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👉 Details: Complaint

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2003-04

(session year)

### Joint

(Assembly, Senate or Joint)

### Committee for Review of Administrative Rules...

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)



Army Corps of Engineers (“Corps”) December 13, 1997 Public Notice published in the Federal Register. 33 U.S.C. 1344(e); 33 C.F.R. 330 (1997); 61 Fed. Reg. 65874 (Dec. 13, 1996).<sup>1</sup> A copy of the challenged rule or order is attached hereto as Exhibit “1”.

2. The Defendant, Wisconsin Department of Natural Resources (“WDNR”), is an administrative agency of the state of Wisconsin located at 101 South Webster Street, Madison, County of Dade, Wisconsin 53703. Its current Secretary is P. Scott Hassett.

3. The Plaintiff, Paul Heinrich (“Heinrich”), a resident of Illinois, owns real property on the shores of Little Star Lake located at the Northwest ¼, Section 10, Township, Range 8 East, Star Lake, Vilas County, Wisconsin.

4. The street address for the Site is 8125 Hwy. K, Star Lake, Wisconsin, 54561.

5. The Site consists of approximately 9.5 acres with 480 feet of frontage on Little Star Lake.

6. The Site consists of approximately 1.5 acres of upland and 8 acres of forested wetland.

7. The forested wetland (“Wetland Site”) is above the ordinary high water mark (“OHWM”) of Little Star Lake.

8. The Wetland Site is not navigable in fact.

9. The Wetland Site is adjacent and is hydrologically connected to Little Star Lake.

10. Little Star Lake is ultimately connected via a series of surface tributaries to the Wisconsin River.

11. Little Star Lake is located above the headwaters of the Wisconsin River as defined by federal regulation. 33 C.F.R. 330.2(d).

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<sup>1</sup>All references to the Federal and Wisconsin state Statutes or Administrative Rules are from the 1997-98 versions unless otherwise noted.

12. Upon information and belief, the Wetland Site is a “water of the United States” based upon the United States Supreme Court case of *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 133-34 (1985).

13. Upon information and belief, the Wetland Site is a “navigable water” subject to regulation pursuant to the federal Clean Water Act (“CWA”). 33 U.S.C. 1311 et seq. (1997)

14. The CWA prohibits the “discharge of any pollutant by any person” from a “point source” into “navigable waters” unless authorized by a permit or specific exception under the Act. 33 U.S.C. §§ 1311(a), 1344(a), and 1362(12).

15. The CWA authorizes the United States Army Corps of Engineers (“Corps”) to issue general permits (section 404 permits), including “nationwide permits,” or “NWP,” for categories of activities having minimal adverse environmental effects. 33 U.S.C. § 1344(e).

16. On February 11, 1997 the Corps issued NWP 26, which allowed for the placement of up to three acres of fill, a type of pollutant, into waters of the United States located above the headwaters. Pursuant to NWP 26, no pre-discharge notification was required to be given to any agency prior to the placement of fill totaling less than one-third of an acre. 61 Fed. Reg. 65,874, 65,916-17 (Dec. 13, 1996).

17. NWP 26 expired on June 7, 2000. *see* 65 Fed. Reg. 14,255 (Mar. 16, 2000).

18. Activities authorized by a NWP may generally proceed without further Corps approval once all the terms and conditions for the permit have been met. 33 U.S.C. 330.2(c), (h).

19. In 1997, Heinrich hired Charles Vogel Enterprises, Inc. (“Vogel”) to construct a road at the Wetland Site.

20. Prior to construction of the road, Heinrich submitted a “State/Federal Application for Water Regulatory Permits and Approvals, Form 3500-53” to the Corps and the local WDNR Water Management Specialist informing them of his intent to discharge fill material into the

Wetland Site. A copy of the application form is attached hereto as Exhibit "5".

21. The WDNR received Heinrich's application form on or about January 17, 1997.

22. The road construction began in August 1997. The roadway began at the level area cleared for a storage building and ended approximately 100 feet from the shore of Little Star Lake or at the point of the culvert closest to the lake.

23. In October 1998, Vogel returned to the Wetland Site to install two culverts beneath the road.

24. In the spring of 1999, Heinrich (without Vogel) installed a 12 foot wide wooden boardwalk over the remaining distance to the lake and deposited 14 concrete-like blocks ("Spancrete") along the shore.

25. Between the effective and expiration date of the 1997 NWP 26, Heinrich and those acting on his behalf discharged less than one-third of an acre of fill into the Wetland Site located in Wisconsin on Heinrich's private property.

26. The sum total of fill activities conducted by or on behalf of Heinrich complied with the terms and conditions of NWP 26 in that less than one-third acre of fill was placed in waters of the United States located above the headwaters of the Wisconsin River located in Vilas County, Wisconsin.

27. No fill was placed on the bed of Little Star Lake.

28. No fill was placed below the OHWM of Little Star Lake.

29. At the insistence of the WDNR, the United States of America filed a CWA suit, Case Number 03 - C - 75 - S, against Heinrich on February 11, 2003 in the United States District Court for the Western District of Wisconsin alleging that he discharged fill into waters of the United States without a valid permit. A copy of the CWA complaint is attached as Exhibit "7" and Heinrich's first amended counterclaim ("Heinrich's CWA Counterclaim") is attached as Exhibit "8".

30. Among other defenses, Heinrich asserted compliance with NWP 26 as a defense to the CWA complaint.

31. In response the United States alleged that the use of NWP 26 was conditioned upon the grant or waiver of Section 401 Water Quality Certification ("WQC") by the State of Wisconsin prior to discharge.

32. The United States further alleged that Heinrich and Vogel's discharges occurred without a valid Section 404 permit under 33 U.S.C. § 1344 because Heinrich and Vogel never obtained a grant or waiver of WQC from Wisconsin prior to discharge.

33. Heinrich responded to the allegation by asserting Wisconsin waived WQC for the 1997 NWPs because the Corps did not receive Wisconsin's final WQC decision on or before February 11, 1997 as outlined below.

34. Pursuant to the Public Notice published by the Corps in the Federal Register on December 13, 1997, the state of Wisconsin was required to issue or waive state Section 401 Water Quality Certification for the Nationwide Permits by February 11, 1997, which was the effective date of the 1997 NWPs.

35. Absent receipt of the state's WQC decision on or before February 11, 1997, the Corps was required by its own regulations to deem the state to have waived WQC for the 1997 NWPs.

36. A document alleged to be the state of Wisconsin WQC decision document was mailed to the Corps on February 24, 1997. A copy of the cover letter mailed with the WQC document is attached hereto as Exhibit "2".

37. The Corps received the alleged WQC decision document on March 3, 1997 as indicated by the Corps date stamp. *See* Cover Letter, Exhibit "2".

38. The alleged state section 401 WQC decision document purported to grant, conditionally grant, and deny WQC for various NWPs, including NWP 26, and was signed by, George E. Meyers, the then acting Secretary of the Department of Natural Resources, and dated

February 11, 1997. *See* Mailed WQC, Exhibit "1".

39. The alleged state section 401 WQC decision document was published in the Wisconsin State Journal, a City of Madison, Dade County, Wisconsin newspaper on February 27, 1997. A copy of the publication is attached hereto as Exhibit "3".

40. The alleged state section 401 WQC decision document was published nowhere else.

41. In support of its position that the state of Wisconsin did not waive WQC for the 1997 NWP's, the United States relied upon the hearsay testimony contained in the cover letter, dated February 24, 1997, from WDNR Secretary George E. Meyer to the Corps. Said letter asserted that

"On February 11, 1997, we provided you with FAX and electronic versions of our water quality certification determinations for the nationwide permits (NWP's) published in the Federal Register on December 13, 1997 [an obvious typo, it should have read December 13, 1996]. We are now following up with a hard copy version of our previous transmittals for your information and use (attached)."

*See* Cover Letter, Exhibit "2".

42. The United States claimed that the enclosure to the February 24, 1997 letter was faxed to the Corps on February 11, 1997, the deadline upon which the Corps must have received the State's section 401 water quality certification decision.

43. There is no provision in the statutory or administrative laws of Wisconsin which authorizes an agency to serve an administrative rule or order upon a party by facsimile transmission. s. 227.48, Stats.

44. The WDNR's attempted service of the administrative rule or order at issue by facsimile transmission was without statutory or regulatory authority and the rule or order transmitted in such manner is invalid and unenforceable.

45. Were service of an administrative rule or order by facsimile authorized by Wisconsin law, the Corps did not actually receive the facsimile of the document attached to Secretary Meyers' February 24, 1997 letter on February 11, 1997.

46. The document received by the Corps was a compilation of facsimiles which were faxed over the period of two days, February 11<sup>th</sup> and 12<sup>th</sup>, 1997. A copy of the facsimile transmissions actually received by the Corps is attached hereto as Exhibit "4".

47. The compilation of facsimiles received by the Corps on February 11<sup>th</sup> and 12<sup>th</sup> are not identical to the document attached to Secretary Meyers' February 24, 1997 letter. Compare Mailed WQC, Exhibit "1" and Facsimile Transmitted WQC, Exhibit "4".

48. The original of a document transmitted by facsimile is the document actually received.

49. Since the "original" WQC document was not received by the Corps on February 11, 1997, the WDNR submission was not timely and WQC for the NWP's was waived by operation of law.

50. As an further defense to the CWA suit, Heinrich alleged that Wisconsin's WQC decision was defective on further procedural and substantive grounds under the Wisconsin law and, therefore, inadmissible in the CWA action. *See* Heinrich's CWA Counterclaim, Exhibit "8".

51. The alleged WQC decision document is an improperly promulgated and invalid "rule".

52. Specifically, the February 11, 1997 WDNR decision was not a valid final agency decision for the activities encompassed in the 1997 NWP's because the decision is an administrative "Rule", "a general order of general application which has the effect of law and which was issued by the WDNR to implement, interpret, or make specific legislation enforced or administered by the agency" and the WDNR, in promulgating the rule, failed to follow mandatory rule-making procedures; e.g., the rule-making was not preceded by public notice and comment as required by s. 227.16 Stats, s. 227.17 Stats., and s. 227.18 Stats.; the rule was neither filed nor published as required by s. 227.20 and s.227.21, Stats.; the rule, a purported "final decision of an agency", contained no or insufficient findings of fact and conclusions of law from which a reviewing court

could determine whether the agency's decision was arbitrary and capricious; the rule was not promulgated by the Board of the WDNR; the rule exceeded the WDNR's statutory authority to the extent that it purports to regulate land, not lakebed, above the ordinary high water mark of a water body; and the rule purported to be effective prior to the effective date of the rule in violation of s. 227.22, Stats.; and the rule was, in fact, arbitrary and capricious.

53. Additionally and alternatively, the February 11, 1997 decision was not a final agency decision for the various activities encompassed in the 1997 NWP's because it was an administrative "Order" and the order did not set forth the reasons for granting, conditionally granting, or denying WQC, as required by NR 299.05(2); it was not preceded by public notice as required by NR 299.05(4)(a) and (b); the order did not include the information and findings required by the provisions of NR 299.05(3)(d)(1) and NR 299.05(3)(e); the order was not served upon the applicant by personal delivery or by mail as required by s. 277.48, Stats.; the order was not timely served upon the applicant (Corps) nor other interested parties as required by s. 227.48 Stats. and NR 299.05(4)(a) and (b); the order was not received by the applicant on or before February 11, 1997; the WDNR did not publish its order on February 11, 1997 as required by NR 299.05(4)(b); the WDNR did not notify the Plaintiff of the decision, a known interested person, as required by NR 299.05(4)(a); the decision was, in fact, arbitrary and capricious; and the order exceeded the WDNR's statutory authority to the extent that it purports to regulate land, not lakebed, above the ordinary high water mark of a water body.

54. By submitting a "State/Federal Application for Water Regulatory Permits and Approvals, Form 3500-53" on January 17, 1997 to the WDNR for WQC, Heinrich became an "applicant" and an "interested person" entitling him to notice of the WDNR's issuance of the administrative rule or order purporting to grant, conditionally grant, and deny WQC for the 1997 NWPs in accordance with NR 299.05(4).

55. Furthermore, by submitting a "State/Federal Application for Water Regulatory Permits and Approvals, Form 3500-53" on January 17, 1997 to the WDNR for WQC, Heinrich was

entitled to a written decision by the WDNR granting, conditionally granting, or denying his individual application for WQC which stated the reasons for granting, conditionally granting, or denying his request.

56. The WDNR never advised Heinrich that his application for WQC was incomplete as required by NR 299.03(2).

57. The WDNR failed to provide Heinrich with a written response to his individual request for WQC as required by NR 299.05.

58. Prior to filing the CWA suit, the WDNR never provided Heinrich, or the public at large, with a copy of its February 24, 1997 correspondence with the Corps.

59. Prior to filing the CWA suit, the WDNR never provided Heinrich, or the public at large, with a copy of the Corps correspondence to the WDNR rejecting the WDNR's conditions placed upon the 1997 NWP's.

60. During the course of the CWA litigation, the WDNR demanded advance payment from Heinrich in excess of five hundred dollars just to view documents held in its possession relevant to Heinrich's defense that the WDNR acted outside the scope of its authority. A copy of the correspondence Heinrich received from Robert Selk of the Wisconsin Department of Justice is attached hereto as exhibit "6".

61. Material evidence of the WDNR's substantive and procedural defaults in issuing its WQC decision were uncovered during the September 11, 2003 discovery deposition of Ralph Augustin of the Corps and the September 15, 2003 deposition of Dale Simon of the WDNR.

62. The District Court entered summary judgment against Heinrich in the CWA action less than one week after the two depositions were taken and a trial on the issue of damages and injunctive relief was had less than three weeks later.

63. But for the state's alleged WQC decision document, Exhibit "1", untimely served upon the Corps and issued by the WDNR in violation of Wisconsin law, Heinrich's discharge was

authorized by NWP 26.

64. The District Court has yet to enter a court approved restoration plan for the site and the CWA action is currently on appeal to the United States Court of Appeals for the Seventh Circuit as Case Numbers 03 – 4178 and 04 – 1696.

65. The timeliness and invalidity of the administrative rule or order was and still is material to the CWA action on appeal.

66. It is an issue of first impression in Wisconsin whether a Wisconsin State agency can serve an administrative rule or order upon an applicant by facsimile transmission as a substitute for personal service or service by mail.

67. It is an issue of first impression in Wisconsin whether the facsimile transmission actually received by the applicant is the “original” of the document or whether the facsimile transmission sent by the agency is the “original” under the “original writing rule”.

68. Concurrent with the filing of this Petition for Declaratory Judgment, a motion to stay the proceedings in the federal court of appeals will be filed to allow the Wisconsin state court time to rule on the issues raised in this Petition.

WHEREFORE, THE PLAINTIFF, PAUL HEINRICH, respectfully prays that this Honorable Court enter an Order declaring that

- i. the “original” of a document sent by facsimile transmission is the document actually received by the recipient;
- ii. Service of an administrative rule or order by facsimile transmission is unauthorized by the Statutes and Regulations which govern the conduct of the Wisconsin’s administrative agencies;
- iii. The WDNR’s attempted service of the administrative rule or order at issue by facsimile transmission was without statutory or regulatory authority and the rule or order transmitted in such manner is invalid and unenforceable;

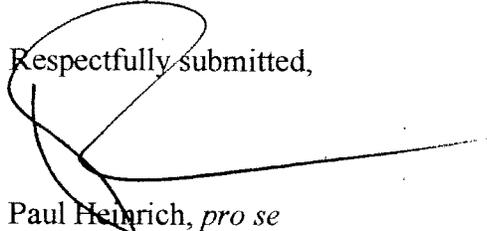
iv. the Wisconsin Department of Natural Resources' administrative action relative the issuance of the 1997 Nationwide Permit Program is ultra vires, invalid, and unenforceable;

v. the state of Wisconsin waived Section 401 Certification for the 1997 NWP's on February 11, 1997 because the WDNR failed to timely and properly respond to the Corps December 13, 1996 request for a state water quality certification determination for the 1997 NWP program;

vi. the WDNR waived WQC for Heinrich's project because it failed to timely and properly respond to Heinrich's individual application for WQC.

Dated: May 17, 2004

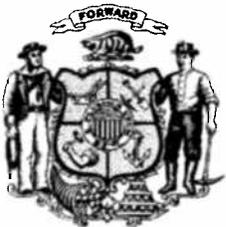
Respectfully submitted,



Paul Heinrich, *pro se*  
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630 232-1116  
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# WISCONSIN STATE LEGISLATURE



BEFORE THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Application of the United States Department )  
of the Army for Water Quality Certification )  
and Coastal Consistency Determination )  
for Final Regulations Pertaining to the )  
Issuance, Re-issuance, and Modifications of )  
Nationwide Permits )

On December 13, 1996, the Department of Army, Corps of Engineers (COE), Office of the Chief of Engineers, 20 Massachusetts Avenue NW, Washington, D.C., 20314-1000 published its Final Notice of Issuance, Re-issuance, and Modifications of Nationwide Permits in the Federal Register. The publication includes 39 revised and new nationwide permits (NWP). The NWPs will become effective on February 11, 1997. Publication of this regulation served as the Corps' application to the State for water quality certification under Section 401 of the Federal Clean Water Act (CWA) and request for a consistency determination for the Wisconsin Coastal Zone Management program.

The St. Paul District/COE, Wisconsin Department of Natural Resources (WDNR) and Wisconsin Coastal Zone Management Program/Department of Administration (WCZMP/DOA) are presently in the process of developing general permits for Wisconsin that will replace the NWP's that are conditionally certified or denied in this document. The WDNR and WCZMP/DOA have examined the final regulations pursuant to Section 401, CWA, Chapter NR 299, Wisconsin Administrative Code (Wis. Adm. Code) and the Wisconsin Coastal Zone Management Plan. The WDNR and WCZMP/DOA have made the determination that the following conditions are required to ensure compliance with state water quality standards enumerated in s. 299.04, Wis. Adm. Code and Wisconsin's Coastal Zone Management Plan. The certification contained herein shall expire on December 31, 1997 or upon revocation of the NWP's by the Corps, whichever comes first.

(Note: The specific language in the NWPs have been either paraphrased or not included in this document. Copies of the complete nationwide permits published in the Federal Register on December 13, 1996 may be obtained from your local COE field office.

STATE CONDITIONS AND LIMITATIONS OF CERTIFICATION

GENERAL CONDITIONS:

1. The applicant shall allow the WDNR reasonable entry and access to the discharge site to inspect the discharge for compliance with the certification and applicable laws.
2. If any conditions are found to be invalid or unenforceable, certification for all activities to which that condition applies is denied.
3. Activities not eligible for state water quality authorization under this certification:
  - A. Fills in navigable waters subject to jurisdiction under Chapters 30 or 31, Wis. Stats.
  - B. Activities likely to jeopardize the continued existence of a state designated threatened or endangered species or a species proposed for such designation or which is likely to destroy or adversely modify the habitat of such species.
  - C. Activities affecting 2 or more acres of waters of the state including wetlands.
  - D. Activities that would result, overall, in adverse impacts to fishery spawning habitat or adversely affect avifauna breeding areas or substantially disrupt the movement of those species which normally migrate from open water to upland or vice versa (i.e. amphibians, reptiles and mammals).

Exhibit  
1

- E. Activities detrimental to the public interest in waters of the state including wetlands.
- F. Activities involving the temporary stockpiling of fill or dredge spoils in waters of the state including wetlands that are not reviewed and approved by the WDNR under the WDNR/WDOT cooperative agreement.

4. Applicants seeking authorization under these NWP's shall complete form 3500-53 (Joint State/Federal Permit Application) and submit a copy to the appropriate local Corps office and local WDNR Water Management Specialist. Applications must contain sufficient location and design information. Please note a \$100.00 non-refundable application fee is required for state water quality certification activities identified under Section II below.

5. If WDNR permits, approvals or coordination in accordance with established WDNR/Wisconsin Department of Transportation (WDOT) liaison procedures are NOT required for the entire activity under II. below an individual Department of the Army permit is required in the following waters of the United States:

- A. Calcareous fens identified by WDNR.
- B. Waters of the United States located within state scientific and natural areas.
- C. Class I, II and III trout streams identified in WDNR publication 6-3600(80), *Wisconsin Trout Streams*, including wetlands within 1,000 feet of the centerline of the stream.
- D. Trout lakes including wetlands with 1,000 of the lake's ordinary high water mark (OHWM).
- E. State or federal wild and scenic rivers, including wetlands within 1,000 feet of the OHWM.

I. The WDNR **GRANTS** water quality certification for the following NWP's subject to compliance with the General Conditions above:

- A. Aids to Navigation. Allows the placement of U. S. Coast Guard (USCG) approved navigational aids.
- B. Structures in Artificial Canals. Allows any structure in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized.
- C. Maintenance. Allows repair, rehabilitation, or replacement of any previously authorized, serviceable, structure or fill provided that use of the structure or fill does not change.
- D. Fish and Wildlife Harvesting, Enhancement and Attraction Devices and Activities. Allows fish and wildlife harvesting devices and activities, including shellfish seeding (but not in wetlands or sites that support submerged aquatic vegetation).
- E. Scientific Measurement Devices. Allows gages, recording devices, water quality testing and improvement devices, and similar structures. Up to 25 cubic yards of fill is authorized for weirs and flumes constructed to water quantity and velocity. Notification is required for fill of greater than 10 cubic yards.
- F. Survey Activities. Allows core sampling, seismic exploration, and plugging of exploration holes.
- G. Outfall Structures. Allows all activities related to construction of outfall and associated intake structures where the effluent from the outfall is in compliance National Pollutant Discharge Elimination System regulations.
- H. Oil and Gas Structures. Allows structures for offshore oil, gas, and mineral development and production within areas leased by the Department of the Interior.
- I. Structures in Fleeting and Anchorage Areas. Allows placement of structures to facilitate mooring of vessels within anchorage areas established by the U.S. Coast Guard.
- J. Mooring Buoys. Allows non-commercial, single boat, mooring buoys.
- K. Temporary Recreational Structures. Allows temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events. Structures must be removed within 30 days after use has been discontinued.
- L. Bank Stabilization. Allows bank stabilization of up to 500 linear feet with up to one cubic yard of material per foot placed below the OHWM without notification. Notification is required for projects of greater length or discharge volumes. Discharges to a special aquatic site is not permitted.

M. USCG Approved Bridges. Allows discharge of fill material incidental to construction of bridges, including cofferdams, foundations, piers, and temporary construction fill, provided discharges is approved by the USCG.

N. Return Water From Upland Contained Disposal Areas. Allows the discharge of return water from an upland, contained, dredge disposal area.

O. Minor Dredging. Allows dredging of up to 25 cubic yards. Dredging or siltation of submerged aquatic vegetation, anadromous fish spawning areas, or wetlands is not permitted.

P. Oil Spill Cleanup. Allows cleanup of oil and hazardous substances provided work is done in accordance with federal regulations and any existing state contingency plans, and has the concurrence of the Federal Regional Response Team.

Q. Removal of Vessels. Allows minor discharges of fill in connection with removal of disabled or abandoned vessels or man-made obstructions to navigation.

R. Structural Discharge. Allows discharges to sealed forms used as a structural member for pile-supported structures such as piers and docks and for linear projects. Discharges to special aquatic sites are permitted.

S. Wetland and Riparian Restoration and Creation Activities. Allows restoration of former non-tidal wetlands and riparian areas, the enhancement of degraded wetlands and riparian areas, and creation of wetlands and riparian areas: (1) on non-federal public lands and private lands in accordance with the terms and conditions of a binding wetland restoration or creation agreement between the landowner and the U.S. Fish and Wildlife Service or the NRCS or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or (2) on any federal land; or (3) on reclaimed surface coal mined lands in accordance with a Surface Mining Control and Reclamation permit; or (4) on any public or private land provided the permittee notifies the District Engineer in accordance with the "Notification" general condition.

T. Modifications of Existing Marinas. Allows the reconfiguration of existing docking facilities within an authorized marina. No dredging or expansion of any kind is permitted.

U. Moist Soil Management for Wildlife. Allows discharge of dredged or fill material into non-tidal wetlands necessary to manage, construct, and/or maintain habitat and feeding areas for wildlife. NWP applies to federally-owned or managed and state-owned or managed property.

V. Maintenance of Existing Flood Control Projects. Allows the excavation and removal of accumulated sediment and associated vegetation for maintenance of existing flood control facilities including debris basins, retention/detention basins and channels not to exceed previously authorized depths and configurations provided the dredged material is disposed of at an upland site or a currently authorized disposal site in waters of the U.S., and proper siltation controls are used.

W. Maintenance Dredging of Existing basins. Allows maintenance of existing marina basins, canals, and boat slips to previously authorized depths, provided disposal of spoils into an upland site and proper siltation controls are used.

X. Boat Ramps. Allows construction of boat ramps, provided that (1) the discharge does not exceed 50 cubic yards of rock; (2) the ramp is not wider than 20 feet; (3) the base is of stone or other "suitable" material; (4) the excavation is limited to the area necessary and excavated material is removed; and (5) no material is placed in special aquatic sites including wetlands.

Y. Emergency Watershed Protection and Rehabilitation. Allows (1) work done or funded by NRCS qualifying as an "exigency" situation pursuant to NRCS's Emergency Watershed Protection Program; and (2) work done or funded by the U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook.

Z. Cleanup of Hazardous and Toxic waste. Allows cleanup of hazardous or toxic waste, performed, ordered, or sponsored by an authorized governmental entity or resulting from a court order or settlement.

II. The WDNR Grants water quality certification for the following NWPs subject to compliance with the general conditions above and any other activity specific condition:

A. Utility Line Backfill. Allows discharges associated with excavating and backfilling trenches for gas, liquid, electrical, or other utility lines. Sidecast material could be discharged for up to three months (or six months with approval of the District Engineer). Stabilization of exposed slopes and stream banks would

be required on completion of the utility line. Notification to the Corps is required for specified circumstances.

Specific Conditions:

- 1) Utility crossings located outside those waters of the U.S. identified in the General Conditions but located in primary environmental corridors are certified subject to the applicant providing written notice to WDNR at least 30 days prior to beginning construction of the crossing. The notice must show the location of the crossing and explain why the utility must cross the wetland.
- 2) All other projects are certified subject to the applicant providing written notice to WDNR, at least 10 days prior to beginning construction of the crossing. The notice must show the location of the crossing, explain why the utility must cross the wetland, and contain a certification from the local unit of government (county, city or village) or the appropriate Regional Planning Commission that the crossing is not located in a primary environmental corridor.

B. Road Crossings. Allows fills up to 1/3 acre and 200 linear feet for road crossings, including discharges to special aquatic sites, provided the fill does not restrict low flows or the passage of aquatic organisms. This NWP may not be combined with NWP 18 or NWP 26 for the purpose of increasing the foot print of the road crossing.

Specific Conditions:

- 1) If WDNR permits, approvals, or coordination in accordance with established WDNR/WDOT liaison procedures are required for the entire crossing, the work is authorized by this nationwide permit.
- 2) Roads and streets in incorporated areas, located outside those waters of the U.S. identified under the general conditions, resulting in a loss of less than 200 lineal feet or 1/3 acre per crossing, are certified subject to the conditions that:
  - a. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the road. The notice shall contain:
    1. The name, address, and telephone (and telefax, if applicable) number of the applicant;
    2. An explanation why the road cannot, as a practical matter, be located outside the wetland;
    3. Information demonstrating that the road is designed to minimize the adverse impacts on wetland functions;
    4. The road is designed with the minimum practical cross-sectional area;
    5. Construction activities will be carried out in the immediate area of the road only;
    6. Any filling, flooding, draining, dredging, ditching, tiling or excavating is necessary for the construction or maintenance of the road;
    7. A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the road is not located in a primary environmental corridor.
  - b. The crossing of the waterway or wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.
  - c. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.
- 3) Roads and streets in subdivisions, located outside those waters of the U.S. identified under the general conditions, and designated for sewer service in an area wide water quality management plan or plan amendment which was approved by WDNR on or after August 1, 1991 are certified subject to the conditions that:
  - a. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the road. The notice shall contain:
    1. The name, address, and telephone (and telefax, if applicable) number of the applicant;
    2. Information on the location and design standards for the road;

3. A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the road is not located in a primary environmental corridor; and:
  4. A copy of the applicable sewer service area approval.
  - b. The crossing of the waterway or wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.
  - c. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.
- 4) Private driveways necessary to provide access for motor vehicles licensed to travel on public highways from a road or street to one or more upland parcels, located outside those waters of the U.S. identified under the general conditions and resulting in a loss of less than 200 linear feet and 1/3 acre.
- a. Crossings of roadside ditches (defined as wetlands which do not extend beyond 30 feet from the outer edge of the shoulder of the roadway and which are not located in the shore land area of any navigable waterway) are certified subject to the condition that:
    1. The applicant provides written notice, at least 10 days prior to beginning construction of the driveway. Notice must show the location of the driveway, explain why the driveway must cross the wetland, and contain a certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a primary environmental corridor.
  - b. Driveways crossing other wetlands are certified subject to the conditions that:
    1. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the driveway. The notice shall contain:
      - (i) The name, address, and telephone (and telefax, if applicable) number of the applicant;
      - (ii) An explanation why the driveway cannot, as a practical matter, be located outside the wetland;
      - (iii) Information demonstrating that the driveway is designed to minimize the adverse impacts on wetland functions;
      - (iv) The driveway is designed with the minimum practical cross-sectional area;
      - (v) Construction activities will be carried out in the immediate area of the driveway only;
      - (vi) Any filling, flooding, draining, dredging, ditching, tiling or excavating is necessary for the construction or maintenance of the driveway; and
      - (vii) A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a designated environmental corridor.
  - c. The crossing of the waterway or wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.
    1. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.
- 5) Crossings of all other waters of the United States, are authorized by this nationwide permit, but work may not proceed until the permittee has received individual water quality certification from the WDNR.

C. Isolated and Headwater Discharges. Allows discharges into headwaters and isolated waters provided the discharge does not cause loss of more than 3 acres of waters. Notification to the Corps is required if more than 1/3 acre is lost.

Specific Conditions:

- 1) An individual Department of the Army permit is required when the discharge is for the construction of an access path or yard fill.
- 2) An individual Department of the Army permit is required when the discharge affects more than 2 acres of wetlands.
- 3) If WDNR permits, approvals, or coordination in accordance with established WDNR/WDOT liaison procedures are required for the entire crossing, the work is authorized by this nationwide permit.
- 4) Roads and streets in incorporated areas, located outside those waters of the U.S. identified under the general conditions, resulting in a loss of less than 200 lineal feet or 1/3 acre per crossing, are certified subject to the conditions that:
  - a. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the road. The notice shall contain:
    1. The name, address, and telephone (and telefax, if applicable) number of the applicant;
    2. An explanation why the road cannot, as a practical matter, be located outside the wetland;
    3. Information demonstrating that the road is designed to minimize the adverse impacts on wetland functions;
    4. The road is designed with the minimum practical cross-sectional area;
    5. Construction activities will be carried out in the immediate area of the road only;
    6. Any filling, flooding, draining, dredging, ditching, tiling or excavating is necessary for the construction or maintenance of the road;
    7. A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the road is not located in a primary environmental corridor.
  - b. The crossing of the waterway or wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.
  - c. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.
- 5) Roads and streets in subdivisions, located outside those waters of the U.S. identified under the general conditions, and designated for sewer service in an area wide water quality management plan or plan amendment which was approved by WDNR on or after August 1, 1991 are certified subject to the conditions that:
  - a. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the road. The notice shall contain:
    1. The name, address, and telephone (and telefax, if applicable) number of the applicant;
    2. Information on the location and design standards for the road;
    3. A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the road is not located in a primary environmental corridor; and
    4. A copy of the applicable sewer service area approval.
  - b. The crossing of the waterway or wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.
  - c. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.
- 6) Private driveways necessary to provide access for motor vehicles licensed to travel on public highways from a road or street to one or more upland parcels, located outside those waters of the U.S. identified under the general conditions and resulting in a loss of less than 200 linear feet and 1/3 acre.
  - a. Crossings of roadside ditches (defined as wetlands which do not extend beyond 30 feet

from the outer edge of the shoulder of the roadway and which are not located in the shore land area of any navigable waterway) are certified subject to the condition that:

1. The applicant provides written notice, at least 10 days prior to beginning construction of the driveway. Notice must show the location of the driveway, explain why the driveway must cross the wetland, and contain a certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a primary environmental corridor.

b. Driveways crossing other wetlands are certified subject to the conditions that:

1. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the driveway. The notice shall contain:

- (i) The name, address, and telephone (and telefax, if applicable) number of the applicant;
- (ii) An explanation why the driveway cannot, as a practical matter, be located outside the wetland;
- (iii) Information demonstrating that the driveway is designed to minimize the adverse impacts on wetland functions;
- (iv) The driveway is designed with the minimum practical cross-sectional area;
- (v) Construction activities will be carried out in the immediate area of the driveway only;
- (vi) Any filling, flooding, draining, dredging, ditching, tiling or excavating is necessary for the construction or maintenance of the driveway; and
- (vii) A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a designated environmental corridor.

c. The crossing of the waterway or wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.

1. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.

7) Crossings of all other waters of the United States, are authorized by this nationwide permit, but work may not proceed until the permittee has received individual water quality certification from the WDNR.

8) Ponds proposed to enhance wetland functional values, located outside those waters of the U.S. identified under the general conditions and resulting in a loss of less than 2 acres of wetlands are certified subject to the conditions that:

- a. The applicant provides written notice to the WDNR at least 30 days prior to beginning construction of the pond. The notice shall contain the following:

1. The name, address and telephone (and telefax, if applicable) number of the applicant;
2. A description of the project, including dimensions and side slopes of the pond and disposition of excavated materials; and
3. A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the pond is not located in a primary environmental corridor.

- b. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.

9) For all other projects:

- a. Discharges resulting in the loss of less than 2 acres of waters of the United States, including wetlands, are authorized after receiving an individual water quality certification from WDNR.

D. Single-Family Housing. Allows discharges of dredged or fill material into non-tidal waters of the U.S. for the construction or expansion of a single-family home and attendant features for an individual permittee subject to certain conditions and limitations.)

Specific Conditions:

- 1) If WDNR permits are not required for the entire project, the following applies:
  - a. Projects involving the discharge of any dredged or fill material located in wetlands adjacent to areas of special natural resource interest as defined in NR 103.04, Wis. Adm. Code, require an individual Department of Army permit.
  - b. Projects involving the discharge of any dredged or fill material located in shore land wetlands (all wetlands located within 300 feet of any river or stream, and/or those wetlands within the floodplain of a river or stream, whichever distance is greater; and all wetlands within 1000 feet of a lake pond or flowage require an individual Department of Army Permit.
  - c. Projects involving the discharge of any dredged or fill material located in any wetland for the purpose of constructing a sewage system, access path or yard fill (not associated with minimum flood proofing requirements under NR 116, Wis. Adm. Code) require an individual Department of Army permit.
  - d. Private driveways necessary to provide access for motor vehicles licensed to travel on public highways from a road or street to upland parcels, located outside those waters of the U.S. identified under conditions a. and b. above are granted water quality certification subject to the following conditions:
    1. Driveways crossing roadside ditches (defined as wetlands which do not extend beyond 30 feet from the outer edge of the shoulder of the roadway and which are not located in the areas identified in a. and b. above are certified subject to the condition that:
      - (i) The applicant provides written notice to the appropriate WDNR office, at least 10 days prior to beginning construction of the driveway.
      - (ii) Notice must show the location of the driveway, explain why the driveway must cross the wetland, and contain a certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a shore land wetland or primary environmental corridor.
    2. Driveways crossing other wetlands are certified subject to the conditions that:
      - (i). The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the driveway.  
The notice shall contain:
        - (a) The name, address, and telephone (and telefax, if applicable) number of the applicant;
        - (b) An explanation why the driveway cannot, as a practical matter, be located outside the wetland;
        - (c) Information demonstrating that the driveway is designed to minimize the adverse impacts on wetland functions;
        - (d) Information that the driveway is designed with the minimum practical cross-sectional area;
        - (e) A statement that the construction activities will be carried out in the immediate area of the driveway only;
        - (f) A statement that any filling, flooding, draining, dredging, ditching, tiling or excavating is necessary for the construction or maintenance of the driveway; and
        - (g) A written certification from the local unit of government (county, city or village) or the appropriate regional planning

commission that the crossing is not located in a designated shore land wetland or primary environmental corridor.

3. The crossing of the wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.
4. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.
- e. Crossings of all other waters of the United States, are authorized by this nationwide permit, but work may not proceed until the permittee has received individual water quality certification from the WDNR.
- f. Expansion of existing single family homes are granted state water quality certification subject to the following conditions:
  1. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction. The notice shall contain:
    - (i) The name, address, and telephone (and telefax, if applicable) number of the applicant;
    - (ii) An explanation why the expansion of the residence cannot, as a practical matter, be located outside the wetland;
    - (iii) Information demonstrating that the expansion of the residence is designed to minimize the adverse impacts on wetland functions;
    - (iv) A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a designated shore land wetland or primary environmental corridor.
  2. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.
- g. All other projects authorized by this nationwide permit require individual state water quality certification.
- h. Mitigation may not be used to authorize an activity under this nationwide permit if the activity, without the mitigation, does not comply with the terms and conditions of the applicable nationwide permit.

E. Completed Enforcement Actions. Allows any structure, work, or discharge which is in compliance with a final federal court decision, consent decree, or settlement agreement resulting from a federal enforcement action under Section 10 or 404.

Specific Conditions:

- 1) Settlement agreements are authorized by this NWP only if WDNR is a party to the agreement or if WDNR has reviewed and approved the settlement agreement.

F. Temporary Construction, Access and Dewatering. Allows temporary fills, including to special aquatic sites, for construction, access, or dewatering of construction sites, provided that the associated permanent activity has authorized by the Corps or the USCG, or involves bridge construction not subject to federal regulation. The permit specifies that near normal flows must be maintained, that flooding must be minimized, that fill material must be non-erodible, that temporary fill must be removed and the affected areas restored to pre-project conditions, and that wetlands and other aquatic areas cannot be dewatered with cofferdams so as to change their use.

G. Cranberry Production Activities. Allows discharges associated with expansion or modification of existing cranberry operations. The total affected area cannot exceed 10 acres and there can be no net loss of wetlands.

Specific conditions:

- 1) In all waters of the United States, other than those listed in the general conditions and limitations, discharges associated with the expansion, enhancement and modification of existing cranberry production operations are authorized, provided that:

- a. Total acreage disturbance does not exceed 2 acres (cumulative for the life of the NWP)

- b. The work does not result in a net loss of wetland acreage (mitigation used to offset impacts/losses)
- c. The applicant notifies the Corps in accordance with 33 CFR Part 330 and WDNR determines within 45 days after notification that:
  - 1. There are no practicable alternatives to the project as proposed, and
  - 2. That the project will not result in significant adverse impacts on wetland functional values.
- d. Discharges do not take place during fish spawning periods or at times when nursery areas would be adversely impacted.
- e. Reservoir dikes and embankments have side slopes of three horizontal to one vertical (3H:1V) or flatter.
- f. Excess excavated material not used for construction is removed to an upland site and not stockpiled in waters or wetlands.

**NOTE: If additional information is needed, or if heavy snow or ice cover prevents WDNR from completing their review, the 45 day time-limit may be extended.**

H. Farm Buildings. Allows discharges of fill up to one acre into the wetlands that were farmed prior to December 23, 1985 to allow construction of "agriculturally related" structures "necessary for farming". Fills must be the "minimum necessary". Discharges to prairie potholes, playa lakes, and vernal pools are not authorized.

Special Conditions:

- 1) Requires state individual water quality certification.

III. The following NWP's are hereby denied water quality certification:

- A. NWP 17. Hydropower Projects.
- B. NWP 18. Minor Discharges.
- C. NWP 21. Surface Coal Mining Activities.
- D. NWP 23. Approved Categorical Exclusions.
- E. NWP 24. State Administered Section 404 Program.
- F. NWP 39. Reserved.

IV. NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to section 227.42, Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources.

This determination becomes final in accordance with the provisions of NR 299.05(7), Wisconsin Administrative Code, and is judicially reviewable when final. For judicial review of a decision pursuant to Sections 227.52 and 227.53, Wisconsin Statutes, you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

This notice is provided pursuant to section 227.48(2), Stats.

Dated at Madison, Wisconsin

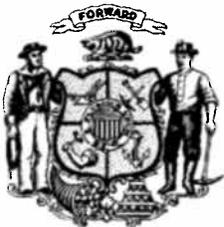
2/11/97

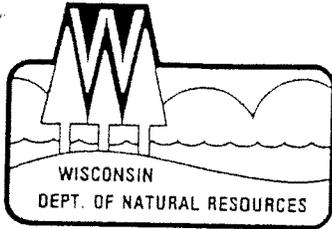
STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer  
George E. Meyer, Secretary



# WISCONSIN STATE LEGISLATURE





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

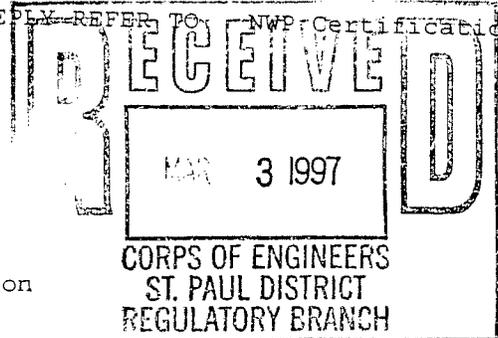
Tommy G. Thompson, Governor  
George E. Meyer, Secretary

PO Box 7921  
101 South Webster Street  
Madison, Wisconsin 53707-7921  
TELEPHONE 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897

February 24, 1997

Colonel J.M. Wonsik  
St. Paul District Engineer  
U.S. Army Corps of Engineers  
ATTN: CENCS-CO-R  
190 Fifth Street East  
St. Paul, MN 55101-1638

IN REPLY REFER TO: NWP Certification



SUBJECT: State Water Quality Certification

Dear Colonel Wonsik:

On February 11, 1997, we provided you with FAX and electronic versions of our water quality certification determinations for the Nationwide Permits (NWP's) published in the Federal Register on December 13, 1997. We are now following up with a hard copy version of our previous transmittals for your information and use (attached).

Perhaps of greater importance are the ongoing efforts between our two agencies to develop a revised state programmatic general permit (SPGP) and a new general permit (GP) that will replace two existing GP's and the recently certified NWP's.

Staff have advised me that their current strategy is to have a SPGP that will eliminate a great deal of regulatory duplication for Section 10 and 404 waters that are concurrently regulated under State law, Chapters 30 & 31, Wis. Stats. In addition, the new GP will consolidate many of the existing NWP's into a document that will be easier to understand and implement.

This joint venture is extremely important to our agencies and the regulated public. We're glad you share our enthusiasm and need to make these innovative changes for the benefit of all while maintaining the integrity of our natural resource protection programs.

Your efforts to help expedite this process are appreciated.

If you have any questions concerning the above please don't hesitate to contact either Dale Simon (608)267-9868 or myself.

Sincerely,

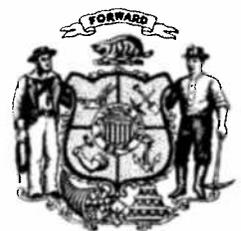
*George*  
George E. Meyer  
Secretary

cc: Susan Sylvester - AD/5  
Regional Directors  
Mary Ellen Vollbrecht - FH/4  
Michael Cain - LC/5  
Dale Simon - FH/6

*Exhibit  
2*



# WISCONSIN STATE LEGISLATURE



RECEIVED

MAY 12 1997

# Meals falling short, senior citizens say

Meals served at some Dane County senior citizen nutrition sites aren't getting rave reviews these days.

At a meeting earlier this month, members of the county Commission on Aging heard complaints about the consistency of the vegetables and too much grease in some food.

Casseroles and soup and sandwiches apparently are the least popular items and participation drops on days when they are served, committee members were told.

A staff member suggested the complaints may be prompted by the county's low budget for meals.

The cost of each meal is \$2.85 to \$2.90 and a provider told the committee that an extra 25 cents per meal could banish soup and sandwiches. He said dessert and entrees like pork chops likely would cost more.

## CITY-COUNTY REPORT

JONNELL LICARI and MARY BALOUSEK

### Vote unchanged in city's 5th District

Not a single vote changed in the recount this week in the 5th District Madison City Council race.

Anthony Tallesin, who finished third in the three-way primary, had petitioned for the recount held Monday, but he still ended up five votes out of the general election.

Tracy Amish and Jason Williams will vie for the seat, left vacant when the former alderman moved out of town last year, on April 1. The final tally, Amish, 181; Williams, 54, and Tallesin, 49.

# Red Cross work is close to one volunteer's heart

Transfusion recipient sees time spent at blood drives more special

By Shelly Birkelo  
The Janesville Gazette

JANESVILLE — Chris Dahmen's Monday morning started like any other day.

He was up at 5 a.m. and eating breakfast 10 minutes later.

But on this particular Monday, the 78-year-old retired union carpenter had a busy day ahead.

It was the start of a three-day blood drive in Janesville, and Dahmen is site setup coordinator.

By 8:30 a.m., Dahmen already had loaded the South Central Wisconsin chapter's Red Cross van and was headed to Chambers

St. Anthony, Wisc. (Photo by Shelly Birkelo)



Associated Press

## LOCAL

### Bigelow builds support among council members

Blvd., with several of his council supporters. He could not be reached for comment Wednesday, and his campaign staff would not reveal which council members are supporting him.

But one of the more surprising back-ers will be Ald. Mike Ellestad, 16th District, who frequently clashed with Bigelow when Ellestad was a freshman on the council since the mid-1980s.

Bigelow plans to hold a news conference at 12:45 p.m. today in the temporary state Senate chamber, 119 Martin Luther King Jr.

Bigelow



the council and Bigelow was president.

At one point last year, Ellestad circulated a scathing letter to Bigelow declaring he no longer recognized him as the council leader. Things have changed, Ellestad said.

"We went through a big turnaround and realized we had to set personalities aside and work together," he said. "Before we go off writing nasty memos, we have to work together. I want a mayor that involves me in the loop, it wasn't that way with (Mayor Paul) Soglin."

Bauman and Bigelow face each other in the April 1 general election.

to replace Soglin, who is leaving office mid-term.

Ellestad said his endorsement of Bigelow was not a rejection of Bauman but rather support for someone he has developed a relationship with.

Bauman said she is not concerned if most of the council endorsed her opponent. So far, two council members, Warren Onken, 2nd District, and Jean MacCubbin, 12th District, are supporting Bauman.

There are 20 council members. "It's what I've been saying all along. Wayne's work in the community has been in politics, whereas I've been working with the people," Bauman said.

## State of Wisconsin Legal Notices

Responsible accreditation, including the Provision of Informational Material in an Alternative Format, will be provided for individuals with disabilities upon request. <http://www.wisconsin.gov>

Application for Final Determination for the Wisconsin Coastal Zone Management Act (WCZMA) is required for the construction of an access

to the Wisconsin Coastal Zone (WCZ) for the purpose of the construction of an access

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Dahmen agreed: "We figure 30 unteers a day."

A half-hour after the drive rted, nearly two dozen donors filed through the doors. The dmobile was running othly, thanks to Rezagholi's nning and Dahmen's anization.

"Chris is a very good volunteer rdinator, and that makes such fference," said Carol Burrows, rge nurse.

Burrows also said Dahmen has ay of calming nervous donors, ich makes it easier to get the dles in place.

"I just tease we've never lost a or yet, and we're not about to t," he said.

## acreage ypsy moths

"We don't know if it didn't work ause the area we sprayed in't large enough or because of rainy weather we had then or it," Batio said during a Tuesday ating to explain the program.

f left untreated, the population r Kellner could cause serious olation in five to 10 years, io said. With control efforts, nage should not occur for 20 or re years.

Wisconsin intends to spray ut 40,000 acres at 24 sites in 13 nties to kill gypsy moth cat- illars, which feed on the leaves ore than 300 kinds of trees and bs. Defoliation can kill plants.

1. Emergency Watershed Protection and Rehabilitation. Allows (1) work done or funded by NRCS qualifying as an "emergency" situation pursuant to NRCS's Emergency Watershed Protection Program; and (2) work done or funded by the U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook.

2. Cleanup of Hazardous and Toxic Wastes. Always cleanup of hazardous or toxic waste, performed, ordered, or sponsored by an authorized governmental entity or resulting from a court order or settlement.

3. The WDNR grants water quality certification for the following NWP's subject to compliance with the general conditions above and any other activity specific condition:

A. Utility Line Backfill. Allows discharges associated with excavating and backfilling trenches for gas, liquid, electrical, or other utility lines. Subleak material could be discharged for up to three months (or six months with approval of the District Engineer). Stabilization of exposed slopes and stream banks would be required on completion of the utility line. Notification to the Corps is required for specified circumstances.

Specific Conditions:

- 1) Utility crossings located outside those waters of the U.S. identified in the General Conditions but located in primary environmental corridors are certified subject to the applicant providing written notice to WDNR at least 30 days prior to beginning construction of the crossing. The notice must show the location of the crossing and explain why the utility must cross the wetland.

- 2) All other projects are certified subject to the applicant providing written notice to WDNR, at least 10 days prior to beginning construction of the crossing. The notice must show the location of the crossing, explain why the utility must cross the wetland, and contain a certification from the local unit of government (county, city or village) or the appropriate Regional Planning Commission that the crossing is not located in a primary environmental corridor.
- B. Road Crossings. Allows fills up to 1/3 acre and 200 linear feet for road crossings, including discharges to special aquatic sites, provided the fill does not restrict low flows or the passage of aquatic organisms. This NWP may not be combined with NWP 18 or NWP 26 for the purpose of increasing the foot print of the road crossing.

Specific Conditions:

- 1) If WDR permits, approvals, or coordination in accordance with established WDNRWDOT liaison procedures are required for the entire crossing, the work is authorized by this nationwide permit.

- 2) Roads and streets in incorporated areas, located outside those waters of the U.S. identified under the general conditions, resulting in a loss of less than 200 linear feet or 1/3 acre per crossing, are certified subject to the conditions that:

- a. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the road. The notice shall contain:

1. The name, address, and telephone (and telefax, if applicable) number of the applicant;
2. Information why the road cannot, as a practical matter, be located outside the wetland;
3. Information demonstrating that the road is designed to minimize the adverse impacts on wetland functions;
4. The road is designed with the minimum practical cross-sectional area;
5. Construction activities will be carried out in the immediate area of the road only;
6. Any filling, flooding, draining, dredging, ditching, tiling or excavating is necessary for the construction or maintenance of the road;

7. A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the road is not located in a primary environmental corridor.
- b. The crossing of the waterway or wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.
- c. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.

- 3) Roads and streets in subdivisions, located outside those waters of the U.S. identified under the general conditions, and designated for sewer service in an area with water quality management plan or plan amendment, which was approved by WDNR on or after August 1, 1991 are certified subject to the conditions that:
- a. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the road. The notice shall contain:

1. The name, address, and telephone (and telefax, if applicable) number of the applicant;
2. Information on the location and design standards for the road;
3. A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the road is not located in a primary environmental corridor; and
4. A copy of the applicable sewer service area approval.

- 4) Private driveways necessary to provide access for motor vehicles licensed to travel on public highways from a road or street to one or more upland parcels, located outside those waters of the U.S. identified under the general conditions and resulting in a loss of less than 200 linear feet and 1/3 acre.
- a. Crossings of roadside ditches (defined as wetlands which do not extend beyond 30 feet from the outer edge of the shoulder of the roadway and which are not located in the shore land area of any navigable waterway) are certified subject to the condition that:

1. The applicant provides written notice, at least 10 days prior to beginning construction of the driveway. Notice must show the location of the driveway, explain why the driveway must cross the wetland, and contain a certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a primary environmental corridor.
- b. Driveways crossing other wetlands are certified subject to the conditions that:

1. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the driveway. The notice shall contain:
- (i) The name, address, and telephone (and telefax, if applicable) number of the applicant;
- (ii) An explanation why the driveway cannot, as a practical matter, be located outside the wetland;
- (iii) Information demonstrating that the driveway is designed to minimize the adverse impacts on wetland functions;

- (iv) The driveway is designed with the minimum practical cross-sectional area;
- (v) Construction activities will be carried out in the immediate area of the driveway only;
- (vi) Any filling, flooding, draining, dredging, ditching, tiling or excavating is necessary for the construction or maintenance of the driveway; and
- (vii) A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a designated wetland or primary environmental corridor.

- c. The crossing of the waterway or wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.
- d. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.
- 5) Crossings of all other waters of the United States, are authorized by this nationwide permit, but work may not proceed until the permittee has received individual water quality certification from the WDNR.

struction or maintenance of the driveway; and

- (g) A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a designated shore land wetland or primary environmental corridor.
3. The crossing of the wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.
4. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.
- g. All other projects authorized by this nationwide permit require individual state water quality certification.
- h. Mitigation may not be used to authorize an activity under this nationwide permit if the activity, without the mitigation, does not comply with the terms and conditions of the applicable nationwide permit.
- E. Completed Enforcement Actions. Allows any structure, work, or discharge which is in compliance with a final federal court decision, consent decree, or settlement agreement resulting from a federal enforcement action under section 10 or 404.

Specific Conditions:

- 1) Settlement agreements are authorized by this NWP only if WDNR is a party to the agreement or if WDNR has reviewed and approved the settlement agreement.

- F. Temporary Construction, Access and Dewatering. Allows temporary fills, including to special aquatic sites, for construction, access, or dewatering of construction sites, provided that the associated permanent activity has authorized by the Corps or the USCG or involves bridge construction not subject to federal regulation. The permit specifies that temporary flows must be maintained, that flooding must be minimized, that fill material must be non-spoilable, that normal flows must be maintained, and the affected areas restored to pre-project conditions, and that wetlands and other aquatic areas cannot be dewatered with cofferdams so as to change their life.

- G. Cranberry Production Activities. Allows discharges associated with expansion or modification of existing cranberry operations. The total affected area cannot exceed 10 acres and there can be no net loss of wetlands. Specific conditions:

- 1) in all waters of the United States, other than those listed in the general conditions and limitations, discharges associated with the expansion, enhancement and modification of existing cranberry production operations are authorized provided that:

- a. Total acreage disturbance does not exceed 2 acres (cumulative for the life of the NWP)
- b. The work does not result in a net loss of wetland acreage (mitigation used to offset impacts/losses)
- c. The applicant notifies the Corps in accordance with 33 CFR Part 330 and WDNR determines within 45 days after notification that:

1. There are no practicable alternatives to the project as proposed, and
2. That the project will not result in significant adverse impacts on wetland functional values.

- d. Discharges do not take place during fish spawning periods or at times when nursery areas would be adversely impacted.
- e. Reservoir dikes and embankments have side slopes of three horizontal to one vertical (3H:1V) or flatter.
- f. Excess excavated material not used for construction if removed to an upland site and not stockpiled in wetlands or wetlands.

NOTE: If additional information is needed, or if heavy snow or ice cover prevents WDNR from completing their review, the 45 day time-limit may be extended.

- H. Farm Buildings. Allows discharges of fill up to one acre into the wetlands that were farmed prior to December 23, 1985 to allow construction of "agriculturally related" structures "necessary for farming". Fills must be the "minimum necessary". Discharges to prairie potholes, playa lakes, and vernal pools are not authorized.

Specific Conditions:

- 1) Requires state individual water quality certification.
- ii. The following NWP's are hereby denied water quality certification:

- A. NWP 17 - Hydropower Projects.
- B. NWP 18 - Minor Discharges.
- C. NWP 21 - Surface Coal Mining Activities.
- D. NWP 23 - Approved Categorical Exclusions.
- E. NWP 24 - State Administered Section 404 Program.
- F. NWP 39 - Reserved.

IV. NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to section 227.42, Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources.

This determination becomes final in accordance with the provisions of NR 299.05(7), Wisconsin Administrative Code, and is judicially reviewable when final. For judicial review of a decision pursuant to Sections 227.52 and 227.53, Wisconsin Statutes, you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

This notice is provided pursuant to section 227.48(2), Stats. Dated at Madison, Wisconsin, 2/11/87.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
By: George E. Meyer, Secretary