

## ENVIRONMENTAL IMPACT ASSESSMENT

Wisconsin Statewide General Permit for the removal of material from the bed of a navigable lake or navigable stream from which material was historically removed.

Prepared by Wisconsin Department of Natural Resources, Bureau of Watershed Management  
April 22, 2015

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 and accuracy of the EIS.  
For your comments to be considered, they must be received by the contact person before 4: 30 p.m.,  
June 29, 2015.

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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.

The procedures for establishing a general permit and the DNR's authority to issue a general permits for activities that affect navigable waters may be found in section 30.206, Wis. Stats. These procedures exempt general permits from the definition of "rule" (eliminating the procedural requirements for promulgating general permits by adopting administrative rules to create a General Permit), and establishes a 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, section s. 30.206(1)(ag) allows the department to impose any of the following conditions on the permit:

- Construction and design requirements that are consistent with the purpose of the activity authorized under the permit.
- Location requirements that 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 Maintenance Dredging of Previously Dredged Areas.**

#### ***Authorized Activities:***

WDNR-GP13-2015 would provide authorization for a person to conduct maintenance dredging and remove material from the bed of a navigable lake or navigable stream from which material was

historically removed. 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 are not exempt from permitting requirements, and do not meet all the terms and conditions of WDNR-GP13-2015 would not be eligible and would be excluded from coverage. Projects that are not eligible for this general permit 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 the placement of net pen project 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-GP13-2015 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 Section 30.206, Wis. Stats. 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-GP13-2015 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 project area for placement of structures, or placement of structures 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 maintenance dredging of previously dredged areas is deemed unnecessary.

The Department has the authority to establish requirements, conditions and exceptions for statewide general permits and WDNR-GP13-2015 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-GP13-2015 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 placement of structures 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: <http://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-GP13-2015 for the maintenance dredging and removal of material from the bed of a navigable lake or navigable stream from which material was historically removed. 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**

WDNR-GP13-2015 would authorize a person to conduct maintenance dredging and remove material from the bed of a navigable lake or navigable stream from which material was historically removed.

Wisconsin has 15,000 lakes and over 43,750 miles of river systems. The physical, biological and cultural resources of each of our lakes and rivers vary widely. This general permit could affect any of our lakes and rivers if there is some proof of previous or historical dredging. Consequently, a general overview of Wisconsin's Lakes and Rivers is necessary to understand the potential impacts of this general permit.

## Lakes

Most of Wisconsin's Lakes are remnants of the last Ice Age. Under natural conditions lakes go through a succession through time where lakes become more shallow and eventually become a wetland. While it would take thousands of years for a lake to move this timeline, human activities within a watershed can accelerate this process. Lakes are generally classified into three (3) trophic states along this timeline, Oligotrophic, Mesotrophic and Eutrophic.

Oligotrophic lakes have low inputs of nutrients, organic matter and sediments and are often cold water lakes. They tend to have clear water, but due to the lack of nutrients some of these lakes have limited fish populations and plant growth and are less likely to support high numbers of wildlife and waterfowl. Lake Superior for example is an oligotrophic lake. These lakes tend to have small watersheds, are minimally developed or are undisturbed by intensive human activities.

Mesotrophic lakes are slightly nutrient enriched lakes and often support a rich and diverse community of native aquatic plants and a healthy population of fish, wildlife and waterfowl. These lakes tend to be in small to medium watersheds with organic soils and moderate development or land disturbing activities in the watershed and a few point sources of pollution.

Finally, Eutrophic lakes are very productive and have high levels of nutrients, organic matter and sediments. These lakes support sizable fish populations and attract waterfowl and wildlife. However the high nutrient content in these lakes may result in excessive plant growth and dissolved oxygen levels that are too low to support some fish species and these lakes could experience fish kills. These lakes tend to be in large watersheds, are shallow, with a substantial amount of land disturbing activity or development in the watershed.

## Rivers

Wisconsin's river systems also highly variable depending on the physical, biological and cultural characteristics of the river and range from wild rivers, such as the Pine and the Wolf, to more urbanized rivers, such as the Milwaukee River. River systems can also be classified as coolwater and warmwater streams, which indicate the river's primary source of water whether it is ground water or surface water runoff. Coolwater systems that receive groundwater as a primary source of water tend to have a steady flow during most times of the year and keep a fairly constant temperature. On the other hand warmwater systems tend to be flashy, carrying large amounts of water after a snow melt or precipitation events and may experience dry spells during certain times of the year.

The water quality and habitat for fish and wildlife species varies in each river system and for larger river systems, such as the Wisconsin or Mississippi Rivers, the biological characteristics change depending geographic location in the state. What is consistent, is that activities that occur upstream or in the upper reaches of a river's watershed, can have an impact on the water quality, fish and wildlife populations and habitat downstream.

## Overall

This general permit would be available for any lake or river in the State of Wisconsin as long as the project is not public rights features as described in NR 1.06 and would not be located in Area of Special Natural Resource Interest (ASNRI) as described in NR 1.05. Consequently, areas of sensitive habitat, exceptional or outstanding resource waters, wild rice waters and trout streams would be ineligible for this general permit.

However, lake or river that are listed as ASNRI for the sole reason that the lake or river, or a portion of the lake or river, contain endangered or threatened species or aquatic elements as defined and identified in the Wisconsin Natural Heritage Inventory or that the water flows through a wetland area identified in a

Special Area Management Plan (SAMP) or a Special Wetland Inventory Study (SWIS), could be eligible for this general permit if the applicant receives written documentation from the department that the project will not impact the habitat of an endangered or threatened species or impair the SAMP or SWIS wetlands.

### **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 420 general permits for these types of dredging projects. However, the current general permit is only available for projects that are located outside of an Area of Special Natural Resource Interest. The proposed WDNR-GP13-2015 could now be available for projects in a lake or river that are listed as ASNRI if that lake or river is listed only because it contains endangered or threatened species or aquatic elements as defined and identified in the Wisconsin Natural Heritage Inventory or that the water flows through a wetland area identified in a Special Area Management Plan (SAMP) or a Special Wetland Inventory Study (SWIS), if the applicant receives written documentation from the department that the project will not impact the habitat of an endangered or threatened species or impair the SAMP or SWIS wetlands.

The Department anticipates that the issuance of WDNR-GP13-2015 may result in more general activity authorization beyond what has historically been authorized under the current general permit. Given the expanded locational coverage allowed in WDNR-GP13-2015, a number of permits that were previously reviewed through the individual permit process would potentially become eligible for the new statewide general permit. While this could represent a large increase in the number of applications that could be eligible for coverage for this general permit and review of these general permits is streamlined, the impact of these projects would be low if proper standards are followed.

Both WDNR-GP13-2015 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 can be difficult since individual removal events may seem minor when considered in isolation, but may become major if considered collectively over time and space, especially if maintenance dredging 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 land use 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-GP13-2015 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-GP13-2015 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-GP13-2015 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-GP13-2015, 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. Once a statewide general permit is issued, the authorization of coverage for 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 one of the early 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-GP13-2015: **the removal of material from the bed of a navigable lake or navigable stream from which material was historically removed.**

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**PRELIMINARY DECISION**

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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**

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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**

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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 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*