



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2009 Wisconsin Act 391**  
[2009 Senate Bill 661]

### **General Permit for Federally Sponsored Wetland Restoration Activities**

*2009 Wisconsin Act 391* authorizes the Department of Natural Resources (DNR) to issue a general permit for wetland restoration activities sponsored by a federal agency (a “wetlands general permit” in this Memo) in lieu of issuing a specified state individual permit, approval, or water quality certification under ch. 30, 31, or 281, Stats., that would otherwise be required for those activities.

#### ***General Permit Creation and Terms***

The Act prescribes procedures for the DNR to issue a wetlands general permit including the issuance of public notices of its intention to issue the permit, a 30-day comment period on these notices, and the opportunity for any person to request a public hearing on the department’s intention to issue the permit. The DNR must hold a requested hearing if it determines that there is a significant public interest in the hearing. The Act specifies that a wetlands general permit is not a “rule,” and thus, the DNR is not required to issue this type of general permit as an administrative rule.

To ensure that the cumulative adverse environmental impact of the activities authorized by a wetlands general permit is insignificant and that the issuance of the permit will not injure public rights or interests, cause environmental pollution, or result in a material injury to the rights of any riparian owner, the Act authorizes the DNR to impose any of the following conditions on the permit:

- Construction and design requirements that are consistent with the purpose of the activity authorized under the permit.
- Location requirements that insure the activity will not materially interfere with navigation or have an adverse impact on the riparian property rights of adjacent riparian owners.
- Restrictions to protect areas of special natural resource interest.

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.state.wi.us/>.

A wetlands general permit is valid for five years. Any activity authorized under the permit remains authorized until the activity is completed. The DNR may renew or modify a wetlands general permit.

### ***Procedures for Conducting Activities Under a General Permit***

The Act specifies that a person wishing to proceed with an activity under the authority of a wetlands general permit must apply to the DNR, with written notification of the person's wish to proceed with the activity, not less than 15 days before commencing the activity. The federal agency sponsoring the activity may file this application on behalf of the person, if authorized by the person.

The DNR may request additional information on the activity one time during the 15-day period. If the DNR makes this request, the 15-day period is tolled from the date the request for additional information is received until the date on which the department receives the information.

The Act also specifies that if, within 15 days after the submittal of this notification, the DNR does not require any additional information about the activity and does not inform the person or the federal agency sponsoring the activity that an individual permit will be required, the activity will be considered to be authorized under the wetlands general permit. The person may then proceed with the activity without further notice, hearing, permit, or approval if the activity is carried out in compliance with all of the conditions of the permit.

Upon completion of an activity that the DNR has authorized under a wetlands general permit, the federal agency that sponsored the activity must provide to DNR a statement certifying that the activity is in compliance with all of the conditions of the permit and a photograph of the activity.

### ***Individual Permit***

The DNR may require a person who has applied for authority to proceed with an activity under a wetlands general permit to apply for and be issued an individual permit if any of the following applies:

- The DNR determines that the proposed activity is not authorized under the permit.
- The DNR has conducted an investigation and visited the site and has determined that conditions specific to this site require restrictions on the activity in order to prevent significant adverse impacts to the public rights and interest, environmental pollution, or material injury to the riparian rights of any riparian owner.

In addition, the Act establishes that a person wishing to proceed with an activity for which a wetlands general permit has been issued may request an individual permit in lieu of seeking authorization under the wetlands general permit.

### ***Enforcement and Penalties***

The Act specifies that the failure of a person authorized to proceed under a wetlands general permit, or the federal agency that sponsored the activity, to follow the procedural requirements in the Act may result in forfeiture but may not, by itself, result in abatement of the activity.

Any person who violates a wetlands general permit is subject to the same forfeiture that applies to the violation of a general permit for an activity affecting navigable waters under s. 30.206, Stats. This

forfeiture is an amount not less than \$10 nor more than \$500 for the first offense and not less than \$50 nor more than \$500 upon conviction of the same offense, a second or subsequent time.

***Effective date:*** 2009 Wisconsin Act 391 takes effect on June 2, 2010.

***Prepared by:*** John Stolzenberg, Chief of Research Services

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