



WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2011-12

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Natural Resources...

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**

Wednesday, October 26, 2011

Testimony regarding Special Session SB/AB 24

By Sharon Clark Gaskill
10405 Bell Road
Black Earth, Wisconsin 53515

People:

I urge you to oppose this Special Session Bill 24, which I see as a wide-ranging bill that has been fast-tracked in an effort to stifle citizen input. Let me tell you why I oppose it.

I was raised in central Illinois, on the Mississippi River, but my family always came to Wisconsin to vacation, camping all over northern Wisconsin from the time I was three, because the parks were wonderful, the waters were clean and we saw lots of wildlife. A vacation to me still means going to the lakes and rivers.

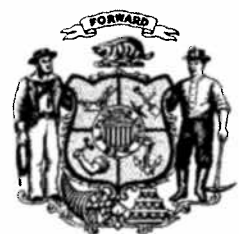
My husband and I chose to move here because of the state's forward-looking commitment to protect this rich natural heritage. I have subsequently closely watched and been involved in many discussions and decisions about natural resources. Laws that have led to continuing this commitment to environmental quality for all citizens of the state were reached with deliberation and with all interested and affected parties at the table.

I see this bill as an attempt to move Wisconsin backward, to negate and diminish the strong protections for water quality and public involvement in decision-making. I see forces with a hidden agenda taking advantage of our fears of poverty and our need for jobs. I see an over-burdened DNR getting its hands tied, its statutory ability to protect the resources for all citizens being curtailed.

This bill is dangerous to the interests of the majority of Wisconsinites, now and in the future, many of whom have no idea this is happening. I urge you, in the strongest terms, to oppose it.



WISCONSIN STATE LEGISLATURE





**Oppose Special Session AB 24 & SB 24:
Polluters Over People Bill
Statement of Jennifer Giegerich
Wisconsin League of Conservation Voters
October 26, 2011**

Good morning. I am Jennifer Giegerich, legislative director for Wisconsin League of Conservation Voters. Thank you for this opportunity to testify on Special Session AB 24 & SB 24.

Wisconsin League of Conservation Voters works with nearly one hundred different conservation groups from around the state. From groups focusing on statewide policy to friends-of-a-local-water way groups, from sportsmen to land trust supporters, the backbone of all our conservation efforts are our individual members.

It is clear that conservationists of all interests and from all around Wisconsin are upset about not only how these bills will negatively impact our water and air quality, but particularly how this bill systematically takes power over decisions affecting our natural resources out of the public's hands and puts it into the hands of those hoping to get a quick permit with minimal accountability back to the public. When your membership consists of people who do water quality sampling, trout fishing, hiking, hunting, and boating, you know they take their ability to be actively engaged in the decisions that impact the waters they care about very seriously.

And that is why, when a draft of a wish-list mining bill surfaced last May that not only sought to exempt mining companies from many clean water and natural resources protections, but also cut the public out of decisions that impact their communities, it immediately came under intense fire. Citizens were outraged and immediately began calling their legislators, sending letters to the editor, and holding meetings. Once the strong and swift public reaction to this draft legislation became apparent, it was wisely dropped.

While we knew that mining companies and their allies were going to pursue legislation, we believed it would be handled in a mining committee via a mining bill. However, in looking through the specific provisions of this bill, it turns out that a number of broad clean water and clean air rollbacks that will impact communities statewide. It is also clear that many of the same policies being asked for by the mining company last May have ended up in this bill. Quite simply, this bill is a grab bag of indefensible policies, which we have outlined in this memo. In summary:

- This bill allows polluters to guard the henhouse and turns DNR into nothing more than a passive rubber stamp for those who would use and effect our public water ways.
- This bill makes it potentially easier to draw down rivers, lakes, and streams.
- This bill undermines air quality protections, and;

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- This bill is a backdoor attempt to gut Wisconsin's mining laws.

But, as appalling as those policies are, it is the undercutting of public participation that is the most egregious aspect of this legislation. WLCV has worked to engage voters in meeting regularly with their legislators through our Conservation Lobby Day, meetings in the districts, and regular contact by phone and email. These are savvy and sophisticated citizens. Thousands of citizens from all around the state were opposed to the first mining legislation. After seeing a thorough analysis of SS AB 24 & SB 24, they are able to connect the dots and see that while this isn't *just* a mining bill, it has many of the rollbacks that the mining company was seeking. And one of those major rollbacks was cutting the public out of decisions.

Special Session AB 24 & SB 24 specifically favors special interests over citizens in decisions about our waterways by:

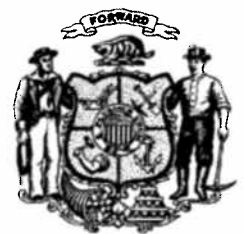
- The public comment period is limited to 30 days from the time the applicant submits a *draft* permit for review. This means the public is only reviewing draft permits that may be radically changed or for which there is not enough information yet provided to make an informed decision.
- The DNR can deny a public hearing on a permit if there is not "significant public interest." "Significant public interest" is not defined in the bill.
- The DNR is only allowed to ask for more information *once* if they believe an application is lacking critical information. The DNR is forbidden from denying a permit due to incomplete information from the applicant.
- The DNR only has to publicly notice that a permit application is available for review somewhere on their website, and no longer in newspapers. This will put some rural communities and those without internet access at a disadvantage for weighing-in on changes occurring in their own communities.
- When members of the public believe that a permit for a new project is not protective of the waterway, the burden of proof is on the *citizens* to prove that the well-paid consultants hired by the applicant were wrong and that the project will cause harm. This makes it much harder for local community members to participate meaningfully on projects in their area.
- DNR must grant a 5-year automatic extension on permits, nearly tripling the amount of time a permit goes without review from the public.

We ask that you oppose Special Session AB 24 & SB 24, *The Polluters Over People Bill*, to ensure that Wisconsin's natural resources and meaningful participation in the their use are protected for future generations.

Thank you.



WISCONSIN STATE LEGISLATURE





RIVER ALLIANCE of Wisconsin

October 26, 2011

Representative Jeff Mursau, Chair, Assembly Committee on Natural Resources
Members of the Assembly Committee on Natural Resources
Senator Neal Kedzie, Chair, Senate Committee on Natural Resources and the
Environment
Members of the Senate Committee on Natural Resources and the Environment
417 North
State Capitol

RE: SS SB 24 and AB 24, Permits in Navigable Waters

Dear Representative Mursau, Senator Kedzie and Committee Members:

The River Alliance of Wisconsin is a non-profit, non-partisan organization representing over 3200 members and supporting over 150 watershed groups around the state. We advocate for the protection and restoration of the state's flowing waters.

We urge you to reject SS SB 24 and AB 24 which undermine Wisconsin's ability to uphold the Public Trust Doctrine, the long-established law that declares the waters of the state common to all. Based in the state constitution and further defined by case law, all citizens of Wisconsin have the right to boat, fish, hunt, ice skate, swim and enjoy the scenic beauty of the state's waters, as well as the quality and quantity of water that supports those uses.

Wisconsin law recognizes that riparian owners hold rights in the water next to their property, but the Wisconsin Supreme Court has consistently found that when there are conflicts between riparian owners and public rights, public rights are primary, riparian rights secondary. It is the responsibility of DNR to consider how waterway projects such as piers, bridges, culverts, rip-rapping or grading of shoreline, filling, dredging or withdrawing water from waterways, and construction of high capacity wells would impact public rights in terms of destroying fish habitat, impairing navigation, or causing alterations that forever change the waterbody and impact property values and enjoyment of other riparians. The courts have also ruled that DNR must consider the cumulative impacts of individual projects – a project's impacts could be minor on its own, but could be the tipping point if it is one of many similar projects, or one activity in a complicated project, such as a new mine. These bills instead allow private interests to usurp public rights.

In 2003, the Job Creation Act directed significant streamlining of permit processes for a range of permits, including waterway permits. A three-tiered process with set review deadlines was created, whereby small projects in areas with no known sensitive features

We Save Rivers

are exempt from permits altogether, and a range of projects in areas with limited environmental risk could move forward quickly under a General Permit, in essence a guideline for how to proceed. Those projects that are larger in scale, in areas where there are known sensitive features, or where the property owner chooses not to follow the General Permit guidelines, must apply for an Individual Permit. Individual Permits are by definition the most complicated projects with the greatest potential to impact public rights, yet they are the target of SB/AB 24.


The bills, in significantly shortening an already compressed review timeline, not only force DNR to make decisions even if the applicant has not provided sufficient information, but expects affected citizens to do the same. And if DNR misses any of the new deadlines, the permit is deemed approved, regardless of the consequences to public rights. The reduced timelines to review that information and threat of automatic approval will inevitably result in fast, poorly-informed and likely regrettable decisions for our public waters.

Most remarkably, however, the bill also turns on its head the long-standing recognition that an applicant proposing to alter not their own private property, but a public resource, bears the burden of demonstrating they can meet the law. Instead, citizens questioning the permit must prove the proposal could cause damage.

DNR rose to the challenges of the Job Creation Act and created a well-functioning, streamlined, predictable waterway permit process. At a time when DNR staffing levels are at an all-time low, significantly foreshortened review times with the looming hammer of automatic approval simply will not permit adequate review and analysis of the site specific and cumulative impacts of complicated projects. Setting unreasonable deadlines and then not providing the resources to meet them is not the way to hold DNR accountable.

SB/AB 24 are a blatant give-away to special interests seeking to use public resources for their own profit, punitive to DNR staff, and frankly insulting to the citizens and property owners depending upon the state to uphold their public rights. Please reject these bills in their entirety.

Sincerely,

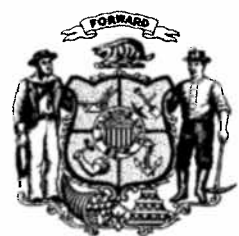


Eori Grant

Water Policy Program Manager



WISCONSIN STATE LEGISLATURE



SS SB24 AND SS AB24 PUBLIC HEARING TESTIMONY

October 26, 2011

Good morning, Co-Chairman Kedzie and Co-Chairman Mursau and members of the natural resources committees. My Name is Don Hammes and I am the Wetlands Committee Chair for the Wisconsin Wildlife Federation. The Wildlife Federation represents the interests of over 170 hunting, fishing and trapping groups in Wisconsin that have over 10,000 members.

I have been attending legislative public hearings now for over 30 years, but I can't remember ever participating in a public hearing like this one. Please let me explain. As I recall, the typical law making process in Wisconsin usually:

- * Takes several months or in some cases longer;
- * Provides adequate time for all interested parties to read bills, analyze bills, and gather additional facts and information about the contents of bills;
- * Allows interested parties, including scientists and technical consultants, to meet and discuss bills among themselves and with the sponsors;
- * Allows various committees in both houses to consider bills;
- * Includes one or more committee public hearings in **both** the Senate and the Assembly;
- * Includes bill revisions and possibly additional public hearings;
- * Is **finally** introduced in the Senate and the Assembly for debate;
- * Goes to a joint Senate/Assembly Committee to iron our differences;
- * And then it is voted on

Now, let's take a look at the process for SS SB 24 and SS AB24. Although I've been told that this bill has been discussed by legislators since January, the bills

- * Were introduced and made available to the public **just a little over a week ago.**
- * Interested parties, including scientists and technical consultants, have had little time to read the bills, analyze the bills, and gather additional facts and information about the contents of the bill ;
- * There has only been a few days for interested parties to try and meet and discuss the bill among themselves and with bill sponsors and
- * There is only one hearing, the one being held today.

So, everyone can see, compared to the typical bill introduced in our legislature, these bills are speeding bullets. Why? Ladies and Gentlemen this is not how democracy is practiced in Wisconsin. As discovered earlier in the year **the process** of how laws are made in Wisconsin is as important as **the content** of a proposed law. The people of Wisconsin demand this. It is The Wisconsin Way.

Did you know these bills concerns changes to Chapter 30 Public Trust Doctrine provisions and, according to at least one attorney well over 100 other federal codes and laws and state statutes and Natural Resource regulations? HOW can a reasonable public review OR legislative review of such lengthy and complex bills as SS SB24 and SS AB24 take place in a little over a week's time? It can't. Not for you and not for me. Once more, the way this bill is presently written, it could be well over **five years** before any public review of these laws will occur again.

As a sportsman who hunts and fishes in Wisconsin I have some very serious concerns regarding these bills. There are provisions in these bills that impact trout streams, rivers, lakes, wetlands, bridges, culverts, our air, wild rice waters, calcareous fens, our groundwater.....just about everything in the outdoors that the people of Wisconsin hold dear. In fact there are so many different impacts I could not possibly address them all in the short time I have left to speak here today, but let me briefly mention one major area of concern.

These bills, if passed, will allow frequent alterations of lake shorelines, wetlands and bottoms despite the fact that these alterations may have serious adverse affects on fish and wildlife that depend on near shore vegetation and near shore bottoms for food and cover.

These bills, if passed, will make changes in the notice process for Chapter 30 (shoreline alteration permits) that will make it very hard for sportsmen, and women or other lake or stream owners, to even become aware of proposed projects that will damage near shore fish and wildlife habitat.

There are parts in these bills where the permit process is greatly shortened for projects where 50/ ten cubic yard dump trucks (500 cubic yards) of material can be removed from the bed of any lake or stream every year by a single applicant for supposed nuisance plants. Those same aquatic plants may well be very valuable to fish and wildlife for food and cover.

In addition, the permit process is greatly shortened for projects where 5/ ten cubic yard (50 cubic yards) dump trucks of material can be removed every year by everyone that owns a pier or boatlift. Think of the impact here....there are literally hundreds of thousands of piers and boatlifts in Wisconsin. This section alone will cause very severe damage to fish and wildlife habitat in every lake and stream in Wisconsin.

With all the changes proposed in these bills, the negative impact on the multi-million dollar tourist industry in Wisconsin could be very serious. The negative impact on the muti-million dollar hunting, fishing, and trapping industry could be very serious. And, the impact on the multi-million dollar logging industry could be equally serious. Certainly, an economic impact analysis of these bills is in order, before debate starts just as Governor Walker has required for all other proposed bills and rule changes.

In conclusion, I know you are interested in streamlining some of the laws and regulations to help businesses in Wisconsin, but this is not the way to go about it. Why not take the time to conduct a proper review, work with members of the scientific community and the public and do the job right? Follow the democratic principles that have made Wisconsin a great state, a state other states look to when they want to do the job right, a state that is regarded with respect and admiration. Let's do it the Wisconsin Way.

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Don Hammes
Wisconsin Wildlife Federation
Wetlands Committee Chair





State Representative
77th Assembly District

Brett Hulse

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Testimony on Special Session SB/AB 24

October 26, 2011

By Representative Brett Hulse

Mr. Chairs and member of the committees, thank you for this opportunity to address you on SS SB/AB 24.

There is a long and very complex bill that raises many questions. I will focus on three today:

1. Why are we promoting development near water when recent record rains have caused so much flood damage?
 2. Why are we relaxing permits to put pollution in our lakes and streams when polluters and developers now get 97.5% of the permits in 26.5 days?
 3. Why are we jeopardizing our state Clean Water and Air program delegation from the EPA with these illegal measures?
- 1. Why are we promoting development near water when recent record rains have caused so much flood damage?**

Flood damages to homes, businesses and property owners are growing considerably, according to the National Weather Service.¹ People across Wisconsin are increasingly seeing scenes like this photo.



Right here in Dane County, flood damages are going up. The Dane County Hazard Mitigation Plan shows this.² Dane County has more than 1,600 properties in floodplains with a total value of over \$350 million.

This bill would make it easier for builders and developers to put fill in rivers and lakes to build closer to the water. Does that make sense?

2. Why are we relaxing permits to put pollution in our lakes and streams when polluters and developers get 97.5% of the permits in 26.5 days?

Photo: Dan Reiland, Wisconsin State Journal, October 9, 2010.

¹ Flood Damages in the United States, <http://www.flooddamagedata.org/data/statescurrent29895920-294.txt>

² www.countyofdane.com/emergency/mitigation_plan.aspx



State Representative
77th Assembly District

Brett Hulsey

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I asked the DNR staff about how many Chapter 30 permits are granted today in how much time. They replied that from 1992 through today, they considered:

- 77,713 permit decisions under chapter 30
- 75,762 permits approved (97.5%)
- 1,951 denied (2.5%).³

Permit Processing Time

Permit Year	Processing Days
2007	31.7
2008	51.6
2009	27.3
2010	26.5
4-year Average	34.3

So 97.5% of the permits were granted in 26.5 days in 2010. What's the problem here?

3. Why are we jeopardizing our state Clean Water and Air program delegation from the EPA with these illegal measures?

I inquired with the EPA Region V Office in Chicago about how this bill would effect our Clean Water Act delegation for NPDES permits. They replied:

“Requirements for approval of State NPDES programs is set forth 40 CFR 123.25. Changes to Wisconsin authorities must be submitted to EPA for possible program revision and approval under 40 C.F.R. 123.62. Should SB/AB 24 become law, Wisconsin will need to demonstrate how the revisions discussed above are equivalent to the corresponding Federal requirements in order to obtain approval for those revisions. Until such approval is obtained, changes will not be deemed part of Wisconsin's federally approved NPDES program.”⁴

It could also impact our CWA section 404 delegation as the Army Corps as already noted and impact our Clean Air Act delegation by limiting the use of modeling. I am happy to share that email with you.

Passage of this bill might require Wisconsin businesses to go to St. Paul to get their wetland fill permits and Chicago to get their NPDES permits, thus creating jobs in other states.

Conclusion

In conclusion, there appears to be no need for this bill, but it could cause great harm to Wisconsin homeowners, businesses and citizens. I urge you to reject it.

³ October 24, 2011 email from DNR staff.

⁴ October 26, 2011 email from EPA staff.



**WISCONSIN LAKES**

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4513 Vernon Blvd., Suite 101, Madison WI 53705

608.661.4313/608.661.4314 fax

wal@wisconsinlakes.org

To: Members of Assembly Committee on Natural Resources and Senate Committee on Natural Resources and Environment
From: Wisconsin Association of Lakes
Re: Special Session SB 24/AB 24
Date: October 26, 2011

Wisconsin Lakes opposes SB 24/AB 24 for both procedural and substantive reasons.

By any measure, this bill is far reaching. It includes provisions related to oil and gas production licenses, air pollution control permits, high capacity wells, DNR deadlines for certifications and registrations of various kinds, Areas of Special Natural Resource Interest, provisions related to how the public can and will be involved in natural resource-related decision-making, and much more.

We feel a bill as far-reaching as this should be brought to the people of this state in a deliberate fashion, allowing not only lawyers and lobbyists time to read the bill, but for the public to be informed as to its provisions, its likely impacts, and for the public to then be able comment on it.

If today's public hearing is the only public hearing on these bills, then that has certainly not happened, and your committees will be doing a disservice to the people of this state who care so deeply about our lakes and waterways and about maintaining a balance between individuals' and businesses' desires to develop property and the public's right to healthy, sustained natural resources.

We ask that over the coming weeks you hold informational sessions and public hearings that are designed to elicit as much public input as possible. If limited legislative resources are a concern, perhaps there is a way to work with other organizations or institutions that could host such events in order to keep costs to a minimum.

Substantively, we are concerned about a number of the bill's provisions. Generally we are afraid that the bill will have the following effects:

- 1) reduces the public's role in water policy,
- 2) drastically alters the mechanisms for which permitting is carried out, and
- 3) weakens environmental standards that have travelled through public debate in recent years and are the result of much deliberation and compromise.

Wisconsin Lakes is a statewide nonprofit organization with over 1,000 members and contributors including individuals, businesses, and lake associations or districts representing more than 80,000 citizens. For over 30 years, Wisconsin Lakes has been a powerful bipartisan advocate for the conservation, protection and restoration of Wisconsin's lake resources.

1. Reduces the public's role in water policy.

The bill alters the public notice process to require a Class 1 notice under Ch. 985 or notice on the DNR's Website.

- There is no procedure outlined for the web based notification.
- No requirement that the web notice meet the standards of a Class 1 notice.
- No transition time for people to move from newspaper notices to electronic notices.
- No plan for rural areas without internet connection, with slow dial-up connection or without access to public computers with internet connection.

These changes apply to the public notice requirement for Ch. 30 Navigable Waters, Ch. 283 WPDES and Storm Water, Ch. 285 Air Pollution Control Permits, Ch. 289 Solid Waste Facilities, and Ch. 291 Hazardous Waste Management.

2. Drastically alters the mechanisms by which permitting is carried out.

The bill institutes default permitting – if the DNR runs out of time the permit is granted even if DNR staff worked diligently on the application.

- Allows only one request for additional information if the department determines an application to be incomplete or have insufficient detail.
- Clock begins on public comment time line once the department gives notice of pending application - not necessarily a complete application - therefore public may be commenting on or requesting a public hearing on an incomplete application.

The bill results in a number of changes to permitting that concern us, including:

- Allows DNR to issue General permits where currently Individual permits are required.
- General permits would be allowed for increased removal of lake bed (dredging) in navigable waters from 10 cubic yards (5 pick up trucks) to 500 cubic yards (250 pick up trucks).
- A permit or contract cannot be denied because an application is incomplete, but the time limits can expire.
- Removes DNR discretion when determining to extend an individual permit – now the bill requires the department to extend individual permits if the grantee requests an extension before the time limit expires.
- No limit on the number of extensions that can be requested.
- DNR must set, by administrative rule, time limits for High Cap well permits, prospecting permits and oil or gas production licenses. If time limits are not met default permitting occurs.

Wisconsin Lakes is a statewide nonprofit organization with over 1,000 members and contributors including individuals, businesses, and lake associations or districts representing more than 80,000 citizens. For over 30 years, Wisconsin Lakes has been a powerful bipartisan advocate for the conservation, protection and restoration of Wisconsin's lake resources.

3. Weakens environmental standards that have travelled through public debate in recent years and are the result of much deliberation and compromise.

The bill includes a number of changes to the regulation of piers, boathouses and shoreland activities, despite the fact that many of the current rules were only recently enacted or amended. Furthermore, the current rules do not appear to be creating any widespread problems necessitating the weakening of these rules.

Specifically, the bill changes recently enacted rules related to:

- Piers –2004 Wis. Act 118 revamped the Chapter 30 program - including piers. Additional modifications were made in 2008 with legislation that expanded the configuration options for exempt piers and provided greater flexibility in the number of boat slips permitted and created the registration system to grandfather pre-2004 piers.
- This bill exempts all piers from permitting requirements if they were in place upon the date of publication of this bill, even though pier permitting requirements were recently revised and significant compromise was made by all represented interests.
- The bill eliminates registration of any pier, even though pier registration was recently revised and significant compromise was made by all represented interests.
- Boathouses – places repair and maintenance provisions of boathouses in the statutes, even though there was a comprehensive 10 year public process on NR 115 which details provisions on repair and maintenance.
- And the bill increases allowances for grading even though there was a comprehensive 10 year public process on NR 115 which details provisions on grading above the ordinary high water mark.

If you have any questions about our position on this bill, would like more specific recommendations on how to improve its many provisions, or if we can be of any assistance in ensuring that residents around the state are able to become informed about the bill and its impacts and then to comment on it, please feel free to contact us.

John Keckhaver
Lobbyist – Wisconsin Lakes
608.395.1805
john@keckhaver.com

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State Senator

Neal J. Kedzie

11th Senate District

Senator Neal Kedzie

Testimony on Special Session Senate and Assembly Bill 24
Senate Committee on Natural Resources and Environment
Assembly Committee on Natural Resources
October 26, 2011

Mr. Chairman and members of the Committee, thank you for your consideration of Special Session Senate and Assembly Bill 24, which makes revisions to various regulations under the jurisdiction of the Department of Natural Resources.

In January of this year, Representative Mursau and I began meeting with the Department to discuss a number of regulations – mostly under Chapter 30 – which we believe are necessary in order to foster a more efficient, effective, and responsive state agency.

This bill is the culmination of reform ideas between lawmakers and the Department to achieve a mutual goal of streamlining various regulations which are either duplicative, vague, costly or confusing for businesses and individuals.

While this bill deals with a number of such regulations which I will speak to in a moment, I must first speak to what this bill does not do: it does not “set the stage” or create a “back door” for mining or wetlands legislation.

Both of those issues will be dealt with separately in future legislation by either this Committee or the Senate Mining Jobs Committee, and members will recognize those bills when they see them. But this is not those bills, nor is it a pre-cursor to those bills. You may hear testimony to the contrary, but we are here to tell you that is not the case.

Officials with the Department of Natural Resources are also here today to offer their testimony and expertise on many of the provisions of the bills, but Representative Mursau and I will provide an overview of Special Session Senate and Assembly Bill 24.

The bill requires the DNR to create a publicly-accessible electronic data system for ordinary high-water mark and navigability determinations. Having this information available electronically to the public will provide greater transparency and efficiency as to whether a project does or does not require a waterway permit.

The bill clarifies and specifies the scope of the scientific value of areas of special natural resource interest waters (ASNRI) for threatened or endangered species. Under current DNR administrative code {NR 1.05(4)}, determinations of significant scientific values of ASNRI waters are listed. This bill places most of that list into statute reflecting that it applies to portions of waters and limits the DNR from making additional determinations by rule.

The bill allows the DNR to grant extensions for certain waterway permits under Chapter 30 (30.01 – 30.29). At times, unexpected delays in a permitted project arise, which could require a person to re-apply for a permit that may be nearing expiration, but has already been approved. This provision addresses that issue by allowing for an extension of an approved permit for up to five years.

The bill revises the current requirement to publicly notice permits as a Class 1 public notice to allow for an equivalent Web-based public notice system. This system would create an easily-accessible public notice page on the DNR's Web site, which could also be sent via e-mail to any and all interested parties.

Having this information immediately available on the Web site would also lessen any delays created by the current public notice requirement. The bill does not do away with the current noticing requirement, but does offer an option to the DNR.

The bill allows the DNR to create an expedited engineering plan and specification review process for certain minor or repeat projects, such as low hazard dams and water and sewage facilities.

The DNR may create the expedited procedure only if the following conditions apply: plan designs are for minor additions, have been submitted by a registered engineer, are similar to other facilities where no adverse impacts to the environment have occurred, and contain no unique siting requirements or features.

The bill allows a person to engage in land grading activity authorized under a stormwater discharge permit or a permit issued by a county under a shoreland zoning ordinance. The intent is to remove duplication of permitted activities. If the activity has already been approved under a different permit system, then no additional permit is required.

Perhaps the two most significant components of the bill are as follows.

First, working with Representative Jim Steineke and Senator Frank Lasee, we are incorporating into this bill the provisions of Assembly Bill 177, as passed by the Assembly on a bi-partisan vote on September 13, 2011.

As Representative Mursau and I worked with the DNR on this regulatory reform package over the last several months, we realized there was a great deal of overlap in both bills. Thus, we have folded the amended and approved version of AB 177 into this bill, and we certainly do appreciate the work of Representative Steineke and Senator Lasee who share our goal to streamline the DNR permit process.

The bill allows the DNR to issue waterway General Permits by a more expedited process, sets deadlines (generally 30 days) for the DNR to approve or disapprove permits, and creates conditions for not meeting those deadlines, which include presumptive approval or refund of fees for permit applications.

In addition, new standards for application completeness are created, along with timelines for public notices and public hearings of permit applications. The bill also directs the DNR to establish timelines by rule for the review of applications for specific permits, licenses, and approvals, which are listed on pages 32 and 34 of the bill. Once established, the DNR would have to adhere to the terms of their self-imposed timelines.

In our discussion with the DNR, they believe the timelines are reasonable and achievable, and will provide the regulated community with the certainty they need in regards to the status of their permit application.

Second, the bill creates a new standard for the regulation of piers and boathouses, as follows:

- o Piers placed after the effective date of the bill may have a loading platform with a surface area of no more than 200 square feet without a permit.
- o Piers placed before the effective date of the bill are considered exempt from the permitting requirements, so long as they do not affect the riparian rights of others.
- o Pier registration requirements are repealed.
- o Permitted or authorized structures are exempt from permitting requirements so long as they are in compliance with their current permit or authorization.
- o Exempt piers may be relocated or reconfigured so long as the pier is not enlarged.

- o Piers may extend no further than to a point where the water is 3 feet at its maximum depth as measured at summer low levels, or to the point where there is adequate depth for mooring a boat or using a boat hoist/lift, whichever is farther from the shoreline.

- o General permits may be issued for piers placed in an area of special natural resource interest, under certain conditions.

- o Additional areas for the mooring of personal watercraft (jet skis) are allowed.

- o Existing boathouses may be repaired and maintained so long as it does not affect the size, location, or configuration of the boathouse, and is not converted into living quarters.

- o Minimal removal of materials in order to provide access to a pier is allowed.

- o General permits may be issued for minor dredging to access piers, and for minimal removal of animal and plant deposits if the deposit impedes navigation.

The issue of the regulation of piers in Wisconsin first surfaced in 2003 during the creation of Wisconsin Act 118, but was not addressed in that law. Since that time, the Legislature created a regulatory matrix for piers, which quite frankly, has been confusing for pier owners.

Some piers which have been in the water for decades causing no navigable or environmental problems were effectively deemed "illegal" under that matrix. Or, piers which were determined to be legal under the new law had to be proven as such through a complex registration system, which requested shoreline footage, number of slips, and even a photograph of the pier.

What was initially intended to be a simple, one page registration form soon became a lengthy, five page, quasi-permitting application. This quickly became a source of frustration for legal pier owners, who were baffled by the need to prove themselves in compliance with the law.

As you know, earlier this year the Legislature approved a bill to extend the pier registration deadline by one year, as many piers either didn't know about the requirement, or may have missed the deadline due to the uncertainty of the law. Recognizing the pier registration requirement no longer makes sense for pier owners, and no longer meets the original intent of the law, we are removing it under this bill.

I would like to thank the Committees for their consideration of Special Session Senate and Assembly Bill 24, and am happy to answer any questions you may have. If we are unable to do so on any specific or technical questions, the Department is here to testify today, and they may be able to provide such additional information.



Senate & Assembly Bills – 24 / October 26, 2011

Members of this joint legislative committee, both Senators and Assembly Representatives, I thank you for this opportunity to weigh in on SB-24 & AB-24. I am Jerry Knuth and I live in Plover, Wisconsin. I grew up in Central Wisconsin next to my Grandfather's Dairy Farm and worked in my dad's HVAC business prior to entering service. After attending college, I spent the next 35 years in the business world. The later 20 years dealing with national accounts and risk management clients. My wife and I have 3 sons and a grandchild; so I share your concerns for a long-term solution to our current jobs problem. I hardly consider myself as anti-business, but at the same time, I'm a bit conflicted and concerned about many features in this legislation.

The interest in open-strip mines in Northern Wisconsin and even closer in nearby Marathon County, has drawn a lot of media attention in recent months. Most media reports leave me hanging with more questions left unanswered than answered. For instance, I wonder if the local residents in the affected counties really want strip mines in their backyard? Are those 700 jobs really going to be a positive outcome for the current population in that area or will they inherit only the trickle down that comes with more people moving into the area? What are the environmental and economic projections over a 5 or 10 year period? Common sense would say that we move cautiously as there's usually no turning back once the mine opens. When things go south, the corporate entity will disappear and we're left holding the bag.

As for altering shorelines, the State of Wisconsin had a year of hearings around the state and time to discuss changes in those rules before they were put into play. The general public understood those needs and accepted the changes. Do we want to turn over our diminishing shoreline to a host of condos and all-inclusive type operations? At the same time, what will these proposed changes do for fish, wildlife and our natural resources?

I've actively worked with my local government agencies, our university system and non-profits over the past 6 years in an effort to maintain stream flow on the Little Plover River near where I live. The Public Rights stage of this effort was a real plus in bringing the various stakeholders together in this effort. I would question the need to diminish the effectiveness of our Public Rights Law.

During my work life, I had little use for peddlers and brokers who provided incomplete or inaccurate information looking for a quick deal. We had a saying that the "perfume of the premium may outweigh the stench of the risk". I think that this could be applied to many parts of this proposed legislation. I would ask you to think it through for the long term well-being of our state's natural resources.

In closing, I should also indicate that while I am an active member and past president of the Wisconsin Wildlife Federation, I've not had a chance to visit with those local affiliates in my district given the short-fuse time-line of this legislation. I am here testifying as an individual and tax-paying state resident; but will follow-through to gather concerns from our local sportsmen and women and the "hook-&-bullet" affiliates in my area.





WISCONSIN'S BUSINESS VOICE SINCE 1911

TO: Members, Senate Committee on Natural Resources & Environment
Members, Assembly Committee on Natural Resources

FROM: Scott Manley, Director of Environmental & Energy Policy

DATE: October 26, 2011

RE: Special Session Senate Bill 24 and Assembly Bill 24

Wisconsin Manufacturers & Commerce (WMC) respectfully requests your support for passage of Special Session Senate Bill 24 and Assembly Bill 24.

The business community appreciates the leadership of Senator Neal Kedzie and Representative Jeff Mursau for drafting this important legislation, as well as Governor Walker for adding the bill to his special session call. There are many reforms proposed in these bills that will simplify permit approval processes within the Department of Natural Resources (DNR), and ultimately improve Wisconsin's regulatory climate. **Of particular importance to Wisconsin's manufacturing sector is the reform related to air dispersion modeling in Section 84 of the bill.**

Air dispersion modeling is sophisticated computer modeling used to predict future air quality associated with a business based upon circumstances unique to the facility. The modeling is expensive, and typically requires the hiring of outside consultants to perform the modeling runs. Like any forecasting tool, dispersion modeling has inherent uncertainty, and often does not reflect actual air quality conditions observed by ambient air monitors.

The reform in the legislation before you would clarify that the DNR is not required to base its decision to issue or renew an air permit based upon the results of dispersion modeling. We believe this is an important reform because DNR staff currently relies much too heavily on this inherently uncertain forecasting tool.

Although modeling should, perhaps, be one factor that DNR considers in the context of air permitting, it should not be the primary factor that drives permit issuance decisions. **These decisions literally dictate whether Wisconsin businesses can locate, expand or continue to operate here, and we should not place the fate of manufacturing jobs in the uncertainty of "black box" dispersion modeling.**

WMC, therefore, strongly supports the provision in Senate Bill 24 and Assembly Bill 24 related to dispersion modeling. However, we believe the language in the bill should be clarified in two important ways in order to fully capture the benefit of this reform.

First, the provision should clarify that DNR may not require air dispersion modeling for air permits issued to "minor" sources of air emissions. A minor source is defined under federal

501 East Washington Avenue, Madison, WI 53703-2914 P.O. Box 352, Madison, WI 53701-0352
Phone (608) 258-3400 • Fax (608) 258-3413 • www.wmc.org

WMC is a business association dedicated to making Wisconsin the most competitive state in the nation.

law as a facility with a potential to emit less than 100 tons per year of a pollutant. They are often small businesses such as light manufacturers, printers, coaters, furniture makers and hospitals. These facilities are not required to be permitted under the Clean Air Act, and many states choose not to permit them. Wisconsin does require permits for minor sources, and also requires the same costly dispersion modeling for these facilities as a "major" source like a power plant or refinery.

Because of the insignificant air emissions associated with minor facilities, it does not make sense to force these small businesses to endure the cost, delay and hassle associated with dispersion modeling. In fact, **an audit of Wisconsin's air management program by the Legislative Audit Bureau (LAB)¹ specifically recommended eliminating the modeling requirement for minor sources** as a means to reduce air permit backlogs and more efficiently use DNR permitting staff resources.

The LAB report noted that minor sources comprised 73 percent of all permitted facilities in Wisconsin, but collectively accounted for only 1.2 percent of all emissions.² These businesses do not significantly impact air quality, and it is therefore a waste of both private sector and public sector resources to require costly air dispersion modeling for permits. We, therefore, respectfully request your consideration to amend the bill to clarify that DNR may not require dispersion modeling for minor sources.

The second clarification would specify that DNR may not require dispersion modeling to obtain coverage under registration permits or general permits. These "off the shelf" air permit streamlining tools were enacted in the bipartisan Jobs Creation Act (2003 Act 118) signed into law by Governor Doyle in 2004. The intent of registration and general permits is a simplified and speedy permitting process for businesses with relatively small emissions that do not present unique permitting challenges. For example, registration permits may be applied for online, and DNR is required to issue or deny the permit within 15 days.

Unfortunately, dispersion modeling requirements have significantly diminished the value of these streamlined permits by reintroducing the cost, delay and complexity that typically accompanies an individual permit. The modeling requirements have, in many cases, diluted the usefulness of these bipartisan streamlining tools without a corresponding environmental benefit, and have only succeeded in adding cost to small businesses. WMC, therefore, respectfully requests your consideration to amend this legislation to clarify that DNR may not require dispersion modeling for registration permits and general permits.

Thank you for the opportunity to share WMC's perspective on this important legislation. Please feel free to contact me at (608) 258-3400 if you have any questions, or if I can provide you with additional information.

¹ *Air Management Programs*, Audit 04-1, Wisconsin Legislative Audit Bureau; Page 44

² *Ibid*; Page 38





222 S. Hamilton St., #1
Madison, WI 53703
Phone: 608.250.9971

***Wisconsin Wetlands Association Testimony on Special Session SB/AB 24
Presented by Erin O'Brien, Policy Director, October 26, 2011
608-695-7511 / erin.obrien@wisconsinwetlands.org***

We share the concerns expressed by many here today about the ways this bill limits DNR's authority to render decisions based on complete information and limits the public's opportunity to comment on a complete application. Today we want to call the committee's attention to two potential unintended consequences of this bill that we believe deserve further attention and remedy. These include: potential impacts to near-shore wetland habitats and inconsistencies with federal laws

Potential impacts to near-shore wetland habitats

We do not believe it is the intention of the legislature to allow dredging and grading in wetlands. But as written, the bill has the potential to result in widespread and significant adverse impacts to near shore wetland habitats.

80% of the wetlands in the state are directly adjacent to lakes, rivers and streams. Areas referred to as shallows, sloughs, lake fringe, the littoral zone, and others, are all, in fact, emergent wetlands. These areas provide numerous and critical services to our waters.

Using lakes as an example, emergent wetland plant communities improve water quality by anchoring sediments and intercepting polluted runoff before it reaches open water. They reduce algal populations by removing (i.e., metabolizing) the nutrients algae feed on and providing refuge for scum eating (algal-grazing) zooplankton. They also shield our shorelines from erosive wave action, and enhance hunting and fishing opportunities by providing critical nesting and foraging habitat for fish, waterfowl, and other fauna.

Some lakes are entirely surrounded by emergent shoreland wetlands. The connectivity of these wetlands would be severely disrupted if each landowner was pre-authorized to dredge 10, 50, or even 500 cubic yards of material from an emergent wetland area each. These provisions also have serious implications for the management of the thousands of shallow lakes that are classified as wetlands due to their ability to support emergent aquatic vegetation.

The solution to this particular concern is to amend this bill to require individual permits for any of the authorized dredging activities that would take place in areas where emergent wetland vegetation exists. This is particularly important with respect to any exemption provisions because review under Wisconsin's water quality standards for wetlands is only triggered when a state decision is required.

We are also concerned about the provision eliminating state permits for land grading activities where a stormwater permit or a shoreland zoning permit has been issued. We have spent the last two years researching how counties regulate wetlands in the shoreland zone. State law

requires only that counties discourage development in *mapped* shoreland wetlands. In many counties this means they only regulate land grading and fill in wetlands two acres or larger. A few counties still rely on maps that only capture wetlands 5 acres or larger. Some counties go above and beyond these standards, but there is great variability between counties for what and how they regulate. We also know that *few* counties have the resources to conduct site visits and that they rely heavily on DNR staff to convey site-specific information and technical expertise on potential aquatic impacts. For these and other reasons, we oppose removing DNR oversight on land grading activities in the shoreland zone.

A final concern about unintended consequences for wetlands relates to the provision to change the definition of ASNRIs. We appreciate the legislature's efforts to further define areas with significant scientific value, but are concerned that the prescribed list is too limited in scope. We have not had sufficient time to come up with a firm recommendation, but would like to see additional language to:

- a. Include waters that flow through wetland community types that have been identified as rare or imperiled under the state Natural Heritage Inventory.
- b. Set criteria, or authorize DNR to set criteria, for identification of additional waters of significant scientific value.

Inconsistencies with federal laws

The dredging, grading, and fill provisions of this bill are inconsistent with federal laws, particularly Section 10 of the Rivers and Harbors Act which regulates activities in navigable waters.

While it is within the state's rights to set its own laws and processes for approving projects that impact state regulated waters, property owners and project sponsors must still comply with federal law.

Because many people are unfamiliar with federal regulations, the exemptions, general permits, and automatic approvals contained within this bill will give people a false certainty that they have done their due diligence before starting construction. It will almost certainly result in people moving forward on state authorized projects in violation of federal laws. For those property owners and developers who do understand and seek to meet their obligations under federal law(s), this bill sets up dual approval processes that may actually lead to delays and additional expenses for permit applicants.

As we have recommended with the drafting of the pending wetland bill, the most effective way to address these concerns is to seek input from the U.S. Army Corps of Engineers on how to integrate and streamline decision-making for projects with shared jurisdiction, and to amend the bill accordingly. Short of that, we strongly recommend adding language to require the DNR to notify permittees that additional federal approvals may be necessary before construction can proceed. The notification requirements contained in 2009 WI Act 373 provides an example for your reference.






22 EAST MIFFLIN STREET, SUITE 900
MADISON, WI 53703
TOLL FREE: 1.866.404.2700
PHONE: 608.663.7188
FAX: 608.663.7189
www.wicounties.org

MEMORANDUM

TO: Honorable Members of the Legislature

FROM: John Reinemann, WCA Legislative Director 

DATE: October 26, 2011

RE: Support for September 2011 Special Session AB 24 and SB 24

These bills make a number of changes to state law in the area of permits and approvals for work regulated by the Wisconsin Department of Natural Resources (DNR).

WCA considers the preservation of Wisconsin's natural resources to be one of the many missions of county government, and this is reflected in many of the long-standing positions of the Wisconsin Counties Association (WCA).

WCA also has long-standing positions in support of certain changes to regulatory processes. In particular, we have long called for shorter timeframes for state permits. Because of this position, we support September 2011 Special Session AB 24 and SB 24.

WCA has been informed that the Wisconsin County Code Administrators (WCCA) may have questions and concerns about the legislation. WCA supports the WCCA and their work. To the extent that the WCCA may find that it seeks changes to the bill, we will work with them to include their concerns in our subsequent conversations on these bills.

Finally, WCA notes that a provision of SS AB 24 and SS SB 24 would repeal a current-law provision exempting cities, villages, towns and counties from the individual and general permitting requirements for the construction or reconstruction of a highway bridge. Instead, under SS AB 24 and SS SB 24, DNR would be required to issue a general permit authorizing the construction, reconstruction, and maintenance of bridges and culverts that are part of a transportation project that is carried out under the direction and supervision of a city, village, town, or county.

WCA's priority in this matter is the ability of local government to be able to do the work necessary to maintain the highway system. On that basis, we do not see an immediate obvious concern with the substitution being made in SS AB 24 and SS SB 24. We do have some potential concern about the criteria that might be applied to permits via administrative rule, and we look forward to working with the department to establish these criteria.

Please contact WCA if you have questions or desire additional information.

LYNDA BRADSTREET
DIRECTOR OF ADMINISTRATION & FINANCE

JON HOCHKAMMER
DIRECTOR OF INSURANCE OPERATIONS

JOHN REINEMANN
LEGISLATIVE DIRECTOR

J. MICHAEL BLASKA
DIRECTOR OF PROGRAMS & SERVICES

MARK D. O'CONNELL, EXECUTIVE DIRECTOR

October 26, 2011

Statement in opposition to SB 24 & AB 24

AB 24 & SB 24 are both direct attacks on Wisconsin's character and tradition of strong environmental leadership. Nullifying the role of the DNR and the dedicated scientists and professionals that dedicate their careers and lives to preserving and protecting our natural resources for the short term profits of a few is criminal in its intent and character.

Wisconsin's water belongs to its citizens and is our most precious of the many natural resources our state is blessed with. To allow corporate rule over the use of public property is at the least deplorable. Studies have shown that mining is a very cyclical and destructive business. Most operations are short lived and produce little or no sustainable employment. But they leave behind a trail of destruction and the depletion of non replenish able resources.

Making citizens disprove a statement or impact study presented by a corporation place an undue burden on those least able afford the cost. Limiting the DNR to position of becoming a rubber stamp authority will lead our state down the slope to becoming a holding ground for the left over toxic waste, without holding the polluter accountable, not a place anyone will be proud to call home.

Limiting the DNR to one request for information on an application from a polluter and limiting the public notice and time line for a public hearing is not a form of open government.

The public waters of Wisconsin are fantastic economic engine that provides a sustainable and growing economic opportunity for the state. We are charged with protecting the health and wellbeing of the people of our state and working in conjunction with industry to preserve our states heritage not allowing the profits of a few to outweigh the health, welfare and traditions of us all. A recent economic study completed in the Driftless Area by Trout Unlimited indicated that the improved cold water resources in this region have an economic impact of over 1.4 billion dollars. We cannot allow wishes of a corporate greed to overrule the people of Wisconsin do not pass AB 24 or SB 24. Leave a legacy to be proud of.

David Sanders

W9070 Lakeview Dr

Cambridge, WI

Representing my self



Testimony from Al Shea
Director, Office of Business Support and Sustainability
Wisconsin Department of Natural Resources
September 2011 Special Session Senate Bill 24
Joint Senate and Assembly Committees on Natural Resources and Environment
Wednesday, October 26, 2011
417 North, State Capitol

Good morning. My name is Al Shea. I serve as the Director of the DNR's new Office of Business Support and Sustainability. With me today are Ken Johnson, Administrator of the DNR's Water Division, and Pat Stevens, Administrator of the DNR's Air & Waste Division.

I want to thank Chairman Kedzie, Chairman Mursau, and the members of the Committees for allowing the Department to testify on Special Session Bill 24. In short, the Department finds the proposal to be focused on regulatory streamlining measures that improve clarity, certainty, and customer service, without reducing our ability to protect the environment. It also gives us important tools we need to better manage our workload.

Before proceeding with my comments on the bill, I felt it important to provide some examples of the progress that Wisconsin has made in environmental and public health protections:

- Aided by \$4 billion in investment, pollution from wastewater treatment plants has been cut by 95%, and runoff from agricultural lands has been reduced by 70% in the past 25 years.
- The Fox and Milwaukee Rivers were not fishable or swimmable in 1970. Today, the Fox River supports a trophy walleye fishery and the up-river Winnebago system supports a world class sustainable sturgeon fishery. The Milwaukee River now supports more than 30 species of fish, where only a few bottom-feeding species could survive before.
- According to DNR's 2010 Water Quality Report to Congress, 75% of the state's 3,200 lakes that were assessed exhibited excellent or good water quality.
- And, on the air quality side, factory and power plant emissions of nitrogen oxides and sulfur dioxides, precursors to ozone formation and acid rain, have decreased by 72% and 54% respectively, since 1982.

I hope these examples serve to underscore the significant environmental progress Wisconsin has made to date.

The provisions of SSB 24 will allow the Department to continue this legacy of success. By "right sizing" regulations to fit permitting requirements to the potential impacts, the bill makes the permit process more efficient for citizens, businesses, and DNR staff. They will also allow the Department to deploy its environmental staff on the issues that most affect public health and the environment, and enable us to continue working on the kinds of successes described above.

Many of the ideas for the provisions in the bill came from DNR staff. In some cases, regulations proposed for change have been in place for decades. Well, times have changed, and we need to put clear and predictable environmental protection processes in place that fit with 21st century needs.

Let me touch on a few examples:

Internet Publication - The bill allows DNR to use modern technology to provide air, wastewater, and waterway permit-related information more efficiently and effectively.

- Public Notices for Individual Permits can be issued by DNR using a web-based system, such as Gov.Delivery, rather than newspaper publication. This change alone will save citizens and businesses an estimated \$100,000 a year, and the Department in excess of \$100,000.
- Regulatory information, such as navigability and ordinary high-water mark determinations, will be posted for rapid access by citizens, businesses, and local governments.
- A permit tracking system will allow applicants and the public to identify pending permit applications for water, air and other environmental permits and track their status through the process.

Municipal Bridges and Culverts – The bill replaces a confusing existing provision with a straight forward permitting process for construction/maintenance of town and county bridges and culverts. Under the bill the Department will develop a General Permit that establishes clear eligibility requirements and review process for these minor projects.

Modeling of Air Emissions – The bill clarifies that dispersion modeling for air emissions is not required for minor sources as a basis for determining a source will meet air emission standards. The department will still need to demonstrate that ambient air quality standards and increments are not violated prior to issuing a minor source permit. For major sources, air dispersion modeling will remain a requirement.

Expedited Procedures - Currently, low hazard dams - dams that are categorized as having low potential to cause significant property damage or loss of life - must go through the same plan review process that high and significant hazard dams go through. The bill's provision simply requires us to develop an expedited plan review process to reduce workload for both dam owners and department staff.

I hope these examples illustrate the kinds of regulatory streamlining measures contained in the bill.

Strong environmental protection and economic vitality can and do go hand-in-hand. The changes proposed in SSB 24 increase regulatory certainty, save resources, and provide a balance between effectively protecting our environment and issuing permits in a timely fashion.

Chairmen Kedzie and Mursau, and members of the Committees, I would like to again thank you for the opportunity to appear before you today. The Department appreciates your leadership on this matter. My colleagues and I would be glad to take questions.





101 W. Main Street #353, P.O. Box 875, Ashland, WI 54806

To: Senate Committee on Natural Resources and Environment
Assembly Committee on Natural Resources

From: Bob Rice, 74355 Kaukamo Rd. Iron River, WI 54847

Re: Opposition to Special Session Bills SB24 and AB24, The Navigable Waters Bill

Date: October 26, 2011

The Bad River Watershed Association is a community organization that works to involve all citizens in taking care of and enjoying their home watershed. We are a data driven organization that is, among other things, working to take the emotion out of what will be a series of challenging decisions regarding the potential establishment of a taconite mine in the Eastern portion of the Bad River Watershed. We have been working with local citizens, governments, our statewide representatives, and other organizations to give people in this area an opportunity to understand what this development would mean to land and water resources.

On Wednesday, October 19th, BRWA delivered a petition with over 1400 signatories which states

Companies seeking to establish mining operations in Wisconsin should meet requirements that protect water quality and supply, while providing opportunity for public input. Current environmental regulations should not be weakened.

While SB 24 is being presented as a bill that streamlines the process of permitting in relation to treatment of navigable waters in association with a special session that is supposed to create jobs, we believe that the bill has several points which have little to do with job creation, but would weaken the current environmental regulations, and would erode the structure of public input currently enjoyed by citizens in the State of Wisconsin. This bill will have direct impact on the permitting process for Gogebic Taconite, or any other company wishing to mine Iron Ore in the Penokee Range.

Amongst our concerns are:

Legislation which would allow for default permitting of large capacity wells. We believe that requiring the DNR to permit high capacity wells, even when there isn't adequate time to evaluate the impact on other wells in the area and on surface water, allows for the potential of many

private wells being drawn down. Taconite mining requires significant amounts of water, and an automatic approval of a high capacity well for a taconite mine in the Bad River Watershed, without collection of data proving that neighboring wells would not be drawn down, weakens important environmental protections found in current legislation, and could potentially result in a situation where we have jobs for some at the cost of enough clean water for others.

Legislation which exempts pellet processing plants from having to do clean air modeling. Taconite production requires a pellet processing plant, and these facilities are a major contributor of mercury in to the waters of the upper Great Lakes. Weakening the environmental standards that Wisconsin has set for clean air will be detrimental to the health of humans and animals. We need a permitting process that assures the operation of a processing plant that does not increase air pollution.

Legislation which would limit the opportunity for public input by significantly shortening the comment period, and by limiting notification of the comment period to a posting on the DNR website. Strange as it may seem to many in a larger city, in Northwestern Wisconsin, there are still many people who don't have access to the internet, and thus rely on newspapers for notification of public comment periods. Furthermore, the DNR website is cumbersome and difficult to navigate, and it is likely that notices of public comment will be hidden deep within that site. Taking away the opportunity for citizens to comment on endeavors that will impact their lives and the lives of future generations is not an example of legislation fairly protecting the rights of the citizens.

Legislation in which the period of public comment sees the clock start ticking after an application is submitted, instead of after it has been deemed complete. This, quite simply, does not allow for adequate public comment regarding what is being permitted and gives no opportunity for public comment on the actual, completed application.

Legislation which authorizes the DNR to deny a public hearing if there is not "significant public interest". We are concerned that this vague and arbitrary determination will deprive concerned citizens of their right to give comment. We, as an organization committed to letting data tell the story and inform decisions regarding what happens in our watershed, find this sort of legislation in conflict with making those sound decisions based on the story that data tells. It is the kind of legislation that has citizens increasingly less trustful that the democratic process is in place for important issues that will impact our home for many, many years.

Our organization strives to achieve change and development that occurs with a stewardship ethic that recognizes the importance of maintaining clean water and healthy natural resources for future generations. This stewardship ethic is strong within a great many of the people who live, work, and play within the Bad River watershed. SB 24 tells us that our stewardship ethic is not important. It tells us that the spectacular views from Mt. Whittlesey outside of Mellen, the awe-inspiring gorges and falls of the Tyler Forks River, the clean and healthy waters of the Potato,

Bad and Marengo Rivers and Javorsky, Devils, and Ballou Creeks are OK to pollute while taking away much of our ability to say anything about it. These are not small and insignificant changes to our clean water protections. These are major changes that stand to have a lasting impact not only on clean water, but on the very fabric and ethic of many of the people who call the Bad River watershed home. Don't put jobs for a few people ahead of clean water for everyone. Please, do not pass SB 24.



418 Mineau Pkwy
Madison, WI 53711
October 26, 2011

Committee on Natural Resources and Environment and Natural Resources Committee

Dear Committee Members:

My name is Robert Schaefer and I am a retired Environmental Engineer from the Department of Natural Resources (DNR). I have a degree in Civil and Environmental Engineering and Natural Resources from the University of Wisconsin, Madison. I have a Professional Engineers license, a Professional Hydrologist license and a Profession Soil Scientist license from the State of Wisconsin. The last 21 years of my 33-year career with the DNR was spent doing high capacity well application reviews, working with facilities that had a contaminated water supply, and assisting them to correct water contamination problems.

Based upon my review of the proposed changes to the law, you may as well take the entire existing statute and associated administrative codes and toss them out, since you do not leave enough time for a proper review of any application. The current language that guides the department is 65 working days. I can tell you in times of drought, and often in times of ordinary application submittals, it is not enough time to complete all the reviews that the department receives in the time you have specified.

A well is an expensive item to install. Once a well is installed it cannot be moved, only filled and sealed and then replaced. The water withdrawn from the ground waters of the state may have no effect on nearby wells, streams, wetlands or the quality of the water supply or nearby water supplies. On the other hand, we know that if you utilize water from the ground, you can create sink holes, completely change the quality of the water, eliminate a stream or wetland altogether, or have any other number of impacts not foreseen by an ill-advised quick review proposal. The minimum amount of time provided now is just barely enough to evaluate all the potential impacts. The University of Wisconsin has a Master's degree program dedicated to the evaluation of hydrogeology, of which water supply is one part. The engineering program has classes in hydraulics and water supply. The importance of water to Wisconsin is part of the basic fabric of our society and you want to threaten this extremely important resource to save a few days of plan review.

Seriously, it would be better to leave the current statute and administrative code language as it is and not jeopardize such a valuable resource. I urge you to vote against Assembly Bill 24 because of the damage it will cause to the waters of the state.

Sincerely,

Robert W. Schaefer

Senate Natural Resources and Environment Committee

Senator Neal Kedzie (Chair)
Senator Terry Moulton

Senator Van Wanggaard
Senator Pam Galloway

Senator Robert Wirth
Senator Jim Holperin

Senator Chris Larson

Assembly Natural Resources Committee

Representative Jeffrey Mursau (Chair)
Representative Roger Rivard
Representative Mary Williams
Representative Joel Kleefisch

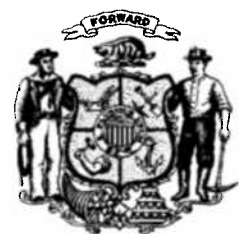
Representative Lee Nerison
Representative Erik Severson
Representative Jim Steineke
Representative Thomas Tiffany

Representative Duey Stroebel
Representative Michelle Litjens
Representative Louis Molepske Jr
Representative Cory Mason

Representative Chris Danou
Representative Fred Clark
Representative Nick Milroy
Representative Brett Hulsey



WISCONSIN STATE LEGISLATURE



October 26, 2011

To: Joint Hearing of the Assembly and Senate Natural Resource Committees
Re: AB/SB 24

Dear Wisconsin Legislator,

1. Groundwater is renewable. But groundwater capacity and groundwater quality are not renewable. After porespace has been collapsed by overpumping, it will never be restored until after the next ice age. When groundwater has been polluted by metals and toxins, its usability for human consumption can never be restored. It's simply not possible to remove or mitigate them sufficiently.

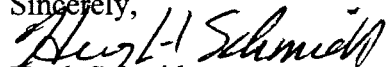
Taconite mining is especially water consumptive and destructive.

2. Most industry leaders don't want to pollute, but they will have to pollute to survive if there isn't sound regulatory policy to prevent their competitors from polluting. If the current value of iron isn't sufficient to cover the costs of mitigating environmental hazards, then the price isn't yet high enough to justify mining. Do you want to be part of a generation that destroyed natural resources for all future generations because we didn't have the moral integrity and patience to be competent stewards?

We need to institute protections beforehand. The price will never rise high enough to repair damage.

3. We can't attract new business if we destroy our environment. We want to be like Vermont, not West Virginia. Vermont protected it's pristine natural resources and out-of-state money pours in because it is the recreation and vacation land for the east coast.

Sincerely,



Hugh Schmidt

1 Veblen Place

Madison, WI 53705-1027

hugh@mistoverfm.org

Speaking against SB24



Testimony from Al Shea
Director, Office of Business Support and Sustainability
Wisconsin Department of Natural Resources
September 2011 Special Session Senate Bill 24
Joint Senate and Assembly Committees on Natural Resources and Environment
Wednesday, October 26, 2011
417 North, State Capitol

Good morning. My name is Al Shea. I serve as the Director of the DNR's new Office of Business Support and Sustainability. With me today are Ken Johnson, Administrator of the DNR's Water Division, and Pat Stevens, Administrator of the DNR's Air & Waste Division.

I want to thank Chairman Kedzie, Chairman Mursau, and the members of the Committees for allowing the Department to testify on Special Session Bill 24. In short, the Department finds the proposal to be focused on regulatory streamlining measures that improve clarity, certainty, and customer service, without reducing our ability to protect the environment. It also gives us important tools we need to better manage our workload.

Before proceeding with my comments on the bill, I felt it important to provide some examples of the progress that Wisconsin has made in environmental and public health protections:

- Aided by \$4 billion in investment, pollution from wastewater treatment plants has been cut by 95%, and runoff from agricultural lands has been reduced by 70% in the past 25 years.
- The Fox and Milwaukee Rivers were not fishable or swimmable in 1970. Today, the Fox River supports a trophy walleye fishery and the up-river Winnebago system supports a world class sustainable sturgeon fishery. The Milwaukee River now supports more than 30 species of fish, where only a few bottom-feeding species could survive before.
- According to DNR's 2010 Water Quality Report to Congress, 75% of the state's 3,200 lakes that were assessed exhibited excellent or good water quality.
- And, on the air quality side, factory and power plant emissions of nitrogen oxides and sulfur dioxides, precursors to ozone formation and acid rain, have decreased by 72% and 54% respectively, since 1982.

I hope these examples serve to underscore the significant environmental progress Wisconsin has made to date.

The provisions of SSB 24 will allow the Department to continue this legacy of success. By "right sizing" regulations to fit permitting requirements to the potential impacts, the bill makes the permit process more efficient for citizens, businesses, and DNR staff. They will also allow the Department to deploy its environmental staff on the issues that most affect public health and the environment, and enable us to continue working on the kinds of successes described above.

Many of the ideas for the provisions in the bill came from DNR staff. In some cases, regulations proposed for change have been in place for decades. Well, times have changed, and we need to put clear and predictable environmental protection processes in place that fit with 21st century needs.

Let me touch on a few examples:

Internet Publication - The bill allows DNR to use modern technology to provide air, wastewater, and waterway permit-related information more efficiently and effectively.

- Public Notices for Individual Permits can be issued by DNR using a web-based system, such as Gov.Delivery, rather than newspaper publication. This change alone will save citizens and businesses an estimated \$100,000 a year, and the Department in excess of \$100,000.
- Regulatory information, such as navigability and ordinary high-water mark determinations, will be posted for rapid access by citizens, businesses, and local governments.
- A permit tracking system will allow applicants and the public to identify pending permit applications for water, air and other environmental permits and track their status through the process.

Municipal Bridges and Culverts – The bill replaces a confusing existing provision with a straight forward permitting process for construction/maintenance of town and county bridges and culverts. Under the bill the Department will develop a General Permit that establishes clear eligibility requirements and review process for these minor projects.

Modeling of Air Emissions – The bill clarifies that dispersion modeling for air emissions is not required for minor sources as a basis for determining a source will meet air emission standards. The department will still need to demonstrate that ambient air quality standards and increments are not violated prior to issuing a minor source permit. For major sources, air dispersion modeling will remain a requirement.

Expedited Procedures - Currently, low hazard dams - dams that are categorized as having low potential to cause significant property damage or loss of life - must go through the same plan review process that high and significant hazard dams go through. The bill's provision simply requires us to develop an expedited plan review process to reduce workload for both dam owners and department staff.

I hope these examples illustrate the kinds of regulatory streamlining measures contained in the bill.

Strong environmental protection and economic vitality can and do go hand-in-hand. The changes proposed in SSB 24 increase regulatory certainty, save resources, and provide a balance between effectively protecting our environment and issuing permits in a timely fashion.

Chairmen Kedzie and Mursau, and members of the Committees, I would like to again thank you for the opportunity to appear before you today. The Department appreciates your leadership on this matter. My colleagues and I would be glad to take questions.





John Muir Chapter

Sierra Club - John Muir Chapter
222 South Hamilton Street, Suite 1, Madison, Wisconsin 53703-3201
Telephone: (608) 256-0565 Fax: (608) 256-4562
john.muir.chapter@sierraclub.org <http://wisconsin.sierraclub.org>

Oppose Special Session AB / SB 24, Before the Senate & Assembly Natural Resources Committees Wednesday, Oct 26, 2011 at 11:00 AM in 417 N

Thank you for accepting our comments today. The Sierra Club – John Muir Chapter includes 15,000 members and supporters of the Wisconsin branch of the nation's oldest, grassroots environmental organization. Our state priorities are working to promote clean energy and protect water resources.

The Sierra Club strongly urges you to oppose Special Session SB 24. This bill jeopardizes our water and land resources statewide by pressuring the DNR to approve permits within 30 days for everything from high capacity wells, to lakebed dredging, to shoreland development, to oil & gas permits and more. Approval deadlines are unreasonable because they fail to account for staffing levels, permit volume, application complexity, or factors such as seasonal conditions that could prevent site evaluation. Additionally, DNR is not allowed to deny an incomplete application, despite the fact that staff can only request additional information from an applicant once. This bill also creates major hurdles before the DNR can designating new areas of special natural resource interest (ANSRIs) for protections, from areas with threatened & endangered species to wild rice waters to outstanding resource waters.

This bill threatens our air statewide by removing emissions modeling requirements for air pollution control permits for coal plants and other stationary sources. It cuts the public out of permitting decisions by allowing air permit hearing notices and requests for comments to be posted online rather than requiring notices in local newspapers where communities are impacted. This is extremely inadequate, given that many rural areas lack broadband access.

Mining industry officials will benefit heavily from provisions in Special Session SB 24 provide them with prospecting permits for metallic minerals, allow them to extract huge volumes of surface and ground water, and create dams needed for tailings ponds and ore processing. According to WI Democracy Campaign, these officials donated nearly \$40,000 to state-level political campaigns in 2010 (<http://www.wisdc.org/pr121510.php>). And many of the bill's provisions were specifically outlined in a presentation on mining industry legislative wishes delivered to the state bar association earlier this year (http://www.wisconsin.sierraclub.org/documents/Mining_Pyper.pdf). It is disturbing that companies like Gogebic Taconite have decided to support legislation favoring their interests over tribes and local communities before submitting a single permit application. Are they afraid that these operations aren't as safe as claimed? In fact, the Sierra Club has found that all 9 operating taconite mines in the US have serious recent air and water violations.

The DNR's mission is not to make it as fast and easy as possible to approve permits for Ohio doctors, Florida coal miners, CAFO owners, and sand mining companies, but "to protect and enhance our natural resources: our air, land and water; our wildlife, fish and forests and the ecosystems that sustain all life...and in this partnership consider the future and generations to follow." This bill sacrifices our children's future by leaving them with a legacy of degraded and depleted natural resources that will turn our state into a place we no longer recognize. And policies that dismantle environmental protections don't create jobs. In fact, recent studies have shown that the costs of air pollution outweigh benefits of adding new coal generation by 5.8 to 1 (<http://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.101.5.1649>), and increased regulations for coal ash would result in a net gain of 28,000 jobs (http://sei-us.org/Publications_PDF/Ackerman-coal-ash-jobs-Oct2011.pdf). We strongly urge you to oppose Special Session SB 24 and AB 24 in favor of policies that create real, sustainable jobs. Thanks for your consideration.