

WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20

CHAPTER 13
**ENVIRONMENTAL PROTECTION
AND NATURAL RESOURCES**

Rachel Letzing, Principal Attorney, and Anna Henning, Senior
Staff Attorney
Wisconsin Legislative Council

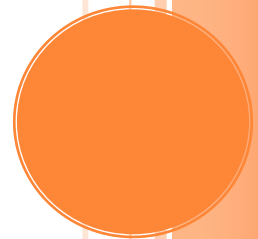


TABLE OF CONTENTS

INTRODUCTION	1
NAVIGABLE WATER AND WETLANDS.....	1
The Public Trust Doctrine.....	1
Navigable Water Regulations	2
Wetlands Regulation and Mitigation.....	3
Shoreland Zoning	5
Water Pollution Discharge Permits	6
Nonpoint Source Water Pollution	6
AIR POLLUTION CONTROL	7
SOLID WASTE AND RECYCLING	8
Solid Waste Disposal.....	8
Recycling.....	8
GROUNDWATER LAW AND PUBLIC WATER SUPPLY	9
Groundwater Quantity.....	9
Groundwater Quality	11
Public Water Supply	12
Private Water Supply.....	12
METALLIC MINING.....	13
NONMETALLIC MINING	13
MANAGEMENT AND ACQUISITION OF STATE PUBLIC LANDS	14
FOREST TAX LAW PROGRAMS	15
INVASIVE SPECIES	15
ENDANGERED SPECIES	15
WILDLIFE MANAGEMENT.....	16
Wildlife Damage.....	17
ADDITIONAL REFERENCES	18
GLOSSARY.....	18

INTRODUCTION

Natural resources law, derived from a combination of statutes and common law, allocates rights and access to natural resources such as metallic and nonmetallic mineral deposits, wildlife, and water. Depending on the context, the Legislature may weigh one set of private landowners' interests against another or balance a certain business development goal with a desire to preserve an area's ecology or character.

Environmental statutes closely relate to natural resources law and generally aim to protect both public natural resources and public health in the state. Some environmental standards are established by federal law, whereas others are determined at the state (or, less commonly, the local) level. The state also administers certain federal laws, including the Clean Air Act and the Clean Water Act, in Wisconsin.

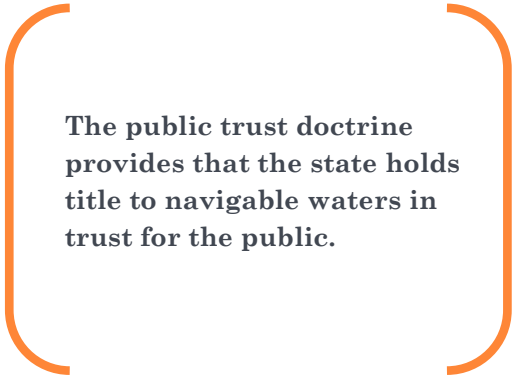
This chapter summarizes key laws and regulations governing navigable waters and wetlands, air pollution, solid waste and recycling, groundwater and water supply, mining, state lands, forest law tax programs, invasive species, and wildlife management.

NAVIGABLE WATER AND WETLANDS

A complex set of laws govern the ownership and use rights of Wisconsin's lakes, streams, and wetlands.

The Public Trust Doctrine

State public trust doctrines have origins in English common law and are recognized in federal law and state constitutions. As interpreted and evolved over time by the Wisconsin Supreme Court, Wisconsin's public trust doctrine provides that navigable waters are held in trust by the state for the benefit of the public. The doctrine has been interpreted to require the Wisconsin Legislature to serve as trustee for the citizens' rights to navigate and enjoy recreational activities in the waters of the state. Interpreting the state's public trust doctrine and early U.S. Supreme Court decisions, the Wisconsin Supreme Court has also held that the title to the beds of all navigable lakes, ponds, and rivers is vested in the state to be held in trust for the public.¹ The Legislature is viewed as having generally delegated its trustee obligations to the Department of Natural Resources (DNR), except where statutes state otherwise. The Wisconsin Supreme Court has interpreted the public trust doctrine to encompass a broad



The public trust doctrine provides that the state holds title to navigable waters in trust for the public.

¹ *Illinois Steel Co. v. Bilot*, 84 N.W. 855 (Wis. 1901).

range of public rights, including commercial and recreational navigation, water quality, fishing and hunting, other recreational uses, and enjoyment of natural scenic beauty.²

The existence of public rights in a lake or stream depends upon whether the water body is “navigable.” A water body is considered to be navigable if it is capable of floating any boat for recreational purposes. Furthermore, the water body does not need to be continually navigable, but needs to be navigable only on a regularly recurring basis, such as during spring runoff periods.

The state owns the beds of natural navigable lakes up to the ordinary high-water mark. The ordinary high-water mark is the point on the bank or shore where the water, by its presence, wave action or flow, leaves a distinct mark on the bank or shore. Riparian owners—people who own property adjacent to a navigable water body—hold title to stream beds to the center of the stream. Riparian rights include the use of the shoreline, the reasonable use of the water, and the right to build piers for navigation. When conflicts arise between riparian rights and public rights, riparian rights are secondary to the public interest.

Navigable Water Regulations

To ensure that both public rights and riparian rights are protected, the Legislature has delegated to the DNR the authority to issue permits for various activities in and near navigable waters. Under subch. II of ch. 30, Stats., a person generally must obtain a permit from the DNR before conducting any of the following activities relating to navigable waters:

Information about the various types of, and application procedures for, ch. 30 permits is available on the DNR website at: <http://dnr.wi.gov>

- Placing a structure or deposit, including a pier, in a navigable water. [s. 30.12, Stats.]
- Constructing a bridge or culvert. [s. 30.123, Stats.]
- Withdrawing water from a lake or stream. [s. 30.18, Stats.]
- Enlarging or protecting a waterway. [s. 30.19, Stats.]
- Changing a stream course. [s. 30.195, Stats.]
- Removing material from the bed of a navigable water body. [s. 30.20, Stats.]

Certain activities may be authorized by a general permit (a permit that applies statewide to any person authorized to engage in the specific activity covered by the permit). Each of the statutory sections cited above directs the DNR to promulgate rules regarding implementation and includes numerous exemptions for specific purposes. If an activity is not authorized under a general permit or explicitly exempted from regulation under state

² *Muench v. Public Service Commission*, 53 N.W.2d 514 (Wis. 1952).

statute, an individual permit typically must be obtained. Each individual ch. 30 permit has specific requirements. Most require that the applicant demonstrate that the activity will not materially impair navigation or be detrimental to the public interest or public rights. Many ch. 30 permits may be granted only to riparian owners. Prescribed timelines apply to the issuance of permits.

State statutes control the size and configuration of piers that may be placed by riparian owners without a permit. The statutes also address piers that were placed prior to the enactment of the existing exemption, and allow an owner to seek a permit for a larger pier. [s. 30.12 (1g) and (1k), Stats.]

Dredging or filling a wetland must be authorized by a general permit, individual permit, or a statutory exemption.

Wetlands Regulation and Mitigation

Wisconsin law requires a person to obtain an individual wetland permit or to be authorized under a wetland general permit before conducting an activity that will result in a discharge of dredged material or fill material into state wetlands (also referred to as “nonfederal wetlands”) unless the activity is exempt from this requirement. [s. 281.36 (3b) and (3g), Stats.] The DNR may not issue either type of wetland permit unless it determines that the discharge authorized pursuant to the wetland permit will comply with all applicable water quality standards. Water quality standards for wetlands are narrative standards that describe “beneficial uses” or “functional values” of a wetland such as flood water retention, groundwater recharge or discharge, and fish and wildlife habitat. If the wetland is a “federal wetland” that is subject to federal jurisdiction under the Clean Water Act, the applicant must also obtain a permit from the U.S. Army Corps of Engineers (ACE), or qualify for an exemption.

If no general permit or exemption applies to dredging or filling a wetland, a person seeking to conduct that activity must apply to the DNR for an individual permit to discharge material into a wetland. State law provides a process for a person to apply for an individual permit. The DNR is required to hold a meeting with a prospective applicant prior to application to discuss the details of the proposed discharge, the application requirements, and the requirements for delineating the wetland. An application must be accompanied by the applicable fee and must include an analysis of the practicable alternatives that will avoid and minimize the adverse impacts of the discharge on wetland functional values and that will not result in any other significant adverse environmental consequences. The DNR must review the practicable alternatives analysis and is directed to limit its review according to factors set forth in the statutes. [s. 281.36 (3m) (a), (b), and (3n), Stats.]

State law generally requires the DNR to require mitigation for wetland individual permits through its mitigation program. Mitigation may be accomplished by any of the following methods:

- Purchasing or applying credits from a mitigation bank in this state. The DNR is required to establish a system of service areas for the mitigation banks under the mitigation program that is geographically based on the locations of the major watersheds in the state.
- Participating in an in lieu fee subprogram, under which payments are made to the DNR or another entity for the purposes of restoring, enhancing, creating, or preserving wetlands or other water resource features.
- Completing mitigation within the same watershed or within one-half mile of the site of the discharge.

Under state statutes, purchasing credits from a mitigation bank and participation in the in lieu fee subprogram are the preferred types of mitigation. The DNR is required to establish mitigation ratios that are consistent with the federal regulations that apply to mitigation and mitigation banks, but the minimum ratio must generally be at least 1.2 acres for each acre affected by a discharge. [s. 281.36 (3n) (d) and (3r), Stats.]

2017 Wisconsin Act 183 created new exemptions for several categories of wetland impacts.

In addition to these required general permits, DNR is authorized to issue wetland general permits to regulate other types of discharges that affect wetlands. Activities conducted under wetland general permits must comply with all applicable water quality standards, and each general permit must include requirements, conditions, and exceptions to ensure that all of the discharges that will occur under each general permit will cause only minimal adverse environmental effects. [s. 281.36 (3b) (b), and (3g) (a) to (d), Stats.]

Wisconsin law also provides exemptions from state wetland permitting requirements for several types of activities. As amended by 2017 Wisconsin Act 183, state law exempts impacts to:

- (1) Up to one acre of state wetlands per parcel located within one-half mile of an incorporated area. Wetland impacts of over 10,000 square feet per parcel must be mitigated.
- (2) Up to three acres of state wetlands per parcel located outside an urban area for impacts for a structure with an agricultural purpose. If more than 1.5 acres of wetland are impacted, mitigation is required for the portion of the affected wetland that exceeds 1.5 acres.
- (3) Certain types of artificial wetlands, for which the DNR has no definitive evidence showing prior wetland or stream history that existed before August 1, 1991. No mitigation is required for impacts to artificial wetlands.

[s. 281.36 (3n) (d) 1., (3r) (a), (am), and (4n), Stats.]

State law, as amended by 2017 Wisconsin Act 58, also provides an exemption for impacts to certain wetlands within an electronics and manufacturing zone designated by the Wisconsin Economic Development Corporation (commonly referred to as the Foxconn project).

Examples of other exempt activities include construction of farm ponds, maintenance of drainage ditches, and maintenance of storm water detention basins. [s. 281.36 (4), (4m), and (4r) Stats.]

A county shoreland zoning ordinance must not regulate a matter more stringently than state standards.

Shoreland Zoning

State shoreland zoning laws regulate certain activities within shorelands, generally 1,000 feet from a lake, pond, or flowage and 300 feet from a river or stream. The statutes direct counties to zone by ordinance all shorelands in unincorporated areas.³ The DNR's shoreland zoning standards for counties are set forth in ch. NR 115, Wis. Adm. Code. State law, as affected by 2015 Wisconsin Act 55, requires the DNR's shoreland zoning standards under ch. NR 115, Wis. Adm. Code, and county shoreland zoning ordinances to satisfy certain parameters and further specifies that county shoreland zoning ordinances may not regulate a matter more restrictively than the matter is regulated under a shoreland zoning standard in ch. NR 115, Wis. Adm. Code. That limitation does not prohibit a county from enacting a shoreland zoning ordinance that regulates a matter that is not regulated by a shoreland zoning standard under ch. NR 115, Wis. Adm. Code. [s. 59.692 (1d), Stats.]

Included among the specific items that county shoreland zoning ordinances may not require are the establishment of vegetative buffer zones in certain circumstances, residential outdoor lighting, and the inspection or upgrade of a structure before its sale or transfer. In addition, county ordinances may not prohibit the maintenance, repair, replacement, restoration, rebuilding, or remodeling of a nonconforming structure (a structure that existed before the current shoreland zoning ordinance took effect) if the activity does not expand the structure's footprint; or prohibit or regulate, with certain exceptions, the vertical expansion of a nonconforming structure if the expansion would result in the structure being not more than 35 feet above grade. If county shoreland zoning ordinances contain impervious surfaces standards, surfaces must be defined as pervious if the runoff from the surface is treated by a device or system, or is discharged to an internally drained pervious area, that retains the runoff on or off the parcel to allow infiltration into the soil. Additional provisions regarding setback averaging rules—using the distance between existing structures and the shore to determine where new structures can be built—may apply to a particular project. [s. 59.692 (1f), (1k), and (1n), Stats.]

³ Cities and villages must also enact shoreland zoning ordinances. [ss. 61.353 and 62.233, Stats.]

Water Pollution Discharge Permits

Under the federal Clean Water Act, the discharge of pollutants from a point source into a navigable water is prohibited without a permit. In Wisconsin, discharges from a point source must be authorized by a Wisconsin Pollutant Discharge Elimination System (WPDES) permit. Through the WPDES permit program, the DNR regulates stormwater and wastewater discharged by industries and municipalities and discharges from large animal feeding operations. The types of pollutants covered by the permits include total suspended solids (particles suspended in water), phosphorus, oil, and grease. Each permit contains monitoring, reporting, and operational requirements. The DNR determines whether a particular facility is appropriately covered by a general or individual permit. [subch. IV, ch. 283, Stats.]

Administrative rules regulating the discharge of phosphorus became effective in 2010.

DNR administrative rules regulate the discharge of phosphorus from point sources. Any WPDES permittee may request a variance from a water quality-based effluent (pollutant) limitation, including phosphorus. A permittee may also request authorization from the DNR to implement adaptive management, an approach which allows a permittee to reduce phosphorus discharges from other sources, including nonpoint sources, if doing so is more cost-effective than reducing its own discharge. [chs. NR 102 and 217, Wis. Adm. Code.]

Pursuant to legislation enacted in 2013, the DNR submitted a request to the Environmental Protection Agency (EPA) on March 30, 2016, for approval of a multi-discharger variance from these phosphorus limits for point sources that cannot comply with them without incurring costs that would cause a substantial and widespread social and economic impact on a statewide basis. [s. 283.16, Stats.] The EPA approved Wisconsin's phosphorus multi-discharger variance on February 6, 2017. Very generally, under the multi-discharger variance, if applicants satisfy certain eligibility requirements, an applicant's WPDES permit may be modified to include extended timelines by which to comply with phosphorus limits in exchange for implementing watershed projects to reduce nonpoint sources of phosphorus.

For more information on nonpoint source water pollution abatement programs, see the Legislative Fiscal Bureau's (LFB) 2017 Informational Paper 69, *Nonpoint Source Water Pollution*, at: <http://www.legis.wisconsin.gov/lfb>

Nonpoint Source Water Pollution

Nonpoint sources of water pollution are sources that are diffuse in nature without a single, well-defined point of origin. Pollutants include fertilizers, nutrients, oil, and sediment from agricultural, urban, and residential areas. Wisconsin has numerous water bodies that are not meeting water quality standards and are therefore considered to be "impaired" as a

result of nonpoint source pollution impacts. As required by the federal Clean Water Act, the DNR has established total maximum daily loads (TMDLs) for impaired water bodies. A TMDL is generally the amount of pollutant that the water body can assimilate and not exceed water quality standards. Once a TMDL is developed and approved by both EPA and the DNR, federal and state laws require that the TMDLs not be exceeded. [ss. 281.15 and 281.16, Stats.]

Wisconsin implements TMDLs by regulating both point sources and nonpoint sources. The state regulates nonpoint discharges through agriculture performance standards and manure management requirements in ch. NR 151, Wis. Adm. Code, and nonagricultural performance standards in both chs. NR 151 and 216, Wis. Adm. Code, the stormwater discharge permit rule. Under their respective authorities, the DNR and the Department of Agriculture Trade and Consumer Protection (DATCP) offer technical assistance and cost-sharing grants to local governments to control nonpoint source pollution. [ss. 92.14 and 281.65, Stats.]

AIR POLLUTION CONTROL

Much of the state's air pollution program under ch. 285, Stats., is designed to implement the federal Clean Air Act. The EPA has established national ambient air quality standards for six principal pollutants: carbon monoxide (CO), nitrogen dioxide (NO₂), ozone (O₃), particulate matter, sulfur dioxide (SO₂), and lead. For a particular air pollutant, the EPA identifies regions within each state where the standard is not met based upon air quality monitoring data collected by the state. These areas are called "nonattainment areas." When a county is identified as not meeting a federal air quality standard based on monitored values of the outside air, it is designated by the EPA as a "nonattainment" area and given a target date to meet the standard. A state must then prepare a "state implementation plan," or SIP, that includes regulations for controls on emissions that are needed to reduce the air pollution and meet the standard. If, at any time, monitored values show that the air quality has improved and the county meets the standard, the DNR may request redesignation of the county. [s. 285.14, Stats.]

Air permits limit the amount of air pollution a facility is allowed to emit and identify the regulatory requirements that facilities must meet. There are two major permit programs for stationary sources in Wisconsin: construction permits for new or modified sources, and operation permits for new, modified, or existing sources. Construction permits ensure that proposed projects meet air pollution standards before they are constructed. Operation permits set emission limits and establish monitoring, record-keeping, and reporting requirements. Operation permits are generally divided into two categories: major source permits and minor source permits. Major source permits are issued to sources that have the potential to emit pollutants above certain levels. Minor source permits are issued to sources that do not have the potential to emit above these levels. Permit conditions may be revised as facilities expand, replace equipment, or change operations. Certain facilities

with lower emissions may be exempt from construction or operation permit requirements. [ss. 285.60 (1) and (2), 285.61, 285.62, and 285.63, Stats.]

The DNR also issues registration permits, which have a more streamlined application process and flexible permit terms for smaller facilities that have lower emissions, and general permits for specific types of industry, such as rock crushing plants. [s. 285.60 (2g) and (3), Stats.]

SOLID WASTE AND RECYCLING

Solid Waste Disposal

Chapter 289, Stats., contains extensive licensing requirements and other regulations governing solid waste disposal facilities, which include traditional solid waste facilities such as incinerators and landfills. Wisconsin law also includes licensing requirements for solid waste treatment facilities, storage facilities, and transportation services.

Lists of electronics collection sites and registered electronics recyclers around the state may be found at: <http://dnr.wi.gov>

State law prohibits the disposal or incineration of specified materials in a solid waste disposal facility. Materials banned from solid waste disposal facilities include lead acid batteries, major appliances, waste oil, yard waste, and aluminum containers; corrugated paper or other container board; glass containers; newspapers and used automotive oil filters and oil absorbent materials that contain waste oil. In addition, the disposal of electronic devices such as computers, televisions, video cassette recorders, digital video disc players, and cell phones in a landfill is prohibited. [s. 287.07, Stats.]

Recycling

State law requires each responsible unit of local government to operate, or contract with another entity to operate, a recycling program that manages solid waste generated within its jurisdiction in compliance with the landfill disposal restrictions that ban certain materials from landfills. A responsible unit may be a municipality, county, tribe, solid waste management system, or other unit of local government responsible for planning, operating, and funding a recycling program. [s. 287.09, Stats.]

Responsible units must be approved by the DNR as operating an effective recycling program in order to apply for a grant under the Municipal and County Recycling Grant Program, which provides financial assistance to responsible units of local government for a portion of eligible recycling costs. A responsible unit's effective recycling program must include several specific components, including an ordinance to require recycling of the materials subject to the landfill bans and curbside collection of certain recyclable materials

in municipalities with a population of 5,000 or greater and a population density of greater than 70 persons per square mile. [s. 287.23, Stats.]

Under Wisconsin’s electronics recycling program, manufacturers of certain electronic devices, including televisions, computers, and desktop printers, must register with the DNR the brands they sell to households and schools in Wisconsin, and recycle a target weight of electronics each year based on their sales. [s. 287.17, Stats.]

GROUNDWATER LAW AND PUBLIC WATER SUPPLY

Groundwater Quantity

High-Capacity Wells

State law sets standards and conditions for approval of high-capacity wells by the DNR. A high-capacity well is defined as a well that, together with all other wells on the same property, has a capacity of more than 100,000 gallons per day. A high-capacity well generally may not be constructed or operated without DNR approval. [s. 281.34 (1) (b) and (2), Stats.]

State law sets forth three specific situations in which the DNR is required to conduct a formal environmental review prior to approving construction of a high-capacity well:

- The well is located in a “groundwater protection area” (an area within 1,200 feet of a water body designated as an outstanding or exceptional resource water or a trout stream).
- More than 95% of the amount of water withdrawn by the well would be lost from the water basin in which the well is to be located.
- The well may have a significant environmental impact on a spring.

State law also authorizes the DNR to impose certain conditions on proposed wells in the

For background information about Wisconsin law relating to groundwater withdrawals, see Legislative Council Information Memorandum 2016-2, available at the Legislative Council website at: <http://lc.legis.wisconsin.gov>

categories described above and on proposed wells that may impair a public utility’s water supply. The DNR may approve wells in those categories only if conditions will ensure that a well will not cause significant environmental impact or impair a public water supply. [s. 281.34 (4) and (5), Stats.]

A circuit court case and a formal Attorney General’s Opinion have interpreted 2011 Wisconsin Act 21, commonly referred to as “Act 21,” to limit the DNR’s authority to impose certain conditions in permits for high-capacity wells to those that are

explicitly allowed in statute or rule. Following the publication of this opinion, the DNR announced that it will conduct environmental review only for applications for high-capacity wells that are one of the three specific types of wells described above or that adversely impact a public water supply.

If applicable conditions are met, state law, as amended by 2017 Wisconsin Act 10, authorizes the owner of a previously approved high capacity well to repair, replace, reconstruct, or transfer ownership of the well without obtaining an additional approval from and without having to pay any fee to the DNR. The conditions in the original well approval generally continue to apply to the repaired, replaced, reconstructed, or transferred well. [s. 281.34 (2g), Stats.]

State law also requires the DNR to evaluate and model the hydrology of three specified lakes and allows the DNR to evaluate the hydrology of other streams and lakes in a specified designated study area. As specified in the statutes, the purpose of this evaluation is to determine whether existing and potential groundwater withdrawals are causing or are likely to cause a significant reduction of a navigable stream's or navigable lake's rate of flow or water level below its average seasonal levels. If the DNR concludes such impacts are or will be occurring, the DNR is required to propose any special measures related to groundwater withdrawal that it recommends that the Legislature implement to rectify those impacts. [s. 281.34 (7m), Stats.]

Great Lakes Compact

The Great Lakes Compact ("Compact") establishes the legal framework for: (1) prohibiting or, in a few cases, authorizing and regulating new or increased diversions of water to places outside of the Great Lakes basin; and (2) regulating large withdrawals and consumptive uses of water within the basin. Under the Compact, "water" includes

groundwater and surface water. In Wisconsin, approximately the eastern 1/4 of the state is in the Lake Michigan part of the Great Lakes basin, and a smaller area in the northern part of the state is in the Lake Superior basin. The remainder of Wisconsin is in the Upper Mississippi River basin, and is not subject to regulation by the Compact. [ss. 281.343 and 281.346, Stats.]

The Great Lakes Compact took effect when it was ratified by Wisconsin and by the other seven Great Lakes states through legislation, consented to by Congress, and signed by President Bush, in 2008.

For purposes of the Compact, any person who withdraws water at an average of 100,000 gallons per day or more in any 30-day period from the basin for use within the basin must register with the DNR, report specified information about the withdrawal, and receive a water use permit. With a few exceptions, new or increased diversions of water from the basin are prohibited under the Compact. Most proposals for diversions are likely to be from communities seeking a public water supply consisting of water from the Great Lakes basin.

More information about specific diversion applications is available on the DNR website at: <http://dnr.wi.gov>

Pursuant to the process provided in the Compact, the City of Waukesha’s application to divert water from Lake Michigan was approved by the Great Lakes-St. Lawrence River Basin Water Resources Council, comprised of the Governors of each

of the eight Great Lakes States, on June 21, 2016. The City of Waukesha is in the process of obtaining all required federal, state and local permits and approvals for diverting Lake Michigan water. The DNR will issue a final diversion approval once all required permits are issued.

On April 25, 2018, after determining that Compact requirements were satisfied, the DNR approved the City of Racine’s application to divert water from Lake Michigan to the Village of Mount Pleasant, an area in which the future site of the Foxconn facility will be located.

Groundwater Quality

The state groundwater protection law requires the establishment of numerical standards for substances in groundwater to be used in all state regulatory programs that affect, or may affect, groundwater, and the creation of enforcement standards for identified substances.

Under state law, each “regulatory agency,” i.e., an agency that regulates activities that could affect groundwater quality, is required to submit to the DNR a list of substances which have been detected in, or have a reasonable probability of entering, groundwater and which are related to activities it regulates. The DNR then sets enforcement standards for each substance identified as a public health concern, using recommendations from the Department of Health Services, and for each substance the DNR identifies as a public welfare concern. Federal standards must generally be used to establish state enforcement standards. When a substance is detected in groundwater in concentrations equal to or greater than its enforcement standard, a violation has occurred and is subject to immediate enforcement action. The DNR also establishes a preventative action limit (PAL) for each substance, which is expressed as a percentage of the enforcement standard. When a preventive action limit is attained or exceeded, a regulatory response may be necessary. After the enforcement standards and preventive action limits are established, they must be used by all state agencies in their regulatory programs that may affect groundwater.

The groundwater protection law also includes a range of enforcement responses a state agency must consider in response to exceedances of PALs and enforcement standards, establishes a groundwater monitoring

Private well owners are responsible for testing the quality of their water supply.

program, and creates the Groundwater Coordinating Council. [See, generally, ch. 160, Stats.; and ch. NR 140, Wis. Adm. Code.]

Public Water Supply

The federal Safe Drinking Water Act establishes maximum contaminant levels for all drinking water supplied from public water systems. The EPA sets national standards for drinking water, which establish enforceable maximum contaminant levels for particular contaminants in drinking water. In Wisconsin, the DNR is authorized to establish, administer, and maintain a safe drinking water program no less stringent than the requirements of the federal Safe Drinking Water Act. Under this authority, the DNR is required to: (1) prescribe, publish, and enforce minimum reasonable standards and methods to be pursued in obtaining pure drinking water for human consumption; and (2) establish all safeguards deemed necessary in protecting the public health against the hazards of polluted sources of impure water supplies intended or used for human consumption. State law sets forth requirements for all types of public water systems, including requirements for general operation; sampling, testing, and treatment; and reporting. [ss. 280.11 and 281.17 (8), Stats.; ch. NR 809, Wis. Adm. Code.] Before a new public water system may be built or an existing public water system may be expanded, those plans must be reviewed and approved by the DNR. [s. 281.41, Stats.] Under the Wellhead Protection Program, DNR approval is required for new wells serving public water systems in order to prevent contaminants from entering the system through the area surrounding the well. [ch. NR 811, Wis. Adm. Code.]

The DNR and the Department of Administration jointly administer the Safe Drinking Water Loan Program, which provides loans to local governments and special purpose districts for projects to plan, design, construct, or modify public water systems. [s. 281.61, Stats.] These two agencies also administer the Clean Water Fund Program, which provides financial assistance to local governments for wastewater treatment facilities and urban stormwater runoff projects. [s. 281.58, Stats.]

Private Water Supply

Private wells, which are generally defined as wells that have fewer than 15 connections and serve fewer than 25 people, are not regulated as part of the public water supply. State law provides standards for the construction and reconstruction of private wells and the installation of pumps in those wells, and state requirements also apply to the sealing and filling of private wells. Private well drillers and pump installers must be licensed by the DNR. Unlike public water supply systems, private wells are generally not required to be tested or inspected by the DNR. [See, generally, ch. 280, Stats.; and ch. NR 812, Wis. Adm. Code.]

The DNR administers the well compensation program, which provides financial assistance to cover a percentage of eligible costs to replace, reconstruct, or treat contaminated residential or livestock water supplies. [s. 281.75, Stats.; and ch. NR 123, Wis. Adm. Code.]

METALLIC MINING

The state’s metallic mining law has been a subject of legislative interest during the past several legislative sessions. As amended by 2013 Wisconsin Act 1 and 2017 Wisconsin Act 134, the process for metallic mining differs for ferrous (i.e., iron) and other metallic minerals.

For both ferrous and non-ferrous metallic mining, DNR authorization is required before a person may commence a mining operation. [ss. 293.37 (1) (a) and 295.47 (1) (a), Stats.] For both types of metallic mining, an environmental impact statement must be prepared and public hearings must be held. In addition, both types of metallic mining are subject to detailed reclamation and financial assurance requirements.

However, as compared with other metallic mining, ferrous mining is subject to a more expedited process. In addition, certain special exemptions relating to navigable waters and wetlands impacts apply to ferrous mining, whereas generally applicable permitting standards apply to non-ferrous metallic mining. In addition, different financial assurance requirements apply to each type of metallic mining.

In addition to state permitting requirements, a metallic mining operator must satisfy any applicable local zoning requirements. Counties, cities, villages, towns, and tribal governments that require an approval or permit under a zoning or land use ordinance may negotiate local agreements with mining operators to satisfy ordinance requirements. [ss. 293.41 and 295.443, Stats.]

2017 Wisconsin Act 134 repealed a requirement under which applicants for a non-ferrous mining permit were required to provide information showing that a sulfide mining operation in the United States or Canada has operated for at least 10 years without polluting surface water or groundwater and that a sulfide mining operation in the United States or Canada has been closed for at least 10 years without polluting surface water or groundwater. That requirement was sometimes referred to as the “sulfide mining moratorium.” During the time the requirement was in effect, the DNR approved one metallic mining project, the Flambeau Mine located in Rusk County.

NONMETALLIC MINING

Nonmetallic mining is the extraction of stone, sand, rock, or similar materials from natural deposits. State law does not require a person seeking to begin nonmetallic mining to obtain a state permit before mining, unless the proposed operation involves environmental

impacts that are independently regulated, such as air pollution, wastewater, or stormwater runoff.

State law establishes standards for nonmetallic mining reclamation, defined to mean the rehabilitation of a nonmetallic mining site to achieve a land use in an approved nonmetallic mining reclamation plan. The DNR is required to promulgate rules regarding nonmetallic mining site reclamation requirements, but delegates the responsibility for adopting and administering such reclamation to local governments. All counties must, and towns, villages, and cities may, enact nonmetallic mining reclamation ordinances. Each ordinance must comply with the minimum reclamation standards in DNR rule. In general, no person may engage in nonmetallic mining or in nonmetallic mining reclamation without first obtaining a nonmetallic mining reclamation permit under the applicable local ordinance. [ss. 295.11 (4), 295.12 to 295.15, Stats.; ch. NR 135, Wis. Adm. Code.] Local governments also regulate nonmetallic mining through zoning ordinances and ordinances enacted pursuant to general police powers to regulate public health, safety, and welfare.

MANAGEMENT AND ACQUISITION OF STATE PUBLIC LANDS

Public lands programs designed for the protection and management of the state’s natural resources and scenic areas are administered by the DNR pursuant to ch. 23, Stats. Under

The LFB 2017 Informational Paper 61, *Warren Knowles-Gaylord Nelson Stewardship Program*, provides extensive information about this program, at:

<http://www.legis.wisconsin.gov/lfb>

this general authority, as well as specific statutes related to each type of property, the DNR supervises various types of land designated for conservation or recreation. These lands include state natural areas, state parks, state forests, state recreation areas, wildlife and game refuges, and the Ice Age Trail.

The primary public land acquisition program in Wisconsin is the Warren Knowles-Gaylord Nelson Stewardship Program. Under the program, the DNR acquires land and provides grants or state aid to local units of government and nonprofit conservation organizations for land acquisition and property development activities. The state generally issues 20-year, tax-exempt general obligation bonds to support the program. State law specifies that the DNR may not obligate more than \$33,250,000 in each year from fiscal years 2015-16 through 2019-20. [s. 23.0915, Stats.]

State law provides public access requirements related to nature-based outdoor activities for certain property acquired at least in part with funding from the Stewardship Program. For purposes of these requirements, “nature-based outdoor activity” means hunting, fishing, trapping, hiking, cross-country skiing, and other nature-based outdoor activity designated by rule by the DNR. For specified categories of property, public access for one or more of the listed types of nature-based recreation may be prohibited only if the Natural Resources

Board determines that it is necessary to do so to protect public safety, protect a unique animal or plant community, or accommodate usership patterns. [s. 23.0916, Stats.]

FOREST TAX LAW PROGRAMS

Wisconsin's forest tax laws encourage sustainable forest management on private lands by providing a property tax incentive to landowners. The two forest tax law programs are the Managed Forest Land Program (MFL) and the Forest Crop Law (FCL). [subchs. I and VI, ch. 77, Stats.] The MFL program was enacted in 1985 and replaced the FCL; however, forest land continues to be enrolled in FCL since the designation lasts for 25 or 50 years. Both programs encourage management of woodlands in their purposes and policies, as well as through a written management plan for a landowner's property. In exchange for following a written management plan and program rules, landowners pay forest tax law program rates in lieu of regular property taxes.

State law sets forth MFL program eligibility requirements, management plan components, and program rates. Landowners enrolled in the MFL program have the option to close up to 320 acres in each municipality to public access in exchange for paying a higher rate. State statutes specify certain procedures and requirements to withdraw land from the MFL program, and withdrawal taxes may be assessed on withdrawn lands.

INVASIVE SPECIES

State law requires the DNR to establish a statewide invasive species control program in order to cut, remove, destroy, suppress, or prevent the introduction of nonindigenous species that are likely to cause economic or environmental harm or harm human health. [s. 23.22, Stats.]

The DNR has promulgated an

administrative rule, ch. NR 40, Wis.

Adm. Code, that classifies and identifies

invasive species. In addition, the rule

generally prohibits the transport, possession, transfer, and introduction of prohibited

species. With landowner permission or a judicial inspection warrant, the DNR may inspect

for, sample, and control prohibited species. The rule also contains preventive measures

including requirements to remove aquatic plants and animals and drain water from boats

and trailers upon removal from the water and to remove aquatic plants and animals from

any vehicle, boat, trailer, or equipment before placing it in any navigable water or

transporting it on a highway.

Certain prolific, nonnative types of plants, insects, animals, or other living things, referred to as invasive species, often lack natural controls, like predators, and may be able to out-compete native species for food, habitat, and other resources.

ENDANGERED SPECIES

The federal Endangered Species Act (ESA), enacted in 1973, has a stated purpose of conserving species identified as endangered or threatened with extinction, and conserving ecosystems on which they depend. It is administered by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Under the ESA, species of plants and animals may be listed as either endangered or threatened according to assessments of the risk of their extinction and a person may not “take” a listed animal without a federal permit. The ESA encourages states to develop and maintain conservation programs for threatened and endangered species. Federal funding is available to promote state participation. [16 U.S.C. ss.1531-1544.]

State law directs the DNR to establish by administrative rule an endangered and threatened species list consisting of federally listed wild animals and plants and endangered and threatened Wisconsin species of wild animals and plants. The list is provided in ch. NR 27, Wis. Adm. Code. Similar to the ESA, state law prohibits the taking, transport, possession, processing, or selling of any listed wild animal, including their parts and products, except under a scientific or incidental take permit issued by the DNR under specified conditions. Similar prohibitions, and the availability of specific permits, regarding wild plants are also included in state statute. [s. 29.604, Stats.; ch. NR 27, Wis. Adm. Code.]

Legal, economic, and social disputes have resulted from actions taken under the ESA. One example particularly relevant to Wisconsin is the treatment of the gray wolf. The gray wolf was removed from the state threatened species list in 2004 and from the federal endangered species list on January 27, 2012. Subsequent to the federal delisting of gray wolves, Wisconsin enacted legislation establishing an annual wolf harvesting season. Three wolf hunting and trapping seasons were subsequently held. However, a federal court

Information on the hunting season structure for game species including deer, bear, and wild turkey is available at:
<http://dnr.wi.gov>

decision in December 2014 directed that the gray wolf be relisted as a federally endangered species in the western Great Lakes region, which includes Wisconsin. Therefore, as of the date this chapter was published, Wisconsin is not authorized to implement a wolf harvest and landowners may not lethally remove wolves from their property.

WILDLIFE MANAGEMENT

The legal framework for fish and game regulation is primarily found in ch. 29, Stats., and ch. NR 10, Wis. Adm. Code. Chapter 29, Stats., governs the regulations applicable to hunting, trapping, and fishing, and the licenses or approvals required for those activities. State law also regulates commercial activities regarding fish and game, such as commercial fishing, hunter education, and stocking of fish and game. One key statutory provision is s.

29.014, Stats., which is the broad grant of authority to the DNR to establish open and closed seasons and to adopt regulations regarding the taking of fish and game.

DNR wardens enforce regulations regarding hunting, fishing, and trapping based on a citation system similar to that used for traffic law violations. The penalty for a citation is a civil forfeiture. Some more serious fish and game law violations have criminal penalties.

Hunting and trapping statutes and regulations are continually evolving. Some of the many statutory changes that have occurred recently include the creation of a hunter and trapper mentoring programs; expansion of crossbow hunting opportunities; the reduction of

The DNR 15-year Chronic Wasting Disease Response Plan is available at:

http://dnr.wi.gov/topic/wildlifehabitat/documents/executive_summary.pdf

resident license fees for certain first-time hunting, fishing, or trapping approvals; the general requirement that state parks be open to hunting, fishing, and trapping; and the elimination of the back-tag requirement.

Chronic wasting disease (CWD) was confirmed in Wisconsin in 2002 and continues to be an issue in the state. State efforts to control CWD include

placing restrictions on baiting and feeding deer in CWD-affected counties, creating limitations on deer carcass movement, and increasing the availability of antlerless deer permits in CWD-affected counties. [ss. 29.063 and 29.336 (2), Stats.] In addition, both DNR and DATCP have certain regulatory authority over registration, inspection, and fencing on captive deer farms, as well as movement of farm-raised deer. [ss. 90.21 (6) and 95.55, Stats.]

In 2010, the DNR developed a 15-year Chronic Wasting Disease Response Plan, which outlines management, monitoring, and public awareness goals and objectives regarding the disease. In May 2018, Governor Walker directed DNR and DATCP to develop emergency rules to enhance fencing on captive deer farms, and to prohibit movement of deer carcasses and live deer from captive deer farms in CWD-affected counties.

Wildlife Damage

Wildlife damage claim payments and wildlife damage abatement assistance are funded by fees collected from hunters. Payments are available under these programs for damage caused by deer, bear, geese, turkey, and cougar. Land for which wildlife damage payments are made may be required to be open to hunting. State law also authorizes wildlife damage payments for sandhill cranes or elk, if hunting of either species is authorized by the DNR in the future. [s. 29.889, Stats.]

ADDITIONAL REFERENCES

1. At the beginning of each biennial legislative session, the LFB publishes Informational Papers on a variety of environmental and natural resources topics. The Informational Papers are available at: <http://www.legis.wisconsin.gov/lfb>.
2. The DNR website contains useful information about environmental protection programs, natural resources management, hunting, fishing and trapping seasons, as well as information about Natural Resources Board meetings. The DNR website is: <http://dnr.wi.gov/>.
3. The DATCP website includes information regarding nonpoint source pollution and nutrient management plans. This information may be found at: <http://datcp.wi.gov>.
4. The federal EPA maintains a website that has information on all federal environmental laws. The EPA website is: <https://www.epa.gov/>.
5. The U.S. Fish and Wildlife Service, a bureau of the Department of Interior, maintains a website that includes information on hunting, fishing, conservation, and endangered species programs. The website is: <http://www.fws.gov/>.
6. The ACE website includes information regarding permit requirements for activities in or near navigable waters and wetlands. The ACE website is: <http://www.usace.army.mil>.

GLOSSARY

Nonattainment area: A nonattainment area is an area identified under the Federal Clean Air Act: (1) where the concentration in the ambient air of an air contaminant exceeds a national ambient air quality standard (NAAQS) for the contaminant; or (2) that contributes to ambient air quality in a nearby area that does not meet a NAAQS.

Nonfederal wetland: Under Wisconsin law, a wetland is identified as a nonfederal wetland if it is determined to be a nonnavigable, intrastate, and isolated wetland by ACE or by a court of competent jurisdiction. These wetlands are not subject to Federal Clean Water Act permit requirements.

Preventive Action Limit (PAL): A PAL is a type of state groundwater protection standard that represents a lower concentration for a substance than the enforcement standard for the substance. PALs are used by state regulatory agencies in establishing design requirements that are intended to prevent groundwater contamination from facilities, activities, and practices under their jurisdiction.

State Implementation Plan (SIP): These plans are required by the federal Clean Air Act. They set forth in detail the regulations and related programs that a state will use to meet its responsibilities under this Act; they are reviewed and approved by the EPA.

Total Maximum Daily Load (TMDL): The amount of a pollutant that a water body can assimilate and not exceed water quality standards. A TMDL is generally established for each pollutant.

WPDES: Wisconsin Pollution Discharge Elimination System. A discharge of water containing certain pollutants from a point source is generally prohibited without a WPDES permit from the DNR.

Wisconsin Legislative Council

One East Main Street, Suite 401

Madison, WI 53703-3382

Phone: (608) 266-1304