



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

2011 Wisconsin Act 167, Relating to the Permitting of Activities in or Near Navigable Waters and Certain Other Activities

This Information Memorandum provides information about 2011 Wisconsin Act 167 (the Act), which primarily relates to regulation by the Department of Natural Resources (DNR) of activities affecting navigable waters, but also includes provisions relating to various other environmental protection programs. This memorandum begins with background information regarding the current permitting processes for activities affecting navigable waters, followed by a summary of the Act.*

BACKGROUND ON REGULATION OF ACTIVITIES AFFECTING NAVIGABLE WATERS

TYPES OF ACTIVITIES REGULATED

Subchapter II of ch. 30, Stats., relates to navigable waters and navigation. It regulates any modification to navigable waters, including changes to the water body itself, the construction or placement of structures in or adjacent to navigable waters, and withdrawals of water from the water body. Six key sections prohibit specified modifications to or withdrawals from navigable waterways without a DNR permit. Each section directs the DNR to promulgate rules regarding implementation and includes numerous exemptions for specific purposes. These sections are the following:

- **Section 30.12, Stats., structures and deposits in navigable waters.** Requires a permit for the deposition or placement of any material or structure on the bed of a navigable water where no bulkhead line has been established or beyond an established bulkhead line.
- **Section 30.123, Stats., bridges and culverts.** Requires a permit for the construction, placement, or maintenance of a bridge or culvert in, on, or over navigable waters.

*The majority of the Act does not take effect until August 1, 2012; this Memorandum refers to the law in effect until that date as "current law."

- **Section 30.18, Stats., withdrawal of water from lakes and streams.** Requires a permit for withdrawals of water from lakes and streams in an amount greater than two million gallons per day over any amount the applicant is authorized to withdraw at the time of the permit application.
- **Section 30.19, Stats., enlargement and protection of waterways.** Requires a permit to do any of the following:
 - Construct, dredge, or enlarge an artificial water body that connects with a navigable waterway.
 - Construct, dredge, or enlarge a part of an artificial water body that is located within 500 feet of an existing navigable waterway.
 - Grade or remove topsoil from more than 10,000 square feet of the bank of any navigable waterway.
- **Section 30.195, Stats., changing of stream courses.** Requires a permit or legislative authorization to change the course of, or straighten, a navigable stream.
- **Section 30.20, Stats., removal of material from beds of navigable waters.** Requires a permit or legislative authorization to remove material from the bed of most waters of the state.¹

TYPES OF PERMITS ISSUED

The DNR issues two types of permits under subch. II of ch. 30, Stats.: general permits and individual permits. A general permit is a permit that applies statewide to any person engaging in the activity covered by the permit. An individual permit is a permit issued for an individual activity at a specific place. The statutes and DNR rules specify procedures for the DNR's review of applications for approval to act under general permits and for issuance of individual permits.

General Permits

In contrast to other permits, general permits are established by administrative rule. The rule identifies the activities being permitted, the locations in which, and conditions under which, the activity is permitted, and any other terms of the permit. The DNR is required by statute to issue general permits by rule for specified activities and has the authority to issue general permits for other activities.

A person intending to act under a general permit must notify the DNR of the proposed activity at least 30 days prior to commencing the activity. The DNR has 30 days to review the application and may request additional information regarding the proposed activity once

¹ A person may remove materials from the bed of outlying waters only under a contract with the DNR or by legislative authorization. "Outlying waters" is defined as Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor, and the Fox River from its mouth to the dam at DePere.

during its review, which tolls the review period until the requested information is provided. If, by the end of the review period, the DNR does not notify the applicant that an individual permit is required for the proposed activity, the DNR is considered to have granted authority to act under the general permit. The statutes do not call for either public comment or hearings on applications for authority to proceed under a general permit.

Upon completion of the activity, the applicant must submit a statement certifying to the DNR that the activity was completed in conformity with the terms and conditions of the general permit. The statement must be accompanied by photographic documentation.

The DNR may require an applicant for authorization to act under a general permit to apply for an individual permit if it determines that the proposed activity is not authorized under the general permit or if it determines, based on an investigation and site visit, that conditions specific to the site require restrictions on the activity in order to prevent significant adverse impacts to the public's rights and interests, pollution, or material injury to the riparian rights of any riparian owner.² In addition, a person intending to engage in an activity that is neither exempt from the permit requirements nor covered by a general permit must apply to the DNR for an individual permit.

Individual Permits

Within 30 days of receiving an application for an individual permit, the DNR must notify the applicant in writing as to whether the application is complete. If the DNR has determined that the application is incomplete, the notice must identify the additional information needed to complete the application. An applicant may resubmit an application that the DNR has determined is incomplete, but in general, the DNR may not require the applicant to provide information beyond what it identified as the deficiencies of the original application. Within 15 days of determining that an application is complete, the DNR must notify the applicant and interested and potentially interested members of the public of that determination.

Public input to the DNR's decision-making process for individual permits is provided in the form of a public comment period and the opportunity for a public hearing. The public comment period runs for 30 days from the date that the DNR provides notice of its determination that the application is complete except that, if the DNR holds a public hearing on the application, the comment period ends 10 days after the hearing.

Any person may request a hearing on an application for an individual permit, in which case the DNR must hold the hearing. The applicant may make a request for a hearing in its application and the DNR may conduct a hearing on its own motion, if it determines there is significant public interest. The statutes authorize the DNR to, by rule, delegate to the applicant the duty to provide notice of the public hearing.³

² A "riparian owner" is the owner of property bordering a lake or stream. "Riparian rights" are rights a riparian owner has, primarily regarding access to the lake or stream that the owner's land borders.

³ The DNR has adopted rules delegating this function to the applicant.

Requests for a public hearing on an application must be made within 30 days of the notice that the application is complete and the DNR must provide notice of the public hearing within 15 days of the request for the hearing. The DNR must hold the hearing within 30 days of noticing the hearing. The DNR must render its decision on the application within 30 days of holding a hearing on the application or, if no hearing is held, within 30 days of the end of the public comment period.

Any interested person may, within 30 days of the DNR's decision on an application for an individual permit, request administrative review of the decision. A request can be for review of the DNR's decision to grant or deny a permit or to impose or not impose conditions on the permit. If a request is granted, the DNR refers the matter to the Division of Hearings and Appeals in the Department of Administration.

A person requesting administrative review of a DNR decision may also request that any action under the permit (if the decision was to grant a permit) be stayed, which temporarily prohibits the applicant from acting under the permit. If the request shows that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment, the permit will be stayed until the DNR denies the administrative review request, the hearing examiner from the Division of Hearings and Appeals determines that the stay is not necessary, or the administrative review process is completed.

An administrative review must be conducted as a contested case hearing. Within 30 days of receiving the referral, the hearing examiner from the Division of Hearings and Appeals must determine whether to continue any stay on action under the permit under review. Within 90 days of receiving the referral, the hearing examiner must render a decision. The 90-day period may be extended by mutual agreement of the parties, and the hearing examiner may grant one 60-day extension upon petition of any party and a showing of good cause demonstrating extraordinary circumstances justifying the extension.

Any person whose substantial interest is affected by the DNR's decision on an application for an individual permit may seek judicial review of that decision in circuit court. Any party aggrieved by a decision of a hearing examiner on an application for an individual permit may also seek judicial review.

2011 WISCONSIN ACT 167

SUMMARY

With respect to activities that affect navigable waters, the Act includes provisions regarding all of the following:

- DNR authority to issue general permits.
- The approval of activities under general permits, including deadlines for DNR action.
- The approval of applications for individual permits, including deadlines for DNR action.

- Publication of DNR determinations of navigability and ordinary high-water mark of individual waterways.
- Permits for specific activities, including: the placement of piers and wharves; and the placement and maintenance of boat shelters, boathouses, and fixed houseboats.

With respect to other environmental protection programs, the Act includes provisions regarding all of the following:

- Deadlines for DNR action on applications for various licenses, certifications, and registrations.
- The approval of a proposed water or sewerage system or the expansion of an existing system.
- The approval of applications for air pollution control permits.

The provisions establishing deadlines for DNR action include automatic approval, the refund of application fees, or similar results in the event the DNR fails to meet the deadlines.

GENERAL PERMITS FOR ACTIVITIES AFFECTING NAVIGABLE WATERS

DNR Authority to Issue General Permits

As noted earlier, the DNR is currently required to issue general permits for various activities and is authorized to issue general permits for other specified activities. The general permits must be created through the administrative rule-making process.

The Act repeals the requirement that the DNR issue general permits through the administrative rule-making process. In addition, it gives the DNR the authority to issue a general permit for any activity for which it may issue an individual permit under ch. 30, Stats. It creates an express statement that a general permit is in lieu of any other permit that would be required.

Procedures for Issuance of General Permits

The Act establishes new procedures for issuance of general permits, which no longer must be issued using the standard administrative rule-making procedure. Under the Act, 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 department'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. In contrast to the treatment of individual permits described below, a hearing on a proposed general permit is not conducted as a contested case hearing.

In issuing general permits under this paragraph, the Act requires the DNR to establish requirements and conditions to ensure that the activities subject to the permit will cause only minimal adverse environmental impacts, will not materially interfere with navigation, and will not have an adverse impact on the riparian property rights of adjacent riparian owners.

The Act also provides an opportunity for the Assembly and Senate standing committees with jurisdiction over natural resources matters to temporarily suspend general permits. For such a suspension to be made permanent, a bill must be passed sustaining the suspension. Such a suspension would not apply to a person who began an activity under a general permit before the suspension. The Act also requires the DNR to report to the Governor and the Legislature about its activities related to general permits.

Term of General Permits

The Act 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.

General permits in effect on the effective date of the legislation remain in effect until replaced with new general permits under the new law. An activity that the DNR has authorized under a general permit continues to be authorized after the expiration of the general permit. The current statutes are silent regarding the term of general permits.

INDIVIDUAL PERMITS FOR ACTIVITIES AFFECTING NAVIGABLE WATERS

Completeness of Application; Date of Closure

As described above, current law establishes a series of deadlines for the various steps in the review of an application for an individual permit, the first of which is the date on which the DNR determines that an application is complete. The Act introduces the concept of the “date of closure” as the starting point for these application review deadlines.

As under current law, the DNR must determine if an application is complete within 30 days of receiving the application. If the DNR determines that the application is complete, it must notify the applicant of this determination within the 30-day review period. If the DNR determines that the application is not complete, it must notify the applicant of this determination and identify the information that is needed to complete the application. In contrast to current law, the DNR may make one request for additional information to complete the application. The request tolls the 30-day review period. When the DNR receives the additional information, it has 10 days to determine if the application is then complete. The DNR may make additional requests for supplemental information, but it may not request information outside the scope of the original request (unless the applicant consents) and further requests do not affect the date of closure.

The date of closure is set as one of the following:

- If the DNR determines during the 30-day review period that the application is complete, the date of closure is the date on which it sends its notice that the application is complete.
- If the DNR requests additional information, the date of closure is the date on which, within 10 days of receiving the additional information, it sends its notice as to whether the application is complete.
- If the DNR fails to determine whether the application is complete within 30 days of receiving the application or within 10 days of receiving additional information it has requested, the date of closure is the last day of the respective 30-day or 10-day review period.

Timeline Following Date of Closure

Under the Act, within 15 days of the date of closure (within 15 days of the determination that an application is complete under current law), the DNR must provide notice of the pending application to interested members of the public. The public comment period runs for 30 days from the date of this notice or, if a public hearing is held, until 10 days after the public hearing (under the Act and under current law). In addition, any person may, within 20 days of this notice (within 30 days under current law), request a hearing on the application. The DNR must provide notice of a hearing within 15 days of receiving a request for a hearing or within 15 days of determining to hold a hearing on its own motion, and must hold the hearing within 30 days of issuing the notice (under the Act and under current law).

Public Hearing on Application

Current law requires the DNR to hold a public hearing on an application for an individual permit if requested. The Act specifies that the DNR must hold a hearing upon request if it determines that there is a significant public interest in a hearing. Notice of a public hearing under the Act is similar to the notice required when the DNR intends to issue a general permit, described above.

Final Action on Application

Under both current law and the Act, 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. Under the Act, the DNR and the applicant may agree to extend this time period one time for up to 30 days. Also, the DNR may extend this time period one time for up to 30 days if adverse weather conditions prevent the DNR from conducting an accurate on-site inspection of the site.

If the DNR fails to meet the deadline for taking final action under the Act, 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.

If the DNR denies an application, the Act requires it to set forth the specific reasons as to how the provisions of the relevant statutes were not met. If the DNR denies an application on the basis that the application was incomplete, it must inform the applicant of the areas of the application that were incomplete.

Term of Individual Permits

Generally, a project conducted by a permit or contract issued under subchs. I and II of ch. 30, Stats., must be completed within three years after the permit or contract was issued. The DNR may specify a time limit of less than three years. For good cause, the DNR may extend this time limit for no longer than two years if the grantee requests an extension prior to expiration of the initial time limit. The Act applies this requirement only to contracts or individual permits, removes the restriction that the DNR extend the time limit only for good cause, and requires the DNR to extend the time limit for an additional five years if the grantee requests an extension prior to expiration of the applicable time limit.

Hearings on Appeal of DNR Action; Burden of Proof

Current law specifies who “shall proceed first with the presentation of evidence and...have the burden of proof” in hearings on appeal of a DNR action. In a proceeding where the DNR has issued an order or proposed order and the recipient of the order requests the hearing, it is the DNR that goes first and has the burden of proof; in a proceeding under which a person has been granted a review hearing under s. 227.42, Stats.,⁴ it is the petitioner; in a *de novo* proceeding⁵ involving issuance of a license, permit, or approval, it is the applicant for the license, permit, or approval.

In a case in which the applicant for a permit appeals the DNR’s action, the applicant is the petitioner; in a case in which an appeal is brought by a person who is affected by the issuance of a permit but is not the permit applicant, that person is the petitioner.

The Act specifies that, in any hearing on a DNR action relating to an individual permit under subch. II of ch. 30, Stats., the petitioner proceeds first with the presentation of evidence and has the burden of proof.

PERMITS FOR SPECIFIC ACTIVITIES AFFECTING NAVIGABLE WATERS

Piers

There are two exemptions from the requirement that a person obtain a permit for placing a pier on the bed of a navigable waterway under current law.⁶ The first exemption is based on the design and location of the pier; the second is an exemption that allows an owner to keep a

⁴ Section 227.42 (1), Stats., provides that any person affected by an agency’s action is entitled to a hearing on that action.

⁵ A *de novo* proceeding is a proceeding in which the hearing examiner reviews the DNR’s action without deference to the DNR’s decision. A *de novo* proceeding is held in certain situations, including when required by law, when the issue is one the courts have not addressed previously, or when the agency has been inconsistent on the issue in its past decisions.

⁶ Pier exemptions under current law and under the Act also generally apply to wharves.

pier that was placed before a certain date (the “grandfather exemption”). Under the first exemption, a pier is generally exempt from the permitting requirements under s. 30.12, Stats., if all of the following apply:

- It is located in an area other than an area of special natural resource interest (ASNRI).
- It does not interfere with the riparian rights of other riparian owners.
- It is no more than six feet wide other than for a loading platform that is no more than eight feet wide, extends perpendicular to one or both sides of the pier, and is located on the waterward end of the pier.
- It extends no further than to a point where the water is three feet at its maximum depth, or to the point where there is adequate depth for mooring a boat or using a boat hoist or boat lift, whichever is farther from the shoreline.
- It has no more than a specified number of boat slips.

The Act would require that the three-foot depth calculation in this exemption be “measured at summer low levels.” The Act also replaces the requirement that a loading platform be no more than eight feet wide and must meet the other listed conditions with a provision limiting the loading platform surface area to 200 square feet.

The Act 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 DNR is also required by the Act to issue a general permit that authorizes a riparian owner to place a pier in, or that would directly affect, an 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 Act specifies that the general permit must apply to any pier that meets the eligibility criteria for the current exemption, described in the preceding paragraphs, with the exception of the criterion that the pier not affect an ASNRI. The Act allows the DNR to impose conditions on piers or wharves under this general permit relating to the location, design, construction, and installation of a pier or wharf but prohibits the DNR from prohibiting a riparian owner from placing a pier or wharf that meets the requirement of the general permit.

Under the grandfather exemption in current law, as affected by 2011 Wisconsin Act 25, 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;⁷ 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.

⁷ Other than a loading platform that is located at the waterward end of the pier, is not more than 300 square feet in surface area, and meets certain width requirements.

The Act modifies this exemption so that it applies to any pier placed before the Act goes into effect if the pier does not interfere with the riparian rights of other riparian owners⁸ and the owner of the pier is not notified by the DNR before the Act goes into effect that the pier is detrimental to the public interest. The other conditions of the exemption that apply under current law would not apply under the Act. The Act 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.

Boat Shelters

The DNR is currently required to issue a general permit that authorizes riparian owners to place a permanent boat shelter adjacent to the owner's property to store or protect watercraft and associated materials, except that no general or individual permit may be issued for a permanent boat shelter that is constructed after May 3, 1988, if the property on which the permanent boat shelter is to be located also contains a boathouse within 75 feet of the ordinary high-water mark or if there is a boathouse over navigable waters adjacent to the owner's property.

The Act prohibits the DNR from issuing a general permit for a permanent boat shelter if the permanent boat shelter extends beyond the waterward end of the owner's pier or the waterward side of the owner's wharf.

Boathouses and Fixed Houseboats

The owner of a boathouse or fixed houseboat extending beyond the ordinary high-water mark of a navigable waterway is currently prohibited from repairing and maintaining it if the cost of the repair or maintenance is more than 50% of its equalized assessed value, or if it is not subject to assessment, its current fair market value. The Act allows repair and maintenance⁹ 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

Under current law, municipalities are generally not required to obtain permits under ch. 30, Stats., to construct or reconstruct highway bridges. Current law also specifies that bridges, as well as arches and culverts, must be constructed in accordance with Department of Transportation standards.

The Act repeals the exemption under ch. 30, Stats., for municipalities and requires the DNR to issue a statewide general permit that authorizes a person to construct, reconstruct, and

⁸ The Act establishes the effective date of this provision as the day after publication.

⁹ Under current law, the terms "maintain" and "repair" are not defined. The Act defines these terms to include replacing structural elements, including roofs, doors, walls, windows, beams, porches, and floors.

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

Current law requires that a person generally must be issued 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. The Act 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 this requirement.

Dams

The Act requires the DNR to establish an expedited procedure for approval of plans for “low hazard dams.”¹⁰ The expedited procedure shall apply if all of the following are satisfied:

- The plan design is of a common construction and size or is for a minor addition to an existing dam.
- The plan design is submitted by a registered professional engineer.
- The plan design is submitted by a person who has designed similar dams and none of those similar dams has caused adverse impacts to the environment.
- The plan design contains no unusual siting requirements or other unique design features.
- The plan design is for a dam that is located entirely on land that the permit grantee owns or that is located entirely on land for which the permit grantee has acquired an easement.
- The plan design is not likely to have an adverse impact on the environment.

OTHER PROVISIONS RELATED TO NAVIGABLE WATERS

Publication of DNR Determinations

In administering the statutes relating to navigable waters, the DNR frequently makes determinations as to whether a particular waterway is navigable and where the ordinary high-water mark is on a particular waterway. The Act requires the DNR to publish on its website any determinations that it makes regarding the navigability of waterways and the ordinary high-water mark of navigable waterways. The Act declares that any person may rely upon such information as accurate. The Act also requires the DNR to publish on its website the current status of any application filed with the DNR for a permit, license, or other approval under chs.

¹⁰ “Low hazard dam” means a large dam the failure of which would probably not cause significant property damage or loss of human life.

30, 281 to 285, or 289 to 299, Stats., along with notice of any hearing on the application that has been scheduled.

Website Fee

The Act requires the DNR to charge applicants for various permits under ch. 30, Stats., a supplemental fee to be used by the DNR to maintain a computerized system by which an applicant may determine the status of an application. The fee will be based on the DNR's estimate of the cost of administering the system or \$3, whichever is less.

PERMITS FOR ACTIVITIES NOT RELATED TO NAVIGABLE WATERS

DNR Action Deadlines and Refund of Permit Fee for Certain Applications

Existing law requires the DNR 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. This requirement applies to certain licenses and approvals for activities affecting navigable waters and for pollution control or other environmental protections, as specified in statute, and applies to any additional approvals the DNR specifies in the rule.

The Act repeals this requirement and replaces it with more specific requirements. The Act establishes, in statute, deadlines for the DNR to take final action on certain permit applications and directs the DNR to set other deadlines.

The Act allows the DNR to extend any of these deadlines if an application is incomplete and if all of the following apply:

- Within 14 days after receiving the application, the DNR provides written notice to the applicant describing specifically the information that must be provided to complete the application.
- The information requested is directly related to eligibility for the license or other approval or to terms or conditions of the license or other approval.
- The information is necessary to determine whether to approve the application or is necessary to determine the terms or conditions of the license or other approval.
- The extension is not longer than the time it takes for the applicant to supply the DNR the information requested.

The Act 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.

The deadlines established by the Act are as follows:

- The DNR must take final action on an application for any of the following within 30 days from the date on which the department receives the application:
 - A solid waste disposal facility operator certification.
 - A hazardous waste transportation license.
 - A medical waste transportation license.
- The DNR must take final action on an application for an oil or gas exploration license within 60 days from the date on which it receives the application.
- The DNR must establish deadlines, not required to be in rule, for it to take final action on an application for any of the following:
 - A well driller or pump installer registration.
 - A water system or septage servicing vehicle operator certification.
 - A license for servicing septic tanks and similar facilities.
 - A solid waste incinerator operator certification.
 - A laboratory certification or registration.

Water and Sewage Facilities

The Act requires the DNR to establish an expedited procedure for approval of a proposed water or sewage system or extension of an existing water or sewage system that applies if all of the following are satisfied:

- The plan design is of a common construction and size or is for a minor addition to an existing facility.
- The plan design is submitted by a registered professional engineer.
- The plan design is submitted by a person who has designed similar facilities and none of those similar facilities has caused adverse impacts to the environment.
- The plan design contains no unusual siting requirements or other unique design features.
- The plan design is not likely to have an adverse impact on the environment.

Air Pollution Control Permits

The Act specifies that the DNR is not required to use air dispersion modeling as a basis for making its findings on permit approval for air pollution control permits for a minor source unless modeling is specifically provided for under the Federal Clean Air Act, certain DNR rules, or a federal or state agreement.

Terms and Renewal of Certain Permits

In general, WPDES¹¹ permits and stormwater management permits issued by the DNR may not be for a term of more than five years. Prior to expiration of a permit, the permit holder must apply to the DNR for reissuance of the permit. The Act authorizes the DNR to renew WPDES permits and stormwater management permits, upon the request of the permit holder, for not more than five years. Prior to expiration of the renewed permit, the permit holder must apply to the DNR for reissuance of the permit.

FORM OF CERTAIN DNR NOTICES

The Act 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 the following¹²:

- Notice of completeness of applications, hearings on application approval, and hearings on appeal of DNR final action on applications related to activities affecting navigable waters.
- Notice of public hearings on proposals to construct utility facilities.¹³
- Notice of public hearings on proposals by federal agencies to conduct wetland restoration activities.
- Notice of a complete application for new or increased interbasin water transfers and water use permits under the Great Lakes Compact.
- Notices related to WPDES permit applications.
- Notices related to the construction, reconstruction, replacement, modification, or operation of a stationary source of air contaminant emissions.
- Notice of proposed redesignation of an area for the purposes of the Federal Clean Air Act by an American Indian tribal governing body.¹⁴

¹¹ The Wisconsin Pollutant Discharge Elimination System (WPDES) is the formal title of the water pollution control program in Wisconsin.

¹² As noted previously, the statutes authorize the DNR to, by rule, delegate to the applicant the duty to provide notice of a public hearing, and the DNR has done so. Under the Act, the applicant would still be required to publish the notice under ch. 985 and mail the notice to those requesting it, but DNR would be required to post the information to its website and manage its electronic notification system.

¹³ Construction of a “utility facility” means construction of any new plant, equipment, property or facility, or extension, improvement, or addition to its existing plant, equipment, property, apparatus or facilities, including a large electric generating facility or a high-voltage transmission line.

¹⁴ Under current law and under the Act, a Class 1 notice of such a proposed redesignation under ch. 985, Stats., must also be published in the official state newspaper.

- Notices related to solid and hazardous waste facilities and management.
- Notices related to remedial action at a site at which the discharge of hazardous substances or other environmental pollution has occurred.

The Act authorizes various notices to interested persons to be provided through an electronic notification system. The DNR is also required to include specified information in various types of notices, including information about public hearings and permit applicants and summaries of the subject matter of the action underlying the notice. The Act generally establishes the official date of public notice; the date upon which the DNR publishes various notices on its website.

The Act includes separate notice provisions for the applicant and interested parties related to any substantial changes the DNR may make to a nutrient management plan of a concentrated animal feeding operation. These provisions allow notification of the permittee by e-mail and require notice to be posted on the DNR's website, but do not require that the notice be published as a Class 1 notice. Under the Act, the DNR is required to provide a 14-day period, from the date on which notice is posted on the DNR's website, for written comments on such a plan change.

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

A more succinct summary may be found as Act Memo 167 on the Legislative Council website: <http://legis.wisconsin.gov/lc>.

This memorandum was prepared by David L. Lovell, Senior Analyst, and Larry Konopacki and Rachel Letzing, Senior Staff Attorneys, on April 17, 2012.

WISCONSIN LEGISLATIVE COUNCIL

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