



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2011 Assembly Bill 421**

**Assembly Substitute  
Amendment 1 and Assembly  
Amendments 1 and 2 to the  
Substitute Amendment**

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### **ASSEMBLY SUBSTITUTE AMENDMENT 1**

#### **General Permits for Activities Affecting Navigable Waters**

Assembly Substitute Amendment 1 establishes new procedures for the Department of Natural Resources (DNR) to issue a general permit for activities that affect navigable waters. The substitute amendment repeals the requirement that the DNR issue general permits through the administrative rule-making process.

Under the substitute amendment, the DNR must provide notice of its intent to issue a general permit in the following four ways: (1) publication of a Class 1 notice; (2) providing a copy of the notice to any person or group upon request of the person or group; (3) publication of the notice through an electronic notification system; and (4) publication of the notice on the DNR's Internet website. The notice must include a description of the activities to be authorized under the general permit.

The DNR must provide a comment period of at least 30 days. In addition, any person may request a hearing on the proposed general permit and, if it finds that there is significant public interest, the DNR must hold a public hearing.

The substitute amendment specifies that general permits are valid for five years and may be renewed, modified, or revoked. It also specifies that projects authorized under a general permit remain authorized for five years from the date the DNR determines the project may proceed under the general permit, even if the underlying general permit expires during this time period.

### **Individual Permits for Activities Affecting Navigable Waters**

Assembly Substitute Amendment 1 makes several changes regarding the approval of applications for individual permits for activities that affect navigable waters and deadlines for DNR action.

The substitute amendment specifies that if the DNR determines that an application is not complete, it may make one request for additional information to complete the application. When DNR receives the additional information, it has 10 days to determine if the application is complete. DNR may make additional requests for supplemental information but may not request information outside the scope of the original request.

The substitute amendment provides that a person may request a hearing on an individual permit application within 20 days of the DNR's notice of a pending application. The DNR is required to hold a public hearing upon request if it determines that there is significant public interest in the hearing.

The substitute amendment provides that the DNR must make a final decision on an application within 30 days of holding a hearing or, if it does not hold a hearing, within 30 days of the close of the public comment period. If the DNR fails to meet the deadline for taking final action, the application is considered to be approved. The resulting permit must authorize the activity as proposed by the applicant, except that the DNR may impose terms and conditions that are consistent with the applicant's basic proposal.

### **Piers**

Assembly Substitute Amendment 1 modifies the two current law exemptions from the requirement that a person obtain a permit to place a pier.

The first exemption is based on the design and location of the pier. The substitute amendment requires that the three-foot depth calculation in this exemption be "measured at summer low levels." The substitute amendment also replaces the requirement that a loading platform be no more than eight feet wide and meets the other listed conditions with a provision limiting the loading platform surface area to 200 square feet. The substitute amendment also specifies that a riparian owner may secure, to a pier, up to two personal watercraft for the first 50 feet of the riparian owner's shoreline footage and one additional personal watercraft for each additional 50 feet of shoreline footage without affecting the riparian owner's eligibility for this exemption.

The second exemption in current law is known as the grandfather exemption, which, as affected by 2011 Wisconsin Act 25, specifies that a riparian owner of a pier that was placed on the bed of a navigable water on or before February 6, 2004, is exempt from the permit requirements under s. 30.12, Stats., if: the pier is not more than eight feet wide; the pier does not interfere with the riparian rights of other riparian owners; and the riparian owner registers the pier with the DNR no later than April 1, 2012. The substitute amendment modifies this exemption so that it applies to any pier placed before the substitute amendment goes into effect if the pier does not interfere with the riparian rights of other riparian owners. The other conditions of the exemption that apply under current law would not apply under the substitute amendment. The substitute amendment also applies this pier exemption to piers for which the DNR initiated enforcement action before February 6, 2004, which enforcement action

remained pending on April 16, 2008, and makes other changes to the enforcement limitations for this exemption.

The substitute amendment also requires DNR to issue a general permit that authorizes a riparian owner to place a pier in, or that would directly affect, an area of special natural resource interest (ASNRI) and that is adjacent to the owner's property, if the pier does not interfere with the riparian rights of other riparian owners. The substitute amendment specifies that the general permit must apply to any pier that meets all of the other eligibility criteria for the first exemption above.

### **Boathouses**

The substitute amendment allows repair and maintenance of a boathouse if the boathouse existed on December 16, 1979, and the repair or maintenance does not affect the size, location, or configuration of the boathouse and does not result in the boathouse being converted into living quarters.

### **Bridges and Culverts**

The substitute amendment repeals the exemption under ch. 30, Stats., for municipalities to obtain permits under ch. 30, Stats., to construct or reconstruct highway bridges and requires the DNR to issue a statewide general permit that authorizes a person to construct, reconstruct, and maintain bridges and culverts that are part of a transportation project that is carried out under the direction and supervision of a municipality.

### **Grading on the Banks of a Navigable Waterway**

The substitute amendment exempts land grading activity authorized under a stormwater discharge permit and land grading activity authorized by a shoreland zoning permit issued by a county from the requirement to have a permit to grade or remove topsoil from the bank of any navigable waterway if the area exposed is more than 10,000 square feet.

### **Dams**

The substitute amendment requires the DNR to establish an expedited procedure for approval of plans for "low hazard dams" if certain specified criteria are satisfied.

### **ASNRI**

Under current law, for purposes of ch. 30, Stats., an ASNRI includes "An area that possesses significant scientific value, as identified by the department." The DNR has promulgated rules that include a list of "areas that possess significant scientific value." The substitute amendment directs the DNR, in its identification of "areas of significant scientific value," to include a list that closely matches the current list under the DNR rule, with the exception of areas identified in a special wetland inventory study and areas identified by the U.S. Army Corp of Engineers in a special area management plan.

**Permits for Activities That Are Not Related to Navigable Waters**

Under current law, the DNR is required to promulgate rules under which it refunds fees paid by an applicant for a license or approval if the DNR fails to make a determination on the application within the time limit specified in the rule for that type of license or approval.

The substitute amendment repeals this requirement and replaces it with more specific requirements. The substitute amendment establishes, in statute, deadlines for the DNR to take final action on certain permit applications and directs the DNR to set other deadlines. The substitute amendment prohibits the DNR from disapproving an application for an approval solely because it is unable to complete its review of the application before a deadline. If it fails to approve or disapprove an application before a deadline, the DNR must refund fees paid by the applicant for the approval and the applicant may bring an appeal as though the DNR had disapproved the application.

**Air Pollution Control Permits**

The substitute amendment specifies that the DNR is not required to use air dispersion modeling as a basis for making its findings on permit approval for certain air pollution control permits, unless required to do so under the Federal Clean Air Act.

**Wisconsin Pollution Discharge Elimination System (WPDES) Permits and Stormwater Management Permits**

The substitute amendment gives the DNR explicit authority to renew WPDES permits and stormwater management permits, upon the request of the permit holder, for not more than five years.

**Forms of Certain DNR Notices**

The substitute amendment requires the DNR to give notice on its Internet website, in addition to the publishing of a Class 1 notice under ch. 985, Stats., for certain types of notices.

**ASSEMBLY AMENDMENT 1 TO ASSEMBLY SUBSTITUTE AMENDMENT 1**

Assembly Amendment 1 adds two new provisions to the current statutes regarding air pollution control permits and criteria for air permit approvals.

The first provision specifies that unless required under the federal Clean Air Act, in determining whether a person is required to obtain a construction permit or an operation permit for a stationary source based on emissions of greenhouse gases, the DNR may not consider carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms, consistent with 40 CFR 51.166 (b) (48) and the definition of “subject to regulation” in 40 CFR 70.2.

The second provision created in the amendment specifies that unless required under the federal Clean Air Act, in determining whether a major source is subject to best available control technology for greenhouse gas emissions, the DNR may not consider carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from

plants, animals, or microorganisms, consistent with 40 CFR 51.166 (b) (48) and the definition of “subject to regulation” in 40 CFR 70.2.

The phrase “the combustion or decomposition or nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms” refers to what are commonly called biofuels; the phrase “carbon dioxide emissions resulting from the combustion or decomposition” refers to such emissions from the use or production of biofuels. The provisions of federal law cited in the amendment create a three-year period during which carbon dioxide emissions resulting from the production or use of biofuels will not be included in determining greenhouse gas emissions when the regulating agency (the DNR, in the case of Wisconsin) determines: (1) whether a person is required to obtain a construction permit or an operation permit for a stationary source based on the greenhouse gas emissions; or (2) whether a major source will be required to have best available control technology for greenhouse gas emissions, unless the federal Clean Air Act requires otherwise.

### **ASSEMBLY AMENDMENT 2 TO ASSEMBLY SUBSTITUTE AMENDMENT 1**

The substitute amendment specifies that the DNR is not required to use air dispersion modeling in making findings which relate to whether the applicant will be able to meet pollution emissions limits, will not cause a violation of air quality standards, and will not degrade air quality such that other sources are potentially prevented from being permitted in the same area, among other findings.

Assembly Amendment 2 revises this provision of the substitute amendment to specify all of the following:

- The DNR is not required to use air dispersion modeling “when issuing [an air pollution control] permit ....”
- The DNR may not require the use of air dispersion modeling before issuing a permit to a minor source.
- The DNR may not require air dispersion modeling as a condition of coverage under a registration permit or a general permit.

In addition, Assembly Amendment 2 changes the wording of the DNR findings required to approve a permit application that relate to compliance with emissions limits and not causing violations of air quality standards. Current law states that the DNR must find, in the one instance, that “[t]he stationary source will meet all applicable emissions limitations and other requirements ....” Assembly Amendment 2 changes this wording to require the DNR to find that “[t]he permit includes terms and conditions necessary to ensure compliance with all applicable emissions limitations and other requirements ....” In the other instance, current law states that the DNR must find that “[t]he stationary source will not degrade air quality in the area sufficiently to prevent [the permitting] of another stationary source ....” Assembly Amendment 2 changes this wording to require the DNR to find that “[t]he permit includes terms and conditions necessary to ensure that the stationary source will not degrade air quality in the area sufficiently to prevent [the permitting] of another stationary source ....”

**LEGISLATIVE HISTORY**

Assembly Substitute Amendment 1 was offered by Representative Mursau on December 7, 2011. Assembly Amendments 1 and 2 to Assembly Substitute Amendment 1 were offered by Representative Tiffany on December 13, 2011.

On December 14, 2011, the Assembly Committee on Natural Resources recommended adoption of Assembly Amendment 1 to Assembly Substitute Amendment 1 on a vote of Ayes, 10; Noes, 4; Absent, 2. The committee recommended adoption of Assembly Amendment 2 to Assembly Substitute Amendment 1 on a votes of Ayes, 8; Noes, 6; Absent, 2. The committee then recommended adoption of Assembly Substitute Amendment 1, as amended, on a vote of Ayes, 13; Noes, 1; Absent, 2. Finally, the committee recommended passage of the bill, as amended, on a vote of Ayes, 9; Noes, 5; Absent, 2.

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