

ENVIRONMENTAL ASSESSMENT

Wisconsin Statewide General Permit for removal of accumulated plant and animal nuisance deposits

Prepared by Wisconsin Department of Natural Resources, Bureau of Watershed Management
April 2013

NOTE TO REVIEWERS: This document is a Department of Natural Resources Environmental Analysis that evaluates probable environmental effects and decides on the need for an Environmental Impact Statement. The attached analysis includes a description of the action and the affected environment. The DNR has reviewed the attachments and accepts responsibility for their scope and content to fulfill requirements in s. NR 150.22, Wisconsin Administrative Code.

Your comments should address completeness, accuracy or the EIS decision.

For your comments to be considered, they must be received by the contact person before 4: 30 p.m., April 17, 2013.

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DESCRIPTION

Statewide General Permit Process

General Permit Issuance

If a regulated project or activity is not exempt in statute from the requirement to obtain a permit, it must be authorized by either a general permit or an individual permit. General permits are written to cover any number of projects or activities that can meet a standardized set of criteria, whereas an individual permit is written specifically for that project.

In the spring of 2012, 2011 Wisconsin Act 167 established new procedures under the DNR's authority to issue a general permits for activities that affect navigable waters (any activity regulated under ch. 30, Wis. Stats). These new procedures exempts general permits from the definition of "rule" (eliminating the procedural requirements for promulgating these permits by adopting administrative rules to create a General Permit), and replaces that procedure with a public comment period and a legislative committee review process. The legislative review process provides for temporary suspension of general permits by certain legislative committees

To ensure that the cumulative adverse environmental impact of the activities authorized by a general permit cause only minimal adverse environmental impacts and that the issuance of the general permit will not injure public rights or interests, cause environmental pollution, as defined in s. 299.01 (4), or result in material injury to the rights of any riparian owner, the department may 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 ensure that 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.

General Permit Coverage:

Individuals may apply for coverage under a statewide general permit to perform work in accordance with the terms and conditions of the general permit. Coverage under a general permit will be valid for a period of 5 years from the date of issuance. Regardless of the expiration date of a general permit, an activity authorized under a general permit remains authorized for five years from the date of coverage or until it is complete, whichever occurs first. The Department continues to have authority to establish requirements, conditions and exceptions for statewide general permits to ensure that the authorized activity will cause only minimal adverse environmental effects. The DNR is authorized to renew, modify and revoke general permits following the same procedures used to issue the general permit initially. The Department will make a determination to either issue coverage under the general permit to the applicant or require an individual permit. The Department determination will depend on whether or not the project complies with the eligibility requirements and standard conditions outlined in the general permit.

Statewide General Permit for removal of accumulated plant and animal nuisance deposit

Authorized Activities:

WDNR-GP5-2013 would provide authorization for the operation of a motor vehicle to remove algae, mussels, dead fish and similar large public nuisance deposits on lake or stream bed. Projects would be required to meet all eligibility standards, terms and conditions of the general permit to be eligible for coverage.

Excluded Activities:

Projects that do not meet all the terms and conditions of WDNR-GP5-2013 would not be eligible and would be excluded from coverage. These projects may be reviewed under the individual permit review process. The department has authority under s. 30.206(3r), Stats. to require an individual permit in lieu of a general permit, if the department has conducted an investigation and visited the site and has determined that conditions specific to the site require restrictions on the activity in order to prevent significant adverse impacts to the public rights and interest, environmental pollution, as defined in s. 299.01 (4), or material injury to the riparian rights of any riparian owner.

Permit Changes:

The department could modify or revoke coverage of the general permit if removal of the accumulated nuisance deposit was not carried out in compliance with the terms and conditions of the permit, or if the Department determines the project would be detrimental to the public interest. Furthermore, the Department would have the authority to reevaluate the effectiveness of WDNR-GP5-2013 and could suspend, modify or revoke it if determined necessary.

PURPOSE AND NEED

The purpose of issuing a statewide general permit is to establish a stable, relatively simple permit program that is specifically designed to effectively and efficiently regulate the public and private needs for minor environmental impacts. The legislative intent of 2011 Wisconsin Act 167 was to establish clear criteria, conditions and timelines to ensure more predictable permit review process and decisions.

ALTERNATIVES

The Department retains authority under 30.206(3r), Stats, to require an individual permit in lieu of a general permit.

Coverage under WDNR-GP5-2013 could be granted for projects meeting all applicable purpose, design, construction and location requirements, terms and conditions. The Department would have 30 days to review the application, notify the applicant of any further required information or missing application items, and make a determination regarding the applicants' eligibility for coverage. When Department review of the proposed project indicates that terms and conditions of the general permit were not sufficient to ensure only minimal adverse environmental effects (for example an unusually large area to be dredged, or dredging in an environmentally sensitive area) the Department could require an individual permit to allow a more detailed review and possible acceptance of the project.

Projects requiring individual permits would be those that do not fit the pre-approved designs, terms and conditions necessary to be eligible for coverage under the statewide general permit. Individual permit procedures require a more detailed permit application and Department review. Through the individual permit process Department staff may advise applicants on project modifications needed to reduce impacts and ensure that the project would not result in any significant adverse environmental consequences. Additionally, individual permits require a public notice, public comment period and an opportunity for an informational hearing. Individual permit decisions are subject to appeal for review by an administrative law judge within 30-days of the decision.

Although the Department has the authority to require an individual permit in lieu of a general permit, the alternative of only permitting removal of nuisance deposits as individual permits is deemed unnecessary.

The Department has the authority to establish requirements, conditions and exceptions for statewide general permits and WDNR-GP5-2013 has been designed to produce and achieve the same regulatory results as an individual permit review for projects with minor impacts. Furthermore, individual permit reviews for all projects is beyond the ability of the Department's limited resources. Individual permit review would be required of proposed projects not meeting the terms and conditions of WDNR-GP5-2013 or on a case-by-case determination of specific site conditions that necessitate additional restrictions in order to provide reasonable assurance that no significant adverse impacts to the environment would occur.

AUTHORITIES AND APPROVALS

General permit authorizations are provisional and require that the applicant obtain any other federal, state, local or tribal permits or approvals that may be required for the project or activity involving alterations to public waters and before any work is authorized. For example, under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (USACE) may require permits for removal of material below the ordinary high water mark in federal navigable waters and for the discharge of dredged or fill material into waters and wetlands. This federal permit is in addition to a state permit. If federal permits are needed, the type of permit and the length of the USACE review of a proposal would depend on the extent of the alteration proposed. More information about federal requirements can be found at: www.mvp.usace.army.mil/regulatory.

Furthermore, while the state permit program governs the determination of whether the placement of structures, dredging and similar activities in or adjacent to navigable waters is in compliance with state Water Quality Standards, it does not affect the authority of the Department to otherwise regulate the discharge of dredged or fill material into a wetland. For example, several types of activities related to collecting, storing, transporting, treating, and disposing of solid waste, require permits or licenses from the Department. Additionally, local governments use floodplain and shore-land zoning to control development along lake shores and streams. Local zoning officials administer permit programs for buildings, land disturbance and other activities in shore-land and floodplain areas.

ENVIRONMENTAL IMPACTS

This analysis briefly describes potential effects that would be attributable to activities authorized by WDNR-GP5-2013 for the removal of accumulated plant and animal nuisance deposits. This analysis further addresses any expected difference in environmental effects and impacts between the issuance of a statewide general permit versus the alternative of issuing an individual permit.

Affected Environment

Low water levels are occurring in many places throughout the state and the reasons why vary according to the type of waterbody and circumstances. Waterbodies where water levels are controlled by a dam or other structure may not experience as drastic a drop as natural glacial kettle lakes common to northern Wisconsin and the central sands area. A survey of several Wisconsin lakes pointed to a relationship between lake level fluctuations and lake types. Water levels in seepage lakes fluctuated between 2½ and 11 feet, where water levels in other lake types only fluctuated between 1½ and 4 feet (Novitzki 1978). The range of fluctuation in seepage lakes is often greater because they have less water to draw from - their main source of water may be a limited groundwater supply. Other lakes may have a larger water source to draw from, including inflow from streams

Low water levels are not the only challenge facing our inland waterways (lakes and streams) and our Great Lakes. Increased populations of invasive species such as Zebra mussels, Quagga mussels, and blooms of the nuisance algae *Cladophora*, have continued to plague our waterways. Lower water levels contribute to a greater exposed beach area, and, as a result, mussel shells, large floating mats of algae, and other biological material often get deposited by wave action in large quantities along the lakeshore and in the shallow littoral zone. The beached algal mats mixed with decaying zebra mussels and other invertebrates and fish result in unsightly, malodorous conditions. Piles of decaying *Cladophora* and zebra mussels may affect tourism, recreation and property owner values. These nuisance deposits when left unchecked have been linked to taste and odor problems in drinking water, and may exacerbate levels of *E. coli* and other bacteria in beach sand and swimming waters, thus raising questions about beach safety. In Wisconsin, these nuisance conditions have been reported at many sites ranging from northeastern Green Bay and the tip of Door County to Kenosha. (UW Sea Grant 2005)

The biomass of *Cladophora* that washes ashore varies between years and locations. Mats of stranded algae two feet thick may collect in some areas— often embayments where waters are calmer and materials tend to collect (Whitman et al. 2003). In 2004, twenty five tons of *Cladophora* were removed from Milwaukee's lakeshore alone (Stauffer 2004). In other great lakes areas, accumulations are less where the decaying algae may remain offshore or confined to the swash zone (Harris 2004).

Waterfront property owners desire to remove unwanted plant and animal nuisance deposits in an efficient manner. Currently, waterfront property owners on inland waterways are only allowed to remove nuisance deposits by hand as existing statutes preclude them from using mechanized removal methods without obtaining an individual permit. A general permit exists for removals on great lakes shorelines, but this permit is limited in scope and does not address large ongoing deposits that may occur as many as 5 times a year. As the volume of public nuisance deposits increases, property owners can't realistically remove these unwanted deposits by hand. For nuisance deposits, the key to successful clean-up is vigilance in removing the algal mats and mussel shells as soon as they wash ashore. This is due to the fact that after only a few days in the warm sun, the algae begins to decay into an organic soup which makes it harder to remove; and in addition the longer the warm, moist conditions created by the algae persist, the more *E. coli* has a chance to grow.

The mechanical removal of large plant and animal accumulations has been accomplished with front-end loaders, backhoes or beach grooming equipment. However, monitoring of indicator bacteria in beach sand has shown that heavy equipment may grind decaying algae into moist sand creating conditions that promote higher bacterial growth (Harris 2004). The most efficient way to remove nuisance deposits from the beds of waterways is with the aid of motor vehicles such as beach groomers and all-terrain vehicles. To allow limited use of motor vehicles for these purposes, precautions must be taken to avoid damaging sensitive beach vegetation and near shore habitat for fish and wildlife. By promulgating General Permits with standards for mechanized removal that include location standards (where on the shoreline can the activity take place), substrate restrictions (limits on the volume of sand vs. cobble that can be removed incidentally), types of mechanized methods allowed, and guidance on what to do with the removed material, among other things, we will be able to ensure that sensitive beach vegetation and near shore habitat impacts are avoided and that these activities are not inadvertently promoting bacterial growth.

General Impacts Due to Dredging Activities

According to state law, any material removed below the ordinary high water mark of a navigable waterway is considered to be dredging. The statewide general permit for the removal of plant and animal nuisance deposits has safeguards in place to minimize the amount of lake or stream bed material removed. However there are general considerations with any type of dredging project.

Water Quality

Water quality variables that can be affected by dredging operations include turbidity, suspended solids, and other variables that affect light transmittance, dissolved oxygen, nutrients, temperature, pH, and concentrations of trace metals and organic contaminants if they are present in the sediments (U.S. Navy 1990). Depending on the dredging method used, dissolved oxygen (DO) concentrations in the water column can be substantially reduced during dredging if the suspended dredged material contains high concentrations of oxygen demanding substances (e.g., hydrogen sulfide). Most aquatic organisms are capable of tolerating low DO conditions for such short periods. Reduced DO concentrations would be expected to be localized and short term, with minimal impacts (U.S. Navy 1990).

Biological Resources

The impacts of dredging on biological resources can be short term or long term. There can be short-term impacts from the dredging, and long-term impacts associated with habitat modification. Short term impacts could include local changes in species abundance or community diversity during or immediately after dredging. Long-term impacts could include permanent species abundance or community diversity changes caused by changes in hydrodynamics or sediment type (U.S. Navy 1990). Communities inhabiting highly variable and easily disrupted environments, such as those found in shallow water, recovered more quickly from dredging operations than communities in less variable environments such as in deep or offshore waters. Seasonal changes in the environment were considered most important in shallower water where the organisms are more likely to be affected by the changing seasons (Reilly et al. 1992) The suspension of sediments during dredging will generally result in localized, temporary increases in turbidity that are dispersed by wind-waves or otherwise dissipate within a few days, depending on hydrodynamics and sediment characteristics. Where dredging occurs in relatively polluted areas, contaminants in the sediments are likely to be dispersed into the water column, resulting in localized, temporary increases in contaminant concentrations that may affect fish and invertebrates.

Dredge Spoil Disposal

Dredge spoils can be disposed of either in-water or on land. The impacts are different depending on where the disposal site is located. In-water disposal can have impacts to the bathymetry or morphology of the lake or stream bed. It can also have impacts to existing sediment quality and water quality in terms of total suspended solids, dissolved oxygen, and contaminants. With relationship to aquatic flora and fauna the greatest impact can be in the form of habitat loss of the benthic community and the shell fish and finfish and invertebrates that rely on it. For land disposal sites, if the site is located in a wetland, the dumping dredge spoils in these environments can eliminate or reduce the wetland functions which have a direct impact on plant species diversity and wildlife. It should be noted that this General Permit has a condition that requires dredge spoil disposal sites to be located in upland areas.

Impacts Due to Permit Processes

To this point, the Department has issued X NUMBER of individual permits for these types of nuisance deposit removal projects. There is currently a GP available only for outlying waters of the state (Great Lakes) and to date only X general permits have been issued for these projects.

The Department anticipates that the issuance of WDNR-GP5-2013 may result in more GP activity authorization beyond what has historically been authorized under the GP and IP permitting program previously in place. Given the expanded locational coverage from outlying waters to all lakes and streams and other expanded allowances of WDNR-GP5-2013, most of permits previously reviewed through the individual permit process would potentially become eligible for the new statewide general permit. While this is a large increase in the number of applications that would be eligible for coverage and review through the new streamlined statewide general permit process, the impact of these projects would be low if proper standards are followed.

Both WDNR-GP5-2013 and individual permits provide terms and conditions that address cumulative impacts to surface waters. Permit requirements to decrease impacts include construction measures to minimize sediment movement into surface waters, avoidance of the spread of invasive species, and prevention of potential pollutants from entering a water body. Both permitting processes prevent adverse impacts to historical and cultural resources, state and federal designated threatened or endangered species, fishery spawning habitat, and ecologically significant coastal wetlands. Neither the general permit nor individual permit authorizations would be contrary to wetland water quality standards or result in adverse impacts to adjacent landowners. Both general and individual permitted projects would be required to be maintained in good condition to ensure that there would be no additional impacts.

Evaluating the overall extent of secondary and cumulative impacts of dredging activities, especially removal of nuisance deposits below the ordinary high water mark can be difficult since individual removal events that may seem minor when considered in isolation may become major if considered collectively over time and space, especially if the accumulated nuisance material occurs more frequently over time. Individual permit review requires a more intensive analysis that will minimize the impacts on lake and stream bed morphology, and will provide that the project will not result in any other significant adverse environmental consequences. The Department considers direct impacts, cumulative impacts and potential secondary impacts of proposed projects in determining that each permitted project represents the least environmentally damaging alternative.

Differences in the ecology of lakes and streams, especially between inland waters and outlying waters, variations in landuse throughout the state, economic trends, and potential impacts of future climate changes provide uncertainties in predicting the environmental effects of future dredging activities that would be authorized under either WDNR-GP5-2013 or individual permits. Both general and individual wetland permits could be revoked if the Department determines that the applicant failed to comply with the terms and conditions of the permit or if the information provided by the applicant proves to be false, incomplete or inaccurate. Either permit could also be revoked if new information indicates that the project would cause significant environmental impacts.

The establishment of this general permit as a streamlined permit process for activities of minimal impact would have the advantage of allowing more Department resources to be allocated to the review of individual permits of greater complexity and greater potential for significant adverse impacts.

Impacts to Air Quality

Dredging with vehicles results in emissions of vehicle exhaust. Projects of the scale that would be covered under WDNR-GP5-2013 would result in only minor and temporary air emissions. Impacts to air quality would be the same for these kinds of projects regardless of coverage under WDNR-GP5-2013 or an individual permit.

Risk

Reliance on Applicants Data:

Department staff would review all general permit applications to determine that projects meet all permit terms and conditions, and are eligible for coverage. In making these determinations, the Department would rely on the information provided by applicants, and any other required information. The Department would have authority for site access to investigate the project construction, operation, maintenance or permit compliance. The Department could deny coverage or reevaluate its decision on any authorization under this GP at any time circumstances warrant.

Circumstances would include, but would not be limited to, failure to comply with the terms and conditions of the general permit; information provided by the applicant proves to have been false, incomplete, or inaccurate; or significant new information surfaces which was not considered in reaching the original determination. Any act of noncompliance would constitute a permit violation and would be grounds for enforcement action.

Presumptive Approval:

Under WDNR-GP5-2013, if the Department failed to make a determination regarding coverage under the general permit within 30 days, the project would be presumed to be authorized under s. 30.206(3), Wis. Stats., and the applicant could proceed. According to recent permitting data, the average general permit decision issued by the Department has been within this 30 day timeframe. The Department cannot guarantee that statutory presumptive approval would never occur, however. Any presumptively approved project would still have to adhere to the terms and conditions of the general permit with any act of noncompliance constituting a permit violation that would be grounds for enforcement action.

Degree of Controversy

The authority and requirement of the Department to issue statewide general permits was legislatively established. The process involves public notice of the Department's intent to issue, modify or revoke a statewide general permit, and allows for public input to address potential concerns. The issuance is not expected to be controversial. The authorization of coverage for WDNR-GP5-2013 permit activities would provide no public comment opportunity, nor would it require notification to adjacent landowners of any proposed activity. However, this is no change from prior general permit procedures promulgated under rule and is not expected to be controversial.

Degree of Precedence

While this is the first statewide general permit to be issued under the new process established by 2011 Act 167, historically the Department has promulgated many general permits (albeit by rule). This new process for creating statewide general permits administratively instead of through rule promulgation continues the Department's practice of consistently providing conditions and standards for low-risk projects in navigable waters.

Project Name: Statewide General Permit WDNR-GP5-2013 to **remove accumulated plant and animal nuisance deposits from beds of navigable waters**

County: Statewide

PRELIMINARY DECISION

In accordance with s. 1.11, Wis. Stats., and Ch. NR 150, Wis. Adm. Code, the Department is authorized and required to determine whether it has complied with s. 1.11, Wis. Stats., and ch. NR 150, Wis. Adm. Code.

The Department has made a preliminary determination that the Environmental Impact Statement process will not be required for this action/project. This recommendation does not represent approval from other DNR sections which may also require a review of the action/project.

Signature of Evaluator	Date Signed
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FINAL DECISION

The public review process has been completed. The Department received and fully considered responses to the news release or other notice.

Pursuant to s. NR 150.22(2)a., Wis. Adm. Code , the attached analysis of the expected impacts of this proposal is of sufficient scope and detail to conclude that this is not a major action, and therefore the environmental impact statement process is not required prior to final action by the Department.

The Department has determined that it has complied with s. 1.11, Wis. Stats., and ch. NR 150, Wis. Adm. Code. This decision does not represent approval from other DNR sections which may also require a review of the action/project.

Signature of Environmental Analysis Program Staff	Date Signed
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NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review must name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to section 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. All requests for contested case hearings must be made in accordance with section NR 2.05(5), Wis. Adm. Code, and served on the Secretary in accordance with section NR 2.03, Wis. Adm. Code. The filing of a request for a contested case hearing does not extend the 30 day period for filing a petition for judicial review.

ADDENDUM: GENERAL PERMIT PROCESS SEQUENCE

- Anyone wishing to proceed with an activity that may be authorized under a statewide wetland general permit is required to submit an application for coverage at least 30 days before beginning the activity.
- The applicant needs to provide sufficient information describing the proposed activity in order for the Department to make a determination whether the activity can be authorized by the general permit.
- The applicant will allow the Department consent to enter and inspect the site if needed.
- General permits are valid for five years and may be renewed, modified, or revoked. It also specifies that projects authorized under a general permit remain authorized for five years from the date the DNR determines the project may proceed under the general permit, even if the underlying general permit expires during this time period.
- The application will be reviewed by the Department to ensure that the proposed project complies with all general permit requirements.
- Applications providing all required project information and found to comply with all general permit requirements will be issued a “Letter of Coverage” authorizing the activity.
- If sufficient information is not received with the proposed project application, the Department can make one request for additional information deemed necessary for the Department to verify compliance with the terms and conditions of the general permit.
- If the Department fails to make a determination regarding coverage under the general permit within 30 days, the project is considered to be authorized and the applicant may proceed as long as the project is carried out in compliance with all conditions of the general permit.
- The Department may determine that the proposed project is not eligible for coverage under the general permit and require that the project be reviewed through the individual permit process as outlined in ch. 30.12(3m) Wisconsin Statutes.
- Authorization of coverage under a general permit is valid for 5 years after the date of issuance or until the project is completed, whichever occurs first.

DOCUMENTS USED IN ANALYSIS:

References

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