2009 DRAFTING REQUEST

Bill

Received: **03/29/2010**

Received By: **mglass**

Wanted: **As time permits**

Companion to LRB:

For: **Robert Wirch (608) 267-8979**

By/Representing: **Paula McGuire**

May Contact:

Drafter: **mglass**

Subject: **Nat. Res. - wet/shore/flood**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Wirch@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

General permit for wetland restoration

Instructions:

Companion to AB 852

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mglass 03/29/2010	bkraft 03/29/2010		_____ _____			State
/1			jfrantze 03/29/2010	_____ _____	mbarman 03/29/2010	sbasford 03/30/2010	

FE Sent For: "/1" @ intro. 4/2/10

<END>

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/?	mglass	/1 bjk 3/29		3/29			

FE Sent For:

<END>

State of Wisconsin
2009 – 2010 LEGISLATURE

LRB-[redacted] e
RNK:bjk:jf

2009 ASSEMBLY BILL 852

March 12, 2010 – Introduced by Representative BLACK. ~~Referred~~ to Committee on Natural Resources.

AN ACT *to amend* 30.298 (3); and *to create* 30.2065 and 227.01 (13) (rt) of the statutes; **relating to:** general permits for certain wetland restoration activities and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) regulates certain activities that occur in or near navigable waterways. In order for a person to conduct such an activity, the person may be required to obtain one or more permits from DNR. Among the permits that DNR issues are permits to construct, operate, and maintain dams, to place structures or deposit material, permits to construct or maintain bridges, permits to enlarge or connect waterways or to grade or remove top soil from banks along navigable waterways, permits to change the courses of streams and rivers, and permits to remove material from beds of navigable waterways. Current law also prohibits a person from discharging dredged or fill material into certain wetlands unless the discharge is authorized by a certification from DNR that the discharge will meet all applicable state water quality standards.

This bill authorizes DNR to issue a general permit for wetland restoration activities sponsored by a federal agency (wetlands general permit) in lieu of issuing certain individual permits or water quality certifications that would otherwise be required for those activities. Under the bill, a wetlands general permit is valid for five years except that an activity that DNR determines is authorized by a wetlands general permit remains authorized under the permit until the activity is completed. The bill authorizes DNR to renew or modify a wetlands general permit. The bill

requires DNR to provide public notice of its intention to issue a wetlands general permit and to provide an opportunity for certain interested persons to request a public hearing with respect to DNR's intention to issue a wetlands general permit. DNR must hold a public hearing if it determines that there is significant public interest in holding the hearing.

Under the bill, a person who wishes to proceed with an activity under the authority of a wetlands general permit must file an application with DNR not less than 15 days before commencing the activity. The bill authorizes the sponsoring federal agency to file the application on behalf of the person wishing to proceed with the activity if that person authorizes the federal agency to do so. The bill also authorizes DNR to request additional information before determining whether the activity is authorized by the wetlands general permit. If, within 30 days after application, DNR does not inform the person wishing to proceed with the activity or the sponsoring federal agency that an individual permit will be required, the activity is considered to be authorized under the wetlands general permit. The bill authorizes DNR to require a person to apply and obtain an individual permit if DNR determines that the activity is not authorized under the wetlands general permit or that site specific conditions require restrictions on the activity. The bill also authorizes a person wishing to proceed with an activity for which a wetlands general permit has been issued to request an individual permit in lieu of seeking authorization under the general permit.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 30.2065 of the statutes is created to read:

2 **30.2065 General permit for certain wetland restoration activities. (1)**
3 DEFINITION. In this section, "activity" means a wetland restoration activity sponsored
4 by a federal agency.

5 **(2)** ISSUANCE; VALIDITY. (a) Upon compliance with the requirements under subs.
6 (3) and (4), the department may issue a general permit to a person wishing to proceed
7 with an activity. A permit issued under this subsection is in lieu of any permit or
8 approval that would otherwise be required for that activity under this chapter or s.
9 31.02, 31.12, 31.33, 281.15, or 281.36.

(b) A general permit issued under this subsection is valid for a period of 5 years except that an activity that the department determines is authorized by a general permit remains authorized under the permit until the activity is completed. The department may renew or modify a general permit issued under this subsection.

(c) To ensure that the cumulative adverse environmental impact of the activities authorized by a general permit is insignificant and that the issuance of the general permit will not injure public rights or interests, cause environmental pollution, as defined in s. 299.01 (4), or result in material injury to the rights of any riparian owner, the department may impose any of the following conditions on the permit:

1. Construction and design requirements that are consistent with the purpose of the activity authorized under the permit.

2. Location requirements that ensure that the activity will not materially interfere with navigation or have an adverse impact on the riparian property rights of adjacent riparian owners.

3. Restrictions to protect areas of special natural resource interest.

(3) PUBLIC NOTICE. (a) The department shall circulate to interested and potentially interested members of the public notices of its intention to issue a general permit. Procedures for the circulation of public notices shall include at least the following:

1. Publication of the notice as a class 1 notice under ch. 985.

2. Mailing of the notice to any person or group upon request.

(b) The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the department's intention to issue a general permit under sub. (2).

All written comments submitted during the period for comment shall be retained by the department and considered in the issuance of the general permit.

(c) Every notice issued by the department of the department's intention to issue a general permit under sub. (2) shall include a description of the activities proposed to be authorized under the general permit.

(4) PUBLIC HEARING. (a) 1. The department shall provide an opportunity for any affected state, the U.S. environmental protection agency, or any interested state or federal agency or person or group of persons to request a public hearing with respect to the department's intention to issue a general permit under sub. (2). Such request for a public hearing shall be filed with the department within 30 days after the circulation of the public notice under sub. (3) and shall indicate the interest of the party filing the request and the reasons why a hearing is warranted.

2. The department shall hold a public hearing upon a request under subd. 1. if the department determines that there is a significant public interest in holding such a hearing. Hearings held under this section are not contested cases under s. 227.01 (3).

(b) Public notice of any hearing held under this section shall be circulated in accordance with the requirements of sub. (3).

(5) PROCEDURES FOR CONDUCTING ACTIVITIES. (a) A person wishing to proceed with an activity under the authority of a general permit issued under sub. (2) shall apply to the department, with written notification of the person's wish to proceed with the activity, not less than 15 days before commencing the activity. The federal agency sponsoring the activity may file the application on behalf of the person wishing to proceed with the activity, if the person authorizes the federal agency to do so. The notification shall provide information describing the activity in order to

allow the department to determine whether the activity is authorized by the general permit and shall give the department consent to enter and inspect the site, subject to s. 30.291. The department may make a request for additional information one time during the 15–day period. If the department makes a request for additional information, the 15–day period is tolled from the date the request for additional information is received until the date on which the department receives the information.

(b) If within 30 days after a notification under par. (a) is submitted to the department the department does not require any additional information about the activity that is subject to the notification and does not inform the person wishing to proceed with the activity or the federal agency sponsoring the activity that an individual permit will be required, the activity will be considered to be authorized under the general permit and the activity may proceed without further notice, hearing, permit, or approval if the activity is carried out in compliance with all of the conditions of the general permit.

(6) INDIVIDUAL PERMIT IN LIEU OF GENERAL PERMIT. (a) The department may decide to require a person who has applied under sub. (5) for authority to proceed with an activity under a general permit to apply for and be issued an individual permit if any of the following applies:

1. The department determines that the proposed activity is not authorized under the general permit.

2. The department has conducted an investigation and visited the site and has determined that conditions specific to the site require restrictions on the activity in order to prevent significant adverse impacts to the public rights and interest,

environmental pollution, as defined in s. 299.01 (4), or material injury to the riparian rights of any riparian owner.

(b) A decision by the department to require an individual permit under this subsection shall be in writing.

(7) COMPLETION OF ACTIVITIES. Upon completion of an activity that the department has authorized under a general permit, the federal agency that sponsored the activity shall provide to the department a statement certifying that the activity is in compliance with all of the conditions of the general permit and a photograph of the activity.

(8) FAILURE TO FOLLOW PROCEDURAL REQUIREMENTS. Failure of the person authorized to proceed under the general permit, or the federal agency that sponsored the activity, to follow the procedural requirements of this section may result in forfeiture but may not, by itself, result in abatement of the activity.

(9) REQUEST FOR INDIVIDUAL PERMIT. A person wishing to proceed with an activity for which a general permit has been issued may request an individual permit under the applicable provisions of this chapter or ch. 31 in lieu of seeking authorization under the general permit.

SECTION 2. 30.298 (3) of the statutes is amended to read:

30.298 **(3)** Any person who violates a general permit under s. 30.206 <u>or 30.2065</u> shall forfeit not less than $10 nor more than $500 for the first offense and shall forfeit not less than $50 nor more than $500 upon conviction of the same offense a 2nd or subsequent time.

SECTION 3. 227.01 (13) (rt) of the statutes is created to read:

227.01 **(13)** (rt) Is a general permit issued under s. 30.2065.

(END)

Barman, Mike

From: McGuire, Paula
Sent: Monday, March 29, 2010 5:13 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-4603/1 Topic: General permit for wetland restoration

Please Jacket LRB 09-4603/1 for the SENATE.