received funding and that were in the top 20 percent of projects on the priority list under sub. (8e) for the prior fiscal year, starting with projects on the funding list for the earliest fiscal year.

3. Assistance under par. (b) for projects on the current fiscal year's funding list under par. (d) in the order that they appear on the funding list.

(f) The department shall promulgate, by rule, a formula for estimating operating, maintenance and replacement costs for determining estimated wastewater treatment user charges under this subsection.

(13m) MINORITY BUSINESS DEVELOPMENT AND TRAINING PROGRAM. (a) The department shall make grants to projects that are eligible for financial assistance under the clean water fund program and that are identified as being part of the minority business development and training program under s. 200.49 (2) (b).

(b) Grants provided under this subsection are not included for the purposes of determining under sub. (8) (i) the amount that a municipality may receive for projects under the clean water fund program.

(14) CONDITIONS OF FINANCIAL ASSISTANCE. (b) As a condition of receiving financial assistance under the clean water fund program, a municipality shall do all of the following:

1. Establish a dedicated source of revenue, that is acceptable to the department of administration under s. 281.59 (9) (am) and (b), for the repayment of any financial assistance.

4. Comply with those provisions of 33 USC 1381 to 1387, this chapter and chs. 283, 285 and 289 to 299 and the regulations and rules promulgated thereunder that the department specifies.

5. Develop and adopt a program of water conservation as required by the department.

6. Develop and adopt a program of systemwide operation and maintenance of the treatment work, including the training of personnel, as required by the department.

7. Develop and adopt a system of equitable user charges to ensure that each recipient of treatment work services pays its proportionate share of the costs of the operation and maintenance of the treatment work. The user fee system shall be in compliance with 33 USC 1284 (b) and the regulations promulgated thereunder. The department may issue an exemption from the requirement imposed under this subdivision if a city or village imposes a system of equitable dedicated charges based upon assessed property values, if the city or village does not operate a treatment work but is served by a regional wastewater treatment plant operated by a metropolitan sewerage district created under ss. 200.21 to 200.65 and if the user charges imposed by that district are approved by the department and comply with 33 USC 1284 (b). The department may provide that the system of user charges for a project with estimated construction costs of $750,000 or less need only cover the costs of debt service and equipment replacement funds.

(15) FINANCIAL ASSISTANCE COMMITMENTS. (a) The department and the department of administration may, at the request of a municipality, issue a notice of financial assistance commitment to the municipality after the department approves the municipality's application under sub. (9m) (a) and the department of administration has allocated financial assistance for the municipality's project.

(am) The notice of financial assistance commitment shall include the conditions that the municipality must meet to secure the financial assistance and shall include the estimated repayment schedules and other terms of the financial assistance.

(21) CONSTRUCTION. This section shall be liberally construed in aid of the purposes of this section.

History: 1987 a. 399; 1989 a. 31, 336, 366; 1991 a. 32, 39, 189; 1993 a. 16; 1995 a. 27; 1995 a. 227 s. 425; Stats. 1995 s. 281.58; 1997 a. 27, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 104; 2005 a. 25, 347; 2009 a. 28; 2011 a. 32, 261; 2013 a. 7; 2015 a. 55; 2017 a. 59; 2017 a. 365 s. 111.

Cross–reference: See also ch. NR 162, Wis. adm. code.

NOTE: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

281.59 Environmental improvement fund; financial management. (1) DEFINITIONS. In this section:

(ag) "Clean water fund program" means the program administered under s. 281.58, with financial management provided under this section.

(am) "Effluent limitation" has the meaning given in s. 283.01 (6).

(as) "Land recycling loan program" means the program administered under s. 281.60, with financial management provided under this section.

(b) "Market interest rate" means the effective interest rate on a fixed–rate revenue obligation issued by the state to fund a loan made under this section or, if the department of administration determines that there has been a significant change in interest rates after the fixed–rate revenue obligation has been issued or if a fixed–rate revenue obligation has not been issued by the state to fund a loan made under this section, the effective interest rate that the department of administration determines would have been

paid if a fixed–rate revenue obligation had been issued on the date financial assistance is allotted.

(c) "Municipality" means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district, joint local water authority created under s. 66.0823, or federally recognized American Indian tribe or band in this state.

(cm) "Safe drinking water loan program" means the program administered under s. 281.61, with financial management provided under this section.

(e) "Treatment work" has the meaning given in s. 283.01 (18).

(f) "Violator of an effluent limitation" means a person or municipality that after May 17, 1988, is not in substantial compliance with the enforceable requirements of its permit issued under ch. 283 for a reason that the department determines is or has been within the control of the person or municipality.

(1m) ESTABLISHMENT OF PROGRAMS. (a) There is established a clean water fund program, administered under s. 281.58, with financial management provided under this section.

(b) There is established a safe drinking water loan program, administered under s. 281.61, with financial management provided under this section.

(2) GENERAL DUTIES. The department of administration shall:

(a) Administer its responsibilities under this section and ss. 281.58, 281.60 and 281.61.

(b) Cooperate with the department in administering the clean water fund program, the safe drinking water loan program and the land recycling loan program.

(c) Accept and hold any letter of credit from the federal government through which the state receives federal capitalization grant payments and disbursements to the environmental improvement fund.

(2m) INVESTMENT MANAGEMENT; ENVIRONMENTAL IMPROVEMENT FUND. (a) The department of administration may:

1. Subject to par. (b), direct the investment board under s. 25.17 (2) (d) to make any investment of the environmental improvement fund, or in the collection of the principal and interest of all moneys loaned or invested from that fund.

2. Subject to par. (b), purchase or acquire, commit on a standby basis to purchase or acquire, sell, discount, assign, negotiate, or otherwise dispose of, or pledge, hypothecate or otherwise create a security interest in, loans as the department of administration may determine, or portions or portfolios of participations in loans, made or purchased under this section. The disposition may be at the price and under the terms that the department of administration determines to be reasonable and may be at public or private sale.

(b) The department of administration shall take an action under par. (a) only if all of the following conditions occur:

1. The action provides a financial benefit to the environmental improvement fund.

2. The action does not contradict or weaken the purposes of the environmental improvement fund.

3. The building commission approves the action before the department of administration acts.

(3) FINANCIAL MANAGEMENT; BIENNIAL FINANCE PLAN. (a) By October 1 of each even–numbered year, the department of administration and the department jointly shall prepare a biennial finance plan that includes all of the following information:

1. An estimate of the wastewater treatment, safe drinking water and land recycling project needs of the state for the 4 fiscal years of the next 2 biennia.

2. The total amount that the department of administration projects will be available to provide financial assistance for projects under subd. 1. during the next biennium.

4. The extent to which the funding for the clean water fund program and the safe drinking water loan program, in the environmental improvement fund, will be maintained in perpetuity.

4m. A chart showing detailed projected sources and uses of funds for projects under subd. 1. during the next biennium.

5. The most recent available audited financial statements of the past operations and activities of the clean water fund program, the safe drinking water loan program and the land recycling loan program, the estimated environmental improvement fund capital available in each of the next 4 fiscal years for the clean water fund program and the safe drinking water loan program, and the projected environmental improvement fund balance for the clean water fund program and the safe drinking water loan program for each of the next 20 years given existing obligations and financial conditions.

5m. The percentage of market interest rate for the projects under subd. 1.

8. The amount and description of any fee expected to be charged during the next biennium under this section.

9. The impact of the biennial finance plan on the guideline under par. (b).

(b) The department of administration and the department shall consider as a guideline in preparing the portion of the biennial finance plan for the clean water fund program that all state water pollution abatement general obligation debt service costs should not exceed 50 percent of all general obligation debt service costs to the state.

(bm) The department and the department of administration jointly shall prepare and submit copies of all of the following to the building commission under s. 13.48 (26), to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution under s. 13.172 (3) to the appropriate legislative standing committees generally responsible for legislation related to environmental issues:

1. By October 1 of each even–numbered year, the version of the biennial finance plan initially prepared as part of the budget process.

2. No later than 30 days after the day on which the biennial budget is submitted to the legislature under s. 16.45, amendments to the biennial finance plan that update the plan to reflect material approved by the governor for inclusion in the budget.

3. No later than 30 days after the day on which the governor signs the biennial budget, a version of the biennial finance plan, updated to reflect the adopted biennial budget act.

(br) The joint committee on finance and each standing committee may submit to the building commission its recommendations and comments regarding each version of the biennial finance plan and amendments to the biennial finance plan, and whether the version of the biennial finance plan updated to reflect the adopted biennial budget act should be approved or disapproved as specified under s. 13.48 (26). If the building commission disapproves the version of the biennial finance plan that is updated to reflect the adopted biennial budget act, the department and the department of administration shall submit a revised biennial finance plan to the building commission.

(j) No later than November 1 of each odd–numbered year, the department of administration and the department jointly shall submit a report, to the building commission and committees as required under par. (bm), on the operations and activities of the clean water fund program, the safe drinking water loan program and the land recycling loan program for the previous biennium.

(3e) CLEAN WATER FUND PROGRAM EXPENDITURES. (d) The department may expend, for financial assistance in a biennium other than financial hardship assistance under s. 281.58 (13) (e), an amount up to 95 percent of the amount available to provide financial assistance for projects under this section for that biennium. The department may expend such amount only from the

percentage of the amount that is not available under par. (e) for financial hardship assistance.

(e) The department may expend, for financial hardship assistance in a biennium under s. 281.58 (13) (e), an amount up to 5 percent of the amount available to provide financial assistance for projects under this section for that biennium. The department may expend such amount only from the percentage of the amount that is not available under par. (d) for financial assistance.

(4) REVENUE OBLIGATIONS. (a) The clean water fund program and the safe drinking water loan program are revenue–producing enterprises or programs, as defined in s. 18.52 (6).

(am) Deposits, appropriations or transfers to the environmental improvement fund for the purposes of the clean water fund program or the safe drinking water loan program may be funded with the proceeds of revenue obligations issued subject to and in accordance with subch. II of ch. 18 or in accordance with subch. IV of ch. 18 if designated a higher education bond.

(b) The department of administration may, under s. 18.561 or 18.562, deposit in a separate and distinct fund in the state treasury or in an account maintained by a trustee outside the state treasury, any portion of the revenues derived under s. 25.43 (1). The revenues deposited with a trustee outside the state treasury are the trustee's revenues in accordance with the agreement between this state and the trustee or in accordance with the resolution pledging the revenues to the repayment of revenue obligations issued under this subsection and to make payments under an agreement or ancillary arrangement entered into under s. 18.55 (6) with respect to revenue obligations issued under this subsection.

(c) The building commission may pledge any portion of revenues received or to be received in the fund established in par. (b) or the environmental improvement fund to secure revenue obligations issued under this subsection. The pledge shall provide for the transfer to the environmental improvement fund of all pledged revenues, including any interest earned on the revenues, which are in excess of the amounts required to be paid under s. 20.320 (1) (c) and (u) and (2) (c) and (u) for the purposes of the clean water fund program and the safe drinking water loan program. The pledge shall provide that the transfers be made at least twice yearly, that the transferred amounts be deposited in the environmental improvement fund and that the transferred amounts are free of any prior pledge.

(d) The department of administration shall have all other powers necessary and convenient to distribute the pledged revenues and to distribute the proceeds of the revenue obligations in accordance with subch. II of ch. 18 or in accordance with subch. IV of ch. 18 if designated a higher education bond.

(e) The department of administration may enter into agreements with the federal government or its agencies, political subdivisions of this state, individuals or private entities to insure or in any other manner provide additional security for the revenue obligations issued under this subsection.

(f) Revenue obligations may be contracted by the building commission when it reasonably appears to the building commission that all obligations incurred under this subsection, and all payments under an agreement or ancillary arrangement entered into under s. 18.55 (6) with respect to revenue obligations issued under this subsection, can be fully paid on a timely basis from moneys received or anticipated to be received. Revenue obligations issued under this subsection for the clean water fund program and safe drinking water loan program shall not exceed $2,526,700,000 in principal amount, excluding obligations issued to refund outstanding revenue obligation notes.

(g) Unless otherwise expressly provided in resolutions authorizing the issuance of revenue obligations or in other agreements with the holders of revenue obligations, each issue of revenue obligations under this subsection shall be on a parity with every other revenue obligation issued under this subsection and in accordance with subch. II of ch. 18 or with subch. IV of ch. 18 if designated a higher education bond.

(9) CONDITIONS OF FINANCIAL ASSISTANCE. (a) A loan approved under the land recycling loan program shall be for no longer than 20 years, as determined by the department of administration, be fully amortized not later than 20 years after the original date of the financial assistance agreement, and require the repayment of principal and interest, if any, to begin not later than 12 months after the expected date of completion of the project that it funds, as determined by the department of administration.

(ad) A loan approved under the safe drinking water loan program shall be fully amortized not later than 30 years after the expected date of completion of the project that it funds, as determined by the department of administration, and require the repayment of principal and interest, if any, to begin not later than 18 months after the expected date of completion of the project that it funds, as determined by the department of administration.

(ag) A loan approved under the clean water fund program shall be for no longer than 30 years or the useful life of the project, whichever is less, as determined by the department of administration. The loan shall be fully amortized not later than 30 years after the original date of the financial assistance agreement or the end of the useful life of the project, whichever is less, as determined by the department of administration. Repayment of principal and interest, if any, shall begin not later than 12 months after the expected date of completion of the project that the loan funds, as determined by the department of administration.

(am) The department of administration, in consultation with the department, may establish those terms and conditions of a financial assistance agreement that relate to its financial management, including what type of municipal obligation, as set forth under sub. (13f), if applicable, is required for the repayment of the financial assistance. Any terms and conditions established under this paragraph by the department of administration shall comply with the requirements of this section and s. 281.58, 281.60 or 281.61. In setting the terms and conditions, the department of administration may consider factors that the department of administration finds are relevant, including the type of obligation evidencing the loan, the pledge of security for the obligation and the applicant's creditworthiness.

(b) As a condition of receiving financial assistance under the clean water fund program, the safe drinking water loan program or the land recycling loan program, an applicant shall do all of the following:

1. Pledge the security, if any, required by the rules promulgated by the department of administration under this section and s. 281.58, 281.60 or 281.61.

2. Demonstrate to the satisfaction of the department of administration the financial capacity to assure sufficient revenues to operate and maintain the project for its useful life and to pay the debt service on the obligations that it issues for the project.

(11) FINANCIAL ASSISTANCE PAYMENTS. (a) The department of natural resources and the department of administration may enter into a financial assistance agreement with an applicant for which the department of administration has allocated financial assistance under s. 281.58 (9m), 281.60 (8) or 281.61 (8) if the applicant meets the conditions under sub. (9) and the other requirements under this section and s. 281.58, 281.60 or 281.61.

(am) The department of administration shall make the financial assistance payments to an applicant that has entered into a financial assistance agreement under par. (a) or to the applicant's designated agent.

(b) If a municipality fails to make a principal repayment or interest payment after its due date, the department of administration shall place on file a certified statement of all amounts due under this section and s. 281.58, 281.60 or 281.61. After consulting the department, the department of administration may collect all amounts due by deducting those amounts from any state payments due the municipality or may add a special charge to the amount of taxes apportioned to and levied upon the county under s. 70.60. If the department of administration collects amounts

due, it shall remit those amounts to the fund to which they are due and notify the department of that action.

(c) The department of administration may retain the last payment under a financial assistance agreement until the department of natural resources and the department of administration determine that the project is completed and meets the applicable requirements of this section and s. 281.58, 281.60 or 281.61 and that the conditions of the financial assistance agreement are met.

(12) MUNICIPAL OBLIGATIONS. The department of administration may purchase or refinance obligations specified in s. 281.58 (6) (b) 1. and guarantee or purchase insurance for municipal obligations specified in s. 281.58 (6) (b) 3. if the department of administration and the department of natural resources approve the financial assistance under this section and s. 281.58.

(13) LOANS FOR TRANSITION PROJECTS. (a) 1. Notwithstanding any other provision of this section and s. 281.58, a municipality that submits to the department by January 2, 1989, a facility plan meeting the requirements of s. 281.57 which is approvable under this chapter and that does not receive a grant award before July 1, 1990, only because the municipality is following a schedule contained in the facility plan and approved by the department and the municipality is in compliance with all applicable schedules contained in a permit issued under ch. 283 or because there are insufficient grant funds under s. 281.57, is eligible to receive financial assistance under this paragraph. The form of the financial assistance is a loan with an interest rate of 2.5 percent per year except that s. 281.58 (8) (b), (f) and (k) applies to projects receiving financial assistance under this paragraph.

2. Notwithstanding any other provision of this section or s. 281.58, the department shall make all loans under subd. 1. to municipalities ready to construct treatment works before the department provides or approves any other financial assistance under this section except for loans under par. (b).

(b) 1. Notwithstanding any other provision of this section or s. 281.58, an unsewered municipality is eligible to receive financial assistance under this paragraph, in the form of a loan with an interest rate of 2.5 percent per year, which may be for original financing or refinancing for a collection system that is ineligible for financial assistance under s. 281.57 because of s. 281.57 (4) (b) 1. and that is being connected to an existing wastewater treatment plant if all of the following apply:

a. The municipality applies to the department for financial assistance under s. 281.57 (5) for a construction project during 1988.

b. Before January 1, 1989, the department issues a notice under s. 281.57 (6) that the department is ready to allocate funds to the municipality for the project.

c. The municipality invites bids for the project in 1989.

d. The municipality receives a grant under s. 281.57 for the construction of the project from the list developed by the department under s. 281.57 (6) (a) for applications received in 1988.

1m. Notwithstanding any other provision of this section or s. 281.58, a town sanitary district is eligible to receive financial assistance under this paragraph, in the form of a loan with an interest rate of 2.5 percent per year, for the extension of a collection system into an unsewered area that is added to the sanitary district if all of the following apply:

a. The department has awarded a grant to the town sanitary district under s. 281.57 (4) (b) 1. c. for a collection system.

b. The department determines that extension of the collection system into the unsewered area is necessary and cost–effective.

c. The sanitary district invites bids for and begins construction of the extension of the collection system before January 1, 1990.

2. Section 281.58 (8) (b), (f) and (k) applies to projects receiving financial assistance under this paragraph.

3. Notwithstanding any provision of this section or s. 281.58, the department shall annually allocate funds for loans under subds. 1. and 1m. before the department provides or approves any other financial assistance under this section or s. 281.58.

(e) The department of administration and the department may not make loans under s. 144.241 (20), 1987 stats., as affected by 1989 Wisconsin Acts 31, 336 and 366, or under this subsection to a metropolitan sewerage district that serves a 1st class city that total more than $230,900,000.

(13f) MUNICIPAL FUNDING OF FINANCIAL ASSISTANCE. Subject to the terms and conditions of its financial assistance agreement, a municipality may repay financial assistance costs received from the clean water fund program under s. 281.58 and under this section by any lawful method, including any one of the following methods or any combination of the methods:

(a) Payment out of its general funds.

(b) Payment out of the proceeds of the sale of obligations issued by it under ch. 67.

(c) Payment out of the proceeds of the sale of public improvement bonds issued by it under s. 66.0619.

(d) Payment out of the proceeds of revenue obligations issued by it under s. 66.0621.

(e) Payment as provided under s. 66.0709.

(f) Payment as provided under s. 66.0821 (2) (a) 1.

(13m) LEGISLATIVE MORAL OBLIGATION. The building commission may, at the time the loan is made, by resolution designate a loan made under the clean water fund program as one to which this subsection applies. If at any time the payments received or expected to be received from a municipality on any loan so designated are pledged to secure revenue obligations of the state issued pursuant to subch. II of ch. 18 and are insufficient to pay when due principal of and interest on such loan, the department of administration shall certify the amount of such insufficiency to the secretary of administration, the governor and the joint committee on finance. If the certification is received by the secretary of administration in an even–numbered year before the completion of the budget under s. 16.43, the secretary of administration shall include the certified amount in the budget compilation. In any event, the joint committee on finance shall introduce in either house, in bill form, an appropriation of the amount so requested for the purpose of payment of the revenue obligation secured thereby. Recognizing its moral obligation to do so, the legislature hereby expresses its expectation and aspiration that, if ever called upon to do so, it shall make the appropriation.

(13s) POWERS. The department of administration may audit, or contract for audits of, projects receiving financial assistance under the clean water fund program, the safe drinking water loan program and the land recycling loan program.

(14) RULES. The department of administration shall promulgate rules that are necessary for the proper execution of this section and of its responsibilities under ss. 281.58, 281.60 and 281.61.

(15) CONSTRUCTION. This section shall be liberally construed in aid of the purposes of this section.

History: 1989 a. 366 ss. 40, 63, 65, 66, 97, 99, 106, 108 to 110, 115; 1991 a. 32, 39, 189, 315; 1993 a. 16; 1995 a. 27; 1995 a. 227 s. 426; Stats. 1995 s. 281.59; 1995 a. 452; 1997 a. 27, 237; 1999 a. 9; 1999 a. 150 s. 374, 672; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20; 2009 a. 28; 2011 a. 32, 146, 261; 2013 a. 12, 20; 2015 a. 55; 2017 a. 59; 2019 a. 9.

Cross–reference: See also ch. NR 166, Wis. adm. code.

281.60 Land recycling loan program. (1) DEFINITIONS. In this section:

(a) "Eligible applicant" means a political subdivision, a redevelopment authority created under s. 66.1333 or a housing authority.

(am) "Landfill" has the meaning given in s. 289.01 (20).

(b) "Land recycling loan program" means the program administered under this section with financial management provided under s. 281.59.

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

(e) "Site or facility" has the meaning given in s. 292.35 (1) (f).

(2) GENERAL. The department and the department of administration may administer a program to provide financial assistance to eligible applicants for projects to remedy environmental contamination of sites or facilities at which environmental contamination has affected groundwater or surface water or threatens to affect groundwater or surface water. Eligible costs for a project include costs of demolition that is a necessary part of the remediation. The department and the department of administration may provide financial assistance under this section to an eligible applicant only if the eligible applicant owns the contaminated site or facility or, if the applicant is a political subdivision, if a redevelopment authority or a housing authority owns the contaminated site or facility. The department and the department of administration may not provide financial assistance under this section to remedy environmental contamination at a site or facility that is not a landfill if the eligible applicant caused the environmental contamination.

(2r) METHODS OF PROVIDING FINANCIAL ASSISTANCE. The following methods of providing financial assistance may be used under the land recycling loan program:

(a) Making loans for projects described in sub. (2).

(b) Purchasing or refinancing the obligation of an eligible applicant if the obligation was incurred to finance the cost of a project described in sub. (2) and the obligation was initially incurred after May 17, 1988.

(c) Guaranteeing, or purchasing insurance for, obligations incurred to finance the cost of projects described in sub. (2) if the guarantee or insurance will provide credit market access or reduce interest rates.

(d) Providing payments to the board of commissioners of public lands to reduce principal or interest payments, or both, on loans made to political subdivisions under subch. II of ch. 24 by the board of commissioners of public lands for projects that are eligible for financial assistance under the land recycling loan program.

(3) NOTICE OF INTENT TO APPLY. (a) An eligible applicant shall submit notice of its intent to apply for financial assistance under the land recycling loan program. An eligible applicant shall submit the notice at least 6 months before the beginning of the fiscal year in which it will request to receive funding. The notice shall be in a form prescribed by the department and the department of administration.

(b) The department may waive par. (a) upon the written request of an eligible applicant.

(5) APPLICATION. After submitting a notice of intent to apply under sub. (3) (a) or obtaining a waiver under sub. (3) (b), an eligible applicant shall submit an application for land recycling loan program financial assistance to the department. The eligible applicant shall submit the application before the date established by the department. The department shall establish at least 2 application deadlines each year. The application shall be in the form and include the information required by the department and the department of administration. An eligible applicant may not submit more than one application per project per year.

(6) PRIORITY LIST. The department shall establish a priority list that ranks each land recycling loan program project. The department shall promulgate rules for determining project rankings based on the potential of projects to reduce environmental pollution and threats to human health and, for sites and facilities that are not landfills, the extent to which projects will prevent the development of undeveloped land by making land available for redevelopment after a cleanup is conducted. Before the department establishes the priority list, the department shall consider the recommendations of the department of administration and the Wisconsin Economic Development Corporation.

(7) APPROVAL OF APPLICATION. The department shall approve an application received under sub. (5) after all of the following occur:

(a) The project is ranked on the priority list under sub. (6).

(b) The department determines that the project meets the eligibility requirements under this section.

(c) The department of administration determines that the eligible applicant will meet the requirements of s. 281.59 (9).

(8) FUNDING LIST; ALLOCATION OF FUNDING. The department shall establish a funding list for each fiscal year that ranks projects of eligible applicants that submit approvable applications under sub. (5) in the same order that they appear on the priority list under sub. (6). If sufficient funds are not available to fund all approved applications for financial assistance, the department of administration shall allocate funding to projects that are approved under sub. (7) in the order that they appear on the funding list, except that the department of administration may not allocate more than 40 percent of the funds allocated in each fiscal year to projects to remedy contamination at landfills.

(8m) CONDITIONS OF FINANCIAL ASSISTANCE. As a condition of receiving financial assistance under the land recycling loan program, an eligible applicant shall do all of the following:

(a) Establish a dedicated source of revenue for the repayment of the financial assistance.

(b) Comply with those provisions of 33 USC 1381 to 1387, this chapter, and the rules and regulations promulgated under those provisions, that the department specifies.

(c) Allow access to the project by representatives of the department for the purpose of making inspections.

(8p) SECURITY. Notwithstanding s. 281.59 (9) (b) 1., the department and the department of administration may not require an applicant to use general obligation bonds as security for financial assistance under this section but shall accept other collateral that meets typical underwriting criteria.

(8s) LIMITATION ON FINANCIAL ASSISTANCE. The amount of a payment under sub. (2r) (d) may not exceed the amount necessary to reduce the interest rate on the loan from market rate to the interest rate that would have been charged on a loan to the political subdivision under sub. (2r) (a).

(9) FINANCIAL ASSISTANCE COMMITMENTS. The department and the department of administration may, at the request of an eligible applicant, issue a notice of financial assistance commitment after the eligible applicant's application for land recycling loan program financial assistance has been approved and funding has been allocated under sub. (8) for the eligible applicant's project. The notice of financial assistance commitment shall specify the conditions that the eligible applicant must meet to secure financial assistance and shall include the estimated repayment schedules and other terms of financial assistance.

(10) DEADLINE FOR CLOSING. If funding is allocated to a project under sub. (8) for a loan and the loan is not closed within 12 months after the date on which funding is allocated, the department of administration shall release the funding allocated to the project.

(11) LOAN INTEREST. The department and the department of administration may not charge interest on a land recycling loan program loan.

(11m) SERVICE FEE. The department and the department of administration shall jointly charge and collect an annual service fee for reviewing and acting upon land recycling loan program applications and servicing financial assistance agreements. For the 1997–99 fiscal biennium, the service fee shall be 0.5 percent of the loan balance. Fee amounts for later biennia shall be established in the biennial finance plan under s. 281.59 (3) (a) 8. The department and the department of administration shall specify in the biennial finance plan a fee designed to cover the costs of reviewing and acting upon land recycling loan program applications and servicing financial assistance agreements.

(12) SALE OF SITE OR FACILITY. (a) An eligible applicant may not sell a site or facility, or portion of a site or facility, for which the eligible applicant has received a loan under this section, while the loan is outstanding, for less than fair market value.

(b) If an eligible applicant sells a site or facility, or portion of a site or facility, for which the eligible applicant has received a loan under this section, the eligible applicant shall do the following:

1. If the sale proceeds are less than or equal to the remaining loan balance, pay the sale proceeds to the department of administration to repay all or a portion of the loan.

2. If the sale proceeds are greater than the remaining loan balance but less than or equal to the cost of the land plus the cost of the cleanup, pay an amount equal to the remaining loan balance to the department of administration and retain the remainder of the sale proceeds.

3. If the sale proceeds are greater than the cost of the land plus the cost of the cleanup, pay to the department of administration an amount equal to the remaining loan balance plus the lesser of 75 percent of the amount by which the sale proceeds exceed the cost of the land plus the cost of the cleanup or the difference between the amount of interest paid on the loan and the amount of interest that would have been paid if the loan had been made at the market rate, and retain the remainder of the sale proceeds.

(13) DUTIES OF THE DEPARTMENT. The department shall do all of the following:

(a) Seek approval of the federal environmental protection agency for the use of funds under 33 USC 1381 to 1387 for the land recycling loan program.

(b) Promulgate rules establishing eligibility criteria for applicants and projects under this section.

(c) Promulgate rules that are necessary for the execution of its responsibilities under the land recycling loan program.

(d) Cooperate with the department of administration in administering the land recycling loan program.

(e) Submit a biennial budget request under s. 16.42 for the land recycling loan program.

(f) Have the lead role with the federal environmental protection agency concerning the land recycling loan program.

(g) Have the lead role with eligible applicants in providing land recycling loan program information, and cooperate with the department of administration in providing that information to eligible applicants.

(h) Periodically inspect land recycling loan program projects to determine project compliance with the requirements of this section.

(i) By May 1 of each even–numbered year, prepare and submit to the department of administration a biennial needs list that includes all of the following information:

1. A list of land recycling loan program projects that the department estimates will apply for financial assistance under the land recycling loan program during the next biennium.

2. The estimated cost and estimated construction schedule of each project on the list under subd. 1., and the total of the estimated costs of all projects on the list under subd. 1.

3. The estimated rank of each project on the priority list under sub. (6).

History: 1997 a. 27, 237; 1999 a. 9; 2001 a. 16, 30; 2009 a. 28; 2011 a. 32; 2015 a. 55.

281.61 Safe drinking water loan program. (1) DEFINITIONS. In this section:

(ag) "Community water system" means a public water system that serves at least 15 service connections used by year–round residents or that regularly serves at least 25 year–round residents.

(am) "Local governmental unit" means a city, village, town, county, town sanitary district, public inland lake protection and rehabilitation district, joint local water authority created under s. 66.0823, or municipal water district.

(b) "Market interest rate" has the meaning given in s. 281.59 (1) (b).

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

(d) "Safe drinking water loan program" means the program administered under this section, with financial management provided under s. 281.59.

(2) GENERAL. The department and the department of administration shall administer a program to provide financial assistance to local governmental units and to the private owners of community water systems that serve local governmental units for projects for the planning, designing, construction or modification of public water systems, if the projects will facilitate compliance with national primary drinking water regulations under 42 USC 300g–1 or otherwise significantly further the health protection objectives of the Safe Drinking Water Act, 42 USC 300f to 300j–26.

(2g) INELIGIBLE PROJECTS. A local governmental unit or the private owner of a community water system that serves a local governmental unit is not eligible for financial assistance under this section if the local governmental unit or the private owner of the community water system that serves a local governmental unit does not have the technical, managerial or financial capacity to ensure compliance with the Safe Drinking Water Act, 42 USC 300f to 300j–26, or the public water system operated by the local governmental unit or private owner of the community water system that serves a local governmental unit is in significant noncompliance with any requirement of a primary drinking water regulation or variance under 42 USC 300g–1 unless the financial assistance will ensure compliance with the Safe Drinking Water Act.

(2r) METHODS OF PROVIDING FINANCIAL ASSISTANCE. The following methods of providing financial assistance may be used under the safe drinking water loan program:

(a) Making loans below the market interest rate for projects described in sub. (2).

(b) Purchasing or refinancing the obligation of a local governmental unit or private owner of a community water system that serves a local governmental unit if the obligation was incurred to finance the cost of a project described in sub. (2) and the obligation was initially incurred after July 1, 1993.

(c) Guaranteeing, or purchasing insurance for, obligations incurred to finance the cost of projects described in sub. (2) if the guarantee or insurance will provide credit market access or reduce interest rates.

(d) Providing payments to the board of commissioners of public lands to reduce principal or interest payments, or both, on loans made to local governmental units under subch. II of ch. 24 by the board of commissioners of public lands for projects that are eligible for financial assistance under the safe drinking water loan program.

(e) Using funds received as federal capitalization grants under 42 USC 300j–12, any other method that is consistent with the federal program for safe drinking water state loan funds under 42 USC 300j–12 or any other federal law providing funding for or otherwise relating to that program, except that funds received as federal capitalization grants may not be used to provide principal forgiveness to a private owner of a community water system.

(3) NOTICE OF INTENT TO APPLY. (a) A local governmental unit or private owner of a community water system that serves a local governmental unit shall submit notice of its intent to apply for financial assistance under the safe drinking water loan program at least 6 months before the beginning of the fiscal year in which it intends to receive the financial assistance. The notice shall be in a form prescribed by the department and the department of administration.

(c) The department may waive par. (a) upon the written request of a local governmental unit or private owner of a community water system that serves a local governmental unit.

(4) ENGINEERING REPORT. A local governmental unit or private owner of a community water system that serves a local governmental unit seeking financial assistance for a project under this section shall submit an engineering report, as required by the department by rule.

(5) APPLICATION. (a) After the department approves an engineering report submitted under sub. (4), the local governmental unit or private owner of a community water system that serves a local governmental unit shall submit an application for safe drinking water financial assistance to the department. The applicant shall submit the application on or before the June 30 preceding the beginning of the fiscal year in which the applicant wishes to receive the financial assistance, except that if funds are available in a fiscal year after funding has been allocated under sub. (8) for all approved applications submitted before the June 30 preceding that fiscal year, the department of administration may allocate funding for approved applications submitted after June 30. The application shall be in the form and include the information required by the department and the department of administration and shall include plans and specifications that are approvable by the department under this section. An applicant may not submit more than one application per project per year.

(b) The department of administration and the department jointly may charge and collect service fees, established by rule, which shall cover the estimated costs of reviewing and acting upon the application and servicing the financial assistance agreement. No service fee established by rule under this paragraph may be charged to or collected from an applicant for financial assistance under s. 281.59 (13). The fees collected under this paragraph shall be credited to the environmental improvement fund.

(6) PRIORITY LIST. The department shall establish a priority list that ranks each safe drinking water loan program project. The department shall promulgate rules for determining project rankings that, to the extent possible, give priority to projects that address the most serious risks to human health, that are necessary to ensure compliance with the Safe Drinking Water Act, 42 USC 300f to 300j–26, and that assist applicants that are most in need on a per household basis, according to affordability criteria specified in the rules. For the purpose of ranking projects under this subsection, the department shall treat a project to upgrade a public water system to provide continuous disinfection of the water that it distributes as if the public water system were a surface water system that federal law requires to provide continuous disinfection.

(7) APPROVAL OF APPLICATION. The department shall approve an application received under sub. (5) after all of the following occur:

(a) The project is ranked on the priority list under sub. (6).

(b) The department determines that the project meets the eligibility requirements under this section.

(c) The department of administration determines that the applicant will meet the requirements of s. 281.59 (9) (b).

(8) FUNDING LIST; ALLOCATION OF FUNDING. The department shall establish a funding list for each fiscal year that ranks projects of applicants that submit approvable applications under sub. (5) in the same order that they appear on the priority list under sub. (6). If sufficient funds are not available to fund all approved applications for financial assistance, the department of administration shall allocate funding to projects that are approved under sub. (7) in the order that they appear on the funding list, except as follows:

(a) The department of administration shall allocate to projects for public water systems that regularly serve fewer than 10,000 persons 15 percent of the available funds in each fiscal year or such lesser amount that fully funds the eligible projects for those public water systems.

(bL) In any biennium, no applicant may receive more than 25 percent of the amount of financial assistance planned to be provided or committed for projects under this section for that biennium.

(8m) CONDITIONS OF FINANCIAL ASSISTANCE FOR LOCAL GOVERNMENTAL UNITS. As a condition of receiving financial assistance under the safe drinking water loan program, a local governmental unit shall do all of the following:

(a) Establish a dedicated source of revenue for the repayment of the financial assistance.

(b) Comply with those provisions of 42 USC 300f to 300j–26 and this chapter and the regulations and rules promulgated under those provisions that the department specifies.

(c) Develop and adopt a program of water conservation as required by the department.

(d) Develop and adopt a program of systemwide operation and maintenance of the public water system, including the training of personnel, as required by the department.

(e) Develop and adopt a user fee system.

(8p) CONDITIONS OF FINANCIAL ASSISTANCE FOR PRIVATE OWNERS. As a condition of receiving financial assistance under the safe drinking water loan program, a private owner of a community water system that serves a local governmental unit shall do all of the following:

(a) Demonstrate that there is adequate security for the repayment of the financial assistance.

(b) Comply with those provisions of 42 USC 300f to 300j–26 and this chapter and the regulations and rules promulgated under those provisions that the department specifies.

(8s) LIMITATION ON FINANCIAL ASSISTANCE. The amount of a payment under sub. (2r) (d) may not exceed the amount necessary to reduce the interest rate on the loan from market rate to the interest rate that would have been charged on a loan to the local governmental unit under sub. (2r) (a).

(9) FINANCIAL ASSISTANCE COMMITMENTS. The department and the department of administration may, at the request of a local governmental unit, issue a notice of financial assistance commitment after the local governmental unit's application for safe drinking water financial assistance has been approved under sub. (7) and funding has been allocated under sub. (8) for the local governmental unit's project. The notice of financial assistance commitment shall specify the conditions that the local governmental unit must meet to secure financial assistance and shall include the estimated repayment schedules and other terms of the financial assistance.

(10) DEADLINE FOR CLOSING. If funding is allocated to a project under sub. (8) for a loan and the loan is not closed before June 30 of the year following the year in which funding is allocated, the department of administration shall release the funding allocated to the project.

(11) LOAN INTEREST RATES. (a) Except as provided under par. (b), the interest rate on a safe drinking water loan program loan shall be as follows:

1. For an applicant that does not meet financial eligibility criteria established by the department by rule, 55 percent of market interest rate.

2. For an applicant that meets financial eligibility criteria established by the department by rule, 33 percent of market interest rate.

(b) The department and the department of administration jointly may request the joint committee on finance to take action under s. 13.101 (11) to modify the percentage of market interest rate under par. (a) 1. or 2.

(12) DUTIES OF THE DEPARTMENT. The department shall do all of the following:

(a) Promulgate rules establishing eligibility criteria for applicants and projects under this section.

(b) Promulgate rules that are necessary for the execution of its responsibilities under the safe drinking water loan program.

(c) Cooperate with the department of administration in administering the safe drinking water loan program.

(d) By May 1 of each even–numbered year, prepare and submit to the department of administration a biennial needs list that includes all of the following information:

1. A list of drinking water projects that the department estimates will apply for financial assistance under the safe drinking water loan program during the next biennium.

2. The estimated cost and estimated construction schedule of each project on the list, and the total of the estimated costs of all projects on the list.

3. The estimated rank of each project on the priority list under sub. (6).

(e) Submit a biennial budget request under s. 16.42 for the safe drinking water loan program.

(f) Have the lead state role with the federal environmental protection agency concerning the safe drinking water loan program.

(g) Have the lead state role with local governmental units and private owners of community water systems that serve a local governmental unit in providing safe drinking water loan program information, and cooperate with the department of administration in providing that information.

(h) Inspect periodically safe drinking water loan program project construction to determine project compliance with construction plans and specifications approved by the department and the requirements of the safe drinking water loan program.

(13) CAPITALIZATION GRANT. The department may enter into an agreement under 42 USC 300j–12 (a), with the federal environmental protection agency to receive a capitalization grant for the safe drinking water loan program.

History: 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25, 159; 2009 a. 217; 2011 a. 19, 32; 2013 a. 7, 12; 2015 a. 55.

Cross–reference: See also ch. NR 166, Wis. adm. code.

281.62 Other drinking water quality activities. (1) In this section:

(a) "Community water system" means a public water system that serves at least 15 service connections used by year–round residents of the area served by the public water system or that regularly serves at least 25 year–round residents.

(b) "Noncommunity water system" means a public water system that is not a community water system.

(c) "Public water system" has the meaning given in s. 281.61 (1) (c).

(2) (a) With the approval of the department of administration, the department may expend funds from the appropriation accounts under s. 20.320 (2) (s) and (x) for any of the following:

1. Providing a loan to the owner of a community water system or a nonprofit noncommunity water system to acquire land or a conservation easement from a willing seller or grantor to protect the source water of the water system from contamination and to ensure compliance with national primary drinking water regulations under 42 USC 300g–1.

2. Providing a loan to the owner of a community water system to do any of the following:

a. Implement voluntary source water protection measures in areas delineated as provided in 42 USC 300j–13 in order to facilitate compliance with national primary drinking water regulations under 42 USC 300g–1 or otherwise significantly further the health protection objectives of the Safe Drinking Water Act, 42 USC 300f to 300j–26.

b. Implement a program for source water quality protection partnerships as provided in 42 USC 300j–14.

3. Assisting the owner of a public water system to develop the technical, managerial and financial capacity to comply with national primary drinking water regulations under 42 USC 300g–1.

4. Delineating or assessing source water protection areas as provided under 42 USC 300j–13.

5. Protecting wellhead areas from contamination as provided in 42 USC 300h–7.

(b) In any fiscal year, the department may not expend under par. (a) more than 15 percent of the funds provided under 42 USC 300j–12 in that fiscal year. In any fiscal year, the department may not expend under par. (a) 1., 2., 3., 4. or 5. more than 10 percent of the funds provided under 42 USC 300j–12 in that fiscal year.

(3) (a) With the approval of the department of administration, the department may expend funds from the appropriation accounts under s. 20.320 (2) (s) and (x) for any of the following:

1. Public water system supervision as provided in 42 USC 300j–2 (a).

2. Technical assistance concerning source water protection.

3. Developing and implementing a capacity development strategy required under 42 USC 300g–9 (c).

4. Operator certification required under 42 USC 300g–8.

(b) In any fiscal year, the department may not expend under par. (a) more than 10 percent of the funds provided under 42 USC 300j–12 in that fiscal year.

(4) With the approval of the department of administration, the department may expend funds from the appropriation accounts under s. 20.320 (2) (s) and (x) to provide technical assistance to public water systems serving 10,000 or fewer persons. In any fiscal year, the department may not expend under this subsection more than 2 percent of the funds provided under 42 USC 300j–12 in that fiscal year.

History: 1997 a. 27.

281.625 Drinking water loan guarantee program. (1) In this section:

(a) "Community water system" means a public water system that serves at least 15 service connections used by year–round residents or that regularly serves at least 25 year–round residents.

(b) "Local governmental unit" has the meaning given in s. 281.61 (1) (am), except that the term does not include a joint local water authority created under s. 66.0823.

(c) "Noncommunity water system" means a public water system that is not a community water system.

(d) "Public water system" has the meaning given in s. 281.61 (1) (c).

(2) The department, in consultation with the department of administration, shall promulgate rules for determining whether a loan is an eligible loan under s. 234.86 (3) for a loan guarantee under s. 234.86. The rules shall be consistent with 42 USC 300j–12.

(3) The department shall determine whether a loan to the owner of a community water system or the nonprofit owner of a noncommunity water system is an eligible loan under s. 234.86 (3) for the purposes of the loan guarantee program under s. 234.86.

(4) With the approval of the department of administration, the department of natural resources may transfer funds from the appropriation accounts under s. 20.320 (2) (s) and (x) to the Wisconsin drinking water reserve fund under s. 234.933 to guarantee loans under s. 234.86.

(5) The department may contract with the Wisconsin Housing and Economic Development Authority for the administration of the program under this section and s. 234.86.

History: 1997 a. 27; 2013 a. 12; 2015 a. 55.

281.63 Financial assistance program; combined sewer overflow abatement. (1) LEGISLATIVE FINDINGS. The legislature finds that state financial assistance for the elimination of combined sewer overflow to the waters of the state is a public purpose and a proper function of state government.

(2) DEFINITIONS. As used in this section:

(a) "Combined sewer" means a sewer intended to serve as a sanitary sewer and a storm sewer or as an industrial sewer and a storm sewer.

(b) "Combined sewer overflow" means a discharge of a combination of storm and sanitary wastewater or storm and industrial wastewater directly or indirectly to the waters of the state when the volume of wastewater flow exceeds the transport, storage or treatment capacity of a combined sewer system.

(c) "Facilities plan" means that plan or study which demonstrates the need for the proposed sewerage system or sewerage system component and which demonstrates through a systematic evaluation of alternatives that the selected alternative is the most cost–effective means of correcting combined sewer overflows.

(d) "Federal act" means the federal water pollution control act, as amended, 33 USC 1251 to 1376.

(3) ADMINISTRATION. The department shall administer the combined sewer overflow abatement financial assistance program. The department shall promulgate rules necessary for the proper execution of this program.

(4) ELIGIBILITY. (a) *Eligible municipalities.* Only a municipality with a sewerage system which is violating ch. 283 or title III of the federal act because of combined sewer overflow is eligible to receive financial assistance under the combined sewer overflow abatement financial assistance program.

(b) *Eligible projects.* Only a project for construction necessary to abate combined sewer overflows identified in department–approved facilities plans as cost–effective and reasonably necessary for water quality improvements is eligible for financial assistance under the combined sewer overflow abatement financial assistance program, except that the department need not determine the cost–effectiveness of projects performed under a contract awarded under s. 200.49.

(c) *Facility planning; engineering design.* Only a municipality which has completed facility planning and engineering design requirements for a combined sewer overflow abatement project is eligible to receive financial assistance under the combined sewer overflow abatement financial assistance program.

(5) APPLICATION. A municipality which seeks financial assistance under the combined sewer overflow abatement financial assistance program shall submit an application to the department. The application shall be in the form and include the information the department prescribes by rule. The department shall review all applications for financial assistance under this program. The department shall determine those applications which meet the eligibility requirements of this section.

(6) PRIORITY. Each municipality shall notify the department of its intent to apply for financial assistance under the combined sewer overflow abatement financial assistance program. For those municipalities that notify the department of their intention to apply for financial assistance under this program by December 31, the department shall establish annually a priority list which ranks these projects in the same order as they appear on the list prepared under s. 281.57 (6) (a).

(7) PAYMENT. Upon the completion by the municipality of all application requirements, the department may enter into an agreement with the municipality for a grant of up to 50 percent of the eligible construction costs of a combined sewer overflow abatement project if the municipality can begin construction within 3 months after the department is ready to allocate funds.

(8) ADVANCE COMMITMENTS FOR REIMBURSEMENT OF ENGINEERING DESIGN COSTS. The department may make an advance commitment to a municipality for the reimbursement of engineering design costs from funds appropriated under s. 20.866 (2) (to) subject to all of the following requirements:

(a) The advance commitment shall include a provision making the reimbursement of engineering design costs conditional on the award of a construction grant.

(b) The advance commitment may be made only for engineering design activities commenced after the department makes the advance commitment.

(c) The advance commitment may be made only if the municipality has completed all facility planning requirements.

(d) The advance commitment may be made only for engineering design costs related to a project that is eligible for assistance under sub. (4).

(e) The advance commitment shall be subject to a priority determination system consistent with sub. (6).

History: 1981 c. 20, 317; 1983 a. 27; 1985 a. 29; 1995 a. 227 s. 427; Stats. 1995 s. 281.63; 1999 a. 150 s. 672.

281.65 Financial assistance; nonpoint source water pollution abatement. (1) The purposes of the nonpoint source pollution abatement financial assistance program under this section are to:

(a) Provide the necessary administrative framework and financial assistance for the implementation of measures to meet nonpoint source water pollution abatement needs identified in areawide water quality management plans.

(b) Provide coordination with all elements of the state's water quality program in order to ensure that all activities and limited resources are optimally allocated in the achievement of this state's water quality goals.

(c) Provide technical and financial assistance for the application of necessary nonpoint source water pollution abatement measures.

(d) Focus limited technical and financial resources in critical geographic locations where nonpoint source related water quality problems and threats are the most severe and control is most feasible.

(e) Provide for program evaluation, subsequent modifications and recommendations.

(2) In this section:

(a) "Best management practices" means practices, techniques or measures, except for dredging, identified in areawide water quality management plans, which are determined to be effective means of preventing or reducing pollutants generated from nonpoint sources, or from the sediments of inland lakes polluted by nonpoint sources, to a level compatible with water quality objectives established under this section and which do not have an adverse impact on fish and wildlife habitat. The practices, techniques or measures include land acquisition, storm sewer rerouting and the removal of structures necessary to install structural urban best management practices, facilities for the handling and treatment of milkhouse wastewater, repair of fences built using grants under this section and measures to prevent or reduce pollutants generated from mine tailings disposal sites for which the department has not approved a plan of operation under s. 289.30 or s. 295.51.

(am) "Governmental unit" means any governmental unit including, but not limited to, a county, city, village, town, metropolitan sewerage district created under ss. 200.01 to 200.15 or 200.21 to 200.65, town sanitary district, public inland lake protection and rehabilitation district, regional planning commission or drainage district operating under ch. 89, 1961 stats., or ch. 88. "Governmental unit" does not include the state or any state agency.

(b) "Nonpoint source" means a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of this state and which is not a point source as defined under s. 283.01 (12).

(be) "Priority lake" means any lake or group of lakes that are identified under sub. (3) (am).

(bs) "Priority lake area" means a priority lake and the area surrounding the priority lake designated by the department for the

implementation of the nonpoint source pollution abatement project for the priority lake.

(c) "Priority watershed" means any watershed that is identified under sub. (3) (am) or (4) (cm) or (co).

(d) "Structural urban best management practices" means detention basins, wet basins, infiltration basins and trenches and wetland basins.

(3) The land and water conservation board shall do all of the following:

(a) Review the lists submitted under sub. (4) (c) and (cd) and reports submitted under sub. (4) (c) and (cg).

(am) Identify priority watersheds and priority lakes as provided in sub. (3m).

(ap) Review and approve priority lake and priority watershed plans prepared under sub. (5m) and modifications to those plans prepared under sub. (5s). The board may exempt minor plan modifications from the requirement of board approval.

(at) Review rules drafted under this section and make recommendations regarding the rules before final approval of the rules by the natural resources board.

(b) Before September 1 of each even–numbered year, submit to the governor and the department a report that includes all of the following:

1. Recommendations for the amount to be appropriated for the program under this section for the following fiscal biennium.

5. Any changes that the board determines would improve the efficiency or effectiveness of the program under this section.

(bm) Whenever the board determines necessary, submit to the governor and the department recommendations concerning changes to the amounts appropriated for the program under this section or recommendations concerning any changes that would improve the efficiency or effectiveness of the program under this section.

(c) Assist counties and the department to resolve concerns about the program under this section.

(d) Establish priorities for the allocation of funds in the event that program needs exceed available funding in any fiscal biennium.

(e) After reviewing a plan submitted under sub. (4) (k), request the building commission to authorize public debt to be contracted in the amount that the board determines to be necessary for the purposes of the program under this section.

(f) Require the department and the department of agriculture, trade and consumer protection to conduct or contract for another person to conduct any evaluation or audit of the program under this section and of individual priority watershed or priority lake projects that the board determines is necessary.

(3m) (a) 1. No later than July 1, 1998, the board shall identify priority watersheds based on the list submitted under sub. (4) (c) and recommendations by the department and the department of agriculture, trade and consumer protection without regard to any priority watershed designations made before the board acts under this subdivision, except for priority watershed designations under sub. (4) (cm) or (co). The department and the department of agriculture, trade and consumer protection shall limit the number of watersheds that they recommend to the board to the number that they determine will enable the department to comply with sub. (4) (g) 9., assuming that the level of funding for the program under this section remains the same as on October 14, 1997.

2. If a watershed is designated as a priority watershed before the board acts under subd. 1. and the board does not identify the watershed as a priority watershed under subd. 1., the board shall terminate the watershed's designation as a priority watershed. This subdivision does not apply to priority watershed designations made under sub. (4) (cm) or (co).

(b) 1. No later than July 1, 1998, the board shall identify priority lakes based on the list submitted under sub. (4) (cd) and recommendations by the department and the department of agriculture, trade and consumer protection without regard to any priority lake designations made before the board acts under this subdivision.

2. If a lake is designated as a priority lake before the board acts under subd. 1. and the board does not identify the lake as a priority lake under subd. 1., the board shall terminate the lake's designation as a priority lake.

(c) If the board terminates a priority watershed or priority lake designation under this subsection, the board shall direct the department to eliminate funding for the project in the former priority watershed or priority lake area.

(d) 1. If a watershed is designated as a priority watershed before the board acts under par. (a) 1. and the board identifies the watershed as a priority watershed under par. (a) 1., the board shall direct the department to continue funding for the project in the priority watershed.

2. If a lake is designated as a priority lake before the board acts under par. (b) 1. and the board identifies the lake as a priority lake under par. (b) 1., the board shall direct the department to continue funding for the project in the priority lake area.

(4) The department shall:

(a) Administer the nonpoint source water pollution program under this section.

(am) Be responsible for the integration of the nonpoint source water pollution abatement program into the state's overall water quality management program.

(ar) Serve as the designated state agency with the federal environmental protection agency on all aspects related to the nonpoint source program management requirements of P.L. 100–4, including the development and submittal of the nonpoint source assessment report and management program required under P.L. 100–4, section 316 and preparation of the annual grant application for federal funding from the environmental protection agency to implement that program.

(as) Consult with the department of agriculture, trade and consumer protection in developing any federal grant application under par. (ar). Every application is subject to s. 16.54 and shall include the proposed expenditures of federal nonpoint source water pollution abatement grant moneys and the allocation of such moneys between the department and the department of agriculture, trade and consumer protection.

(b) Identify through the areawide water quality management plans provided for under section 208 of the federal water pollution control act, P.L. 92–500, as amended, the designated local management agencies.

(c) Prepare a list of the watersheds in this state in order of the level of impairment of the waters in each watershed caused by nonpoint source pollution, taking into consideration the location of impaired water bodies that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A), and submit the list to the board no later than January 1, 1998.

(cd) Prepare a list of the lakes in this state in order of the level of impairment of the waters in the lakes caused by nonpoint source pollution, taking into consideration the location of impaired water bodies that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A), and submit the list to the board no later than January 1, 1998.

(cg) Before July 1 of each even–numbered year, submit its recommendations on the matters under sub. (3) (b) 1. and 5. to the land and water conservation board.

(cm) Identify watershed areas in the Milwaukee River basin as priority watershed areas, notwithstanding par. (c), and identify the best management practices necessary to meet water quality objectives in those watershed areas. For the purposes of this paragraph, the Kinnickinnic River shall be treated as being within a watershed area in the Milwaukee River basin. The department shall appoint an advisory committee which represents appropriate local interests to assist it in the planning and implementation of projects and best management practices in these watershed areas.

The advisory committee shall include a member of the county board from each county with any area in the Milwaukee River basin.

(co) Identify the Root River watershed as a priority watershed.

(d) Review and approve the detailed program for implementation prepared by the designated local management agencies identified under par. (b).

(dm) Establish water quality objectives for each water basin and for each priority watershed and priority lake and identify the best management practices to achieve the water quality objectives.

(dr) Appoint a committee for each priority watershed and priority lake, to advise the department, the department of agriculture, trade and consumer protection and the counties, cities and villages concerning all aspects of the nonpoint source pollution abatement financial assistance program. Each committee shall include at least 2 farmers as members if the priority watershed or priority lake area includes property in agricultural use. Each committee shall include at least 2 representatives of a public inland lake protection and rehabilitation district that is within the priority watershed or priority lake area or, if one does not exist, of riparian property owners. Each committee for a priority watershed or priority lake area with any area in the Milwaukee River basin shall include a member of the county board from each county with any area in that priority watershed or priority lake area.

(e) Promulgate rules, in consultation with the department of agriculture, trade and consumer protection, as are necessary for the proper execution and administration of the program under this section. Before promulgating rules under this paragraph, the department shall submit the rules to the land and water conservation board for review under sub. (3) (at). The rules shall include standards and specifications concerning best management practices which are required for eligibility for cost–sharing grants under this section. The standards and specifications shall be consistent with the performance standards, prohibitions, conservation practices and technical standards under s. 281.16. The department may waive the standards and specifications in exceptional cases. The rules shall specify which best management practices are cost–effective best management practices. Only persons involved in the administration of the program under this section, persons who are grant recipients or applicants and persons who receive notices of intent to issue orders under s. 281.20 (1) (b) are subject to the rules promulgated under this paragraph. Any rule promulgated under this paragraph which relates or pertains to agricultural practices relating to animal waste handling and treatment is subject to s. 13.565.

(em) In identifying best management practices under pars. (dm) and (g) 4., identify cost–effective best management practices, as specified under par. (e), except in situations in which the use of a cost–effective best management practice will not contribute to water quality improvement or will cause a water body to continue to be impaired as identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

(f) Administer the distribution of grants and aids to governmental units for local administration and implementation of the program under this section. A grant awarded under this section may be used for cost–sharing for management practices and capital improvements, easements, or other activities determined by the department to satisfy the requirements of this section. A grant under this section to a lake district for a priority lake identified under sub. (3m) (b) 1. may be used for plan preparation, technical assistance, educational and training assistance, and ordinance development and administration. A grant may not be used for promotional items, except for promotional items that are used for informational purposes, such as brochures or videos.

(g) In cooperation with the department of agriculture, trade and consumer protection and the appropriate governmental unit, prepare priority watershed and priority lakes plans to implement nonpoint source water pollution abatement projects in priority watersheds and priority lake areas. In preparing the plans, the department shall:

1. Conduct the planning process in a cost–effective and timely manner and scale the planning process in accordance with the scale and nature of the pollution problem addressed in the plan.

2. Promote significant participation from the department of agriculture, trade and consumer protection and other state agencies, governmental units and other persons located in any priority watershed or in any priority lake area that is the subject of the plan.

3. Prepare a water resource assessment, set water quality goals and analyze alternative management practices for the area which is the subject of the plan.

4. In cooperation with the department of agriculture, trade and consumer protection, incorporate the appropriate best management practices into the plan.

5. Determine whether any county, city, village or town within the area which is the subject of the plan, as a condition of a grant under this section, should be required to develop a construction site erosion control ordinance under s. 59.693, 60.627, 61.354 or 62.234 or a manure storage ordinance under s. 92.16 in order to meet the water quality goals established in the plan.

6. Determine the specific plan components to be prepared by any appropriate governmental units in the watershed or in the area of the project affecting the priority lake, after determining the technical, financial and staffing capability of that governmental unit.

7. Prepare a project funding list.

8. Establish an implementation plan for each priority watershed and priority lake, including all of the following:

a. A list of the best management practices identified under par. (dm) that are most critically needed to achieve water quality objectives in the priority watershed or priority lake.

am. Designation as critical sites those sites that are significant sources of nonpoint source pollution upon which best management practices must be implemented in order to obtain a reasonable likelihood that the water quality objectives established under par. (dm) can be achieved.

b. A procedure for establishing implementation priorities to meet the needs identified in subd. 8. a. with the highest priority given to significant sources of nonpoint pollution that substantially inhibit the achievement of water quality objectives.

c. Consultation with the committee appointed under par. (dr) concerning the implementation plan.

d. A requirement to review the implementation plan periodically and to modify the implementation plan to reflect the agreements entered into by landowners and operators to implement best management practices.

e. Provisions for public notice and education concerning the implementation plan in the period during which grants are available to governmental units and landowners and operators, in order to achieve the greatest level of voluntary participation.

9. Complete the planning process in all priority watersheds by December 31, 2015.

(h) Designate a governmental unit to perform the inventory required under sub. (4m) (a).

(i) Cooperate with the department of agriculture, trade and consumer protection under s. 92.14 (6).

(k) Before public debt is contracted for projects under this section, prepare a plan for the expenditure of the proceeds of that debt and submit the plan to the land and water conservation board.

(L) Before September 1 of each year, in consultation with the department of agriculture, trade and consumer protection, submit a budget report to the board that includes anticipated expenditures for projects under this section during the next year, criteria for ending projects under this section and, if anticipated expenditures exceed anticipated funding, a plan for reducing expenditures.

(o) Annually, in cooperation with the department of agriculture, trade and consumer protection, submit a report on the progress of the program under this section to the land and water conservation board.

(p) Jointly with the department of agriculture, trade and consumer protection, prepare the plan required under s. 92.14 (13). The department shall review and approve or disapprove the plan and shall notify the land and water conservation board of its final action on the plan. The department shall implement any part of the plan for which the plan gives it responsibility.

(pm) Jointly with the department of agriculture, trade and consumer protection, develop the forms required and implement the process under s. 92.14 (14).

(q) Include the report submitted under sub. (3) (b), along with a request for all resources and any changes necessary to implement each recommendation in the report, in the information that it submits to the department of administration under s. 16.42 for the program under this section.

(s) Provide staff services to the land and water conservation board.

(4c) (a) A governmental unit may request funding under this subsection for a project that is in a priority watershed or priority lake area or a project that is not in a priority watershed or a priority lake area by submitting an application to the department. An application shall be submitted before July 15 to be considered for initial funding in the following year.

(ae) The department shall administer this subsection in a manner that promotes the accelerated implementation of nonpoint source water pollution control that cannot be conducted with funding under s. 92.14 in target areas described in par. (am) 1. that are of the highest priority.

(am) The department may select a project for funding under this subsection only if all of the following apply:

1. The project will implement nonpoint source pollution control in an area that is a target area based on any of the following:

a. The need for compliance with performance standards established by the department under s. 281.16 (2) and (3).

b. The existence of impaired water bodies that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

c. The existence of outstanding or exceptional resource waters, as designated by the department under s. 281.15.

d. The existence of threats to public health.

e. The existence of an animal feeding operation that has received a notice of discharge under ch. 283 or a notice of intent to issue a notice of discharge.

f. Other water quality concerns of national or statewide importance.

2. The department, in consultation with the department of agriculture, trade and consumer protection, determines that funding provided under s. 92.14 is insufficient to fund the project.

3. The project is consistent with priorities identified by the department on a watershed or other geographic basis.

4. The project is consistent with approved land and water resource management plans under s. 92.10.

5. The application for the project specifies the watershed, subwatershed or specific site that will be served by the project.

(b) The department shall use the system under par. (d) to determine the score of each project for which it receives an application under par. (a) and shall inform the land and water conservation board of the scores no later than September 1 of each year.

(c) After determining project scores under par. (b), the department shall notify the land and water conservation board of the projects that the department proposes to select for funding in the following year. The board shall review the proposal and make recommendations to the department. Before November 1 of each year, the department shall select projects for funding under this subsection in the following year. To the extent practicable, within the requirements of this section, the department shall select projects so that projects are distributed evenly around this state.

(d) The department shall adopt a scoring system for ranking nonpoint source water pollution abatement projects for which applications are submitted under par. (a). The criteria on which the scoring system is based shall include all of the following:

1. The extent to which the application proposes to use the cost–effective and appropriate best management practices to achieve water quality goals.

2. The existence in the project area of an impaired water body that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

3. The extent to which the project will result in the attainment of established water quality objectives.

4. The local interest in and commitment to the project.

5. The inclusion of a strategy to evaluate the progress toward reaching project goals, including the monitoring of water quality improvements resulting from project activities.

6. The extent to which the application proposes to use available federal funding.

7. The extent to which the project is necessary to enable the city of Racine to control storm water discharges as required under 33 USC 1342 (p).

(f) A project funded under this subsection may be conducted over a period of one to 3 years, except that the department may approve an extension for one year.

Cross–reference: See also ch. NR 153, Wis. adm. code.

(4e) (a) A governmental unit may request funding under this subsection for a project to implement best management practices for animal waste management at an animal feeding operation for which the department has issued a notice of discharge under ch. 283 or a notice of intent to issue a notice of discharge.

(b) The department may grant a request under par. (a) if it determines that providing funding under this subsection is necessary to protect the waters of the state.

(bm) The department may provide a cost–sharing grant under this subsection directly to a landowner, or to an operator of an animal feeding operation, for a project to implement best management practices for animal waste management at an animal feeding operation for which the department has issued a notice of discharge under ch. 283 or a notice of intent to issue a notice of discharge if the department determines that providing funding under this subsection is necessary to protect the waters of the state.

(c) Subsection (8) (d) does not apply to a grant under this subsection.

(4g) The department may contract with any person from the appropriation account under s. 20.370 (9) (at) for services to administer or implement this section, including information and education and training services.

(4m) (a) Any governmental unit or regional planning commission designated by the department under sub. (4) (h) shall prepare an inventory of nonpoint source water pollution in the watershed which is the subject of the plan under sub. (4) (g) and submit the inventory to the department for incorporation into the plan.

(b) Every plan prepared for an area under sub. (4) (g) shall include all of the following:

1. The inventory for that area prepared under par. (a).

2. A water resource assessment of that area.

3. The identification of critical surface water and groundwater protection management areas within that area and the agricultural and nonagricultural best management practices to be applied to that area.

4. A plan implementation schedule developed in cooperation with the appropriate governmental unit or designated local management agency identified under sub. (4) (b).

5. A grant disbursement and project management schedule.

6. An integrated resource management strategy to protect or enhance fish and wildlife habitat, aesthetics and other natural resources.

7. A comprehensive management strategy to manage agricultural and nonagricultural nonpoint source water pollution affecting surface water or groundwater, including animal waste, fertilizer, pesticides, storm water, construction site erosion and other nonpoint sources of water pollution.

(c) The department shall submit a copy of any plan it completes under this subsection to any county located in or containing any watershed which is a subject of the plan and to the department of agriculture, trade and consumer protection. The department of agriculture, trade and consumer protection shall review the plan and notify the department of natural resources of its comments on the plan. A county receiving a plan under this subsection shall review the plan, approve or disapprove the plan and notify the department of natural resources of its action on the plan.

(d) After the department considers the comments of the department of agriculture, trade and consumer protection on a plan under par. (c) and receives approval of the plan by every county to which it was sent and by the land and water conservation board, the department shall designate the plan to be an element of the appropriate areawide water quality management plan under P.L. 92–500, section 208.

(5) The department of agriculture, trade and consumer protection shall:

(b) Prepare sections of the priority watershed or priority lake plan relating to farm–specific implementation schedules, requirements under s. 281.16 (3), animal waste management and selection of agriculturally related best management practices and submit those sections to the department for inclusion under sub. (4m) (b). The best management practices shall be cost–effective best management practices, as specified under sub. (4) (e), except in situations in which the use of a cost–effective best management practice will not contribute to water quality improvement or will cause a water body to continue to be impaired as identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

(d) Develop a grant disbursement and project management schedule for agriculturally related best management practices to be included in a plan established under sub. (4) (g) and identify recommendations for implementing activities or projects under ss. 92.10 and 281.16 (3).

(e) Identify areas within a priority watershed or priority lake area that are subject to activities required under s. 281.16 (3).

(f) Provide implementation assistance as identified and approved in the priority watershed or priority lake plan under sub. (4) (g).

(5m) Upon completion of plans by the department under sub. (4) (g), the governmental unit or regional planning commission under sub. (4m) and the department of agriculture, trade and consumer protection under sub. (5), and upon receiving the approval of the land and water conservation board, the department shall prepare and approve the final plan for a priority watershed or priority lake.

(5q) (a) Notwithstanding sub. (5s), neither the department nor the land and water conservation board may extend funding under this section for a priority watershed or priority lake project beyond the funding termination date that was in effect for the priority watershed or priority lake project on January 1, 2001, except as provided in par. (b).

(b) The department may authorize funding to be provided to a landowner under a priority watershed or priority lake project for up to one year after the funding termination date under par. (a) for that project if the department determines that a delay in implementation of best management practices by the landowner was caused by conditions beyond the control of the landowner.

(5s) The department may make modifications, including designating additional sites as critical sites, in a priority watershed or priority lake plan with the approval of every county to which the department sent the original plan under sub. (4m) (c) and of the land and water conservation board. If the owner or operator of a site prevails in a final review under sub. (7) or the site is not designated as a critical site in the original plan under sub. (5m) and the pollution is from an agricultural source and is not caused by animal waste, the department may not make a modification designating the site as a critical site unless the designation is based on a substantial increase in pollution from the site, on information about pollution from the site that was not available when the plan was prepared or on a substantial change to the criteria for designating a site as a critical site. This subsection applies to a priority watershed or priority lake plan completed before, on or after August 12, 1993.

(5w) After the land and water conservation board approves a priority watershed or priority lake plan or a modification to such a plan that designates a site to be a critical site, the department shall notify the owner or operator of that site of the designation and of the provisions in sub. (7) and either s. 281.20 or, if the pollution is caused primarily by animal waste, ss. NR 243.21 to 243.26, Wis. adm. code.

(5y) If the owner or operator of a critical site installs and maintains best management practices as provided under the priority watershed or priority lake plan, the site is no longer a critical site. The owner or operator may discontinue maintenance of a best management practice for a period during which the owner or operator changes the use of the site if the best management practice is not needed for the changed use.

(6) The appropriate governmental unit is responsible for local administration and implementation of priority watershed and priority lakes projects and shall:

(a) Be responsible for coordination and implementation of activities necessary to achieve water quality objectives including the development of a detailed program for implementation.

(b) Utilize, whenever possible, existing staff or contract with existing governmental agencies to utilize that agency's existing staff to provide various field, administrative, planning and other services.

(d) Participate in the plan preparation under contract with the department. The department shall determine the specific plan components which will be prepared depending upon the technical, financial and staffing capability of the appropriate governmental unit.

(7) (a) 1. The owner or operator of a site designated as a critical site in a priority watershed or priority lake plan under sub. (5m) or in a modification to such a plan under sub. (5s) may request a review of that designation by filing a written request within 60 days after receiving notice under sub. (5w) with the land conservation committee of the county in which the site is located or, if the site is located in more than one county, with the land conservation committee of the county in which the largest portion of the site is located.

2. A county land conservation committee receiving a request under subd. 1. shall provide the owner or operator with a hearing and shall provide reasonable notice of the hearing to the owner or operator, the department and the department of agriculture, trade and consumer protection. The county land conservation committee shall conduct the hearing under this subdivision as an informal hearing. Section 68.11 (2) does not apply to the hearing. The land conservation committee shall hold the hearing in a place convenient to the owner or operator. Within 60 days after the hearing, the department shall, and the department of agriculture, trade and consumer protection may, submit a report and recommendation to the land conservation committee concerning the issues at the hearing. The land conservation committee may affirm or reverse the designation of the site as a critical site.

(b) The owner or operator of a site designated as a critical site in a priority watershed or priority lake plan under sub. (5m) or in a modification to such a plan under sub. (5s) or the department of

natural resources may obtain a review of the decision of a county land conservation committee under par. (a) 2. by filing a written request with the land and water conservation board within 60 days after receiving the decision of the county land conservation committee.

(c) The owner or operator of a site designated as a critical site in a priority watershed or priority lake plan under sub. (5m) or in a modification to such a plan under sub. (5s) may request a contested case hearing under ch. 227 to review the decision of the land and water conservation board under par. (b) by filing a written request with the department within 60 days after receiving an adverse decision of the land and water conservation board.

(7m) The state share of a grant for local administration under this section may not exceed 70 percent of the cost of the activities for which the grant is provided if the department first provides a grant to fund those activities after June 30, 1998.

(8) Eligibility for cost–sharing grants under this section shall be determined based on the following:

(a) Governmental units and individual landowners or operators are eligible for cost–sharing grants.

(b) Grants may be provided to applicants in priority watershed areas for projects in conformance with approved areawide water quality management plans.

(c) Grants may be provided to applicants in nonpriority watersheds for projects which are in conformance with areawide water quality management plans and which conform to the purposes specified under sub. (1).

(cm) Grants may be provided to applicants for projects affecting priority lakes if the projects are in conformance with areawide water quality management plans and the purposes specified under sub. (1).

(d) Each cost–sharing grant shall be approved by the designated management agency.

(e) Grants may only be used for implementing best management practices. Grants for implementing best management practices may only be used for implementing cost–effective best management practices specified under sub. (4) (e) unless an applicant demonstrates that the use of a cost–effective best management practice will not contribute to water quality improvement or will cause a water body to continue to be impaired as identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

(f) A cost–sharing grant shall equal the percentage of the cost of implementing the best management practice that is determined by the department in providing a cost–sharing grant under sub. (4e) (a) or by the governmental unit submitting the application under sub. (4c) (a) or (4e) (a) and is approved by the board, except that a cost–sharing grant may not exceed 70 percent of the cost of implementing the best management practice unless par. (gm) applies.

(gm) The department in providing a cost–sharing grant under sub. (4e) (a) or a governmental unit submitting the application under sub. (4c) (a) or (4e) (a) may exceed the limit under par. (f) in case of economic hardship, as defined by the department by rule. In providing a grant for a project to achieve compliance with a performance standard or prohibition established under s. 281.16 (3) (a), the department shall provide cost–sharing of 70 percent of the cost of compliance or 70 percent to 90 percent of the cost of compliance in case of economic hardship.

(L) A grant may not be made to an individual whose name appears on the statewide support lien docket under s. 49.854 (2) (b), unless the individual provides to the department a payment agreement that has been approved by the county child support agency under s. 59.53 (5) and that is consistent with rules promulgated under s. 49.858 (2) (a).

(m) The department may recognize the value of a conservation easement created under s. 700.40 (2) and donated to the department, or to any person approved by the department, as constituting all or a portion of the landowner's or operator's share of a cost–sharing grant as determined under par. (f).

(n) The department shall identify by rule the types of cost–shared practices and the minimum grant amounts for cost–sharing grants that require any subsequent owner of the property to maintain the cost–shared practice for the life of the cost–shared practice, as determined by the department.

(o) The department shall provide grants for animal waste storage facilities in amounts not to exceed an amount specified by the department by rule.

(p) The department may provide a cost–sharing grant to replace a structure or facility at a new location, rather than to repair or reconstruct the structure or facility, if the relocation reduces water pollution and replacement is cost–effective compared to repairing or reconstructing the structure or facility.

(8b) Beginning in 1999, if the department establishes an anticipated cost–share reimbursement amount for a year for a county that receives funding under this section and the county enters into cost–share agreements with landowners or operators that result in reimbursable amounts for the year that exceed the amount established by the department, the county shall provide reimbursement to the landowners or operators in the amount by which the reimbursable amounts exceed the amount established by the department.

(8e) The department may not require a person who received a cost–sharing grant to repay the cost–sharing grant on the basis of a violation of this section, rules promulgated under this section or the grant agreement, if, at the time of the violation, the person who received the grant no longer owns or operates the land for which the department provided the grant. This subsection applies without regard to whether the person received the grant before, on or after May 16, 1992.

(8m) If the department determines under sub. (4) (g) 5. that a county, city, village or town should be required to develop a construction site erosion control ordinance under s. 59.693, 60.627, 61.354 or 62.234 or a manure storage ordinance under s. 92.16, that county, city, village or town shall make a commitment to develop and adopt the ordinance as a condition of receiving a grant under this section.

(9) The department may distribute grants and aids to state agencies, including itself, for administration and implementation of the nonpoint source water pollution abatement program on land under state ownership or control for projects affecting priority lakes or in priority watershed areas. The department may distribute grants and aids to itself for the purchase of easements in priority watershed areas.

(11) Notwithstanding subs. (3) (am) and (3m), the South Fork of the Hay River is a priority watershed for the period ending on June 30, 2005. Notwithstanding subs. (2) (a), (4) (dm), (e), (em) and (g) 4., (4m) (b) 3. and (8) (b) and (e), the department, in consultation with the local units of government involved with the priority watershed project, shall establish guidelines for the types of nonpoint source water pollution abatement practices to be eligible for cost–sharing grants in the watershed. Notwithstanding sub. (8) (f), the amount of a cost–sharing grant in the watershed may be based on the amount of pollution reduction achieved rather than on the cost of the practices installed, using guidelines developed by the department, in consultation with the local units of government involved with the priority watershed project. In providing funding under s. 92.14 (3), the department of agriculture, trade and consumer protection shall determine the amount of matching funds required for staff for the priority watershed project as though the funding termination date of June 30, 2005, had been in effect on October 6, 1998. The department and the local governmental staff involved with the priority watershed project shall evaluate the cost effectiveness of the project and the reduction in nonpoint source water pollution associated with the project.

(12) Notwithstanding sub. (8), during fiscal year 2002–03, the department shall make a payment under this section to a landowner who received a notice of discharge under ch. 283, who entered into a cost–share agreement with the department of agriculture, trade and consumer protection for a grant under s. 92.14 (4) (c), 1997 stats., and who complied with the cost–share agreement but who did not receive the grant under s. 92.14 (4) (c), 1997 stats. The department shall make a payment under this subsection in the amount to which the landowner would have been entitled under the cost–share agreement with the department of agriculture, trade and consumer protection. The department may not require a landowner to file an application to receive payment under this subsection.

History: 1977 c. 418; 1979 c. 34, 221; 1979 c. 355 s. 241; 1981 c. 20; 1981 c. 346 s. 38; 1983 a. 27; 1983 a. 189 s. 329 (16); 1983 a. 416; 1985 a. 29; 1987 a. 27; 1989 a. 31, 336, 366; 1991 a. 39, 309; 1993 a. 16, 166, 213, 246, 491; 1995 a. 27, 201, 225; 1995 a. 227 s. 428; Stats. 1995 s. 281.65; 1995 a. 404 s. 204; 1997 a. 27, 209, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 109; 2003 a. 33; 2007 a. 20; 2009 a. 28; 2013 a. 1; 2017 a. 59.

Cross–reference: See also chs. NR 120 and 151, Wis. adm. code.

281.66 Urban nonpoint source water pollution abatement and storm water management program. (1) DEFINITIONS. In this section:

(a) "Governmental unit" has the meaning given in s. 281.65 (2) (am).

(b) "Nonpoint source" has the meaning given in s. 281.65 (2) (b).

(c) "Population" means population shown by the last federal census or by any subsequent population estimate under s. 16.96.

(d) "Structural urban best management practices" has the meaning given in s. 281.65 (2) (d).

(e) "Urban area" means any of the following:

1. An area with a population of 1,000 or more per square mile.

2. An area in which the land is used for industrial or commercial land uses.

3. An area that is surrounded by an area described in subd. 1. or 2.

(2) ADMINISTRATION. The department shall administer the program under this section in a manner that promotes all of the following:

(a) Management of urban storm water and runoff from existing and developing urban areas to achieve water quality standards, to minimize flooding and to protect groundwater.

(b) Coordination of urban nonpoint source management activities and the municipal storm sewer discharge permit program under s. 283.33.

(c) Implementation of nonpoint source performance standards under s. 281.16 (2).

(3) ELIGIBILITY. (a) The department may provide a cost–sharing grant for a project under this section only if all of the following apply:

1. The project is in an urban area.

2. The governmental unit with jurisdiction over the project area ensures adequate implementation of construction site pollution control, and of storm water management after development, for development and redevelopment of sites of one or more acres.

3. The project is consistent with nonpoint source performance standards under s. 281.16 (2).

4. The project is consistent with priorities identified by the department on a watershed or other geographic basis.

5. The application for the project specifies the watershed, subwatershed or specific site that will be served by the project.

(b) The department may provide financial assistance under this section for a project in a governmental unit either to that governmental unit or to another governmental unit that is required to control storm water discharges under s. 283.33.

(4) FINANCIAL ASSISTANCE. (a) The department may provide local assistance grants and cost–sharing grants under this section. A local assistance grant or cost–sharing grant may not exceed 50 percent of eligible costs.

(b) The department may award a local assistance grant for any of the following:

1. Storm water management for urban areas and for areas that are expected to become urban areas within 20 years.

2. Informational and educational activities related to nonpoint source water pollution control, construction site erosion control or storm water management.

3. Development, administration and enforcement of a construction site erosion control or storm water management ordinance.

4. Training of staff concerning nonpoint source water pollution control, construction site erosion control or storm water management.

5. Other activities identified by the department by rule.

(c) The department may award a cost–sharing grant for any of the following types of projects:

1. Structural urban best management practices, including necessary land acquisition, storm sewer rerouting and removal of structures, and associated flood management, except that the department may not award a grant for structural urban best management practices associated with new construction or new development.

2. Stream bank or shoreland stabilization necessary to control pollution.

3. Other nonpoint source water pollution abatement or storm water management practices identified by the department by rule.

(5) SCORING SYSTEM. The department shall use a scoring system for ranking nonpoint source water pollution abatement and storm water management projects for which applications are submitted under this section. The criteria on which the scoring system is based shall include all of the following:

(a) The extent to which the application proposes to use the cost–effective and appropriate practices to achieve water quality goals.

(b) The existence in the project area of an impaired water body that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

(c) The extent to which the project will result in the attainment of established water quality objectives.

(d) The local interest in and commitment to the project.

(e) The inclusion of a strategy to evaluate the progress toward reaching project goals, including the monitoring of water quality improvements resulting from project activities.

(f) The extent to which the application proposes to use available federal funding.

(g) The extent to which the project is necessary to enable the city of Racine to control storm water discharges as required under 33 USC 1342 (p).

(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.

History: 1999 a. 9 ss. 2525f, 2525g; 2015 a. 55.

281.665 Municipal flood control and riparian restoration program. (1) DEFINITIONS. In this section:

(a) "Conservation easement" has the meaning given in s. 700.40 (1) (a).

(b) "Local governmental unit" means a city, village, town or metropolitan sewerage district.

(2) ADMINISTRATION. The department shall administer the program under this section to provide financial assistance to local governmental units for facilities and structures for the collection and transmission of storm water and groundwater, including the purchase of perpetual flowage and conservation easement rights on land within floodways, and for the floodproofing of public and private structures that remain in the 100–year floodplain.

(3) ELIGIBLE APPLICANTS. (a) The department may provide a cost–sharing grant for a project that affects 2 or more local governmental units to one of the following:

1. One of the affected local governmental units upon application by all of the affected local governmental units.

2. A local governmental unit that has jurisdiction over the provision of storm water collection facilities for all of the affected local governmental units.

(c) The department may provide a cost–sharing grant for a project that affects one local governmental unit to that local governmental unit.

(4) FINANCIAL ASSISTANCE. (a) The department may provide local assistance grants and cost–sharing grants under this section. A local assistance grant may not exceed 50 percent of eligible costs, including planning and design costs. A cost–sharing grant may not exceed 50 percent of eligible costs for construction and real estate acquisition.

(b) In any fiscal year, the department may not provide to any applicant more than 20 percent of the funding available under this section in the fiscal year.

(c) 1. Notwithstanding pars. (a) and (b) and subject to subd. 2., the department shall provide a cost–sharing grant under this section for a project described under sub. (5) (d) in an amount sufficient to accomplish the flood–control goals of the project as proposed in the application, but not to exceed $14,600,000.

2. The department may not provide a cost–sharing grant under subd. 1. unless the department first notifies the cochairpersons of the joint committee on finance, in writing, that it intends to award the grant. The notice shall contain a description of the purposes proposed for expenditure of the moneys received as a part of the grant. If the cochairpersons of the committee do not notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposed grant within 14 working days after the date of the department's notification, the moneys may be awarded as proposed by the department. If, within 14 working days after the date of the department's notification, the cochairpersons of the committee notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposed grant, no moneys may be awarded without the approval of the committee.

(5) ELIGIBILITY AND SCORING CRITERIA. (a) The department shall promulgate rules specifying eligibility criteria for projects under this section and for determining which eligible projects will receive financial assistance under this section.

(b) The department may not provide a cost–sharing grant for a project under this section if any of the following applies:

1. The project would transfer flooding downstream.

2. The project provides for the channelization of a stream or for lining a natural stream bed with concrete.

3. The project would accelerate upstream runoff.

(c) The department shall include all of the following in the criteria for determining which eligible projects will receive cost–sharing grants under this section:

1. The extent to which a project minimizes harm to existing beneficial functions of water bodies and wetlands.

2. The extent to which a project maintains aquatic and riparian environments.

3. The extent to which a project uses storm water retention and detention structures and natural storage.

4. The extent to which a project provides opportunity for public access to water bodies and to the floodway.

(d) Notwithstanding pars. (a) to (c), during the 2017–19 and 2019–21 fiscal bienniums, the department shall consider an applicant to be eligible for a cost–sharing grant for a project under this section if the project is funded or executed in whole or in part by the U.S. army corps of engineers under 33 USC 701s.

History: 1999 a. 9; 2015 a. 55; 2017 a. 59, 369.

Cross–reference: See also ch. NR 199, Wis. adm. code.

281.67 Watershed projects. The department shall assist and advise the department of agriculture, trade and consumer protection regarding watershed projects under 16 USC 1001 to 1008.

History: 1981 c. 346; 1995 a. 227 s. 429; Stats. 1995 s. 281.67.

281.68 Lake management planning grants and lake monitoring and protection contracts. (1) DEFINITIONS. In this section:

(ag) "Lake" includes a flowage.

(b) "Qualified lake association" means an association that meets the qualifications under sub. (3m) (a).

(c) "Qualified school district" is a school district that meets the qualifications under sub. (3m) (c).

(1m) PURPOSES OF GRANTS AND CONTRACTS. The department shall develop and administer a financial assistance program to provide lake management planning grants and to award contracts under sub. (1t) for projects to provide information and education on the use of lakes and natural lake ecosystems and on the quality of water in lakes and the quality of natural lake ecosystems.

(1r) USES OF GRANTS. Lake management planning grants shall be used to improve water quality assessment and planning and to aid in the selection of activities to do any of the following:

(a) Prevent pollution from entering into lakes or into natural lake ecosystems.

(b) Protect or improve the quality of water in lakes or the quality of natural lake ecosystems.

(1t) LAKE MONITORING AND PROTECTION CONTRACTS. The department may award contracts to public groups or persons for the creation and support of a statewide lake monitoring network. The contracts may include payments for the costs of all of the following:

(a) Training, equipment, and supplies necessary for water quality sample collection, lake surveys, and watercraft inspection.

(b) Handling, shipping, and laboratory analysis of water samples.

(c) Developing, maintaining, and managing a statewide database system for entering, tracking, evaluating, and reporting water quality and lake survey results.

(d) Producing and distributing water quality and lake survey results and reports.

(2) AMOUNT OF GRANTS AND CONTRACTS. (a) The department may provide a grant of 67 percent of the cost of a lake management planning project up to a total of $25,000 per grant. In each fiscal year, the total amount of moneys awarded as grants for lake management planning projects may not exceed $50,000 for any one lake.

(b) The total amount of lake monitoring and protection contracts for each fiscal year may not exceed 25 percent of the total amount appropriated under s. 20.370 (6) (ar), (as), and (av).

(3) RULES FOR GRANTS AND CONTRACTS. (a) The department shall promulgate rules for the administration of the lake management planning grant program which shall include all of the following:

1. Eligible recipients to consist of nonprofit conservation organizations, as defined in s. 23.0955 (1), counties, cities, towns, villages, qualified lake associations, town sanitary districts, qualified school districts, public inland lake protection and rehabilitation districts, and other local governmental units, as defined in s.

66.0131 (1) (a), that are established for the purpose of lake management.

2. Eligible activities, which shall include all of the following for lakes and natural lake ecosystems:

a. Data collection.

b. Assessments of water quality and of fish and aquatic life and their habitat.

c. Assessments of the uses of a lake and the uses of the land surrounding the lake.

d. Nonpoint source pollution evaluation.

e. Informational or educational programs and materials.

f. Providing programs and materials that promote the monitoring of private on–site wastewater treatment systems, the reduction in the use of environmentally harmful chemicals, water safety, and the protection of natural lake ecosystems.

(bg) The department shall promulgate rules for the administration of the lake monitoring and protection contracts program, which shall specify the eligible activities and qualifications for participation in the statewide lake monitoring and protection network. Eligible activities shall include providing technical assistance to public or private entities that apply for, or have received, a grant under s. 23.22 (2) (c). Qualified participants shall include counties and public or private entities that manage aquatic invasive species under a management plan approved by the department.

(3m) QUALIFIED ENTITIES. (a) To be a qualified lake association, an association shall do all of the following:

1. Demonstrate that it is incorporated under ch. 181.

2. Specify in its articles of incorporation or bylaws that a substantial purpose of its being incorporated is to support the protection or improvement of one or more inland lakes for the benefit of the general public.

3. Demonstrate that the substantial purpose of its past actions was to support the protection or improvement of one or more inland lakes for the benefit of the general public.

4. Allow to be a member any individual who for at least one month each year resides on or within one mile of an inland lake for which the association was incorporated.

5. Allow to be a member any individual who owns real estate on or within one mile of an inland lake for which the association was incorporated.

6. Not have articles of incorporation or bylaws which limit or deny the right of any member or any class of members to vote as permitted under s. 181.0721 (1).

7. Demonstrate that it has been in existence for at least one year.

8. Demonstrate that it has at least 25 members.

9. Require payment of an annual membership fee as set by the department by rule under par. (b).

(b) For purposes of par. (a) 9., the department shall set by rule the maximum amount and the minimum amount that may be charged as an annual membership fee.

(c) To be a qualified school district, the board of the school district shall adopt a resolution to conduct a lake management planning project that will do all of the following:

1. Provide information or education on the use of lakes or natural lake ecosystems, on the quality of water in lakes, or on the quality of natural lake ecosystems.

2. Allow another eligible recipient of grants under this section to cooperate with the school district in the project.

(4) ELIGIBILITY FOR LAKE MANAGEMENT PLANNING GRANTS. At the completion of a lake management planning project, upon request of the recipient of a grant under this section, the department may approve recommendations made as a result of the project as eligible activities for a lake management grant under s. 281.69.

History: 1989 a. 31; 1989 a. 160 ss. 1, 3, 4; 1989 a. 359; 1991 a. 39, 269; 1995 a. 27; 1995 a. 227 s. 430; Stats. 1995 s. 281.68; 1997 a. 79; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 185; 2001 a. 16; 2003 a. 275; 2009 a. 28; 2011 a. 32, 146; 2015 a. 250.

Cross–reference: See also ch. NR 193, Wis. adm. code.

281.69 Lake management and classification grants and contracts. (1b) DEFINITIONS. In this section:

(ae) "Floating treatment wetland" means an artificial, buoyant platform for keeping plants afloat that mimics the function of natural wetlands and allows plants to grow in water that is typically too deep for them and that is placed below the ordinary high–water mark in a navigable water.

(ag) "Lake" includes a flowage.

(bn) "Nonprofit conservation organization" has the meaning given in s. 23.0955 (1).

(c) "Qualified lake association" is an association that meets the qualifications under s. 281.68 (3m) (a).

(d) "Wetland" has the meaning given in s. 23.32 (1).

(1m) TYPES OF PROJECTS. The department shall develop and administer a financial assistance program to provide grants for the following 2 types of projects:

(a) Lake management projects that will improve or protect the quality of water in lakes or the quality of natural lake ecosystems.

(b) Lake classification projects that will classify lakes by use and implement protection activities for the lakes based on their classification.

(1r) CONTRACTS. The department may award contracts for lake classification technical assistance projects to be conducted by nonprofit corporations that will provide educational and technical assistance.

(2) AMOUNTS OF GRANTS AND CONTRACTS. (a) A grant for a lake management project may be made for up to 75 percent of the cost of the project but may not provide more than $200,000 per grant.

(b) A grant for a lake classification project may be made for up to 75 percent of the cost of the project but may not exceed $50,000 per grant.

(c) A contract for a lake classification technical assistance project may not exceed $200,000.

(3) RULES FOR LAKE MANAGEMENT PROJECT GRANTS. The department shall promulgate rules to administer and to determine eligibility for grants for lake management projects. The rules shall include all of the following:

(a) A designation of eligible recipients, which shall include nonprofit conservation organizations, counties, cities, towns, villages, qualified lake associations, town sanitary districts, public inland lake protection and rehabilitation districts, and other local governmental units, as defined in s. 66.0131 (1) (a), that are established for the purpose of lake management.

(b) A designation of eligible activities, which shall include all of the following:

1. The purchase of land or of a conservation easement, as defined in s. 700.40 (1) (a), if the eligible recipient enters into a contract under s. 281.71 and if the purchase will substantially contribute to the protection or improvement of a lake's water quality or its natural ecosystem.

2. The restoration of a wetland if the restoration will protect or improve a lake's water quality or its natural ecosystem.

2m. The restoration of habitat in a littoral area of a lake or along its shoreline if the restoration will protect or improve the lake's water quality or its natural ecosystem.

3. The development of local regulations or ordinances that will protect or improve a lake's water quality or its natural ecosystem.

4. An activity that is approved by the department and that is needed to implement a recommendation made as a result of a plan to improve or protect the quality of water in a lake or the natural ecosystem of a lake.

5. A wetland enhancement or restoration project under sub. (3m).

6. The placement of a floating treatment wetland in a lake.

(3m) GRANTS FOR WETLANDS. (a) The department shall provide grants of $10,000 each from the appropriation under s. 20.370 (6) (ar) for lake management projects to eligible recipients, other than nonprofit conservation organizations, that have completed a comprehensive land use plan that includes a wetland enhancement or restoration project. The grant shall be used for the implementation of the wetland enhancement or restoration project. The 75 percent limitation under sub. (2) (a) does not apply to these grants.

(b) The department shall provide up to 25 grants per fiscal year during fiscal years 2001–02 and 2002–03. The department shall award the grants to eligible recipients who qualify for the grants in the order in which the grant applications are received by the department.

(5) LAKE CLASSIFICATION PROJECT GRANTS. (a) The department shall promulgate rules to administer and to determine eligibility for grants for lake classification projects.

(b) The rules under par. (a) shall include guidelines to be used for lake classification. The guidelines shall require that certain factors be used in classifying each lake by use. The factors shall include all of the following:

1. The size, depth and shape of the lake.

2. The size of the lake's watershed.

3. The quality of the water in the lake.

4. The potential of the lake to be overused for recreational purposes.

5. The potential for the development of land surrounding the lake.

6. The potential of the lake to suffer from nonpoint source water pollution.

7. The type and size of the fish and wildlife population in and around the lake.

(c) The rules under par. (a) shall designate which classification and protection activities are eligible for lake classification grants.

(d) The department may award lake classification grants only to counties.

(6) LAKE CLASSIFICATION TECHNICAL ASSISTANCE CONTRACTS. A nonprofit corporation receiving a lake classification technical assistance contract shall use the money provided under the contract to provide educational and technical assistance to local units of government and lake management organizations that will participate in a lake classification project.

(7) PROHIBITED ACTIVITIES. The department may not promulgate a rule designating dam maintenance and repair as an eligible activity for grants under this section.

History: 1991 a. 39; 1993 a. 343; 1995 a. 27; 1995 a. 227 s. 431; Stats. 1995 s. 281.69; 1997 a. 27; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 185; 2001 a. 6, 16; 2009 a. 180; 2019 a. 177.

Cross–reference: See also ch. NR 193, Wis. adm. code.

281.695 Aids to municipalities for prevention and abatement of water pollution. (1) As used in this section "municipality" means any city, town, village, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewerage district.

(2) Any municipality is authorized to apply for and accept grants or any other aid which the United States Government or any agency thereof has authorized or may hereafter authorize to be given or made to the several states of the United States or to any political subdivisions or agencies thereof within the states for the construction of public improvements, including all necessary action preliminary thereto, the purpose of which is to aid in the prevention or abatement of water pollution.

(3) Any municipality is further authorized to accept contributions and other aid from commercial, industrial and other establishments for the purpose of aiding in the prevention or abatement of water pollution and in furtherance of such purpose to enter into contracts and agreements with such commercial, industrial and other establishments covering the following:

(a) The collection, treatment and disposal of sewage and industrial wastes from commercial, industrial and other establishments;

(b) The use and operation by such municipality of sewage collection, treatment or disposal facilities owned by any such commercial, industrial and other establishment;

(c) The coordination of the sewage collection, treatment or disposal facilities of the municipality with the sewage collection, treatment or disposal facilities of any commercial, industrial and other establishment.

(4) When determined by its governing body to be in the public interest any municipality is authorized to enter into and perform contracts, whether long–term or short–term, with any industrial establishment or establishments providing for sewage or other facilities, including the operation thereof, to abate or reduce the pollution of waters caused in whole or in part by discharges of industrial wastes by the industrial establishment or establishments on such terms as may be reasonable and proper.

(5) Any municipality may participate in the state financial assistance program for soil and water resources protection established under s. 281.55, 281.57 or 281.65 and may enter into agreements with the department of natural resources for that purpose. Any municipality may participate in the clean water fund program under ss. 281.58 and 281.59 and may enter into agreements with the department of administration and the department of natural resources for that purpose. Any county may participate in the state financial assistance program for soil and water resources protection established under s. 92.14 and may enter into agreements with the department of agriculture, trade and consumer protection for that purpose.

(6) Any municipality is authorized to enter into contracts with a nonprofit–sharing corporation for the municipality to design and construct the projects it will sublease from the department of natural resources pursuant to s. 281.55 (6) (b).

(7) The provisions of this section shall not be construed by way of limitation or restriction of the powers otherwise granted municipalities but shall be deemed as an addition to and a complete alternative to such powers.

History: 1975 c. 197; 1979 c. 34 s. 2102 (39) (d); 1983 a. 532 s. 36; 1987 a. 27, 197, 399, 403; 1989 a. 56, 366; 1995 a. 227; 1999 a. 150 s. 370; Stats. 1999 s. 281.695.

281.70 River protection grants. (1) DEFINITIONS. In this section:

(a) "Floating treatment wetland" means an artificial, buoyant platform for keeping plants afloat that mimics the function of natural wetlands and allows plants to grow in water that is typically too deep for them and that is placed below the ordinary high–water mark in a navigable water.

(b) "River" includes a stream or a flowage.

(2) TYPES OF PROJECTS. The department shall develop and administer a financial assistance program to provide grants for planning projects and management projects.

(3) AMOUNTS OF GRANTS. (a) A grant for a planning project may be made for up to 75 percent of the cost of the project but may not exceed $10,000 per grant.

(b) A grant for a management project may be made for up to 75 percent of the cost of the project but may not exceed $50,000 per grant.

(4) ELIGIBLE RECIPIENTS. (a) All of the following shall be eligible for grants under this section:

1. Local governmental units, as defined in s. 66.0131 (1) (a).

2. River management organizations that meet the qualifications under par. (b).

3. Nonprofit conservation organizations, as defined in s. 23.0955 (1).

(b) The department shall promulgate rules to establish the qualifications that a river management organization must meet to qualify for a grant under this section.

(5) ELIGIBLE ACTIVITIES. The department shall promulgate rules to do all of the following:

(a) Designate activities that are eligible for grants for planning projects. Eligible activities under the rules for these grants shall include all of the following:

1. Data collection.

2. Assessments of water quality and of fish and aquatic life and their habitat.

3. Assessments of the uses of a river and the uses of the land surrounding the river.

4. Nonpoint source pollution evaluation.

5. Informational or educational programs and materials as specified in par. (b).

6. Programs and materials to assist persons in forming river management organizations or other groups to protect or improve rivers and natural riverine ecosystems.

(b) For purposes of par. (a) 5., specify informational or educational materials that may be provided on any of the following:

1. Protecting or improving the ways in which rivers are used.

2. Protecting or improving the quality of water in rivers.

3. Protecting or improving the quality of natural riverine ecosystems.

4. Protecting or improving fish populations, aquatic life or fish habitat in rivers.

(c) Designate activities that are eligible for grants for management projects. Eligible activities under the rules for these grants shall include all of the following:

1. The purchase of land or of a conservation easement, as defined in s. 700.40 (1) (a) if the recipient enters into a contract under s. 281.71 and if the purchase will substantially contribute to the protection or improvement of the river's water quality or its natural ecosystem.

2. The restoration of in–stream or shoreline habitat.

3. The development of local regulations or ordinances that will protect or improve the river's water quality or its natural ecosystem.

4. An activity that is approved by the department and that is needed to implement a recommendation made as a result of a plan to protect or improve the river's water quality or its natural ecosystem.

5. Installation of pollution control practices.

6. The placement of a floating treatment wetland in a river.

(6) ELIGIBILITY; TYPES OF RIVERS. The department shall promulgate rules establishing the types of natural riverine ecosystems that are eligible for grants under this section.

(7) ELIGIBILITY; OTHER. At the completion of a planning project, upon request of the recipient of the grant for the planning project, the department may approve as eligible activities for a management project grant the recommendations that were made as a result of the project.

History: 1999 a. 9; 2001 a. 30; 2019 a. 177; s. 35.17 correction in (1) (intro.) and (b).

Cross–reference: See also ch. NR 193, Wis. adm. code.

281.71 Lake management project grants; river protection grants; purchases. (1) In order to receive a grant for a purchase under s. 281.69 (3) (b) 1. or 281.70 (5) (c) 1., the recipient shall enter into a contract with the department that contains all of the following provisions:

(a) Standards for the management of the property to be acquired.

(b) A prohibition against using the property to be acquired as security for any debt unless the department approves the incurring of the debt.

(c) A prohibition against the property being closed to the public unless the department determines it is necessary to protect wild animals, plants or other natural features.

(d) A clause that any subsequent sale or transfer of the property to be acquired is subject to subs. (2) and (3).

(2) The recipient of the grant used for a purchase under s. 281.69 (3) (b) 1. or 281.70 (5) (c) 1. may subsequently sell or transfer the acquired property to a 3rd party other than a creditor of the recipient if all of the following apply:

(a) The department approves the subsequent sale or transfer.

(b) The party to whom the property is sold or transferred enters into a new contract with the department that contains the provisions under sub. (1).

(3) The recipient of the grant used for a purchase under s. 281.69 (3) (b) 1. or 281.70 (5) (c) 1. may subsequently sell or transfer the acquired property to satisfy a debt or other obligation if the department approves the sale or transfer.

(4) If the recipient violates any essential provision of the contract, title to the acquired property shall vest in the state.

(5) The instrument conveying the property to the recipient shall state the interest of the state under sub. (4). The contract entered into under sub. (1) and the instrument of conveyance shall be recorded in the office of the register of deeds of each county in which the property is located.

History: 1999 a. 9 s. 2548.

281.72 River protection; contracts with nonprofit organizations. (1) DEFINITION. In this section, "nonprofit conservation organization" means a river management organization that meets the qualifications under s. 281.70 (4) (b) or a nonprofit corporation, a charitable trust or other nonprofit association whose purposes include the protection of rivers and that is described in section 501 (c) (3) of the Internal Revenue Code and is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(2) REQUIREMENTS TO RECEIVE CONTRACTS. The department shall provide contracts to nonstock, nonprofit corporations that are described under section 501 (c) (3) or (4) of the Internal Revenue Code and that are organized in this state. For a nonstock, profit corporation to qualify for a contract, the corporation shall meet all of the following requirements:

(a) The corporation is exempt from taxation under section 501 (a) of the Internal Revenue Code.

(b) The corporation provides support to nonprofit conservation organizations.

(c) The corporation has a board of directors that has a majority of members who are representatives of nonprofit conservation organizations.

(d) The corporation contributes, to be used with the contract, $1 for every $3 it receives under the contract.

(3) REQUIREMENTS UNDER CONTRACTS. A corporation receiving a contract under this subsection shall do all of the following:

(a) Assist in the establishment of nonprofit conservation organizations.

(b) Provide technical assistance to nonprofit conservation organizations.

(c) Conduct conferences on topics for which technical assistance is provided under par. (b).

History: 1999 a. 9.

SUBCHAPTER VI

COMPENSATION

281.75 Compensation for well contamination and abandonment. (1) DEFINITIONS. In this section:

(a) "Alternate water supply" means a supply of potable water obtained in bottles, by tank truck or by other similar means.

(b) "Contaminated well" or "contaminated private water supply" means a well or private water supply which:

1. Produces water containing one or more substances of public health concern in excess of a primary maximum contaminant level promulgated in the national drinking water standards in 40 CFR 141 and 143;

2. Produces water containing one or more substances of public health concern in excess of an enforcement standard under ch. 160; or

3. Is subject to a written advisory opinion, issued by the department, containing a specific descriptive reference to the well or private water supply and recommending that the well or private water supply not be used because of potential human health risks.

(c) "Groundwater" means any of the waters of the state occurring in a saturated subsurface geological formation of permeable rock or soil.

(d) "Livestock" has the meaning specified under s. 95.80 (1) (b) and includes poultry.

(e) "Livestock water supply" means a well which is used as a source of potable water only for livestock and which is:

1. Approved by the department of agriculture, trade and consumer protection for grade A milk production under s. 97.24; or

2. Constructed by boring or drilling.

(f) "Private water supply" means a residential water supply or a livestock water supply.

(g) "Residential water supply" means a well which is used as a source of potable water for humans or humans and livestock and is connected to 14 or less dwelling units.

(h) "Well," if not followed by the words, "subject to abandonment," means an excavation or opening in the ground made by boring, drilling or driving for the purpose of obtaining a supply of groundwater. "Well" does not include dug wells.

(i) "Well subject to abandonment" means a well that is required to be abandoned [filled and sealed] under s. NR 812.26 (2) (a), Wis. Adm. Code, [s. NR 812.26 (4) (a), Wis. Adm. Code,] or that the department may require to be abandoned [filled and sealed] under s. NR 812.26 (2) (b), Wis. Adm. Code [s. NR 812.26 (4) (b), Wis. Adm. Code].

NOTE: The correct term and cross–references are shown in brackets. Corrective legislation is pending.

(2) DUTIES OF THE DEPARTMENT. The department shall:

(a) Establish by rule procedures for the submission, review and determination of claims under this section.

(b) Assist claimants in submitting applications for compensation under this section.

(c) Issue awards under this section.

(d) Establish casing depth and other construction requirements for a new or reconstructed private water supply.

(e) Declare an area of special eligibility for compensation for well contamination, based on contamination reported after December 31, 2005, if all of the following criteria are satisfied:

1. Results of tests performed by a laboratory certified under s. 299.11 establish that wells in the area are contaminated by fecal bacteria.

2. Evidence demonstrates that the bacterial contamination is caused by livestock.

(f) Establish requirements for the filling and sealing of wells subject to abandonment.

(3) WELLS FOR WHICH A CLAIM MAY BE SUBMITTED. A claim may be submitted for a private water supply which, at the time of submitting the claim, is contaminated or for a well subject to abandonment.

(4) WHO MAY SUBMIT A CLAIM. (a) Except as provided under par. (b), a landowner or lessee of property on which is located a contaminated private water supply or a well subject to abandonment, or the spouse, dependent, heir, assign or legal representative of the landowner or lessee, may submit a claim under this section.

(b) The following entities may not submit a claim:

1. The state.

2. An office, department, independent agency, institution of higher education, association, society or other body in state government.

3. An authority created under subch. II of ch. 114 or ch. 231, 233, 234, 237, or 238.

4. A city, village, town, county or special purpose district.

5. A federal agency, department or instrumentality.

6. An interstate agency.

(4m) INCOME LIMITATION. (a) In order to be eligible for an award under this section, the annual family income of the landowner or lessee of property on which is located a contaminated water supply or a well subject to abandonment may not exceed $65,000.

(b) Except as provided under par. (d), annual family income shall be based upon the adjusted gross income of the landowner or lessee and the landowner's or lessee's spouse, if any, as computed for Wisconsin income or franchise tax purposes for the taxable year prior to the year in which the claim is made. The county median income shall be determined based upon the most recent statistics published by the federal department of housing and urban development for the year prior to the year of the enforcement order.

(c) In order to be eligible for an award under this section, the claimant shall submit a copy of the designated income or franchise tax returns for the taxable year prior to the year in which the claim is made together with the application under sub. (5). The claimant shall submit a copy of the landowner's or lessee's Wisconsin franchise tax return, joint Wisconsin income tax return or, if filing separately, the landowner's or lessee's separate Wisconsin income tax return and the separate Wisconsin income tax return of his or her spouse, if any.

(d) The department may disregard the Wisconsin income tax return for the taxable year prior to the year in which the claim is made and may determine annual family income based upon satisfactory evidence of adjusted gross income or projected taxable income of the landowner or lessee and the landowner's or lessee's spouse in the current year.

(5) APPLICATION. (a) A claimant shall submit a claim on forms provided by the department. The claimant shall verify the claim by affidavit.

(b) The claim shall contain:

1. Test results which show that the private water supply is contaminated, as defined under sub. (1) (b) 1. or 2., information to show that the private water supply is contaminated as defined under sub. (1) (b) 3., or information to show that the well is a well subject to abandonment;

2. If the claim is based on a contaminated private water supply, any information available to the claimant regarding possible sources of contamination of the private water supply; and

3. Any other information requested by the department.

(c) The department shall notify the claimant if the claim is complete or specify the additional information which is required to be submitted. If the claimant does not submit a complete claim, as determined by the department, the department may not proceed under this section until it receives a complete claim.

(d) A claim constitutes consent by the claimant to:

1. Enter the property where the private water supply or well subject to abandonment is located during normal business hours and conduct any investigations or tests necessary to verify the claim; and

2. If the claim is based on a contaminated private water supply, cooperate with the state in any administrative, civil or criminal action involving a person or activity alleged to have caused the private water supply to become contaminated.

(e) The department shall consolidate claims if more than one claimant submits a claim for the same private water supply or for the same well subject to abandonment.

(f) The department shall allocate money for the payment of claims according to the order in which completed claims are received. The department may conditionally approve a completed claim even if the appropriation under s. 20.370 (6) (cr) is insufficient to pay the claim. The department shall allocate money for the payment of a claim which is conditionally approved as soon as funds become available.

(6) DETERMINING CONTAMINATION. (a) Contamination of a private water supply, as defined under sub. (1) (b) 1. or 2., is required to be established by analysis of at least 2 samples of water, taken at least 2 weeks apart, in a manner which assures the validity of the test results. The samples shall be tested by a laboratory certified under s. 299.11.

(b) The department may reject test results which are not sufficiently recent.

(c) The department, at its own expense, may test additional samples from any private water supply for which a claim is submitted.

(7) PURPOSE AND AMOUNT OF AWARD. (a) If the department finds that the claimant meets all the requirements of this section and rules promulgated under this section and that the private water supply is contaminated or that the well is a well subject to abandonment, the department shall issue an award. The award may not pay more than 75 percent of the eligible costs. The award may not pay any portion of eligible costs in excess of $16,000.

(b) If the annual family income of the claimant exceeds $45,000, the amount of the award is the amount determined under par. (a) less 30 percent of the amount by which the claimant's income exceeds $45,000.

(c) Eligible costs under this subsection include the following items only:

1. If the claim is based on a contaminated private water supply, the cost of obtaining an alternate water supply;

2. If the claim is based on a contaminated private water supply, the cost of any one of the following:

a. Equipment used for treating the water;

b. Reconstructing the private water supply;

c. Constructing a new private water supply;

d. Providing for a public water supply to replace the private water supply including costs related to connection to the public water supply and costs related to special assessments and one–time municipal charges for capital improvements and services involved in providing the public water supply; or

e. Providing a connection to an existing private water supply;

3. The cost of abandoning a contaminated private water supply, if a new private water supply is constructed, if connection to a public or private water supply is provided, or if the claim is based on a well subject to abandonment;

4. The cost of obtaining 2 tests to show that the private water supply was contaminated if the claim is based on a contaminated private water supply and the cost of those tests was originally paid by the claimant;

5. The cost of purchasing and installing a pump, if the claim is based on a contaminated private water supply and a new pump is necessary for the new or reconstructed private water supply; and

6. If the claim is based on a contaminated private water supply, the cost of relocating pipes, as necessary, to connect the replacement water supply to the buildings served by it.

7. If the claim is based on a contaminated water supply that is eligible under sub. (11) (ae), the cost of properly abandoning any improperly abandoned private water supply located on the property owned or leased by the claimant.

(8) COPAYMENT. The department shall require a copayment of $250 unless the claim is solely for well abandonment.

(9) CONTAMINATION STANDARD; NITRATES. (a) This subsection applies to a private water supply which:

1. Is a livestock water supply or is a residential water supply which is used as a source of potable water for livestock as well as for a residence; and

2. Is used at least 3 months each year and while in use provides an estimated average of more than 100 gallons per day for consumption by livestock.

(b) Notwithstanding the requirement of contamination under sub. (7), if a private water supply meets the criteria under par. (a) and the claim is based upon contamination by nitrates and not by any other substance, the department may make an award only if the private water supply produces water containing nitrates in excess of 40 parts per million expressed as nitrate–nitrogen.

(10) ISSUANCE OF AWARD. (a) The department shall issue awards without regard to fault.

(b) Contributory negligence is not a bar to recovery and no award may be diminished as the result of negligence attributable to the claimant or to any person who is entitled to submit a claim.

(c) The department shall pay each claim within 30 days after a completed payment request is submitted. The department shall pay eligible costs under sub. (7) based upon cost tables and rules promulgated under sub. (11) (c).

(11) DENIAL OF CLAIM; LIMITS ON AWARDS. (a) *Denial of claim.* The department shall deny a claim if:

1. The claim is not within the scope of this section.

2. The claimant submits a fraudulent claim.

3. The claim is for reimbursement of costs incurred before the department determined that the claim was complete under sub. (5) (c).

4. If the claim is based on a contaminated private water supply, one or more of the contaminants upon which the claim is based was introduced into the well through the plumbing connected to the well.

5. If the claim is based on a contaminated private water supply, one or more of the contaminants upon which the claim is based was introduced into the well intentionally by a claimant or a person who would be directly benefited by payment of the claim.

6. If the claim is based on a contaminated private water supply, all of the contaminants upon which the claim is based are naturally occurring substances and the concentration of the contaminants in water produced by the well does not significantly exceed the background concentration of the contaminants in groundwater at that location.

7. Except as provided in sub. (14), an award has been made under this section within the previous 10 years for the parcel of land where the private water supply is located and the claim is based on a contaminated private water supply.

8. If the claim is based on a contaminated private water supply, the contaminated private water supply is a residential water supply, is contaminated by bacteria or nitrates or both, and is not contaminated by any other substance, except as provided in par. (ae).

9. If the claim is based on a contaminated private water supply, the contaminated private water supply is a livestock water supply, is contaminated by bacteria, and is not contaminated by any other substance.

10. The amount of the award determined under sub. (7) would be less than $100.

(ae) *Bacterial contamination.* Paragraph (a) 8. does not apply to a residential well that is contaminated by bacteria and is in an area of special eligibility for compensation for well contamination as declared by the department under sub. (2) (e).

(am) *Emergency.* Notwithstanding par. (a) 3., the department may authorize expenditures before a claim is submitted if the department determines that an emergency situation exists. The department shall establish standards and procedures for the payment of claims in emergency situations.

(b) *Limits on awards for contaminated wells; purposes.* 1. An award may be issued for purchasing and installing a pump if a pump is necessary for the new or reconstructed private water supply.

2. An award may be issued for water treatment only if the contamination cannot be remedied by reconstruction or replacement of the private water supply, or connection to another water supply is not feasible.

3. An award may not be issued for the replacement of a sand point well with a drilled well unless:

a. The department determines that replacement with another sand point well is not feasible; and

b. The department determines that the person had no knowledge or reason to believe the sand point well would become contaminated at the time it was constructed.

4. An award may not be issued for the reimbursement of costs of an alternative water supply incurred before the department confirmed that contamination existed.

(c) *Limits on awards; costs determined by rule.* The department shall determine by rule the usual and customary costs of each item for which an award may be issued under sub. (7). The rule shall reflect the range of costs resulting from differences in costs of construction, labor, equipment and supplies throughout the state, various soil and bedrock conditions, sizes and depths of wells, types of well construction and other factors which may affect the costs. The department shall determine the amount of all awards according to the rules promulgated under this paragraph.

(d) *Limits on awards for contaminated wells; amount.* Awards shall be issued subject to the following limitations on amount:

1. If the contamination can be remedied by reconstruction of the private water supply, construction of a new private water supply or connection to an existing public or private water supply, the department shall issue an award for the least expensive means of remedying the contamination.

2. If the contamination cannot be remedied by a new or reconstructed private water supply, the maximum award for connection to an existing public or private water supply is 150 percent of the cost of constructing a new private water supply.

3. An award for an alternate water supply is limited to the amount necessary to obtain water for a one–year period, except as provided under sub. (13).

(11m) ABANDONMENT OF CERTAIN PRIVATE WATER SUPPLIES. If the department determines that there is an improperly abandoned private water supply located on property owned or leased by a claimant with a contaminated private water supply that is eligible under sub. (11) (ae), the department may issue an award only if the claimant properly abandons the improperly abandoned private water supply.

(12) RECONSTRUCTION OR REPLACEMENT OF WELLS. If the department determines that the claimant is entitled to compensation for reconstruction of a private water supply or construction of a new private water supply, the department may issue the award only if all of the following conditions are satisfied:

(a) The well complies with casing depth and other construction requirements established by the department.

(b) If the well is a drilled well, it is constructed by a well driller licensed under ch. 280 or, if the well is a sandpoint well, it is constructed by a well driller or pump installer licensed under ch. 280.

(13) COORDINATION OF COMPENSATION AND REMEDIAL ACTION. If the secretary determines that the implementation of a response to groundwater contamination by a regulatory agency under s. 160.25 can be expected to remedy the contamination in a private water supply in 2 years or less, the secretary may order a delay in the issuance of an award for up to a 2–year period. If the secretary issues an order under this subsection, the department shall issue an award for an alternate water supply while the order is in effect or until the well is no longer contaminated, whichever is earlier. If, upon expiration of the order, the department determines that the private water supply is not contaminated, the department may not issue an award under this section.

(14) NEW CLAIMS. (a) *New contamination.* A claimant who receives an award for the purpose of constructing or reconstructing a private water supply or connection to a private water supply may submit a new claim if the contamination is from a new source and, if the previous award was for a new or reconstructed private water supply, the well was constructed properly.

(b) *Failure to eliminate contamination.* 1. A claimant who receives an award for the purpose of constructing or reconstructing a private water supply or connection to a private water supply may submit a new claim if the contamination is not eliminated and, if the award was for a new or reconstructed private water supply, the well was constructed properly.

2. Only one additional claim may be submitted under this paragraph within 10 years after an award is made.

(15) TOLLING OF STATUTE OF LIMITATIONS. Any law limiting the time for commencement of an action is tolled by the filing of a claim. The law limiting the time for commencement of the action is tolled for the period from the first filing of a claim until the department issues an award under this section. If a period of limitation is tolled by the filing of a claim, and the time remaining after issuance of the final award in which an action may be commenced is less than 30 days, the period within which the action may be commenced is extended to 30 days from the date of issuance of the final award.

(16) RELATION TO OTHER ACTIONS. (a) The existence of the relief under this section is not a bar to any other statutory or common law remedy.

(b) A person is not required to exhaust the remedy available under this section before commencing an action seeking any other statutory or common law remedy.

(c) The findings and conclusions under this section are not admissible in any civil action.

(d) The state is subrogated to the rights of a claimant who obtains an award under this section in an amount equal to the award. All moneys recovered under this paragraph shall be credited to the environmental fund for environmental management.

(17) APPLICABILITY. (a) A claim based on a contaminated private water supply may be submitted irrespective of the time when the contamination is or could have been discovered in the private water supply. A claim may be submitted for contamination which commenced before May 11, 1984, and continues at the time a claim is submitted under this section.

(b) This section does not apply to contamination which is compensable under subch. II of ch. 107 or s. 293.65 (4) or 295.61 (8).

(18) SUSPENSION OR REVOCATION OF LICENSES. The department may suspend or revoke a license issued under ch. 280 if the department finds that the licensee falsified information submitted under this section. The department of safety and professional services may suspend or revoke the license of a plumber licensed under ch. 145 if the department of safety and professional services finds that the plumber falsified information submitted under this section.

(19) PENALTIES. Whoever does any of the following shall forfeit not less than $100 nor more than $1,000 and shall be required to repay an award issued to that person under this section:

(a) Causes or exacerbates the contamination of a private water supply for the purpose of submitting a claim under this section; or

(b) Submits a fraudulent claim under this section.

History: 1983 a. 410; 1985 a. 22, 29; 1989 a. 31; 1991 a. 39; 1993 a. 413; 1995 a. 27 ss. 4208 to 4210, 9116 (5); 1995 a. 227 s. 401; Stats. 1995 s. 281.75; 1997 a. 27;

2001 a. 16; 2005 a. 123, 335; 2007 a. 20; 2009 a. 28; 2011 a. 7, 10, 32; 2013 a. 1; 2017 a. 69.

Cross–reference: See also ch. NR 123, Wis. adm. code.

281.77 Damage to water supplies. (1) In this section:

(a) "Private water supply" means a well that is used as a water supply for humans or a well that is constructed by drilling and is used as a water supply for livestock, as defined in s. 95.80 (1) (b), or poultry.

(b) "Regulated activity" means an activity for which the department may issue an order under chs. 285 or 289 to 299 or this chapter, if the activity is conducted in violation of chs. 285 or 289 to 299 or this chapter or in violation of licenses, permits or special orders issued or rules promulgated under chs. 285 or 289 to 299 or this chapter.

(2) (a) Except as provided under par. (b), if the department finds that a regulated activity has caused a private water supply to become contaminated, polluted or unfit for consumption by humans, livestock or poultry, the department may conduct a hearing on the matter. The department shall conduct a hearing on the matter upon request of the owner or operator of the regulated activity. At the close of the hearing, or at any time if no hearing is held, the department may order the owner or operator of the regulated activity to treat the water to render it fit for consumption by humans, livestock and poultry, repair the private water supply or replace the private water supply and to reimburse the town, village or city for the cost of providing water under sub. (4).

(b) If the department finds that a regulated activity caused a private water supply to become contaminated, polluted or unfit for consumption by humans, livestock or poultry, and if the regulated activity is an approved facility, as defined in s. 289.01 (3), the department may conduct a hearing under s. 292.31 (3) (f). If the damage to the private water supply is caused by an occurrence not anticipated in the plan of operation which poses a substantial hazard to public health or welfare, the department may expend moneys in the environmental fund that are available for environmental repair to treat the water to render it drinkable, or to repair or replace the private water supply, and to reimburse the town, village or city for the cost of providing water under sub. (4). If the damage to the private water supply is not caused by an occurrence not anticipated in the plan of operation, if the damage does not pose a substantial hazard to public health or welfare, or if moneys in the environmental fund that may be used for environmental repair are insufficient, the department may order the owner or operator of the regulated activity to treat the water to render it fit for consumption by humans, livestock and poultry, or to repair or replace the private water supply, and to reimburse the town, village or city for the cost of providing water under sub. (4).

(3) In any action brought by the department of justice under s. 299.95, if the court finds that a regulated activity owned or operated by the defendant has caused a private water supply to become contaminated, polluted or unfit for consumption by humans, livestock or poultry, the court may order the defendant to treat the water to render it fit for consumption by humans, livestock and poultry, repair the private water supply or replace the private water supply and to reimburse the town, village or city for the cost of providing water under sub. (4).

(4) (a) The owner of land where the private water supply is located may submit the following information to the town, village or city where the private water supply is located:

1. Documentation from an action under sub. (2) or (3) showing that the department or the department of justice is seeking to obtain treatment, repair or replacement of the damaged private water supply.

2. A declaration of the need for an immediate alternative source of water.

(b) A person who submits information under par. (a) may file a claim with the town, village or city where the private water supply is located. The town, village or city shall supply necessary amounts of water to replace that water formerly obtained from the damaged private water supply. Responsibility to supply water commences at the time the claim is filed. Responsibility to supply water ends upon notification to the town, village or city that an order under sub. (2) or (3) has been complied with or upon a finding that the regulated activity is not the cause of the damage.

(c) If the department or the court does not find that the regulated activity is the cause of the damage to a private water supply, reimbursement to the town, village or city for the costs of supplying water under par. (b), if any, is the responsibility of the person who filed the claim. The town, city or village may assess the owner of the property where the private water supply is located for the costs of supplying water under this subsection by a special assessment under s. 66.0703.

History: 1981 c. 374; 1983 a. 27 s. 2202 (38); 1983 a. 410 ss. 75g to 77g; Stats. 1983 s. 144.265; 1989 a. 31; 1995 a. 227 s. 433; Stats. 1995 s. 281.77; 1999 a. 150 s. 672; 2005 a. 347.

NOTE: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

SUBCHAPTER VII

GREAT LAKES REMEDIAL ACTION

281.81 Definitions. In this subchapter:

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

(2) "Remedial action plan" means a comprehensive plan to clean up and restore the environment in a contaminated area that is in or adjacent to Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior and that is identified as an area of concern by the international joint commission under the Great Lakes water quality agreement.

History: 1995 a. 227 s. 412.

281.83 Remedial action in the Great Lakes and their tributaries. (1) The department may perform activities to clean up or to restore the environment in an area that is in or adjacent to Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior if the activities are included in a remedial action plan that is approved by the department.

(2) In selecting projects to perform under this section, the department shall consider the amount of state funds available, the availability of matching funds from federal, private or other sources, the willingness and ability of a responsible person to fund a project, the willingness and ability of a local governmental unit, as defined in s. 281.51 (1) (c), to undertake or assist in a project, the severity of the environmental contamination that a project will address and the size of the population affected by the contamination.

(3) (a) If a person provides funding for an activity that is part of a remedial action plan, that provision of funding is not evidence of liability or an admission of liability for any environmental contamination.

(b) The acceptance by the department of funding from a person for an activity that is part of a remedial action plan does not limit the ability of the department to take action against that person if the department determines that the person is responsible, in whole or in part, for environmental contamination.

History: 1995 a. 227 ss. 411, 413.

281.85 Great Lakes protection fund share. The department may use moneys from the appropriation under s. 20.370 (4) (ah) for any of the following purposes:

(1) To implement activities included in a remedial action plan.

(2) To restore or protect fish or wildlife habitats in or adjacent to Lake Michigan or Lake Superior.

(3) For planning or providing information related to cleaning up or protecting the Great Lakes.

History: 1995 a. 227 ss. 414, 416; 1997 a. 27.

281.87 Great Lakes contaminated sediment removal. The department may expend funds from the appropriation under s. 20.866 (2) (ti) to pay a portion of the costs of a project to remove contaminated sediment from Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior if the project is in an impaired water body that the department has identified under 33 USC 1313 (d) (1) (A) and the source of the impairment is contaminated sediment.

History: 2007 a. 20; 2009 a. 28.

SUBCHAPTER VIII

GENERAL PROVISIONS; ENFORCEMENT

281.91 State agency personnel to report water pollution. Personnel of all state agencies shall report any evidence of water pollution found by them to the department.

History: 1995 a. 227 ss. 396, 987.

281.92 Limitation. Nothing in this chapter affects ss. 196.01 to 196.79 or ch. 31.

History: 1979 c. 221 s. 624; Stats. 1979 s. 144.27; 1995 a. 227 s. 435; Stats. 1995 s. 281.92.

DNR may consider wetland water quality standards in Wis. Admin. Code ch. NR 103 when making a water level determination under s. 31.02 (1). This section does not preclude the DNR from applying the wetland water quality standards in ch. NR 103 or other parts of ch. 281, when appropriate, after weighing factors under s. 31.02 (1). Rock–Koshkonong Lake District v. Department of Natural Resources, 2013 WI 74, 350 Wis. 2d 45, 833 N.W.2d 800, 08–1523.

281.93 Hearings on certain water use actions. (1) PERMIT OR APPROVAL HOLDER OR APPLICANT; ORDER RECIPIENT. Any permit or approval, part of a permit or approval, condition or requirement in a permit or approval, order, decision or determination by the department under s. 281.344, 281.346, or 281.35 shall become effective unless the permit or approval holder or applicant or the order recipient seeks a hearing challenging the action in the following manner:

(a) *Petition.* The person seeking a hearing shall file a petition with the department within 30 days after the date of the action sought to be reviewed. The petition shall set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted, and the relief desired. Upon receipt of the petition, the department shall hold a hearing after at least 10 days' notice.

(b) *Hearing.* The hearing shall be a contested case under ch. 227. At the beginning of the hearing the petitioner shall present evidence in support of the allegations made in the petition. Following the hearing the department's action may be affirmed, modified, or withdrawn.

(1m) EFFECT OF A CHALLENGE. If a permit or approval holder or applicant seeks a hearing challenging part of a permit or approval or a condition or requirement in a permit or approval under sub. (1), the remainder of the permit or approval shall become effective and the permit or approval holder or applicant may, at its discretion, begin the activity for which the application was submitted or for which the permit or approval was issued.

(2) OTHER PERSONS. Except as provided in ss. 281.344 (4e) (g) and 281.346 (4e) (g), any person who is not entitled to seek a hearing under sub. (1) (intro.) and who meets the requirements of s. 227.42 (1) or who submitted comments in the public comment process under s. 281.344, 281.346, or 281.35 may seek review under sub. (1) of any permit or approval, part of a permit or approval, order, decision, or determination by the department under s. 281.344, 281.346, or 281.35.

(3) MINING HEARING. Subsections (1) and (2) do not apply if a hearing on the matter is conducted as a part of a hearing under s. 293.43.

History: 2007 a. 227.

281.94 Investigation of alleged water withdrawal violations. (1) Any 6 or more residents of this state may petition for an investigation of a withdrawal alleged to be in violation of s. 281.35, 281.344 (3) (a), or 281.346 (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 (4) to (6), 281.344 (3) (a), or 281.346 (3) (a) 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.

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

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

(b) Conduct a contested case hearing on the allegations of the petition. Within 60 days after the hearing, the department shall either dismiss the petition or notify the alleged violator of its finding that the allegations are true and order the alleged violator to take whatever action is necessary to achieve compliance with the statute, rule, condition, limitation or restriction.

(d) If the department determines that the allegations are untrue or that the petition was filed maliciously or in bad faith, dismiss the petition without holding a hearing.

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

History: 1985 a. 60; 1995 a. 227 s. 827; Stats. 1995 s. 281.94; 2007 a. 227.

281.95 Remedies; water withdrawal violations. Any person who makes a withdrawal in violation of s. 281.35, 281.344 (3) (a), or 281.346 (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 (4) to (6), 281.344 (3) (a), or 281.346 (3) (a) 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 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.

History: 1985 a. 60; 1995 a. 227 s. 828; Stats. 1995 s. 281.95; 2007 a. 227.

281.96 Visitorial powers of department. Every owner of an industrial establishment shall furnish to the department all information required by it in the discharge of its duties under subch. II, except s. 281.17 (6) and (7). Any member of the natural resources board or any employee of the department may enter any industrial establishment for the purpose of collecting such information, and no owner of an industrial establishment shall refuse to admit such member or employee. The department shall make such inspections at frequent intervals. The secretary and all members of the board shall have power for all purposes falling within the department's jurisdiction to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of necessary or essential data.

History: 1995 a. 227 ss. 402, 403.

281.97 Records; inspection. Records required by the department shall be kept by the owners and the department supplied with certified copies and such other information as it may require. Agents of the department may enter buildings, structures and premises of owners supplying the public or industrial plants

with water, ice, sewerage systems, sewage or refuse disposal service and private properties to collect samples, records and information, and to ascertain if the rules and orders of the department are complied with.

History: 1995 a. 227 s. 410; Stats. 1995 s. 281.97.

281.98 Penalties. (1) Except as provided in ss. 281.344 (14) (a), 281.36, 281.346 (14) (a), 281.47 (1) (d), 281.75 (19), and 281.99 (2), any person who violates this chapter or any rule promulgated or any plan approval, license, special order, or water quality certification issued under this chapter shall forfeit not less than $10 nor more than $5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed, or enjoined, this penalty does not accrue.

(2) In addition to the penalties provided under sub. (1) or s. 281.99 (2), the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of a violation of this chapter, including attorney fees. The department of justice shall deposit in the state treasury for deposit into the general fund all moneys that the court awards to the department or the state under this subsection. The costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).

(3) In addition to the penalties under sub. (1), the court may order the defendant to abate any nuisance, restore a natural resource or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the defendant.

History: 1995 a. 227; 1997 a. 27; 1999 a. 147; 2001 a. 6, 109; 2003 a. 309; 2007 a. 227; 2011 a. 118.

281.99 Administrative forfeitures for safe drinking water violations. (1) (a) The department may directly assess forfeitures in the amounts provided under sub. (2) for violations of safe drinking water program rules promulgated under s. 281.17 (8) or (9).

(b) 1. Subject to subd. 2., if the department proposes to assess a forfeiture for a particular violation, it shall first provide written notice of the alleged violation to the water system owner or operator. The notice shall state the amount of the proposed forfeiture, an explanation of how the amount of the proposed forfeiture was determined under sub. (2) (b) and a proposed order under par. (c). After providing the notice, the department shall attempt to negotiate with the water system owner or operator to remedy the alleged violation. If the water system owner or operator corrects the alleged violation, or if the department and the water system owner or operator reach a compliance agreement, before an order is issued under par. (c), the department may not assess a forfeiture for the alleged violation.

2. The department may directly assess a forfeiture by issuing an order under par. (c) without first providing notice if the alleged violation either creates an acute risk to public health or safety or is part of a documented pattern of noncompliance with one or more rules promulgated under s. 281.17 (8) or (9).

(c) If the department determines that a forfeiture should be assessed for a particular violation, it shall issue an order under s. 281.19 (2) (a) to the water system owner or operator alleged to have committed the violation. Except as provided in par. (b) 2., the department may not issue the order until at least 60 days after the day on which it provided notice under par. (b) 1. The order shall specify the amount of the forfeiture assessed, the violation and the rule alleged to have been violated and shall inform the licensee of the right to contest the order under sub. (3).

(2) (a) The amount of forfeitures that the department may assess under this section are as follows:

1. For water systems that serve a population of more than 10,000 persons, not less than $10 nor more than $1,000 for each day of each violation, but not more than $25,000 per violation in one order.

2. For water systems that serve a population of 10,000 persons or less, not less than $10 and not more than $500 for each day of violation, but not more than $25,000 in one order.

(b) The department, in determining the amount of forfeiture that it assesses under this section, shall consider the following factors, as appropriate:

1. The gravity of the violation, including the probability of harm to persons served by the water system.

2. Good faith exercised by the water system owner or operator, including past or ongoing efforts to correct problems or achieve compliance with the safe drinking water program.

3. Any previous violations committed by the water system owner or operator at the same water system.

4. The financial benefit to the water system owner or operator of continuing the violation.

5. Any other relevant factors.

(c) While an order issued under this section is contested, suspended, stayed or enjoined, any forfeiture under this section does not accrue.

(3) A water system owner or operator may contest the issuance of an order and the assessment of a forfeiture under this section using the procedure under ch. 227 or s. 281.19 (8). A water system owner or operator that timely requests a hearing under ch. 227 is entitled to a contested case hearing.

(4) All forfeitures shall be paid to the department within 60 days after receipt of the order or according to a schedule agreed to by the department and the water system owner or operator or, if the forfeiture is contested under sub. (3), within 10 days after receipt of the final decision after exhaustion of administrative review, unless the final decision is appealed and the order is stayed by court order. The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

(5) The attorney general may bring an action as provided in s. 281.19 (2) (a) in the name of the state to collect any forfeiture imposed under this section if the forfeiture has not been paid following the exhaustion of all administrative and judicial reviews.

(6) Section 893.80 does not apply to actions commenced under this section.

History: 1997 a. 27, 237; 2003 a. 33.