

STUDY COMMITTEE ON THE COMMERCIAL BUILDING PERMITTING PROCESS

PETER A. TOMASI

AUGUST 24, 2022



OVERVIEW-ENVIRONMENTAL REQUIREMENTS FOR BUILDING PERMITTING

- Stormwater, wastewater, and water quality
- Zoning (erosion, energy and shoreland)
- Other permits

CLEAN WATER ACT – OVERVIEW

- Clean Water Act (CWA) prohibits discharge of any “pollutant” into “navigable waters” without a permit
- Wisconsin similarly prohibits discharges of pollutants into “waters of the State”
- Pollutant is broadly defined to include various types of waste, heat, dredged material, and fill
- Regulated stormwater, wetlands, and shoreland zoning

CLEAN WATER ACT – OVERVIEW

- Discharges regulated under the CWA include:
 - Point source/Non-Point source; and
 - Permanent fill within wetland or water body.
- In Wisconsin, discharges of stormwater and wastewater are regulated through Wisconsin Pollutant Discharge Elimination System (WPDES) permits.
- Discharges to wetlands are regulated through two separate regulatory agencies and related, but different, permits.

STORMWATER PERMITTING

- Three categories of stormwater permits:
 - Construction sites
 - Industrial facilities
 - Municipal separate storm sewer systems (MS4s) for community storm sewer systems
- Depending on facility, may apply for coverage under general permit, or seek individual permit
- Specific types of industrial facilities must obtain coverage under permit, implement plans to minimize contamination of runoff
- Municipalities need to limit suspended solids in runoff

WASTEWATER PERMITS

- Facilities that generate wastewater (other than sanitary) as a part of their operations must obtain one of two types of WPDES permit:
 - Permit for direct discharge to water of the state
 - Permit for discharge to municipal sewerage system (for example, MMSD)
- Depending on size of discharge, may include sampling, recordkeeping, and reporting requirements.
- Permit review also includes separate 90-day plans & specifications review for treatment technology.

WETLAND PERMITS

- United States Army Corps of Engineers (U.S.ACE)
 - Regulates discharges to “waters of the United States” under Section 404 permits
 - Shares enforcement with U.S. EPA
- Wisconsin Department of Natural Resources
 - Regulates discharges to “waters of the State” under Wis. Stat. s. 281.36 permits.
 - Also provides “water quality certification” for federal permits
- In Wisconsin federal wetlands are also regulated by the state, but some wetlands are only regulated by the state (“non-federal”)
- Determination of federal vs. state jurisdiction often requires federal process

WETLAND REGULATION – PERMITS

- Both agencies use similar framework:
 - Individual permits – project specific, and higher standard to obtain
 - General permits – authorize activities that are:
 - Similar in nature
 - Will “cause only minimal adverse environmental effects both individually and cumulatively”
- Apply three-step process: avoid, minimize, mitigate.
- Mitigation options:
 - Create new wetland(s);
 - Purchase credits from a wetland bank; or
 - Pay “In-Lieu Fee” to WDNR, which separately develops mitigation.

ZONING

- Erosion control ordinances.
- Limits on zoning requirements for solar and wind energy systems pursuant to Wis. Stat. s. 66.0401.
- Farmland preservation & airport districts.
- Shoreland zoning:
 - DNR sets minimum standards for municipalities to adopt and apply in NR 115 and NR 117.
 - Limited grounds for municipalities to exceed these model requirements.

OTHER PERMITS

- Air permits:
 - Required for projects that will generate emissions over a specific threshold.
 - Depending upon size and complexity of project, may require:
 - Documentation that exemptions are met;
 - Compliance with general (registration) permits; or
 - Issuance of individual permit containing emission control and monitoring requirements.
- Construction on former waste site: required for building in areas where waste materials disposed of.

TOPICS FOR CONSIDERATION

- Act 183 Wetland Council Review:
 - In-Lieu Fee (ILF).
 - Additional tools to evaluate and compare wetland functional values:
 - Water quality trading.
 - Stormwater.
- Questions from July 19, 2022 meeting.