

**NATURAL RESOURCES BOARD AGENDA ITEM**

**SUBJECT:** INFORMATION ITEM: Update on Regulatory Reform and Wetland legislation

**FOR:** MAY 2012 BOARD MEETING

**TO BE PRESENTED BY / TITLE:** Liesa Lehmann, Waterways and Wetlands Section Chief

**SUMMARY:**

2011 Wisconsin Act 118 - known as the State Wetland and Mitigation Program Act - revised the state wetland regulations in chapter 281, Stats. Act 118 goes into effect on July 1, 2012.

2011 Wisconsin Act 167 - known as the Regulatory Reform Act - revised state waterway, wastewater and air regulations in various state statutes. Act 167 goes into effect on August 1, 2012.

Department staff will provide an overview of the law changes in each Act, identify the Department's implementation plans and progress to-date, and describe the Natural Resources Board's role in implementation of Act 118 and Act 167.

Summaries of the key provisions of Acts 118 and Act 167 are attached.

**RECOMMENDATION:** Informational - no action needed

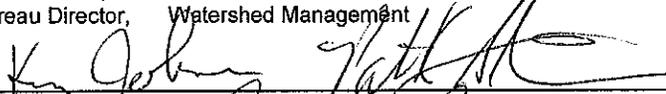
**LIST OF ATTACHED MATERIALS:**

- |  |   |                              |          |
|--|---|------------------------------|----------|
| No <input checked="" type="checkbox"/> | Fiscal Estimate Required                              | Yes <input type="checkbox"/> | Attached |
| No <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes <input type="checkbox"/> | Attached |
| No <input checked="" type="checkbox"/> | Background Memo                                       | Yes <input type="checkbox"/> | Attached |

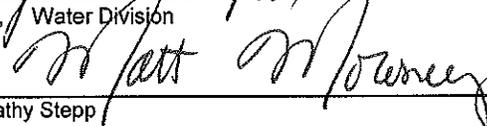
**APPROVED:**

  
Bureau Director, Watershed Management

5-9-12  
Date

  
Administrator, Water Division

5/9/12  
Date

  
Secretary, Cathy Stepp

5/14/12  
Date

cc: NRB Liaison  
DNR Rules Coordinator  
  
Liesa Lehmann - WT/3

## **Summary of Provisions in 2011 Wisconsin Act 118 – Wetlands Legislation**

**Effective July 1, 2012**

1. Creates an independent state law that directly regulates all Wisconsin wetlands.
  - Maintains existing wetland water quality standards.
  - Creates the term "Wetland permits" as the state's water quality certification decision
  - Eliminates the concept of "non-federal" wetlands
  - Revises the definition of "practicable"
  - Removes the statutory list of wetland "Areas of Special Natural Resource Interest"
  - New General Permit and Individual Permit procedures will apply to permit applications received after the bill becomes effective (expected to be June 1, 2012)
  
2. Wetland General Permits
  - Requires DNR to develop category-specific wetland General Permits (GPs).
  - Requires that GPs contain requirements, conditions, exceptions and prohibitions for projects that will cause only minimal adverse environmental effects.
  - Allows Statewide GPs to be created using an administrative process, that will be valid for 5 years.
  - Permit applicants will apply for coverage under a GP. GPs are automatically approved after 30 days, similar to chapter 30 GPs.
  - Requires Statewide GP's to be consistent with federal GP's.
  - For most GP's limits the discharge impact to 10,000 square feet.
  - Department may prohibit wetland discharges under a GP in 7 listed wetland types.
  - No compensatory mitigation for GPs
  - Surcharge fee required for some project categories that are authorized under a GP, and requires that fee to be used for wetland restoration.
  
3. Wetland Individual Permits
  - Maintains the existing decision sequence of Avoid, Minimize, No Significant Adverse Impacts
  - Establishes permit process and timelines consistent with Chapter 30, with a 30-day public notice required during the wetland permit review process, a potential for public informational hearing, and a final decision.
  - Requires a pre-application meeting for wetland IPs.
  - Requires a limiting of the scope of alternatives analysis to on-site or adjacent parcels for certain circumstances (projects with economic public benefit, expansion of existing industrial or commercial facilities, development in an existing industrial park)
  - Maintains functional values impacts assessment, including consideration of direct wetland impacts, secondary and cumulative impacts.
  - Compensatory Mitigation is required for all IP's

#### 4. Wetland Compensatory Mitigation

- Allows DNR to consider and develop an In Lieu Fee program consistent with federal regulations.
- Requires the mitigation ratio to be consistent with federal guidelines, but establishes a minimum 1.2 acres restored or created for every 1 acre filled. A ration of 1.3 is required if the mitigation is off site.
- Establish mitigation bank credits and in-lieu fees as preferred mitigation option, but continues to allow on-site wetland restoration and/or creation.
- Establishes a wetland restoration fund made up of GP surcharge fees and in-lieu fees. The fund will be administered by DNR, allowing DNR to conduct wetland restoration/creation work or enter into agreements with third-party organizations to perform wetland restoration/creation work. Any project that utilizes these funds must be open to the public with some exceptions.

#### 5. Enforcement, Fees, Staff, etc.

- Establishes wetland enforcement authority for inspections and contested case hearings
- Increases permit fees for both waterway and wetland permits, eliminates single-highest fee provisions, and allows DNR to establish fees for other determinations
- Creates two permanent DNR staff positions for Wetland Mitigation, and converts 3 Wetland ID project positions to permanent
- Removes the Wetland Map Review (Tier 1) service and associated fees from the Wetland Identification Program.
- Increases DNR's response time for Wetland Identification services from 30 to 60 days.

## **Summary of Provisions in 2011 Wisconsin Act 167 – Regulatory Reform**

**Effective August 1, 2012**

### Waterway General Permit (GP) procedures

- Allows DNR to issue, reissue or revoke statewide waterway GPs using an administrative process rather than rulemaking. Statewide GPs are valid for 5 years. Existing GPs remain until reissued or revoked. Reporting is required to legislative committees.
- Establishes additional standards for any new waterway GPs, requiring that they have minimal environmental effects, not materially impair navigation, and not adversely affect riparian rights of adjacent riparians.
- Provides that permit applicants may apply for coverage under a statewide GP. DNR may ask for additional information within 30 days. GP applications will be automatically approved if DNR does not issue coverage under the GP or require an IP within 30 days.
- Requires DNR to create several new GPs, including GPs for piers, boat shelters, and municipal bridges and culverts.

### Waterway Individual Permit (IP) procedures

- Establishes standardized permit timelines for completeness review, public notice, public informational hearing and decision.
- Establishes Completeness framework - DNR has one opportunity to notify that application is incomplete, and request additional information. DNR may continue to ask for the requested items until they are received, but may not ask for other items not in original notice.
- Establishes framework for public Informational hearings - The time limit for someone to request an informational hearing is reduced from 30 to 20 days. DNR given discretion to determine if hearing should be held.
- Establishes conditions for presumptive Approval - An Individual Permit application is considered approved if DNR fails to meet the decision deadline. DNR can still place conditions on the project. The decision deadline can be extended up to 30 days due to weather, or by agreement between DNR and applicant.

### Pier and Wharf standards

- Establishes standards for loading Platform – An exempt pier/wharf can have loading platform up to 200 square feet in size.
- Establishes slip standard for Personal Watercraft – A waterfront owner can have specified number of PWCs based on the length of their shoreline, in addition to the number of boats currently allowed.
- Grandfathers existing piers - Any pier/wharf placed prior to effective date of legislation is exempt, provided it doesn't interfere with other riparian's rights. Pier Registration program is eliminated and registration of existing piers is no longer required.
- Requires DNR to issue GPs for piers in ASNRI, and for boat shelters.

#### Over-the-water Boathouses

- Establishes a new exception for maintenance of boathouses. 50% repair and maintenance limit is added, for work that doesn't affect the size, location, or configuration of the wet boathouse, and does not result in the boathouse being converted into living quarters.

#### Grading on the bank of waterway

- Creates an exemption from the 30.19 grading permit requirement, if a project is authorized by state stormwater permit or county shoreland zoning permit.

#### Municipal bridges and culverts

- Eliminates the 30.123 exemption for municipal bridges and replaces with a Chapter 30 GP for construction and maintenance of municipal highway bridges and culverts. Those structures that do not meet the GP standards would require an IP. TRANS 207 technical standards for municipal (towns, cities, villages and counties) bridges, arches or culverts remain in effect.

#### Electronic Waterway Public Notices and Mapping

- Allows and requires DNR to publish certain notices on website, in addition to newspaper notification
- Requires DNR to publish status of permit reviews re: navigable waters on DNR's website
- Requires DNR to publish Navigability and OHWM determinations on DNR's website

#### Expedited Dam Plan approval

- Requires DNR to create an expedited process for low hazard dam small plan approval if certain conditions are met

#### Expedited Wastewater Plan Approval

- Requires DNR to establish an expedited plan approval process for minor construction at existing water and wastewater facilities with certain other limitations

#### Electronic Public Noticing of WPDES Permits

- Requires electronic public noticing of permits, in addition to publishing in newspapers
- Starts the clock for parties commenting on or requesting hearings on public noticed permits to the time of the electronic notice
- Requires posting of complete permit applications on the Department's internet site
- Allows for electronic notices of substantial changes to CAFO Nutrient Management Plans without newspaper notices.

#### Air Permitting

- Specifies that DNR is not required to use air dispersion modeling as a basis for making its findings for a minor source unless modeling is specifically provided for under the Federal Clean Air Act, rules promulgated under ch. 285, Wisc. Stats., or a federal or state agreement.

### Permit Deadlines

- Requires DNR to adopt deadlines for approving or disapproving applications for the following: well driller or pump installer registrations; water system or septage servicing vehicle operator certifications; licenses for servicing septic tanks and similar facilities; solid waste incinerator operator certifications; and laboratory certifications or registrations.
- Requires DNR to approve or disapprove applications for the following within 30 days of receipt of the application:
  - solid waste disposal facility operator certifications;
  - hazardous waste transportation licenses; and
  - medical waste transportation licenses.
- Requires DNR to approve or disapproved applications for oil or gas exploration within 60 days of receipt.
- Provides that if DNR fails to take action within the timeframes mentioned above, DNR must refund the fees paid by the applicant and the applicant may bring an appeal as though DNR disapproved the application.
- Specifies the provisions under which the DNR may extend a deadline, and for how long.

### Internet Notices

- Requires DNR to give notice on its Internet website, in addition to publishing a Class 1 notice, for certain types of notices, including but not limited to those relating to air permitting, certain air redesignation notifications, solid waste disposal feasibility reports, solid and hazardous waste operating licenses, mining facility long-term care obligations, denials of hazardous waste licenses, and certain remedial actions.
- Provides that the timeframes for when notices start to run is on the date the notice is first published on the Internet site.

### Web Information

- Requires DNR, to the "greatest extent possible", to publish on the DNR's website the current status of any application for a permit license or other approval under chs. 281 to 285 or 289 to 299 of the Wisconsin Statutes.