

Chapter 1522: GREAT LAKES-ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

1522.01 Compact ratified and enacted.

The "Great Lakes-St. Lawrence River Basin Water Resources Compact," which has been negotiated by representatives of this state and the states of Illinois, Indiana, Michigan, Minnesota, New York, and Wisconsin and the commonwealth of Pennsylvania, is hereby ratified, enacted into law, and entered into by this state as a party to it as follows:

AGREEMENT

Section 1. The states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by the respective state legislatures and consent by the Congress of the United States as follows:

GREAT LAKES-ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

ARTICLE 1 SHORT TITLE, DEFINITIONS, PURPOSES AND DURATION

Section 1.1. Short Title.

This act shall be known and may be cited as the "Great Lakes-St. Lawrence River Basin Water Resources Compact."

Section 1.2. Definitions.

For the purposes of this Compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

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.

Agreement means the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement.

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.

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.

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.

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.

Compact means this Compact.

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.

Council means the Great Lakes-St. Lawrence River Basin Water Resources Council, created by this Compact.

Council Review means the collective review by the Council members as described in Article 4 of this Compact.

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.

Cumulative Impacts mean 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.

Decision-Making Standard means the decision-making standard established by Section 4.11 for Proposals subject to management and regulation in Section 4.10.

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.

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 i) are environmentally sound, ii) reflect best practices applicable to the water use sector, iii) are technically feasible and available, iv) are economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs and v) 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.

Exception means a transfer of Water that is excepted under Section 4.9 from the prohibition against Diversions in Section 4.8.

Exception Standard means the standard for Exceptions established in Section 4.9.4.

Intra-Basin Transfer means the transfer of Water from the watershed of one of the Great Lakes into the watershed of another Great Lake.

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

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.

New or Increased Withdrawal or Consumptive Use means a new Withdrawal or Consumptive Use or an increase in an existing Withdrawal or Consumptive Use.

Originating Party means the Party within whose jurisdiction an Application or registration is made or required.

Party means a State party to this Compact.

Person means a human being or a legal person, including a government or a non-governmental 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.

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. (i) Water used as part of the packaging of a Product shall be considered to be part of the Product. (ii) 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. (iii) Except as provided in (i) above, Water which is transferred as part of a public or private supply is not a Product or part of a Product. (iv) Water in its natural state such as in lakes, rivers, reservoirs, aquifers or water basins is not a Product.

Proposal means a Withdrawal, Diversion or Consumptive Use of Water that is subject to this Compact.

Province means Ontario or Quebec.

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.

Regional Body means the members of the Council and the Premiers of Ontario and Quebec or their designee as established by the Agreement.

Regional Review means the collective review by the Regional Body as described in Article 4 of this Compact.

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.

Standard of Review and Decision means the Exception Standard, Decision-Making Standard and reviews as outlined in Article 4 of this Compact.

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

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 two Great Lakes watersheds.

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.

Water means ground or surface water contained within the Basin.

Water Dependent Natural Resources means the interacting components of land, Water and living organisms affected by the Waters of the Basin.

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.

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

Section 1.3. Findings and Purposes.

The legislative bodies of the respective Parties hereby find and declare:

1. Findings: a. The Waters of the Basin are precious public natural resources shared and held in trust by the States;b. The Waters of the Basin are interconnected and part of a single hydrologic system;c. 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;d. 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;e.

Continued sustainable, accessible and adequate Water supplies for the people and economy of the Basin are of vital importance; and,f. 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.

2. Purposes: a. 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;b. To remove causes of present and future controversies;c. To provide for cooperative planning and action by the Parties with respect to such Water resources; d. To facilitate consistent approaches to Water management across the Basin while retaining State management authority over Water management decisions within the Basin;e. 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;f. To prevent significant adverse impacts of Withdrawals and losses on the Basin's ecosystems and watersheds;g. To promote interstate and State-Provincial comity; and,h. To promote an Adaptive Management approach to the conservation and management of Basin Water resources, which recognizes, considers and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the Basin's Waters and Water Dependent Natural Resources.

Section 1.4. Science. 1. 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.2. The strategy shall guide the collection and application of scientific information to support:a. 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;b. The periodic assessment of Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses on a Great Lake and St. Lawrence River watershed basis;c. Improved scientific understanding of the Waters of the Basin;d. Improved understanding of the role of groundwater in Basin Water resources management; and,e. The development, transfer and application of science and research related to Water conservation and Water use efficiency.

ARTICLE 2 ORGANIZATION

Section 2.1. 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.

Section 2.2. Council Membership.

The Council shall consist of the Governors of the Parties, ex officio.

Section 2.3. 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.

Section 2.4. 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.

Section 2.5. 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 Chair and Vice-Chair 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.

Section 2.6. 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.

Section 2.7. 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.

Section 2.8. 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 which shall approximate the taxes lawfully assessed upon similar property.

Section 2.9. 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.

ARTICLE 3 GENERAL POWERS AND DUTIES

Section 3.1. General.

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.

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 Section 3.3 of this Compact and in accordance with each Party's respective statutory authorities and applicable procedures.

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.

Section 3.2. 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 which may be reasonably implied therefrom.

Section 3.3. 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 Section 4.9. Any rule or regulation of the Council, other than one which 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.

Section 3.4. 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 five 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 five 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.

ARTICLE 4 WATER MANAGEMENT AND REGULATION

Section 4.1. Water Resources Inventory, Registration and Reporting. 1. Within five 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. 2. 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.3. To develop and maintain a compatible base of Water use information, within five 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.4. 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. 5. Each Party shall annually report the information gathered pursuant to this Section 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 Section 8.3.6. Information gathered by the Parties pursuant to this Section 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.

Section 4.2. Water Conservation and Efficiency Programs.1. 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 program. These objectives are based on the goals of:a. Ensuring improvement of the Waters and Water Dependent Natural Resources; b. Protecting and restoring the hydrologic and ecosystem integrity of the Basin; c. Retaining the quantity of surface water and groundwater in the Basin; d. Ensuring sustainable use of Waters of the Basin; and,e. Promoting the efficiency of use and reducing losses and waste of Water. 2. Within two 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. 3. Beginning five years after the effective date of this Compact, and every five 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 Section 4.15.4. Within two years of the effective date of this Compact, the Parties commit to promote Environmentally Sound and Economically Feasible Water Conservation Measures such as:a. Measures that promote efficient use of Water;b. Identification and sharing of best management practices and state of the art conservation and efficiency technologies;c. Application of sound planning principles;d. Demand-side and supply-side Measures or incentives; and,e. Development, transfer and application of science and research.5. Each Party shall implement in accordance with Paragraph 2 above 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.

Section 4.3. Party Powers and Duties. 1. Each Party, within its jurisdiction, shall manage and regulate New or Increased Withdrawals, Consumptive Uses and Diversions, including Exceptions, in accordance with this Compact.2. Each Party shall require an Applicant to submit an Application in such manner and with such accompanying information as the Party shall prescribe.3. 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.4. Each Party shall monitor the implementation of any approved Proposal to ensure consistency with the approval and may take all necessary enforcement actions. 5. 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.

Section 4.4. 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.

Section 4.5. Regional Review.

1. General.a. 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. b. 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 Section 4.5.2 of such Proposal is received from the Originating Party. c. 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.d. 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.e. 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.f. 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 Section. Any such Regional Review shall be undertaken only after consulting the Applicant.

2. Notice from Originating Party to the Regional Body.a. 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.b. 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.c. An Originating Party may:i. Provide notice to the Regional Body of an Application, even if notification is not required; or, ii. 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.d. An Originating Party may provide preliminary notice of a potential Proposal.

3. Public Participation.a. 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 this Article.b. 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.c. 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.d. The Regional Body shall consider the comments received before issuing a Declaration of Finding.e. The Regional Body shall forward the comments it receives to the Originating Party.

4. Technical Review.a. The Originating Party shall provide the Regional Body with its Technical Review of the Proposal under consideration. b. 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.c. Any member of the Regional Body may conduct their own Technical Review of any Proposal subject to Regional Review.d. 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.e. All

Parties shall exercise their best efforts to ensure that a Technical Review undertaken under Sections 4.5.4.c and 4.5.4.d 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.

5. Declaration of Finding.a. 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.b. 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, 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:i. Meets the Standard of Review and Decision;ii. Does not meet the Standard of Review and Decision; or,iii. Would meet the Standard of Review and Decision if certain conditions were met.c. An Originating Party may decline to participate in a Declaration of Finding made by the Regional Body.d. 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.e. 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.f. In the event that the members cannot agree, the Regional Body shall make every reasonable effort to achieve consensus within 25 days.g. 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.h. The Regional Body shall release the Declaration of Finding to the public.i. The Originating Party and the Council shall consider the Declaration of Finding before making a decision on the Proposal.

Section 4.6. Proposals Subject to Prior Notice.1. Beginning no later than five years from 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 million 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.2. A Party may provide notice, an opportunity to comment and a response to comments even if this is not required under Paragraph 1 of this Section. Any provision of such notice and opportunity to comment shall be undertaken only after consulting the Applicant.

Section 4.7 Council Actions.1. 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.2. 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.

Section 4.8. Prohibition of New or Increased Diversions.

All New or Increased Diversions are prohibited, except as provided for in this Article.

Section 4.9. Exceptions to the Prohibition of Diversions.1. 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 the Water so transferred shall be used solely for Public Water Supply Purposes within the Straddling Community, and:a. 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:i. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin; ii. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;iii. Maximizes the portion of water returned to the Source Watershed as Basin Water and minimizes the surface water or groundwater from outside the Basin;b. 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,c. If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period, the Proposal shall also undergo Regional

Review.2. Intra-Basin Transfer. A Proposal for an Intra-Basin Transfer that would be considered a Diversion under this Compact, and not already excepted pursuant to Paragraph 1 of this Section, shall be excepted from the prohibition against Diversions, provided that: a. 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.b. 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 million gallons per day average over any 90-day period:i. 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;ii. 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,iii. The Originating Party shall provide notice to the other Parties prior to making any decision with respect to the Proposal.c. If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period:i. 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;ii. 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;iii. The Proposal undergoes Regional Review; and, iv. The Proposal is approved by the Council. Council approval shall be given unless one or more Council members vote to disapprove.3. Straddling Counties. 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.

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.4. Exception Standard. Proposals subject to management and regulation in this Section shall be declared to meet this Exception Standard and may be approved as appropriate only when the following criteria are met:a. The need for all or part of the proposed Exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies;b. The Exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed; c. 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:i. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin; ii. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;d. 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;e. The Exception will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use;f. 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,g. All other applicable criteria in Section 4.9 have also been met.

Section 4.10. Management and Regulation of New or Increased Withdrawals and Consumptive Uses.1. Within five 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. 2. Any Party that fails to set threshold levels that comply with Section 4.10.1 any time before ten years after the effective date of this Compact shall apply a threshold level for management and regulation of all New or Increased Withdrawals of 100,000 gallons per day or greater average in any 90-day period. 3. The Parties intend programs for New or Increased Withdrawals and Consumptive Uses to evolve as may be necessary to protect Basin Waters. Pursuant to Section 3.4, 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.

Section 4.11. Decision-Making Standard.Proposals subject to management and regulation in Section 4.10 shall be declared to meet this Decision-Making Standard and may be approved as appropriate only when the following criteria are met:1. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use;2. 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;3. The Withdrawal or Consumptive Use will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures;4. 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;5. The proposed use is reasonable, based upon a consideration of the following factors: a. 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; b. If the Proposal is for an increased Withdrawal or Consumptive Use, whether efficient use is made of existing water supplies;c. 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;d. The supply potential of the Water source, considering quantity, quality and reliability and safe yield of hydrologically interconnected water sources; e. 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 non-consumptive 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,f. If a Proposal includes restoration of hydrologic conditions and functions of the Source Watershed, the Party may consider that.

Section 4.12. Applicability.1. 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. 2. Baseline.a. 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 their jurisdiction:i. A list of existing Withdrawal approvals as of the effective date of the Compact;ii. 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.For all purposes of this Compact, volumes of Diversions, Consumptive Uses, or Withdrawals of Water set forth in the list(s) prepared by each Party in accordance with this Section, shall constitute the baseline volume.c. The list(s) shall be furnished to the Regional Body and the Council within one

year of the effective date of this Compact.3. Timing of Additional Applications. Applications for New or Increased Withdrawals, Consumptive Uses or Exceptions shall be considered cumulatively within ten years of any application. 4. 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.5. 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.6. 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.7. Connecting Channels. The watershed of each Great Lake shall include its upstream and downstream connecting channels.8. 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. 9. Hydrologic Units. The Lake Michigan and Lake Huron watersheds shall be considered to be a single hydrologic unit and watershed. 10. 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.

Section 4.13. Exemptions.

Withdrawals from the Basin for the following purposes are exempt from the requirements of Article 4:1. 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.2. To use in a non-commercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

Section 4.14. U.S. Supreme Court Decree: Wisconsin et al. v. Illinois et al.1. Notwithstanding any terms of this Compact to the contrary, with the exception of Paragraph 5 of this Section, 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 Paragraph 5 of this Section, 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. 2. 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, 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.3. With the exception of Paragraph 5 of this Section, 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 Section 4.9, to seek New or Increased Withdrawals, Consumptive Uses or Diversions of Basin Water.4. With the exception of Paragraph 5 of this Section, because Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12 (Paragraphs 1, 2, 3, 4, 6 and 10 only) and 4.13 of this Compact 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 Section 4.2.5. 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 Paragraphs 1, 3 and 4 of this Section.6. For

purposes of the State of Illinois' participation in this Compact, the entirety of this Section 4.14 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.

Section 4.15. Assessment of Cumulative Impacts.1. The Parties in cooperation with the Provinces shall collectively conduct within the Basin, on a Great 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 five years or each time the incremental Basin Water losses reach 50 million 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:a. 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;b. 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;c. 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.2. The Parties have the responsibility of conducting this Cumulative Impact assessment. Applicants are not required to participate in this assessment.3. 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 their Proposal meets the no significant adverse Cumulative Impact provision of the Standard of Review and Decision.

ARTICLE 5 TRIBAL CONSULTATION

Section 5.1. Consultation with Tribes.1. In addition to all other opportunities to comment pursuant to Section 6.2, 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.2. 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 Section 6.2 and invite them to attend. The Parties and the Council shall consider the comments received under this Section before approving, approving with modifications or disapproving any Proposal subject to Council or Regional Review.3. 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 on-going 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.

ARTICLE 6 PUBLIC PARTICIPATION

Section 6.1. 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.

Section 6.2. 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(s) or hearing(s), 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.

ARTICLE 7 DISPUTE RESOLUTION AND ENFORCEMENT

Section 7.1. 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.

Section 7.2. Alternative Dispute Resolution. 1. 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. 2. The Council, in consultation with the Provinces, shall provide by rule procedures for the resolution of disputes pursuant to this section.

Section 7.3. Enforcement. 1. 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, (i) 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, (ii) 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. 2. a. 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. b. 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. 3. 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. a. No action under this subsection may be commenced if: i. The Originating Party or Council approval for the New or Increased Withdrawal, Consumptive Use or Diversion has been granted; or, ii. 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. b. No action under this subsection may be commenced unless: i. 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, ii. Neither the Originating Party nor the Council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance with this Compact.

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. 4. 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.

ARTICLE 8 ADDITIONAL PROVISIONS

Section 8.1. 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.

Section 8.2. 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.

Section 8.3. 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.

Section 8.4. 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.

Section 8.5. 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.

Section 8.6. 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.

Section 8.7. Duration of Compact and Termination.

Once effective, the Compact shall continue in force and remain binding upon each and every Party unless terminated.

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.

ARTICLE 9 EFFECTUATION

Section 9.1. Repealer.

All acts and parts of acts inconsistent with this act are to the extent of such inconsistency hereby repealed.

Section 9.2. 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.

Section 9.3. 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.

Section 9.4. 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 Congress of the United States. This Compact shall be signed and sealed in nine identical original copies by the respective chief executives of the signatory Parties. One such copy shall be filed with the Secretary of State of each of the signatory Parties or in accordance with the laws of the state in which the filing is made, and one copy shall be filed and retained in the archives of the Council upon its organization. The signatures shall be affixed and attested under the following form:

In Witness Whereof, and in evidence of the adoption and enactment into law of this Compact by the legislatures of the signatory parties and consent by the Congress of the United States, the respective Governors do hereby, in accordance with the authority conferred by law, sign this Compact in nine duplicate original copies, attested by the respective Secretaries of State, and have caused the seals of the respective states to be hereunto affixed this day of (month), (year).

Effective Date: 2008 HB416 12-08-2008.

1522.02 Governor as state administrator of compact.

The governor, ex officio, shall serve as this state's administrator of the great lakes-st. Lawrence river basin water resources compact. The governor shall appoint the director of natural resources as the governor's alternate for purposes of attending all meetings of the great lakes-st. Lawrence river basin water resources council and voting on matters before the council in the governor's absence.

The governor shall do all of the following as administrator:

- (A) Receive copies of all agreements that are entered into pursuant to the compact by this state or its political subdivisions and other states or their political subdivisions;
- (B) Consult with, advise, and aid this state, other states, and political subdivisions in the formulation of such agreements;
- (C) Make any recommendations to the general assembly, legislatures of other states, governmental agencies, and political subdivisions that the governor considers desirable in order to effectuate the purposes of the compact;
- (D) Consult with and cooperate with the compact administrators of other states that are parties to the compact.

Effective Date: 2008 HB416 12-08-2008.

1522.03 Implementation and enforcement of compact.

The chief of the division of water resources shall do all of the following:

(A) Adopt rules in accordance with Chapter 119. of the Revised Code for the implementation, administration, and enforcement of the great lakes-st. Lawrence river basin water resources compact;

(B) Enforce the great lakes-st. Lawrence river basin water resources compact and take appropriate actions to effectuate its purposes and intent;

(C) Adopt rules in accordance with Chapter 119. of the Revised Code for the development, implementation, administration, and enforcement of any permit program established under this chapter.

Rules adopted under this section shall be no more stringent than the great lakes-st. Lawrence river basin water resources compact. The chief shall convene a working group consisting of parties with interests in Lake Erie, the Lake Erie watershed, and the great lakes-st. Lawrence river basin water resources compact. The working group shall consult with the chief regarding the adoption of rules under this section.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Amended by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.

Effective Date: 2008 HB416 12-08-2008

1522.04 Legislative authorization for vote on standard of review.

(A) Prior to casting a vote under Section 3.1 of the great lakes-st. Lawrence river basin water resources compact with respect to any regulation that amends or revises the standard of review and decision, the governor or the governor's alternate shall obtain authorization from the general assembly for the vote. The governor or the governor's alternate shall obtain the authorization via a concurrent resolution adopted or bill enacted by the general assembly. The governor or the governor's alternate shall exercise the vote consistent with the terms of the general assembly's authorization. The procedures established in this section are material requirements for adoption of any such regulation in accordance with Section 3.1 of the compact and Ohio's respective statutory authority and procedures.

(B) No regulation duly adopted as provided for in Section 3.1 of the compact that amends or revises the standard of review and decision as set forth in the compact may be adopted by the director of natural resources unless the regulation is first approved by the general assembly in the same manner as a statutory enactment.

Effective Date: 2008 HB416 12-08-2008.

1522.05 Organization and operation of water resources council.

Pursuant to Section 9.2 of the great lakes-st. Lawrence river basin water resources compact, the governor may take such actions as are necessary for the initial organization and operation of the great lakes-st. Lawrence river basin water resources council created in Section 2.1 of the compact. Agencies of the state are hereby authorized to cooperate with the council.

The chief of the division of water resources shall adopt voluntary watershedwide goals, objectives, and standards for water conservation and efficiency consistent with Section 4.2 of the great lakes-st. Lawrence river basin water resources compact.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Amended by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.

Effective Date: 2008 HB416 12-08-2008

1522.06 Incorporation of water into product as consumptive use.

It is the intent of the general assembly that any incorporation of water into a product that is produced within the great lakes-st. Lawrence river basin and packaged and intended for intermediate or end-use consumers, whether distributed inside or outside the basin, is a consumptive use and does not constitute a diversion for purposes of the great lakes-st. Lawrence river basin water resources compact. A proposal to withdraw water and remove it from the basin in a container greater than five and seven-tenths gallons in capacity shall be treated as a proposal for a diversion as provided under Section 4.12.10 of the great lakes-st. Lawrence river basin water resources compact.

Effective Date: 2008 HB416 12-08-2008.

1522.07 [Repealed].

Repealed by 129th General Assembly File No.108, HB 473, §2, eff. 9/4/2012.

Effective Date: 2008 HB416 12-08-2008

1522.08 Private property rights not abrogated by compact.

(A) It is the intent and understanding of the general assembly that the enactment of the great lakes-st. Lawrence river basin water resources compact and its implementation in this state do not and shall not in any manner abrogate any private property rights established under the Revised Code or the common law of this state. In addition, it is the intent and understanding of the general assembly that the enactment of the great lakes-st. Lawrence river basin water resources compact does not confer or extend any public trust rights and does not confer any proprietary ownership rights to the state or any public entity over the ground water or surface water in the great lakes-st. Lawrence river basin in this state.

(B) It is the intent and understanding of the general assembly that the great lakes-st. Lawrence river basin water resources compact does not create any cause of action that may be brought against any person beyond those causes of action that are specifically authorized under Section 7.3 of the compact.

Effective Date: 2008 HB416 12-08-2008.

1522.10 Definitions for ORC sections 1522.10 to 1522.21.

As used in sections 1522.10 to [1522.21](#) of the Revised Code:

(A) "Baseline facility" means a facility identified in the baseline report or a facility added to the baseline report under section [1522.16](#) of the Revised Code.

(B) "Baseline facility abandonment" means the voluntary and affirmative termination of a baseline facility's withdrawal and consumptive use capacity as listed in the baseline report. "Baseline facility abandonment" does not include the nonuse or the transfer of a baseline facility's withdrawal and consumptive use capacity unless either of the following applies:

(1) The nonuse continues for fifteen consecutive years for a facility with a potential withdrawal from Lake Erie or a recognized navigational channel and the nonuse is not extended in accordance with division (B) of section [1522.16](#) of the Revised Code.

(2) For a facility to which division (B)(1) of this section does not apply, the nonuse continues for thirty-six consecutive months and is not extended in accordance with division (B) of section [1522.16](#) of the Revised Code.

(C) "Baseline report" means a list of the withdrawal and consumptive use capacities of facilities that was developed for purposes of Section 4.12 of the great lakes-st. Lawrence river basin water resources compact by the department of natural resources and submitted to the great lakes-st. Lawrence river basin water resources council on December 8, 2009.

(D) "Capacity" means the ability of a facility's pumps, pipes, and other appurtenances to withdraw water presented in terms of withdrawal capacity, treatment capacity, distribution capacity, or other capacity-limiting factors.

(E) "Compact" means the great lakes-st. Lawrence river basin water resources compact set forth in section [1522.01](#) of the Revised Code.

(F) "Consumptive use" has the same meaning as in section [1522.01](#) of the Revised Code. For purposes of determining a new or increased capacity for consumptive use, "consumptive use" is the use based on a coefficient of consumptive use generally accepted in the scientific community that most accurately reflects the process at a facility or the use based on facility specific data, whichever is more accurate.

(G) "Diversion" has the same meaning as in section [1522.01](#) of the Revised Code.

(H) "Facility" means any site, installation, or building at which water withdrawal and consumptive use activities take place or are proposed to take place, that is located at a property or on contiguous properties, and that is under the direction of either a private or public entity. "Facility" includes any site, installation, building, or service area of a public water system at or within which water withdrawal and consumptive use activities take place.

(I) "Facility abandonment" means the voluntary and affirmative termination of a facility's withdrawal and consumptive use capacity as listed in a withdrawal and consumptive use permit issued under section [1522.12](#) of the Revised Code. "Facility abandonment" does not include the nonuse or the transfer of a facility's withdrawal and consumptive use capacity unless either of the following applies:

(1) The nonuse continues for fifteen consecutive years for a facility with a potential withdrawal from Lake Erie or a recognized navigational channel and the nonuse is not extended in accordance with division (B) of section [1522.16](#) of the Revised Code.

(2) For a facility to which division (I)(1) of this section does not apply, the nonuse continues for thirty-six consecutive months and is not extended in accordance with division (B) of section [1522.16](#) of the Revised Code.

(J) "High quality water" means a river or stream segment that has been designated by the environmental protection agency under Chapter 3745-1 of the Administrative Code as an exceptional warm water habitat, cold water habitat, outstanding state water, or superior high-quality water.

(K) "Increased capacity" does not include any capacity that results from alterations or changes made at a facility that replace existing capacity without increasing the capacity of the facility.

(L) "Public water system" has the same meaning as in section [6109.01](#) of the Revised Code.

(M) "Recognized navigation channel" means that portion of a river or stream extending from bank to bank that is a direct tributary of Lake Erie and that, as of the effective date of this section, is a state or federally maintained navigation channel.

(N) "River or stream" means a body of water running or flowing, either continually or intermittently, on the earth's surface or a channel in which such flow occurs.

(O) "Water" means ground or surface water contained within the basin of the Lake Erie source watershed.

Added by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.

[1522.101](#) **References to source watershed or the Lake Erie source watershed.**

For purposes of sections [1522.10](#) to [1522.21](#) of the Revised Code, a reference to source watershed or the Lake Erie source watershed means the Lake Erie watershed considered as a whole.

Added by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.

[1522.11](#) **Permit for new or increased diversion of water out of Lake Erie Watershed.**

(A) No person shall install or operate a facility or equipment that results in a new or increased diversion of any water out of the Lake Erie watershed to another watershed without first obtaining a permit to do so issued by the chief of the division of water resources. An application for such a permit shall be submitted to the chief on a form that the chief prescribes. An application shall be accompanied by a nonrefundable fee of one thousand dollars, which shall be credited to the water management fund created in section [1501.32](#) of the Revised Code.

(B) The chief shall approve a permit application submitted under this section only if the chief determines that it meets the criteria required to qualify as an exception to the prohibition against diversions established in Section 4.9 of the compact. The chief shall issue or deny a permit through issuance of an order.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Added by 129th General Assembly File No. 108, HB 473, §1, eff. 9/4/2012.

1522.12 Program for issuance of withdrawal and consumptive use permits.

(A) For purposes of the compact, not later than one hundred eighty days after September 4, 2012, the chief of the division of water resources shall establish a program for the issuance of permits for the withdrawal and consumptive use of water from the Lake Erie watershed. Upon establishment of the program, the owner or operator of a facility within the Lake Erie watershed that is not otherwise exempt under section [1522.14](#) of the Revised Code shall obtain a withdrawal and consumptive use permit from the chief if the facility meets any of the following threshold criteria:

(1) The facility has a new or increased capacity for withdrawals or consumptive uses from Lake Erie or a recognized navigation channel of at least two and one-half million gallons per day.

(2) Except as provided in division (A)(3) of this section, the facility has a new or increased capacity for withdrawals or consumptive uses from any river or stream or from ground water in the Lake Erie watershed of at least one million gallons per day.

(3)

(a) Except as provided in division (A)(3)(b) of this section, the facility has a new or increased capacity for withdrawals or consumptive uses from any river or stream in the Lake Erie watershed that is a high quality water of at least one hundred thousand gallons per day. Division (A)(3) of this section does not apply to withdrawals and consumptive uses from outstanding state waters that are designated as such by the environmental protection agency due to their exceptional recreational values.

(b) If a river or stream or segment thereof is designated as a high quality water as of September 4, 2012, the threshold established in division (A)(3)(a) of this section applies to the river or stream or segment thereof and the entire watershed upstream of that river, stream, or segment. If a river or stream or segment thereof is designated as a high quality water after September 4, 2012, the threshold established in division (A)(3)(a) of this section applies to the river or stream or segment thereof and the entire watershed upstream of that river, stream, or segment, provided that the director of environmental protection and the director of natural resources, or their designees, jointly determine that the proposed withdrawal or consumptive use would cause the high quality water to lose its designation as a high quality water. If the directors determine that the proposed withdrawal or consumptive use would not cause the high quality water to lose that designation, the threshold established in division (A)(2) of this section applies to the withdrawal or consumptive use at a point beginning one thousand feet upstream of the upstream end of the designated high quality water segment or at a point beginning two times the length of the river, stream, or segment that has been designated as a high quality water, whichever is greater.

Upon establishment of the withdrawal and consumptive use permit program under this division, the owner or operator of a facility that is not otherwise exempt under section [1522.14](#) of the Revised Code and that is subject to a threshold specified in division (A)(1) or (2) of this section, after submitting an application for a permit under this section and a determination by the chief that the application is complete, may commence installation of the

facility or equipment that will result in a new or increased withdrawal or consumptive use of water in the Lake Erie watershed prior to issuance of the withdrawal and consumptive use permit.

Upon establishment of the withdrawal and consumptive use permit program under this division, the owner or operator of a facility that is not otherwise exempt under section [1522.14](#) of the Revised Code and that is subject to a threshold specified in division (A)(3) of this section shall not install or operate the facility or equipment that will result in a new or increased withdrawal or consumptive use of water in the Lake Erie watershed without first obtaining a withdrawal and consumptive use permit.

(B) Permits issued under this section shall be issued only for the amount of withdrawal or consumptive use capacity of a facility that meets or exceeds threshold amounts established in division (A) of this section. A permit shall not be required for the portion of the withdrawal and consumptive use capacity of the facility below that threshold amount.

(C) An applicant for a permit shall submit an application to the chief on a form that the chief prescribes. The applicant shall include with the application all of the following:

- (1) The name, address, and telephone number of the applicant and of a contact person for the applicant;
- (2) The names, addresses, and other necessary contact information of any other owners and operators of the facility;
- (3) A description of all of the following:
 - (a) The facility's current withdrawal capacity per day if the withdrawal is to occur at a facility already in operation;
 - (b) The total new or increased daily withdrawal capacity proposed for the facility;
 - (c) The locations and sources of water proposed to be withdrawn;
 - (d) The locations of proposed discharges or return flows;
 - (e) The locations and nature of proposed consumptive uses and the applicable consumptive use coefficient for the facility;
 - (f) The estimated average annual and monthly volumes and rates of withdrawal;
 - (g) The estimated average annual and monthly volumes and rates of consumptive use;
 - (h) The environmentally sound and economically feasible water conservation measures to be undertaken by the applicant;
 - (i) Other ways the applicant's need for water may be satisfied if the application is denied or modified;
 - (j) Any other information the chief may require to adequately consider the application.

(4) A nonrefundable application fee of one thousand dollars, the proceeds of which shall be credited to the water management fund created in section [1501.32](#) of the Revised Code.

(D) Provided that a facility meets all applicable permit conditions, a permit for the facility is valid until the facility is the subject of facility abandonment. Once every five years, the owner or operator of a facility shall certify to the chief that the facility is in compliance with the permit that has been issued for the facility.

(E) No person that is required to do so shall fail to apply for and receive a withdrawal and consumptive use permit.

(F) A permit issued under this section shall include terms and conditions restricting the withdrawal and consumptive use by a facility to amounts not exceeding the capacity of the facility.

(G) The chief shall issue or deny a permit not later than ninety days after receipt of a complete application. If applicable, the chief shall comply with the requirements regarding prior notice established in Section 4.6 of the compact. The chief shall issue or deny a permit through issuance of an order. The chief shall issue a permit if all applicable criteria for receiving the permit are met as provided in sections [1522.10](#) to [1522.21](#) of the Revised Code.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Added by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.

1522.13 Issuance of withdrawal and consumptive use permit; requirements.

(A) The chief of the division of water resources shall issue a withdrawal and consumptive use permit for a facility if the chief determines that the facility meets all of the criteria established in Section 4.11 of the compact.

(B) In applying the provision of the decision-making standard established in Section 4.11.2 of the compact, the chief shall require that a withdrawal or consumptive use will be implemented so as to ensure that the withdrawal or consumptive use will result in no significant individual or cumulative adverse impacts on the quantity or quality of the waters and water dependent natural resources of the great lakes basin considered as a whole or of the Lake Erie source watershed considered as a whole. As part of the evaluation of a permit application under Section 4.11.2 of the compact, the chief shall do all of the following:

(1) Rely on the best generally accepted scientific methods appropriate for this state derived from professionally accepted resources and practices;

(2) Consider the long-term mean annual inflow and outflow of the Lake Erie source watershed;

(3) Consider the withdrawal and the portion of the withdrawal that is not returned to the Lake Erie source watershed.

(C) Impacts of a withdrawal or consumptive use on the quantity or quality of waters and water dependent natural resources of more localized areas that affect less than the great lakes basin considered as a whole or the Lake Erie source watershed considered as a whole shall be considered as a part of the evaluation of whether a proposed withdrawal or consumptive use is reasonable as provided in Section 4.11.5 of the compact.

(D) The chief shall not submit an application for a withdrawal and consumptive use permit for regional review under Section 4.5.2(c)(ii) of the compact to the regional body as defined in Section 1.2 of the compact unless regional review is agreed to by the applicant.

(E) Nothing in sections [1522.10](#) to [1522.21](#) of the Revised Code shall be construed to affect, limit, diminish, or impair any rights validly established and existing under the laws of this state as of December 8, 2008, including, but not limited to, sections [1506.10](#) and [1521.17](#) of the Revised Code, or to limit a person's right to the reasonable use of ground water, water in a lake, or any other watercourse in contravention of Section 19b of Article I, Ohio Constitution.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Added by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.

1522.131 Experimental use permits.

(A) To encourage the development of innovative water use practices and technologies that ensure sustainable water use for industrial, commercial, residential, agricultural, or public purposes, including recreational and cultural resources, as a means to facilitate sustainable economic growth and job creation, the chief of the division of water resources, with the approval of the director of natural resources, may issue experimental use permits. An experimental use permit may be issued in lieu of a withdrawal and consumptive use permit as determined appropriate by the chief.

(B) An experimental use permit may be issued if all of the following apply:

(1) The experimental use is reasonable based on a consideration of the factors specified in Section 4.11.5 of the compact.

(2) The experimental use will use no more water than is necessary to determine the effectiveness and economic feasibility of the experimental use.

(3) The experimental use does not reduce the protection afforded the waters and water dependent natural resources of the source watershed as defined in the compact below what is provided in this chapter and rules adopted under it.

(C) The chief may refuse to issue an experimental use permit if the chief determines that the proposed use will result in significant individual or cumulative adverse impacts on the quantity or quality of the waters and water dependent natural resources of the great lakes basin considered as a whole or the Lake Erie source watershed considered as a whole.

(D) The chief shall issue or deny a permit under this section through issuance of an order.

(E) The chief shall establish the terms and conditions of an experimental use permit and may suspend such a permit, at any time, if the chief finds that its terms or conditions are being violated or that its terms and conditions are inadequate to avoid significant individual or cumulative adverse impacts on the quantity or quality of the waters and water dependent natural resources of the great lakes basin considered as a whole or the Lake Erie source watershed considered as a whole.

(F) An experimental use permit issued under this section shall expire not later than twenty-four months after the date of issuance of the permit.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Added by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.

1522.14 Facilities exempt from permit requirements.

The following are exempt from the requirement to obtain a withdrawal and consumptive use permit:

(A) A facility or proposed facility that has a withdrawal and consumptive use capacity or proposed capacity below the threshold amounts established in divisions (A)(1) to (3) of section [1522.12](#) of the Revised Code;

(B) A facility that has a new or increased withdrawal capacity above an applicable threshold amount established in section [1522.12](#) of the Revised Code if either of the following apply:

(1) Except as provided in division (B)(2) of this section, the new or increased maximum daily withdrawal of the facility is less than the applicable threshold amount when averaged over any ninety-day period.

(2) The new or increased maximum daily withdrawal of the facility is less than the applicable threshold amount when averaged over any forty-five-day period with regard to a facility with withdrawals from a river or stream that is a high quality water when the withdrawals are made at a point where the area of the watershed of the river or stream is less than one hundred square miles but greater than fifty square miles.

Division (B) of this section does not apply to withdrawals of a facility from a river or stream that is a high quality water when the withdrawals are made at a point where the area of the watershed of the river or stream is fifty square miles or less.

(C) A baseline facility that has not increased its withdrawal and consumptive use capacity beyond the capacity listed in the baseline report and beyond the threshold amounts established in section [1522.12](#) of the Revised Code;

(D) An electric generating facility that increases its consumptive use due to a requirement imposed by a federal regulation that is unrelated to an increase in production at the facility;

(E) A facility making a withdrawal and consumptive use from an impoundment of water collected primarily from diffused surface water sources, including a farm pond, golf course pond, nursery pond, stormwater retention pond, or other private pond; or a facility making a withdrawal and consumptive use from any stream or river to augment the water supply of an impoundment of water if the impoundment is used, at least in part, for firefighting purposes. The exemption established by this division does not apply to a facility making a withdrawal and consumptive use for industrial purposes or for public water supply purposes.

(F) A facility that must temporarily establish a new or increased withdrawal and consumptive use capacity as a result of an emergency for the duration of that emergency that, without the new or increased withdrawal and consumptive use capacity, will result in imminent harm to human health or property;

(G) A facility that is establishing a new or is increasing its withdrawal and consumptive use capacity in compliance with an experimental use permit issued under section [1522.131](#) of the Revised Code;

(H) A facility that must temporarily establish a new or increased withdrawal and consumptive use capacity in order to respond to a humanitarian crisis for the duration of that crisis if the new or increased capacity is necessary to assist in the management of that crisis;

(I) A facility that is exempt from the requirement to obtain a permit under division (B) or (C) of section [1501.33](#) of the Revised Code;

(J) A facility that is subject to regulation under Chapter 1514. of the Revised Code;

(K) A facility that purchases all of its water from a public water system;

(L) A facility that is withdrawing or consumptively using water from an off-stream impoundment that has been substantially filled with a stream withdrawal by a baseline facility or with a stream withdrawal that is subject to a withdrawal and consumptive use permit;

(M) A facility that is increasing its withdrawal or consumptive use capacity directly related to supplying a major electric generating facility that is subject to regulation under Chapter 4906. of the Revised Code.

Added by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.

[1522.15 Transfer of permits.](#)

(A)

(1) Transfer of a withdrawal and consumptive use permit upon the sale or transfer of a facility may occur so long as the location of the facility, the source of water, and the withdrawal and consumptive use capacities do not change. Transfer of the baseline withdrawal and consumptive use capacity of a baseline facility upon the sale or transfer of the baseline facility may occur so long as the location of the facility, the source of water, and the withdrawal and consumptive use capacities do not change. Transferred capacity of a baseline facility does not require a withdrawal and consumptive use permit.

Notice of a transfer shall be provided to the chief of the division of water resources in a manner prescribed by the chief.

(2) If the owner of a facility for which a withdrawal and consumptive use permit has been issued sells or transfers a portion of the facility, transfer of the applicable portion of the withdrawal and consumptive use capacity authorized by the withdrawal and consumptive use permit may occur so long as the location of the facility, the source of water, and the total withdrawal and consumptive use capacities do not change. The permittee shall provide notice of such a transfer to the chief in a manner prescribed by the chief. Upon receipt of the notice and if a permit is required for the transferred portion based on the threshold amounts established in divisions (A)(1) to (3) of section [1522.12](#) of the Revised Code, the chief shall issue a new permit for the transferred portion of the facility to the transferee and a modified permit for the remaining portion of the facility to the original permittee upon a showing that the transferee will meet the conditions of the original permit and all applicable requirements

of this chapter and rules adopted under it. Any new permit shall reflect the portion of the withdrawal and consumptive use capacity that has been transferred.

(3) If the owner of a baseline facility sells or transfers a portion of the baseline facility, transfer of the applicable portion of the withdrawal and consumptive use capacity listed in the baseline report for that facility may occur so long as the location of the facility, the source of water, and the total withdrawal and consumptive use capacities do not change. The owner shall provide notice of such a transfer to the chief in a manner prescribed by the chief. The chief shall not require the owner of the baseline facility or the transferee to obtain a withdrawal and consumptive use permit, but shall update the baseline report to reflect the transfer.

(4) The chief may deny a transfer under this section by issuing an order denying the transfer and sending written notice to the permittee and the transferee not later than thirty days after notice of the intended transfer. The chief shall deny the transfer if the chief determines that the transfer will result in noncompliance with this chapter, rules adopted under it, or the terms and conditions of a withdrawal and consumptive use permit.

(5) The chief shall remove a facility from the baseline report when the facility is subject to baseline facility abandonment. However, a baseline facility shall not be removed from the baseline report due to the transfer of the facility's baseline capacity.

(B) No person shall sell or transfer a withdrawal and consumptive use permit for purposes of evading the requirements established in sections [1522.10](#) to [1522.21](#) of the Revised Code.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Added by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.

[1522.16 Petitions regarding baseline reports.](#)

(A)

(1) The owner or operator of a facility may petition the chief of the division of water resources for either of the following:

(a) Inclusion in the baseline report if the owner or operator believes that the facility was erroneously excluded from the report;

(b) The amendment of the amount of a withdrawal and consumptive use or other information included in the baseline report regarding the facility if the owner or operator believes that the information is incorrect.

(2) The chief shall issue an order either approving or disapproving a petition submitted under this section. The chief shall issue the order based on a thorough examination of the circumstances concerning the petition.

(3) The chief shall adopt rules in accordance with Chapter 119. of the Revised Code that establish procedures for the submission of petitions under this division.

(B) With regard to the nonuse of a baseline facility's or a facility's withdrawal and consumptive use capacity, not later than sixty days after the time period specified in division (B)(1) or (2) or (I)(1) or (2) of section [1522.10](#) of the Revised Code, the owner or operator of the facility may request an extension from the chief to retain the facility's active status. The request shall be made in a manner prescribed by the chief. The chief shall determine the appropriate terms and conditions of the extension, if approved, based on information submitted by the owner or operator. The chief shall issue an order approving or disapproving the request and shall do so in a manner prescribed by the chief.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Added by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.

[1522.17 Submission of facility water conservation plan.](#)

(A) The owner or operator of a facility who is applying for a withdrawal and consumptive use permit shall submit to the chief of the division of water resources a facility water conservation plan that incorporates environmentally sound and economically feasible water conservation measures in accordance with Section 4.11.3 of the compact. If the plan reasonably incorporates environmentally sound and economically feasible water conservation measures applicable to the facility, it shall be deemed to be in compliance with Section 4.11.3 of the compact.

(B) The chief shall keep confidential any portions of a facility water conservation plan that constitute a trade secret as defined in section [1333.61](#) of the Revised Code as follows:

(1) During the period of time after confidentiality is requested under division (C) of this section and until the chief makes a determination to approve or disapprove the request;

(2) On and after the date on which the chief approves a request for confidentiality under division (C) of this section.

Any portions of a facility water conservation plan that are kept confidential as provided in this division are not subject to section [149.43](#) of the Revised Code.

(C)

(1) The owner or operator of a facility may request that any portions of a facility water conservation plan be kept confidential. The request for confidentiality shall be submitted at the same time that an owner or operator submits a facility water conservation plan under division (A) of this section. The owner or operator shall clearly indicate the information that the owner or operator considers a trade secret and shall label it as "trade secret." Failure to make such a request shall constitute a waiver of the right to prevent public disclosure of the information. A request for confidentiality shall be accompanied by documents that support the request. The documents shall describe the measures that the requestor has taken to safeguard the confidentiality of the information and indicate whether or not others are bound by a confidentiality agreement related to the information.

(2) The chief, by order, shall issue a decision regarding the confidentiality request not later than forty-five days after the receipt of the request. Until the decision is issued, the information that is the subject of the request shall be confidential and maintained by the chief in a separate file labeled "confidential." The applicant shall be notified by mail of the decision.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Added by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.

1522.18 Investigations; access to premises.

The chief of the division of water resources, on the chief's own initiative or upon written complaint by any person, may investigate or make inquiries into any alleged failure to comply with this chapter, any rule adopted under it, any order issued under it, or the terms and conditions of a permit issued under it. The chief or the chief's duly authorized representative may enter at reasonable times on any private or public property to inspect and investigate conditions relating to any such alleged act of noncompliance and, if necessary, may apply to the court of common pleas having jurisdiction for a warrant permitting the entrance and inspection.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Added by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.

1522.19 Violation.

No person shall violate any provision of this chapter, any rule or order adopted or issued under it, or any term or condition of a permit issued under it.

Added by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.

1522.20 Issuance of order of violation.

(A)

(1) The chief of the division of water resources may issue an order to a person that the chief determines has violated, is violating, or is threatening to violate any provisions of this chapter, rules adopted under it, or permits or orders issued under it. The order shall be effective upon issuance and shall identify the facility where the violation has occurred, is occurring, or is threatened to occur, the specific violation, and actions that the owner or operator of the facility must take to comply with the order. The order shall establish a reasonable date by which the owner or operator must comply with the order.

(2) An order issued under division (A)(1) of this section shall be in writing and shall contain a finding of the facts on which the order is based. Notice of the order shall be given by certified mail to the applicable owner or operator of a facility. Notice also shall be provided to a person who initiated a complaint that resulted in the order and shall be posted on the web site of the department of natural resources in a manner prescribed by the chief.

(B)

(1) The chief, by order, may propose to suspend or revoke a permit issued under this chapter if the chief determines that any term or condition of the permit is being violated. The chief's order shall identify the facility where the violation allegedly occurred, describe the nature of the violation, and prescribe what action the permittee may take to bring the facility into compliance with the permit. The chief shall fix and specify in the order a reasonable date or time by which the permittee must comply. The order shall state that the chief may suspend or revoke the permit if the permittee fails to comply with the order by that date or time. If on that date or time the chief finds that the permittee has not complied with the order, the chief may issue a new order suspending or revoking the permit.

(2) The chief or the chief's designee may enter on private or public lands and take action to mitigate, minimize, remove, or abate the conditions caused by a violation that is the subject of an order issued under division (B)(1) of this section.

(C) The attorney general, upon written request of the chief, shall bring an action for an injunction or other appropriate legal or equitable action against any person who has violated, is violating, or is threatening to violate any provision of this chapter, any rule or order adopted or issued under it, or any term or condition of a permit issued under it. The attorney general shall bring the action in the court of common pleas of Franklin county or the county where the applicable facility is located. In an action for injunction, any factual findings of the chief presented at a hearing conducted under division (A) of section [1522.21](#) of the Revised Code is prima-facie evidence of the facts regarding the order that is the subject of the hearing.

(D) A person who violates any provision of this chapter, any rule or order adopted or issued under it, or any term or condition of a permit issued under it is liable to the chief for any costs incurred by the division of water resources in investigating, mitigating, minimizing, removing, or abating the violation and conditions caused by it. Upon the request of the chief, the attorney general shall bring a civil action against the responsible person to recover those costs in the court of common pleas of Franklin county. Moneys recovered under this division shall be deposited in the state treasury to the credit of the water management fund created in section [1501.32](#) of the Revised Code.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Added by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.

1522.21 Issuance of proposed order indicating intent to issue final order.

(A) As used in this section, "person who is or will be aggrieved or adversely affected" means a person with a direct economic or property interest that is or will be adversely affected by an order or rule issued or adopted by the chief of the division of water resources under this chapter.

(B)

(1) Before issuance of a final order denying the issuance of a permit under section [1522.11](#), [1522.12](#), or [1522.131](#) of the Revised Code, denying a transfer under section [1522.15](#) of the Revised Code, denying a petition to the chief under section [1522.16](#) of the Revised Code, or denying a request for confidentiality under section [1522.17](#) of the Revised Code, or before the issuance of a final order under section [1522.20](#) of the Revised Code, the chief shall issue a proposed order indicating the chief's intent to issue a final order. If the chief receives a written objection from a person who is or will be aggrieved or adversely affected by the issuance of the final order, the chief shall conduct an adjudication hearing with respect to the proposed order in accordance with Chapter 119. of the Revised Code. A person who is or will be aggrieved or adversely affected by the issuance of the final order and who submitted a written objection under this division may be a party to the adjudication.

(2) Any person who is issued a proposed order or a final order by the chief shall be a party in any administrative or legal proceeding in which the proposed order or final order is at issue. This division is in addition to any other rights that a person may have as a person aggrieved or adversely affected.

(C)

(1) After the issuance of a final order, a person who is or will be aggrieved or adversely affected by the issuance of the order may appeal the order to the court of common pleas of Franklin county or the court of common pleas of the county in which the facility that is the subject of the order is located. Subject to the exceptions specified in section [2506.03](#) of the Revised Code, the court is confined to the record as certified to it by the chief if an adjudication hearing was conducted by the chief under division (B) of this section. However, the court also may grant a request for the admission of additional evidence when satisfied that the additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the chief. If no adjudication hearing was conducted under division (B) of this section, the court shall conduct a hearing de novo.

(2) The filing of an appeal under division (C)(1) of this section does not automatically suspend the order that is the subject of the appeal. Upon application by the appellant, the court may suspend or stay the order, pending an immediate hearing on the appeal.

(3) If the court finds that the order was lawful and reasonable, it shall issue a written order affirming the order. If the court finds that the order was unreasonable or unlawful, it shall issue a written order vacating or modifying the order. The judgment of the court is final unless reversed, vacated, or modified on appeal.

(4) Attorney's fees shall not be awarded to any party to an administrative or legal proceeding under this section.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 1/1/2016.

Added by 129th General Assembly File No.108, HB 473, §1, eff. 9/4/2012.