Wisconsin Department of Natural Resources
Bureau of Fisheries Management and Habitat Protection
101 S. Webster Street, Madison, WI 53707

WATERWAY PERMITS FOR PONDS AND SMALL IMPOUNDMENTS

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What You Need to Know

More people than ever before are interested in constructing their own ponds. Some of these ponds will be used for fishing or swimming. By design, other ponds will attract a wide range of wildlife, amphibians and reptiles. Because of the potential for side effects on existing lakes, streams and wetlands, the construction of ponds or the alteration of streams may require permits from the Department of Natural Resources (DNR).

Before you consider building a pond, take a long hard look at whether a pond will improve or degrade the natural environment of your property. Although the small stream or wetland on your property may provide limited swimming or fishing opportunities, those natural settings are often most important for endangered or threatened species, all types of amphibians and reptiles as well as critical reproductive habitat for game species like ducks and many other species of birds. You'll find it very easy to appreciate and enjoy the unique characteristics of your own small stream or wetland, if you take the time to look closely. ❖

Underlined words are defined in the Glossary

Inside This Factsheet

Overview of DNR Regulations

In Wisconsin, our navigable waters are held in trust for all citizens and protected by the Public Trust Doctrine. The state legislature and courts have recognized that wetlands and lands near or adjacent to navigable waters (public) hold a special relationship with respect to water quality and other public rights. Accordingly, most pond or impoundment construction is regulated by the DNR.

Specifically, Wisconsin Statutes require a person to obtain a permit for the following types of pond and impoundment construction activities:

1) to construct, dredge or enlarge any artificial pond or waterway within 500 feet of a navigable waterway,

2) to construct a watercourse that will be ultimately connected to a navigable waterway,

3) to enlarge or connect any natural or artificially constructed pond or waterway with any exisiting navigable waterway,

4) any pond or waterway project that will directly or indirectly affect wetlands,

5) to construct a dam on either a navigable or a non-navigable stream.

These types of pond and impoundment permits are issued under ss. 30.19, 31.05 and 31.33 Wis. Statutes. If you are interested in dredging out an existing pond, please review the factsheet titled "Waterway Permits for Dredging Projects" (PUB-FH-058 2001). Other permits may be required by the local municipality (e.g. city, village, town, county) and by the Army Corps of Engineers (ACOE).

Please make contact with your local DNR Water Management Specialist listed on page 4 of this publication to determine which permits may apply to your pond project. ❖

Protecting Your Natural Resources

The first step to protecting natural resources is to realize the limitations in pond construction on your property. The source of water, soils, land uses near the pond, and drainage from the entire watershed must be considered along with the benefits or impacts the proposal will have on the surrounding environment. Trying to build a clear water, sandy bottom swimming pond built where nature intended a productive, soft-bottom wildlife pond is an uphill battle. A quality pond takes much more than digging a hole and filling it with water.

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Contact the DNR early in your planning process to have staff help identify the appropriate site and explain the permitting process. An improper pond design or location can have devastating effects on the natural ecosystem and public rights. Some of the harmful pond effects include:

- Stagnant pond water can damage existing streams by discharging warm water or water with high nutrient levels;
- Deep ponds built in wetlands can threaten the existence of many species of amphibians and reptiles that use shallow wetlands for part of their life cycles;
- Constructed ponds surrounded by manicured lawns and free of weeds and algae may reduce the natural integrity of your property and incur substantial annual maintenance cost.

In some cases, your particular pond may not acutely affect the nearby stream or wetland; but the cumulative effect of many ponds built within the watershed can. When considering what you want your pond to look like, think about how to mesh the local attributes of your natural resources with the goals and objectives you have for your pond.

Consider This...

Existing wetlands or shallow waterways are usually self-sustaining ecosystems, which provide fish and wildlife habitat and protect areas from flooding, water quality degradation and shoreline erosion. If these natural settings are disturbed or altered, the loss of those functions can damage your property value or the value and use of private or public property nearby. Ponds can be constructed in upland areas adjacent to existing aquatic resources to avoid impacting these fragile ecosystems.

Ponds or impoundments created by the construction of a dam on an existing stream may seem like the easiest and cheapest way to build a pond. However, these are often the most difficult to permit and the most costly to maintain. The legal authority to construct a dam on a public, navigable stream requires changes to mapped floodplains, proof of financial security and no impacts to public interests. Together, over the years, the plants and animals have inhabited a flowing stream system that natural processes created. When the flowing stream is converted with a dam into a pond, the entire environmental setting of the system can be changed, including threatening many of those animals and plants that rely on the natural system.

After a pond is permitted and constructed, it is important to plan for maintenance. Designing a natural buffer strip to filter water, provide habitat and deter excessive geese numbers is critical. Minimizing fertilizer use near your pond can also help reduce algae and plant growth.

Maintaining a healthy balance of aquatic plants is critical to a pond's ecosystem. Aquatic plants provide the basic resources for the rest of the pond community including oxygen, spawning and nesting habitat and food resources. Exotic weeds like Eurasian watermilfoil and rough fish like carp or bullheads can damage your pond's plants and water quality. Useful pond design and maintenance references can be found on the Internet or at your local library or bookstore. ❖

Glossary

CONNECTED WATERWAY: a pond or channel joined by means of a waterway below the OHWM of an existing public waterway by a navigable channel having bed and banks (NR 340.02(18) Wis. Adm. Code).

DREDGING: any part of the process of the removal of material from the beds of waterways and the transport of the material to a disposal site (NR 347 Wis. Adm. Code).

ENLARGEMENT OR CONNECTION: the direct physical joining of a waterway below the OHWM of an existing public waterway by a channel having bed and banks (NR 340.02(18) Wis. Adm. Code).

NAVIGABLE WATERS OR NAVIGABLE WATERWAY: any body of water with defined bed and banks which is navigable under the laws of this state. Navigable waters were most recently defined by the Supreme Court in DeGayner & Co., Inc. v. Department of Natural Resources, 70 Wis.2d 936, 236 N.W.2d 217 (1975)

ORDINARY HIGH WATER MARK (OHWM): the point on the banks or shore up to which the presence and action of water is so continuous as to have a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristics (NR 320 Wis. Adm. Code).

PUBLIC TRUST DOCTRINE: created by Article IX of the state constitution to protect the rights of the public including commercial and recreational navigation, water quality, fishing and hunting, swimming, enjoyment of natural scenic beauty.

PUBLIC WATERWAY: any waterway declared navigable under s. 30.10 Wis. Stats. In order to protect public rights in these waters, permits are required to modify or alter these waterways.

UNCONNECTED POND: any waterway that does not have an open or closed outlet that discharges to another public waterbody.

ULTIMATELY CONNECTED: any waterway joined to an existing public waterway by any means (permanent or temporary) that tends to confine and direct flow into the existing navigable waterway (NR 340.02(20) Wis. Adm. Code).

Permitting Process

Step 1. Collect Information

Collect the following information to help determine which permits are required and what restrictions might apply:

- Purpose and use of the pond
- Location of the project, nearby waterways and wetlands
- Previous DNR permits for the waterway
- Location of spoil disposal area
- Needed modifications to waterway or wetlands (e.g. dredging, culverts, etc.)
- Location of wetland floodplain and shoreland boundaries
- Property ownerships and boundaries near the project location

Step 2. Meet with DNR Staff

Compile the information above and submit it along with a permit application to your local DNR office. Then contact your local DNR Water Management Specialist to review the information and verify which permits are required and what restrictions might apply. If local or federal permits are required for a project, you will likely work with staff from other agencies.

Step 3. Obtain All Permits Prior to Construction

Once you have identified which permits may be required and discussed the general concept of your project with DNR staff, you'll need to complete and submit the permit application forms and the appropriate permit fees. Many of the application forms and applicable guidance can be found on the DNR website (www.dnr.state.wi.us/org/water/fhp/waterway/) under the subject of Waterway Permits, or you can work through your local Water Management Specialist.

After a complete application has been submitted, DNR staff will determine whether your project complies with the requirements of the law. In most instances this requires a site visit and reviews by DNR fisheries, wildlife, and water quality staff. Complex projects may require a public notice or environmental assessment as specified by statute or administrative rule. Once the permit decision has been issued, there is an appeal period where you or other members of the public may challenge the DNR decision. ❖

Frequently Asked Questions

Can a pond be created on a natural stream?

Ponds created on natural waterways have the potential, over time, to harm the stream's quality by trapping nutrients and sediment, warming water temperatures and reducing oxygen. Permits for ponds constructed on navigable streams by enlarging the stream or construction of a dam will require substantial permitting. In addition, dam construction requires extensive permitting including adjusting the floodplain maps, proof of financial security and requires the preparation of an environmental assessment and publication of a notice. The pond may be declared public waters by the permit to protect the public rights associated with all waters of the state.

Can I construct a pond in a wetland?

There are many practical reasons not to locate your pond in a wetland. Although the wetland will provide a water source, typically that water source is very nutrient rich, which can lead to excessive weed growth, toxic algae blooms and low oxygen conditions – none of which are favorable. Attempting to convert a natural ecosystem to a manmade system can significantly damage amphibians and reptiles. This may seem like a "small" price to pay, but the cumulative impact of habitat loss and habitat shifts will reduce or even eliminate these precious species. More typically, ponds are approved on uplands adjacent to wetlands or restricted to shallow wildlife ponds that will enhance the wetland functional values of a degraded wetland.

How long does it take to get a permit?

All permit applications under Ch. 30 are reviewed on a case by case basis. DNR staff are trained to examine the potential impacts of a proposed project on the public rights and interests associated with wetlands or waterways. Depending on the type of project you are proposing, approvals could be as easy as determining no permit is required to permit reviews that take 1 to 120 days or longer. Information about different permit decision times is available from your local DNR Water Management Specialist.

Where can I find more information?

There are three excellent resource books available from the University of Wisconsin Extension (www1.uwex.edu/ces/pubs/):

Management of Aquatic Plants and Algae in Ponds, FH228

Managing Wisconsin Fish Ponds, G3693

Understanding Lake Data, F3582

You can also check the library, the Internet or talk with your local county zoning staff, UW-Extension staff or pond construction contractors. ❖

DNR Contacts

To find the name and phone number of the DNR Water Management Specialist assigned to review permits in your project area you can either contact your nearest DNR Service Center or the nearest of the five DNR Regional Headquarter Offices listed below. You can also find the Water Management Specialists listing and many permit applications and factsheets on our Waterway & Wetland permit website (search for waterway and wetland or visit www.dnr.state.wi.us/org/water/fhp/waterway/). ❖

Southern Region:
3911 Fish Hatchery Rd
Fitchburg WI 52711
608-275-3266 – phone

Southeast Region:
2300 N Dr Martin Luther King Jr Dr
PO Box 12436
Milwaukee WI 53212
414-263-8500 – phone

Northeast Region:
1125 N Military Ave
PO Box 10448
Green Bay WI 54307-0448
920-492-5800 – phone

Western Region:
1300 W Clairemont Avenue
PO Box 4001
Eau Claire WI 54702-4001
715-839-3700 – phone

Northern Region:
Spooner
810 W Maple St
Spooner WI 54801
715-635-2101 – phone

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