

WISCONSIN LEGISLATOR
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**CHAPTER 14 –
ENVIRONMENTAL
PROTECTION AND
NATURAL RESOURCES**

Environmental and natural resources laws result from a process shaped by each of the three branches of government – legislative, executive, and judicial. Major federal legislation, including legislation related to air and water, delegates part or all of the implementation or programs to the states. In Wisconsin, the Legislature has enacted legislation covering a wide range of environmental protection and natural resources issues. The Department of Natural Resources is the primary executive branch agency that administers these programs and promulgates administrative rules interpreting the applicable statutes. Courts have developed case law, or common law, that significantly impacts the scope and implementation of environmental and natural resources laws.

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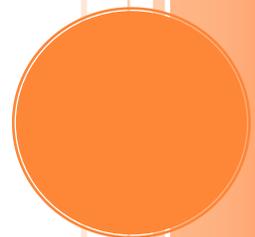


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NAVIGABLE WATER AND WETLANDS

A complex set of laws govern the ownership and use rights of Wisconsin's lakes, streams, and wetlands.

The Public Trust Doctrine

The Wisconsin Constitution, Article IX, Section 1, provides that the “river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost or duty therefor.” That provision has been interpreted to mean that the Wisconsin Legislature is the trustee for the citizens’ rights to navigate and enjoy recreational activities in the waters of the state. This interpretation is known as the “public trust doctrine.” The Legislature is viewed as having generally delegated its trustee obligations to the Department of Natural Resources (DNR), except where statutes state otherwise. The Wisconsin Supreme Court has interpreted the public trust doctrine to encompass a broad range of public rights, including commercial and recreational navigation, water quality, fishing and hunting, other recreational uses, and enjoyment of natural scenic beauty.

The public trust doctrine is a body of common and statutory law that provides that the state holds title to navigable waters in trust for public purposes.

The existence of public rights in a lake or stream depends upon whether the water body is “navigable.” A water body is considered to be navigable if it is capable of floating any boat for recreational purposes. Furthermore, the water body does not need to be continually navigable, but needs to be navigable only on a regularly recurring basis, such as during spring runoff periods. The trust also applies to artificial navigable waters that are directly and inseparably connected with natural, navigable waters.

The state owns the beds of natural navigable lakes up to the ordinary high-water mark. The ordinary high-water mark is the point on the bank or shore where the water, by its presence, wave action or flow, leaves a distinct mark on the bank or shore. Riparian owners--people who own property adjacent to a navigable water body--hold title to stream beds to the center of the stream. Riparian rights include the use of the shoreline, the reasonable use of the water, and the right to build piers for navigation. When conflicts arise between riparian rights and public rights, riparian rights are secondary to the public interest.

In order to ensure that both public rights and riparian rights are protected, the Legislature has delegated to the DNR the authority to issue permits for various activities in and near navigable waters under subch. II of ch. 30, Stats.

Navigable Water Regulations

Under subch. II of ch. 30, Stats., a person generally must obtain a permit from the DNR before conducting any of the following activities relating to navigable waters:

- Placing structures and deposits, including piers, in navigable waters. [s. 30.12, Stats.]
- Constructing bridges and culverts. [s. 30.123, Stats.]
- Withdrawing water from lakes and streams. [s. 30.18, Stats.]
- Enlarging and protecting waterways. [s. 30.19, Stats.]
- Changing stream courses. [s. 30.195, Stats.]
- Removing material from beds of navigable water bodies. [s. 30.20, Stats.]

Certain activities may be authorized by a general permit (a permit that applies statewide to any person authorized to engage in the specific activity covered by the permit). Each statutory section directs the DNR to promulgate rules regarding implementation and includes numerous exemptions for specific purposes. If an activity is not authorized under a general permit or explicitly exempted from regulation under state statute, an individual permit typically must be obtained. Each individual ch. 30 permit has specific requirements. Most, however, require that the applicant demonstrate that the activity will not materially impair navigation or be detrimental to the public interest or public rights. Many ch. 30 permits may be granted only to riparian owners. Prescribed timelines apply to the issuance of permits.

Information about the various types of, and application procedures for, ch. 30 permits is available on the DNR website at: <http://dnr.wi.gov/permits/water/>

State statutes control the size and configuration of piers that may be placed by riparian owners without a permit. The statutes also address piers that were placed prior to the enactment of the existing exemption, and allow an owner to seek a permit for a larger pier. [s. 30.12 (1g) and (1k), Stats.]

Wetlands Regulation

Under state law, a wetland general permit or individual permit is required if an activity will result in a discharge of dredged material or fill material into wetlands, unless the activity is exempt from this requirement. [s. 281.36 (3b) and (3g), Stats.] The DNR may not issue either type of wetland permit unless it determines that the discharge authorized

pursuant to the wetland permit will comply with all applicable water quality standards. Water quality standards for wetlands are narrative standards that describe “beneficial uses” or “functional values” of a wetland such as flood water retention, groundwater recharge or discharge, and fish and wildlife habitat.

If the wetland is a “federal wetland,” the applicant must also obtain a permit from the U.S. Army Corps of Engineers (ACE). Federal wetlands are wetlands that are subject to federal jurisdiction under the Clean Water Act. Nonfederal wetlands are “nonnavigable, isolated, intrastate wetlands,” which were removed from the ACE’s jurisdiction by the U.S. Supreme Court in *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001).

General permits and individual permits are available for applicants whose projects will have an impact on wetlands.

The DNR is required to establish wetland general permits for certain types of discharges, and may issue other wetland general permits to regulate other types of discharges. When drafting a wetland general permit, the DNR is required to impose requirements, conditions, and exceptions to ensure that the discharges that will occur under the permit will cause only minimal adverse environmental effects. [s. 281.36 (3g), Stats.]

A wetland individual permit is required for a person to discharge dredged material or fill material into any wetland unless the discharge is authorized under a general permit or is exempt from permitting requirements. An application for a wetland individual permit must include an analysis of the practicable alternatives (reasonably available and capable of being implemented after taking into consideration cost, site availability, available technology, logistics, and proximity to the proposed project site, in light of the overall purpose and scope of the project) that will avoid and minimize the adverse impacts of the discharge on wetland functional values and that will not result in any other significant adverse environmental consequences. The DNR must review the practicable alternatives analysis and is directed to limit its review according to factors set forth in the statutes. [s. 281.36 (3m) (b) and (3n), Stats.]

A pre-application meeting with staff from the DNR is required for all wetland individual permit applications.

Wetland Mitigation

The term “wetland mitigation” refers to actions taken to compensate for the adverse impacts of a project on other wetlands.

Wisconsin law requires the DNR to require mitigation for wetland individual permits through its mitigation program. The mitigation program must allow mitigation to be accomplished by any of the following methods:

- Purchasing or applying credits from a mitigation bank in this state. The DNR is required to establish a system of service areas for the mitigation banks under the mitigation program that is geographically based on the locations of the major watersheds in the state.
- Participating in an in lieu fee subprogram, if established, under which payments are made to the DNR or another entity for the purposes of restoring, enhancing, creating, or preserving wetlands or other water resource features.
- Completing mitigation within the same watershed or within one-half mile of the site of the discharge.

Wetland mitigation is required for all wetland individual permits.

The statutes provide that purchasing credits from a mitigation bank and participation in the in lieu fee subprogram are the preferred types of mitigation. The DNR is required to establish mitigation ratios that are consistent with the federal regulations that apply to mitigation and mitigation banks, but the minimum ratio must generally be at least 1.2 acres for each acre affected by a discharge. [s. 281.36 (3n) (d) and (3r), Stats.]

Shoreland Zoning

State shoreland zoning laws regulate certain activities within shorelands, generally 1,000 feet from a lake, pond, or flowage and 300 feet from a river or stream. The statutes direct counties to zone by ordinance all shorelands in unincorporated areas. The DNR's shoreland zoning standards for counties are set forth in ch. NR 115, Wis. Adm. Code. State law, as affected by 2015 Act 55 (the Biennial Budget Act), requires the DNR's shoreland zoning standards under ch. NR 115, Wis. Adm. Code, and county shoreland zoning ordinances to satisfy certain parameters and further specifies that county shoreland zoning ordinances may not regulate a matter more restrictively than the matter is regulated under a shoreland zoning standard in ch. NR 115, Wis. Adm. Code. That limitation does not prohibit a county from enacting a shoreland zoning ordinance that regulates a matter that is not regulated by a shoreland zoning standard under ch. NR 115, Wis. Adm. Code. [s. 59.692 (1d), Stats.]

Included among the specific items that county shoreland zoning ordinances may not require are the establishment of vegetative buffer zones in certain circumstances, residential outdoor lighting, and the inspection or upgrade of a structure before its sale or transfer. In addition, county ordinances may not prohibit the maintenance, repair, replacement, restoration, rebuilding, or remodeling of a nonconforming structure (a structure that

existed before the current shoreland zoning ordinance took effect) if the activity does not expand the structure's footprint; or prohibit or regulate, with certain exceptions, the vertical expansion of a nonconforming structure if the expansion would result in the structure being not more than 35 feet above grade. If county shoreland zoning ordinances contain impervious surfaces standards, surfaces must be defined as pervious if the runoff from the surface is treated by a device or system, or is discharged to an internally drained pervious area, that retains the runoff on or off the parcel to allow infiltration into the soil. Additional provisions regarding setback averaging rules--using the distance between existing structures and the shore to determine where new structures can be built--may apply to a particular project. [s. 59.692 (1f), (1k), and (1n), Stats.]

WATER POLLUTION DISCHARGE PERMITS

Under the federal Clean Water Act, the discharge of pollutants from a point source into a navigable water is prohibited without a permit. In Wisconsin, discharges from a point source are subject to the Wisconsin Pollutant Discharge Elimination System (WPDES) program permit requirements provided in statute. [s. 283.31, Stats.] Through the WPDES permit program, the DNR regulates stormwater and wastewater discharged by industries and municipalities and discharges from large animal feeding operations. The types of pollutants covered by the permits include total suspended solids (particles suspended in water), phosphorus, oil, and grease. Each permit contains monitoring, reporting, and operational requirements. The DNR determines whether a particular facility is appropriately covered by a general or individual permit.

The DNR promulgated administrative rules that became effective on December 1, 2010, regulating the discharge of phosphorus from point sources and establishing the procedures for incorporating new phosphorus water quality-based standards into WPDES permits. [chs. NR 102 and 217, Wis. Adm. Code.] Any WPDES permittee may request a variance from the DNR from a water quality-based effluent (pollutant) limitation, including phosphorus. A permittee may also request authorization from the DNR to implement adaptive management, an approach which allows a permittee to reduce phosphorus discharges from other sources, including nonpoint sources, if doing so is more cost-effective than reducing its own discharge.

Administrative rules regulating the discharge of phosphorus became effective in 2010.

Pursuant to legislation enacted in 2013, the DNR submitted a request to the Environmental Protection Agency (EPA) on March 30, 2016, for approval of a multi-discharger variance from these phosphorus limits for point sources that cannot comply with them without incurring costs that would cause a substantial and widespread social and economic impact on a statewide basis. [s. 283.16, Stats.] If the EPA approves the multi-discharge variance, it will be an additional phosphorus compliance option for certain

WPDES permit holders. As with other variance requests to Clean Water Act requirements, the EPA must approve the statewide variance.

NONPOINT SOURCE WATER POLLUTION

Nonpoint sources of water pollution are sources that are diffuse in nature without a single, well-defined point of origin. Pollutants include fertilizers, nutrients, oil, and sediment from agricultural, urban, and residential areas. Wisconsin has numerous water bodies that are not meeting water quality standards and are therefore considered to be “impaired” as a result of nonpoint source pollution impacts. As required by the federal Clean Water Act, the DNR has established total maximum daily loads (TMDLs) for impaired water bodies. A TMDL is generally the amount of pollutant that the water body can assimilate and not

For more information on nonpoint source water pollution abatement programs, see the Legislative Fiscal Bureau’s (LFB) 2015 Informational Paper 70, *Nonpoint Source Water Pollution*, at:
<http://www.legis.wisconsin.gov/lfb>

exceed water quality standards. Once a TMDL is developed and approved by both EPA and DNR, federal and state laws require that the TMDLs not be exceeded. [ss. 281.15 and 281.16, Stats.]

Wisconsin implements TMDLs by regulating both point sources and nonpoint sources. The state regulates nonpoint discharges through

agriculture performance standards and manure management requirements in ch. NR 151, Wis. Adm. Code, and nonagricultural performance standards in both chs. NR 151 and 216, Wis. Adm. Code, the stormwater discharge permit rule. Under their respective authorities, the DNR and the Department of Agriculture Trade and Consumer Protection (DATCP) offer technical assistance and cost-sharing grants to local governments to control nonpoint source pollution. [ss. 92.14 and 281.65, Stats.]

AIR POLLUTION CONTROL

Much of the state's air pollution program under ch. 285, Stats., is designed to implement the federal Clean Air Act. The EPA has established national ambient air quality standards for six principal pollutants: carbon monoxide (CO), nitrogen dioxide (NO₂), ozone (O₃), particulate matter, sulfur dioxide (SO₂), and lead. For a particular air pollutant, the EPA identifies regions within each state where the standard is not met based upon air quality monitoring data collected by the state. These areas are called “nonattainment areas.”

When a county is identified as not meeting a federal air quality standard based on monitored values of the outside air, it is designated by the EPA as a “nonattainment” area and given a target date to meet the standard. A state must then prepare a “state implementation plan,” or SIP, that includes regulations for controls on emissions that are needed to reduce the air pollution and meet the standard. [s. 285.14, Stats.] If at any time monitored values show that the air quality has improved and the county meets the standard, the DNR may request redesignation of the county.

Air permits limit the amount of air pollution a facility is allowed to emit and identify the regulatory requirements that facilities must meet. There are two major permit programs for stationary sources in Wisconsin: construction permits for new or modified sources, and operation permits for new, modified, or existing sources. Construction permits are required so that proposed projects meet air pollution standards before they are constructed. Operation permits set emission limits and establish monitoring, record-keeping, and reporting requirements. Operation permits are generally divided into two categories: major source permits and minor source permits. Major source permits are issued to sources that have the potential to emit pollutants above certain levels. Minor source permits are issued to sources that do not have the potential to emit above these levels. Permit conditions may be revised as facilities expand, replace equipment, or change operations. Certain facilities with lower emissions may be exempt from construction or operation permit requirements. [ss. 285.60 (1) and (2), 285.61, 285.62, and 285.63, Stats.]

The DNR also issues registration permits that have a more streamlined application process and flexible permit terms for smaller facilities that have lower emissions; and general permits for specific types of industry, such as rock crushing plants. [s. 285.60 (2g) and (3), Stats.]

SOLID WASTE AND RECYCLING

Solid Waste Disposal

Chapter 289, Stats., contains extensive licensing requirements and other regulations governing solid waste disposal facilities, which include traditional solid waste facilities such as incinerators and landfills. Wisconsin law also includes licensing requirements for solid waste treatment facilities, storage facilities, and transportation services.

State law prohibits the disposal or incineration of specified materials in a solid waste disposal facility. Materials banned from solid waste disposal facilities include lead acid batteries, major appliances, waste oil, yard waste, and aluminum containers; corrugated paper or other container board; glass containers; newspapers and used automotive oil filters and oil absorbent materials that contain waste oil. In addition, the disposal of electronic devices such as computers, televisions, video cassette recorders, digital video disc players, and cell phones in a landfill is prohibited. [s. 287.07, Stats.]

Recycling

State law requires each responsible unit of local government to operate, or contract with another entity to operate, a recycling program that manages solid waste generated within its jurisdiction in compliance with the landfill disposal restrictions that ban certain materials from landfills. A responsible unit may be a municipality, county, tribe, solid waste management system, or other unit of local government responsible for planning, operating, and funding a recycling program. [s. 287.09, Stats.]

Responsible units must be approved by the DNR as operating an effective recycling program in order to apply for a grant under the Municipal and County Recycling Grant Program, which provides financial assistance to responsible units of local government for a portion of eligible recycling costs. A responsible unit's effective recycling program must include several specific components, including an ordinance to require recycling of the materials subject to the landfill bans and curbside collection of certain recyclable materials in municipalities with a population of 5,000 or greater and a population density of greater than 70 persons per square mile. [s. 287.23, Stats.]

Lists of electronics collection sites and registered electronics recyclers around the state may be found at:

<http://dnr.wi.gov/topic/Ecycle/Electronics.html>

Under Wisconsin's electronics recycling program, manufacturers of certain electronic devices, including televisions, computers, and desktop printers, must register with the DNR the brands they sell to households and schools in Wisconsin, and recycle a target weight of electronics each year based on their sales. [s. 287.17, Stats.]

GROUNDWATER LAW AND PUBLIC WATER SUPPLY

Groundwater Quantity

High-Capacity Wells

State law sets standards and conditions for approval of high-capacity wells by the DNR. A high-capacity well is defined as a well that, together with all other wells on the same property, has a capacity of more than 100,000 gallons per day. A high-capacity well may not be constructed or operated without DNR approval. [s. 281.34 (1) (b) and (2), Stats.]

State law sets forth three specific situations in which the DNR is required to conduct a formal environmental review prior to approving construction of a high-capacity well:

- The well is located in a “groundwater protection area” (an area within 1,200 feet of a water body designated as an outstanding or exceptional resource water or a trout stream).
- More than 95% of the amount of water withdrawn by the well would be lost from the water basin in which the well is to be located.
- The well may have a significant environmental impact on a spring.

State law also authorizes the DNR to impose certain conditions on proposed wells in the categories described above and on proposed wells that may impair a public utility's water supply. The DNR may approve wells in those categories only if conditions will ensure that

a well will not cause significant environmental impact or impair a public water supply. [s. 281.34 (4) and (5), Stats.]

Recent legal decisions have impacted DNR regulatory authority regarding approvals of high-capacity wells. In 2011, the Wisconsin Supreme Court held that the DNR, when reviewing a proposed high capacity well, has a “general duty,” grounded in its delegated obligations as trustee under the public trust doctrine and reflected in the department’s

For more information about Wisconsin law relating to groundwater withdrawals, see Legislative Council Information Memorandum 2016-2, available at the Legislative Council website at:

<http://lc.legis.wisconsin.gov/>

general obligations under ss. 281.11 and 281.12, Stats., to investigate or consider potential harm from the proposed well on the waters of the state. [*Lake Beulah Management District v. Department of Natural Resources*, 2011 WI 54.] Under the court’s holding, that “general duty” is triggered when the DNR is presented with sufficient concrete, scientific

evidence of potential harm to waters of the state as a result of a proposed high-capacity well. Following the *Lake Beulah* decision, the DNR began to “screen” all proposed high-capacity wells for potential adverse impacts to any waters of the state.

However, this screening process did not include consideration of the cumulative impacts of other existing and proposed withdrawals in the area of a proposed well, except for other wells on the same property. In 2014, the state’s Division of Hearings and Appeals issued a decision which stated that the DNR, to fulfill its obligations under ch. 281, Stats., and the *Lake Beulah* decision, must consider cumulative impacts caused by existing and anticipated drawdown of groundwater and surface waters by other area wells when evaluating a proposed high-capacity well application.

Most recently, a circuit court case and a formal Attorney General’s Opinion have interpreted 2011 Wisconsin Act 21, commonly referred to as “Act 21,” to limit the DNR’s authority to impose certain conditions in permits for high-capacity wells to those that are explicitly allowed in statute or rule. Following the publication of this opinion, DNR announced that it will conduct environmental review only for applications for high-capacity wells that are one of the three specific types of wells described above or that adversely impact a public water supply.

Great Lakes Compact

The Great Lakes Compact (“Compact”) establishes the legal framework for: (1) prohibiting or, in a few cases, authorizing and regulating new or increased diversions of water to places outside of the Great Lakes basin; and (2) regulating large withdrawals and consumptive uses of water within the basin. Under the Compact, “water” includes groundwater and surface water. In Wisconsin, approximately the eastern 1/4 of the state is in the Lake

Michigan part of the Great Lakes basin, and a smaller area in the northern part of the state is in the Lake Superior basin. The remainder of Wisconsin is in the Upper Mississippi River basin, and is not subject to regulation by the Compact. [s. 281.343 and 281.346, Stats.]

For purposes of the Compact, any person who withdraws water at an average of 100,000 gallons per day or more in any 30-day period from the basin for use within the basin must register with the state DNR, report specified information about the withdrawal, and receive a water use permit. With a few exceptions, new or increased diversions of water from the basin are prohibited under the Compact. Most proposals for diversions are likely to be from communities seeking a public water supply consisting of water from the Great Lakes basin.

The Great Lakes Compact took effect when it was ratified by Wisconsin and by the other seven Great Lakes states through legislation, consented to by Congress, and signed by President Bush, in 2008.

More information about the City of Waukesha diversion application is available at:

<http://dnr.wi.gov/topic/WaterUse/waukeshadiversionapp.html> and
<http://www.waukeshadiversion.org>

In May 2010, the City of Waukesha submitted an application to the DNR to divert water from Lake Michigan. Since that time, the DNR has held public hearings, accepted public comments, and conducted technical reviews of Waukesha's diversion application. Upon completion of its review, the DNR forwarded Waukesha's application to the

other Great Lakes states, and the Canadian Provinces of Ontario and Quebec, pursuant to Compact requirements for regional review of diversion requests. In May 2016, this regional group voted to approve Waukesha's application, with certain revisions, and forwarded it to the Great Lakes-St. Lawrence River Basin Water Resources Council (Compact Council), comprised of the Governors of each of the eight Great Lakes States, for final review. On June 21, 2016, the Compact Council approved, with conditions, the City of Waukesha's diversion application. The City of Waukesha may now begin to obtain all required federal, state and local permits and approvals for diverting Lake Michigan water. The DNR will issue a final diversion approval once all required permits are issued.

Groundwater Quality

State law provides, in part, that the intent of the groundwater protection law is to minimize the concentration of polluting substances in groundwater through the use of numerical standards in all groundwater regulatory programs. [s. 160.001, Stats.] Whenever available, federal standards are to be used in setting state standards. Regulatory agencies continue to exercise the powers and duties in those regulatory programs, consistent with enforcement standards and preventive action limits for substances in groundwater created under ch.

160, Stats. In order to comply with the groundwater law, a regulatory agency is not required to adopt a particular type of regulation; agencies are free to establish any type of regulation which assures that regulated facilities and activities will not cause the concentration of a substance in groundwater to exceed enforcement standards (ES) and preventive action limits (PAL). A PAL serves as a means to inform an agency of potential contamination problems and to establish a level of contamination at which regulatory agencies are required to commence efforts to control contamination.

DNR, in conjunction with the Department of Health Services, is required to promulgate rules creating enforcement standards for substances in groundwater. [ss. 160.07 and 160.09, Stats.] DNR establishes PALs for substances in groundwater. [s. 160.15, Stats.] For each substance for which an enforcement standard or PAL is adopted by DNR, a regulatory agency must promulgate rules setting forth the range of responses the agency may take or which it may require a person to take if the limits are attained or exceeded at a point of standards application.

Public Water Supply

The federal Safe Drinking Water Act establishes maximum contaminant levels for all drinking water supplied from public water systems. The EPA sets national standards for drinking water, which establish enforceable maximum contaminant levels for particular contaminants in drinking water. In Wisconsin, the DNR is authorized to establish, administer, and maintain a safe drinking water program no less stringent than the requirements of the federal Safe Drinking Water Act. Under this authority, the DNR is required to: (1) prescribe, publish, and enforce minimum reasonable standards and methods to be pursued in obtaining pure drinking water for human consumption; and (2) establish all safeguards deemed necessary in protecting the public health against the hazards of polluted sources of impure water supplies intended or used for human consumption. State law sets forth requirements for all types of public water systems, including requirements for general operation; sampling, testing, and treatment; and reporting. [ss. 280.11 and 281.17 (8), Stats.; ch. NR 809, Wis. Adm. Code.] Before a new public water system may be built or an existing public water system may be expanded, those plans must be reviewed and approved by the DNR. [s. 281.41, Stats.]

Private well owners are responsible for testing the quality of their water supply.

The DNR has established standards for the construction of private wells and the installation of pumps in these wells. [s. 280.15, Stats.] Under the Wellhead Protection Program, DNR approval is required for new wells serving public water systems in order to prevent contaminants from entering the system through the area surrounding the well. [ch. NR 811, Wis. Adm. Code.]

The DNR and the Department of Administration jointly administer the Safe Drinking Water Loan Program, which provides loans to local governments and special purpose districts for projects to plan, design, construct, or modify public water systems. [s. 281.61, Stats.] These two agencies also administer the Clean Water Fund Program, which provides financial assistance to local governments for wastewater treatment facilities and urban stormwater runoff projects. [s. 281.58, Stats.] The DNR also administers the Well Compensation Program, which provides financial assistance to replace, reconstruct, or treat contaminated residential or livestock water supplies. [s. 281.75, Stats.]

METALLIC MINING

State law provides both a process and permitting standards to facilitate the issuance of permits for ferrous (i.e. iron) mining in the state. [subch. III, ch. 295, Stats.] The DNR may issue a mining permit following a multi-stage process involving public hearings, preparation and public review of an environmental impact statement (EIS), and the approval of various state and federal permits and approvals relating to environmental and natural resources impacts resulting from mining and activities secondary to mining.

For more information on state metallic mining regulations, see Legislative Council Information Memoranda IM 2013-02 and IM 2013-03, available at the Legislative Council website at:

<http://legis.wisconsin.gov/lc>

The statutes recognize three levels of activity related to mining metallic minerals: exploration, bulk sampling (excavation by removal of less than 10,000 tons of material for purposes of assessing a ferrous mineral deposit), and mining. Prescribed timelines apply to each phase of this process.

For a ferrous mining permit, an applicant is required to submit an environmental impact report that includes specific components, together with the mining permit application, mining plan and reclamation plan, to the DNR. The DNR must hold an informational hearing, which covers the mining permit, all other environmental approvals for the project, and the EIS. Prior to the hearing, the DNR must make the relevant material available to the public. The DNR must hold an informational hearing and provide an opportunity for public comment within specific timelines.

State law generally requires the DNR to issue or deny a mining permit no more than 420 days after the day on which the application for a mining permit is deemed administratively complete, unless an extension to that timeline is approved.

NONMETALLIC MINING

Nonmetallic mining is the extraction of stone, sand, rock, or similar materials from natural deposits. State law does not require a person seeking to begin nonmetallic mining to obtain

a state permit before mining, unless the proposed operation involves environmental impacts that are independently regulated, such as air pollution, wastewater, or stormwater runoff.

State law establishes standards for nonmetallic mining reclamation, defined to mean the rehabilitation of a nonmetallic mining site to achieve a land use in an approved nonmetallic mining reclamation plan. The DNR is required to promulgate rules regarding nonmetallic

For more information about the regulation of sand mining in Wisconsin, see Legislative Council Information Memorandum 2013-04 available at the Legislative Council website at: <http://legis.wisconsin.gov/lc>

mining site reclamation requirements, but delegates the responsibility for adopting and administering such reclamation to local governments. All counties must, and towns, villages, and cities may, enact nonmetallic mining reclamation ordinances. Each ordinance must comply with the minimum reclamation standards in DNR rule. In general, no person may engage in

nonmetallic mining or in nonmetallic mining reclamation without first obtaining a nonmetallic mining reclamation permit under the applicable local ordinance. [ss. 295.11 (4), 295.12, 295.13, 295.14, 295.15 and ch. NR 135, Wis. Adm. Code.] Local governments are primarily responsible for regulating nonmetallic mining through nonmetallic mining reclamation ordinances, zoning ordinances, and ordinances enacted pursuant to general police powers to regulate public health, safety, and welfare.

NATURAL RESOURCES

Management of State Public Lands

Public lands programs designed for the protection and management of the state's natural resources and scenic areas are administered by the DNR pursuant to ch. 23, Stats. Under this general authority, as well as specific statutes related to each type of property, the DNR supervises various types of land designated for conservation or recreation. These lands include state natural areas, state parks, state forests, state recreation areas, wildlife and game refuges, and the Ice Age Trail.

The LFB 2015 Informational Paper 62, *Warren Knowles-Gaylord Nelson Stewardship Program*, provides extensive information about this program, at: <http://www.legis.wisconsin.gov/lfb>

Acquisition of Public Land

The primary public land acquisition program in Wisconsin is the Warren Knowles-Gaylord Nelson Stewardship Program. [s. 23.0915, Stats.] Under the program, the DNR acquires land and provides grants to local units of government and nonprofit conservation

organizations for land acquisition and property development activities. The state generally issues 20-year, tax-exempt general obligation bonds to support the program. 2015

Wisconsin Act 55, the Biennial Budget Act, specified that the DNR may not obligate more than \$33,250,000 in each year from fiscal years 2015-16 through 2019-20.

State law provides public access requirements related to nature-based outdoor activities for certain property acquired at least in part with funding from the Stewardship Program. [s. 23.0916, Stats.] For purposes of these requirements, “nature-based outdoor activity” means hunting, fishing, trapping, hiking, cross-country skiing, and other nature-based outdoor activity designated by rule by the DNR. For specified categories of property, public access for one or more of the listed types of nature-based recreation may be prohibited only if the Natural Resources Board determines that it is necessary to do so to protect public safety, protect a unique animal or plant community, or accommodate usership patterns.

Forest Tax Law Programs

Wisconsin’s forest tax laws encourage sustainable forest management on private lands by providing a property tax incentive to landowners. The two forest tax law programs are the Managed Forest Land Program (MFL) and the Forest Crop Law (FCL). [subchs. I and VI, ch. 77, Stats.] The MFL program was enacted in 1985 and replaced the FCL; however, forest land continues to be enrolled in FCL since the designation lasts for 25 or 50 years. Both programs encourage management of woodlands in their purposes and policies, as well as through a written management plan for a landowner's property. The management plan incorporates landowner objectives, timber management, wildlife management, water quality, and the environment as a whole to create a healthy and productive forest. In exchange for following a written management plan and program rules, landowners pay forest tax law program rates in lieu of regular property taxes.

2015 Wisconsin Act 358 made a significant number of changes to the MFL program. The Act changed program eligibility requirements, simplified the formula for calculating the withdrawal tax assessed on land withdrawn from the program; created new methods to withdraw land from the program; authorized MFL owners to lease their enrolled land; eliminated the yield and severance taxes for timber harvesting; and increased the number of acres an MFL owner may close to public access from 160 to 320 acres in each municipality. In addition, the Act specified that the order DNR issues enrolling land in the program constitutes a contract between the DNR and the landowner, and changed the distribution of fees paid by owners who close their MFL land to public access.

INVASIVE SPECIES

State law requires the DNR to establish a statewide invasive species control program in order to cut, remove, destroy, suppress, or prevent the introduction of nonindigenous species that are likely to cause economic or environmental harm or harm human health. [s. 23.22, Stats.]

The DNR has promulgated an administrative rule, ch. NR 40, Wis. Adm. Code, that classifies and identifies invasive species. In addition, the rule

generally prohibits the transport, possession, transfer, and introduction of prohibited species. With landowner permission or a judicial inspection warrant, the DNR may inspect for, sample, and control prohibited species. The rule also contains preventive measures including requirements to remove aquatic plants and animals and drain water from boats and trailers upon removal from the water and to remove aquatic plants and animals from any vehicle, boat, trailer, or equipment before placing it in any navigable water or transporting it on a highway.

Certain prolific, nonnative types of plants, insects, animals, or other living things, referred to as invasive species, often lack natural controls, like predators, and may be able to out-compete native species for food, habitat, and other resources.

ENDANGERED SPECIES

The federal Endangered Species Act (ESA), enacted in 1973, has a stated purpose of conserving species identified as endangered or threatened with extinction, and conserving ecosystems on which they depend. It is administered by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Under ESA, species of plants and animals may be listed as either endangered or threatened according to assessments of the risk of their extinction. Under the ESA, a person may not “take” a listed animal without a federal permit. The ESA encourages states to develop and maintain conservation programs for threatened and endangered species. Federal funding is available to promote state participation. [16 U.S.C. ss.1531-1544.]

State law directs the DNR to establish by administrative rule an endangered and threatened species list consisting of federally listed wild animals and plants and endangered and threatened Wisconsin species of wild animals and plants. The list is provided in ch. NR 27, Wis. Adm. Code. Similar to the federal ESA, state law prohibits the taking, transport, possession, processing, or selling of any listed wild animal, including their parts and products, except under a scientific or incidental take permit issued by the DNR under specified conditions. Similar prohibitions, and the availability of specific permits, regarding wild plants are also included in state statute. [s. 29.604, Stats.; ch. NR 27, Wis. Adm. Code.]

Legal, economic, and social disputes have resulted from actions taken under ESA. One example particularly relevant to Wisconsin is the treatment of the gray wolf. The gray wolf was removed from the state threatened species list in 2004 and from the federal endangered species list on January 27, 2012. Subsequent to the federal delisting of gray wolves, Wisconsin enacted legislation establishing an annual wolf harvesting season. Three wolf hunting and trapping seasons were subsequently held. However, a federal court decision in December 2014 directed that the gray wolf be relisted as a federally endangered species in the western Great Lakes region, which includes Wisconsin. Therefore, Wisconsin is not authorized to implement a wolf harvest and landowners may not lethally remove wolves from their property.

Information on the deer season structure and permits is available at:

<http://dnr.wi.gov/topic/hunt/deer.html>

WILDLIFE MANAGEMENT

The legal framework for fish and game regulation is primarily found in ch. 29, Stats., and ch. NR 10, Wis. Adm. Code. Chapter 29, Stats., governs the regulations applicable to

hunting, trapping, and fishing, and the licenses or approvals required for those activities. State law also regulates commercial activities regarding fish and game, such as commercial fishing, hunter education, and stocking of fish and game. One key statutory provision is s. 29.014, Stats., which is the broad grant of authority to the DNR to establish open and closed seasons and to adopt regulations regarding the taking of fish and game.

The enforcement of regulations regarding hunting, fishing, and trapping is done by the DNR wardens and is based on a citation system similar to that used for traffic law violations. The penalty for a citation is a civil forfeiture rather than a criminal penalty. Some of the more serious fish and game law violations have criminal penalties.

Hunting and trapping statutes and regulations are constantly evolving. Some of the many statutory changes that have occurred recently include the creation of a hunter mentoring program; expansion of crossbow hunting opportunities; the reduction of resident license fees for certain first-time hunting, fishing, or trapping approvals; the general requirement that state parks be open to hunting, fishing, and trapping; and the elimination of the back-tag requirement.

White-Tailed Deer

The DNR's deer management practices have been a controversial issue for many years. In October 2011, the state entered into a contract with Dr. James Kroll to conduct an independent review of these practices. Dr. Kroll's final report, issued in July 2012, encouraged the DNR to increase public involvement in deer management and made a number of recommendations relating to deer population management, hunting regulations and seasons, and chronic wasting disease management.

The DNR 15-year Chronic Wasting Disease Response Plan is available at:

http://dnr.wi.gov/topic/wildlifehabitat/documents/executive_summary.pdf

Among the changes the DNR has implemented in response to the Kroll report recommendations include the Deer Management Assistance program, under which DNR assists landowners with implementing forest regeneration and deer hunting practices, and the creation of County Deer Advisory Councils (CDACs) in each county in the state. Each CDAC gathers public input

and provides recommendations to the DNR on deer management issues in their county, including recommendations on the county-based deer population, antlerless harvest quota, and permit and deer season frameworks.

Chronic wasting disease continues to be an issue in Wisconsin. The DNR has developed a 15-year Chronic Wasting Disease Response Plan which outlines management, monitoring, and public awareness goals and objectives regarding the disease. On May 13, 2016, Governor Walker announced that certain steps will be taken to update the state's CWD response plan, including: directing the DNR to conduct a comprehensive study of deer population dynamics, creating best management practices for the deer farm industry, and conducting more frequent fence inspections.

WILDLIFE DAMAGE

Wildlife damage claim payments and wildlife damage abatement assistance are funded by fees collected from hunters. Payments are available under these programs for damage caused by deer, bear, geese, turkey, and cougar. Land for which wildlife damage payments are made may be required to be open to hunting. State law also authorizes wildlife damage payments for sandhill cranes or elk, if hunting of either species is authorized by the DNR in the future. [s. 29.889, Stats.]

ADDITIONAL REFERENCES

1. At the beginning of each biennial legislative session, the LFB publishes Informational Papers on a variety of environmental and natural resources topics. The Informational Papers are available at: <http://www.legis.wisconsin.gov/lfb>.
2. The DNR website contains useful information about environmental protection programs, natural resources management, hunting, fishing and trapping seasons, as well as information about Natural Resources Board meetings. The DNR website is: <http://dnr.wi.gov/>.
3. The DATCP website includes information regarding nonpoint source pollution and nutrient management plans. This information may be found at: http://datcp.wi.gov/Farms/Nutrient_Management/index.aspx.

4. The federal EPA maintains a website that has information on all federal environmental laws. The EPA website is: <https://www3.epa.gov/>.
5. The U.S. Fish and Wildlife Service, a bureau of the Department of Interior, maintains a website that includes information on hunting, fishing, conservation, and endangered species programs. The website is: <http://www.fws.gov/>.
6. The ACE website includes information regarding permit requirements for activities in or near navigable waters and wetlands. The ACE website is: <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx>.

GLOSSARY

ACE: The U.S. Army Corps of Engineers. A permit from the ACE may be required for activities in or near navigable waters or federal wetlands.

Nonattainment area: A nonattainment area is an area identified under the Federal Clean Air Act: (1) where the concentration in the ambient air of an air contaminant exceeds a national ambient air quality standard (NAAQS) for the contaminant; or (2) that contributes to ambient air quality in a nearby area that does not meet a NAAQS.

Nonfederal wetland: Under Wisconsin law, a wetland is identified as a nonfederal wetland if it is determined to be a nonnavigable, intrastate, and isolated wetland by ACE or by a court of competent jurisdiction. These wetlands are not subject to Federal Clean Water Act permit requirements.

Preventive Action Limit (PAL): A PAL is a type of state groundwater protection standard that represents a lower concentration for a substance than the enforcement standard for the substance. PALs are used by state regulatory agencies in establishing design requirements that are intended to prevent groundwater contamination from facilities, activities, and practices under their jurisdiction.

State Implementation Plan (SIP): These plans are required by the federal Clean Air Act. They set forth in detail the regulations and related programs that a state will use to meet its responsibilities under this Act; they are reviewed and approved by the EPA.

Total Maximum Daily Load (TMDL): The amount of a pollutant that a water body can assimilate and not exceed water quality standards. A TMDL is generally established for each pollutant.

WPDES: Wisconsin Pollution Discharge Elimination System. A discharge of water containing certain pollutants from a point source is generally prohibited without a WPDES permit from the DNR.

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