

DATE: February 16, 2010

TO: Jonathan Ela, Chair
John W. Welter, Vice-Chair

FROM: Matt Frank

SUBJECT: Amended Scope Statement related to Rules to Implement the Provisions of the Great Lakes—St. Lawrence River Basin Water Resources Compact

Subject/Objective of the Proposed Rule

On May 27, 2008 Governor Doyle signed 2007 Wisconsin Act 227, which contains Wisconsin's ratification of the Great Lakes-St Lawrence River Basin Water Resources Compact (Compact); regulates water use in the Wisconsin portion of the Great Lakes Basin; implements the Compact in Wisconsin, and establishes other state water use programs.

The proposed set of administrative rules to implement 2007 Wisconsin Act 227 will include: a rule to implement a statewide water conservation and efficiency program; a rule to implement a statewide water use registration and reporting requirement; a rule to implement a statewide water supply service area planning program; a rule to implement a water use permitting system in the Great Lakes basin, along with a rule to determine water loss from consumptive use; and a rule related to public participation for water use permitting and diversion applications. Affected and proposed chapters of the Wisconsin Administrative Code include: NR 142, NR 850, NR 854, NR 856, NR 858, NR 860, and NR 864.

In addition, the 2009-11 biennial budget (2009 Wisconsin Act 28), directs the Department to promulgate a rule specifying a fee on persons who withdraw more than 50,000,000 gallons of water per year from the Great Lakes basin. Great Lakes basin withdrawals include withdrawals from waters of the state—surface water and groundwater—within the land area of the State that drains to Lake Michigan or Lake Superior. Persons who withdraw more than 50,000,000 gallons per year within the Great Lakes basin are likely to include primarily public water systems, power companies, and other large industrial or commercial facilities. Revenue generated from the fee will be deposited to a program revenue appropriation used to fund Compact implementation. Revenue to the appropriation will also include that generated from a statutory fee of \$125 to be charged annually to any person—statewide—with a water supply system capable of withdrawing an average of 100,000 gallons per day or more in any 30-day period. Act 28 directed that the provisions of the Act related to these fees takes effect on January 1, 2011.

The earlier statement of scope is amended to include information related to promulgating a rule related to the above-mentioned fee, and to update you on the revised schedule for promulgating the rules necessitated by 2007 Wisconsin Act 227.

Description of Policy Issues/Analysis of Policy Alternatives

Act 227 expanded the state's authority to manage water quantity throughout the state. Act 227 directs the Department to develop and implement several new requirements related to water use in the state, including:

- Statewide registration and annual reporting for water systems with the capacity to withdraw an

- average of 100,000 gallons of water per day (GPD) or more in any 30-day period;
- Developing and implementing a statewide water conservation and efficiency program;
 - Developing and implementing a water use permitting program within the Great Lakes basin for all water systems that withdraw an average of 100,000 GPD or more in any 30-day period;
 - Establishing a water supply service area planning process for public water systems serving a population of 10,000 or more;
 - Instituting a public participation process for requests for diversions of Great Lakes water and for certain water use permits;
 - Developing a database of water use information and publishing a report of the information on a regular basis.

The proposed set of rules outlined above will address all elements of the Compact implementing legislation that mandate rule development.

Statutory Authority

Wis. Stat. Sections 281.343, 281.345, 281.346, and 281.348.

Estimate of Time Needed to Develop the Rules

4000 hours.

Summary and Preliminary Comparison with Existing or Proposed Federal Regulations

There are no existing federal requirements regulating water use in the Great Lakes basin comparable to the Compact. The Compact was specifically negotiated to address weaknesses in prior federal law (specifically the Water Resources Development Act, 42 USC 1962d – 20.) Nothing in the Compact contradicts 42 USC 1962d – 20.

Description of All Entities Affected by the Rule

Any person with a water supply system (e.g. well(s) or surface water withdrawal) with the capacity to withdraw an average of 100,000 gallons-per-day or more in any 30-day period will be affected by these rules. Any person with a water supply system that actually withdraws an average of 100,000 gallons-per-day or more in any 30-day period will have to annually report water usage; and, if the system is located in the Great Lakes basin, the person must have a water use permit on or before December 8, 2011. In addition, as volumes of withdrawals increase, regulatory reviews of the application for withdrawal become more stringent. Operators of public water supply systems serving a population of 10,000 or more will be affected by the water supply service area planning rule. Public water supply systems, power producers, and industrial or commercial operations using large volumes of water will be affected by the fee rule. Finally, the rules—particularly the water conservation and efficiency rule—will be of interest to a variety of groups concerned with sustainable water use.

Name, Address, Telephone Number and E-Mail Address of Agency Contact Person

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