



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Great Lakes Compact Law (2007 Wisconsin Act 227): DNR Rule-Making

In implementing the Great Lakes-St. Lawrence River Basin Water Resources Compact (the “compact”) and establishing other state water use programs, 2007 Wisconsin Act 227 directs or authorizes the Department of Natural Resources (DNR) to interpret a number of policies and to establish a number of program elements by administrative rule. This memorandum summarizes this rule-making specifically called for in the act.

This memorandum is one of a series of memoranda summarizing Act 227. Other memoranda in this series address the following topics:

- IM-2008-03: *Executive Summary of the Act.*
- IM-2008-04: *Summary of the Compact.*
- IM-2008-05: *New State Water Use Regulations.*
- IM-2008-06: *Water Supply Planning.*
- IM-2008-07: *Water Loss, Legislative Oversight, and Other Provisions in the Act.*

The table below summarizes the rule-making by the DNR called for in 2007 Wisconsin Act 227 (the “act”). This rule-making was identified based upon a search of the word “rule” in the act. The rule-making summarized in this memorandum is also described in IM-2008-05 and 2008-06 in the context of the relevant provision in the act.

The rule-making listed in the table is organized under the following categories:

- Registration and Reporting of Statewide Withdrawals, Interbasin Transfers, and Diversions
- Interbasin Transfers and Diversions From the Great Lakes Basin
- Withdrawals in the Great Lakes Basin
- Water Conservation
- Public Participation

- Water Supply Planning
- Other Rule-Making

The table contains four columns. The first column in the table identifies the subject of the rule-making. The second column indicates whether the act requires or authorizes DNR to promulgate the rule. The third column indicates the period in which the rule applies once the rule is effective. “Pre-compact” indicates that the rule is only effective when the pre-compact implementation statute, s. 281.344, Stats., is effective, i.e., before the effective date of the Great Lakes-St. Lawrence River Basin Water Resources Compact (the “compact”).* “Post-compact” indicates that the rule cannot take effect before the post-compact implementation statute takes effect, i.e., on the compact’s effective date. An entry of “pre- and post-compact” in the third column means that the same rule-making is called for in both the pre- and post-compact implementation statutes. “No limit” indicates that the rule was promulgated under a statute created by the act other than the pre- or post-compact implementation statute and thus does not have limited applicability. The fourth column provides a citation to the statute created by the act requiring or authorizing the rule-making.

The act specifies deadlines for DNR to promulgate two of the rules in the table. A nonstatutory provision in the act directs DNR to submit by December 1, 2009 in proposed form to the Legislative Council Rules Clearinghouse a rule specifying the requirements for an applicant for a new, increased, or expanded interbasin transfer to demonstrate the efficient use and conservation of existing water supplies and a rule establishing a continuing water supply planning process for the preparation of water supply plans for persons operating public water supply systems. While the act does not contain deadlines for the promulgation of the other rules in the table, starting dates for programs created by the act, such as the regulation of diversions after the compact’s effective date, will in effect create deadlines for the promulgation of relevant rules interpreting the programs.

In addition to the explicit requirements and authorizations for rule-making identified in this memorandum, s. 227.11 (2) (a), Stats., expressly confers rule-making authority on state agencies to promulgate rules interpreting the provisions on any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute. This provision also states that a rule is not valid if it exceeds the bounds of correct interpretation. Given the breadth of the provisions in the act, it appears reasonable to assume that DNR will be promulgating rules under s. 227.11 (2) (a) that interpret the act in addition to those identified in the table.

* As set forth in the text of the compact (see IM-2008-04), the compact becomes effective when ratified through legislation by the Great Lakes states and consented to by the U.S. Congress.

DNR Rule-Making in 2007 Wisconsin Act 227

<i>Subject</i>	<i>Rule-Making Duty Versus Power</i>	<i>Period Rule Applies</i>	<i>Citation</i>
Registration and Reporting of Statewide Withdrawals, Interbasin Transfers, and Diversions			
Deadlines for registering existing withdrawals and interbasin transfers.	Required.	Pre-compact.	s. 281.344 (3) (a) 1.
Other information that must be included in a registration.	Discretionary.	Pre- and post-compact.	ss. 281.344 (3) (b) 10. and 281.346 (3) (b) 10.
Different reporting frequencies (other than annual) or additional reporting information based upon the type or category of water use.	Discretionary.	Pre- and post-compact.	ss. 281.344 (3) (e) 2. and 281.346 (3) (e) 2.
Interbasin Transfers and Diversions From the Great Lakes Basin			
Other information required in an application for an interbasin transfer or diversion.	Discretionary.	Pre- and post-compact.	ss. 281.344 (4) (b) 4. and 281.346 (4) (b) 4.
Any requirements for a small intrabasin transfer or diversion when s. 30.18, 281.34, or 281.41 does not apply.	Discretionary.	Pre- and post-compact.	ss. 281.344 (4) (d) 1. and 281.346 (4) (d) 1.
Withdrawals in the Great Lakes Basin			
Requirements in a general water use permit for estimating the amount withdrawn, monitoring the withdrawal, if necessary, and reporting the results of the estimating and monitoring.	Required.	Pre- and post-compact.	ss. 281.344 (4s) (a) 2. and 281.346 (4s) (a) 2.

<i>Subject</i>	<i>Rule-Making Duty Versus Power</i>	<i>Period Rule Applies</i>	<i>Citation</i>
Staggered schedule for DNR to issue automatic notices of coverage under a general water use permit.	Discretionary.	Pre-compact.	s. 281.344 (4s) (c)
Content of an application for coverage under a general water use permit, where DNR is not required to issue an automatic notice of coverage under a general water use permit.	Required.	Pre- and post-compact.	ss. 281.344 (4s) (d) 1. and 281.346 (4s) (d) 1.
Time limit for DNR to determine whether a withdrawal qualifies for coverage under a general water use permit after receiving an application for the coverage.	Required.	Pre- and post-compact.	ss. 281.344 (4s) (d) 2. and 281.346 (4s) (d) 2.
Requirements in an individual water use permit for estimating the amount withdrawn, monitoring the withdrawal, if necessary, and reporting the results of the estimating and monitoring.	Required.	Pre- and post-compact.	ss. 281.344 (5) (b) 3. and 281.346 (5) (b) 3.
Limits in an individual water use permit on the location and dates or seasons of the withdrawal and on the allowable uses of the water.	Required.	Pre- and post-compact.	ss. 281.344 (5) (b) 5. and 281.346 (5) (b) 5.
Staggered schedule for DNR to issue automatic individual water use permits.	Discretionary.	Pre-compact.	s. 281.344 (5) (c).
Content of an application for an individual water use permit.	Required.	Pre-compact.	s. 281.344 (5) (d) 1.
Time limit for DNR to determine whether to approve the application for an individual water use permit or request additional information after receiving an application for the permit.	Required.	Pre- and post-compact.	ss. 281.344 (5) (d) 2. and 281.346 (5) (d) 2.

<i>Subject</i>	<i>Rule-Making Duty Versus Power</i>	<i>Period Rule Applies</i>	<i>Citation</i>
Water Conservation			
Requirements for an applicant for a new, increased, or expanded interbasin transfer or diversion subject to the applicable exception standard to demonstrate the efficient use and conservation of existing water supplies.	Required.	Pre-and post-compact.	ss. 281.344 (4) (g) and (8) (d) and 281.346 (4) (g) and (8) (d).
Requirements for water conservation measures for interbasin transfers and diversions subject to the applicable exception standard and for withdrawals subject to a general or individual water use permit.	Required.	Pre- and post-compact.	ss. 281.344 (8) (d) and 281.346 (8) (d).
Public Participation			
Procedures for circulating to members of the public a notice of a complete application for a new, increased, or expanded interbasin transfer received by DNR and the form and content of this notice.	Required.	Pre-compact.	s. 281.344 (9) (b) 1. and 2.
Procedures for the conduct of a public hearing on an application for a new, increased, or expanded interbasin transfer.	Required.	Pre-compact.	s. 281.344 (9) (d) 2.
Procedures for circulating to members of the public a notice of a complete application received by DNR for an individual water use permit subject to the state or compact decision-making standard (other than for a public water supply system covered by a water supply plan), or a diversion; or of each general water use permit DNR proposes to issue; and the form and content of these notices.	Required.	Post-compact.	s. 281.346 (9) (b) 1. and 2.

<i>Subject</i>	<i>Rule-Making Duty Versus Power</i>	<i>Period Rule Applies</i>	<i>Citation</i>
Procedures for the conduct of a public hearing on an application identified in the preceding row or on a proposed general water use permit.	Required.	Post-compact.	s. 281.346 (9) (d) 2.
Water Supply Planning			
Continuing water supply planning process for the preparation of water supply plans for persons operating public water supply systems.	Required.	No limit.	s. 281.348 (3) (a) 1.
Other Rule-Making			
Procedures for determining the amount of water loss from consumptive uses	Required.	Pre- and post-compact.	ss. 281.344 (2) (c) and 281.346 (2) (c).

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

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