



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2015 Assembly Bill 640

Assembly Amendments 1 and 3

Memo published: February 17, 2016

Contact: Rachel E. Letzing, Principal Attorney (266-3370)

Assembly Bill 640 makes changes to certain regulations that apply to aquaculture and fish farms. The changes include the following:

- Provides that a natural body of water that may be used as a fish farm or part of a fish farm includes a spring that provides water to an artificial water body that is used as a fish farm or as part of a fish farm.
- Allows a person who previously held a permit and who takes no action other than maintaining the fish farm facility to use a natural body of water as a fish farm.
- Specifies that the requirement that a person maintaining a dam on any navigable stream must pass at all times at least 25% of the natural low flow of water of the stream does not apply to a dam in a fish farm where the water is returned to a navigable stream.
- Adds aquaculture to the list of activities that are considered agricultural practices, which are exempt from complying with nonpoint source performance standards unless cost-sharing is available.
- Adds an exemption to the requirement to obtain permit under s. 30.19, Stats., to construct, dredge, or enlarge an artificial water body that connects with a navigable waterway or that is located within 500 feet of the ordinary high-water mark of an existing navigable waterway, or to grade or remove more than 10,000 square feet of topsoil from the bank of a navigable waterway, for any aquacultural use of land.
- Adds a discharge that is part of a development for aquacultural purposes, if the discharge does not affect more than 10,000 square feet of wetland, to the categories of discharges that are included under a wetland general permit.

- Adds exemptions from the requirement to have a wetland individual permit for: (1) a discharge to a wetland created for aquacultural purposes; and (2) the construction or maintenance of ponds or roads used in fish farms to the list of activities that are currently exempt from this requirement.
- Specifies that an aquaculture applicant for a wetland individual permit is not required to conduct a practicable alternatives analysis to the proposed discharge.
- Requires that when the Department of Natural Resources (DNR) determines whether wetland mitigation within the same watershed or within one-half mile of the site of the discharge has been accomplished by a fish farm, DNR must consider wetlands created in the ordinary course of the facility's operation.
- Specifies that when issuing a Wisconsin Pollution Discharge Elimination System (WPDES) permit to a fish farm, DNR must include best management practices (BMPs) that apply to fish farms as required in federal law. The bill further specifies that DNR may not include additional conditions in the permit except as necessary for the fish farm to meet applicable limitations, standards, and other provisions, including effluent limits, effluent standards, prohibitions and pretreatment standards, and any more stringent limitations, including those necessary to meet federal or state water quality standards or to comply with any applicable federal law or regulation. The bill provides that any conditions in a WPDES permit issued for a fish farm must be limited to site-specific BMPs to the greatest extent allowed under federal law.
- Provides that if a fish farm withdraws water and places it in an aquaculture pond registered with the Department of Agriculture, Trade, and Consumer Protection (DATCP), any subsequent withdrawal of that water is not considered a withdrawal for purposes of regulation under the Great Lakes Compact.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 does the following:

- Changes the provision in the bill relating to springs to provide that a natural body of water that may be used as a fish farm or part of a fish farm includes an artificial water body that is used as a fish farm or as part of a fish farm, regardless of its water source, including an artificial water body fed by a spring.
- Specifies that the exemption to the 25% pass-through requirement for dams on navigable streams in the bill only applies to an existing dam in an existing fish farm where the water is returned to a navigable stream.
- Removes the provision in the bill that includes aquaculture as an agricultural practice for purposes of the nonpoint source performance standards.

ASSEMBLY AMENDMENT 3

Assembly Amendment 3 does the following:

- Specifies that an aquacultural use of land is exempt from the requirement to have a permit to grade or remove more than 10,000 square feet of topsoil from the bank of a navigable waterway, only to the extent that the purpose of grading or removing topsoil is to maintain an artificial water body or a fish farm that is registered with DATCP.
- Clarifies that the exemption in the bill that allows a person who previously held a permit and who takes no action other than maintaining the fish farm facility to use a natural body of water as a fish farm only applies to people who currently hold a permit from DNR to have a fish farm in a natural body of water.

BILL HISTORY

Assembly Amendment 1 was offered by Representative Czaja on January 11, 2016. Assembly Amendment 3 was offered by Representative Czaja on February 4, 2016. On February 10, 2016, the Assembly Committee on Environment and Forestry recommended adoption of Assembly Amendments 1 and 3, each on a vote of Ayes, 8; Noes, 5, and recommended passage of the bill, as amended, on a vote of Ayes, 8; Noes, 5.

On February 16, 2016, the Assembly passed Assembly Amendment 1 and Assembly Amendment 3, each on a voice vote. The Assembly then passed the bill, as amended, on a vote of Ayes, 63; Noes, 35.

REL:ksm;jal