



ENVIRONMENTAL PERMITS FOR WISCONSIN FISH FARMS

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What You Need to Know

This factsheet describes the types of environmental permits for fish farms that are reviewed by the Department of Natural Resources (DNR) including

- NR 19 Natural Water Body Permits
- Chapter 30 Waterway Permits
- Chapter 31 Dam Permits
- Water Quality Wetland Permits
- WPDES Discharge Permits
- High Capacity Well Permits
- Importation Permit

Other permits may be required by the local municipality (city, village, town, county) and by the Army Corps of Engineers (ACOE). The Department of Agriculture, Trade and Consumer Protection (DATCP) handles fish farm registration and fish health issues. The types of environmental permits required are determined on a case by case basis and dependent on the location, design and operation of the fish farm facility.

Please check with your DNR Regional Fish Farm Environmental Permit Coordinator listed on page 4 of this publication to determine which permits may apply to your facility.

Underlined words are defined in the Glossary

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Overview of DNR Regulations

The DNR is responsible for implementing a number of permits applicable to fish farms as required by Wisconsin State Statutes including the following.

NR 19 Natural Water Body Permit: This permit was first required in January 2000 by new laws (s. 29.733 Wis. Stats. and NR 19 Wis. Adm. Code). The DNR is responsible for permitting the use of natural bodies of water as fish farms. Natural bodies of water that are permitted as private water body by a ch. 30 or 31 permit are exempt from this permit requirement.

Generally, all DATCP registered fish farms that possessed 1997 DNR private fish hatchery licenses are eligible for a 10-year grandfathered permit (\$50 permit fee). Fish farms utilizing a natural body of water that were not licensed by the DNR in 1997 are required to be freeze-out ponds and have insignificant public interest. A non-refundable application fee of \$500 is required and if a permit is issued, it is valid for 10 years.

Importation of Non-Native Fish: The DNR is required to review and permit all introductions of non-native fish or fish eggs into the state (s. 29.735 Wis. Stats.). You should contact the DATCP who will work with the DNR to determine if a species is non-native and if a DNR permit is required. You will also have to work with DATCP to meet the health requirements for any fish imported into the state.

Chapter 30 Permits

s. 30.12 Structure Permit: You may need a structure permit if you plan to construct a structure below the ordinary high water mark of a public waterway (i.e. a waterway determined to be navigable under s. 30.10 Wis. Stats.). This would include intake structures, culverts, bridges, and most shore protection practices (rip-rap, bio-logs, etc.).

s. 30.18 Diversion Permit: All agriculture diversions from any stream or lake are required to be authorized by the DNR. Currently, for the purposes of s. 30.18 Wis. Stats, aquaculture is not defined as agriculture and therefore a diversion permit is required only if the diversion results in an average loss of 3.09 cubic feet per second during any 30-day period.



s. 30.19 Enlargements, Ponds and Grading: This section of the statutes requires permits for four activities.

- 1) Ponds without outlets constructed within 500 feet of a public waterway require an unconnected pond permit. These ponds are private ponds unless prescribed public by a condition of the ch. 30 permits.
- 2) All ponds with open or closed (i.e. piped) outlets to public waters, regardless of the distance to a public waterway, require an ultimately connected pond permit. These ponds are private ponds unless prescribed public by a condition of the ch. 30 permit.
- 3) All ponds connected by a navigable channel to an existing public waterway or any enlargement of any public waterway require a permit. These ponds and enlargements are statutorily public waters and require a public notice and an environmental assessment (EA).
- 4) Any grading in excess of 10,000 square feet on the bank of a public waterway requires a grading permit. A public notice is required for these types of permits.

s. 30.20 Dredging: Permits are required to dredge or “remove bed material” from both public and non-navigable streams and from all lakes. Permits are not required for maintenance dredging to permitted dimensions of ponds considered private under s. 30.19 Wis. Stats.

Chapter 31 Dams Construction: Permits are required to construct dams or impoundment on all waterways in Wisconsin. Small dam plan approvals may be obtained for dams constructed on non-navigable streams under s. 31.33. Dams on public waterways require extensive permitting under s. 31.06.

Wetland Permits: Depending on the type of project a Water Quality Certification (WQC) may be required if any impacts to wetlands are proposed. If a WQC is required, the project will have to meet the State Water Quality Standards for Wetlands (see NR 103 Wis. Adm. Code). WQC is necessary if any type of DNR permit, approval or funding is attached to the project or the wetland is a non-federal wetland. WQC is required to validate an Army Corps of Engineers 404 wetland permit for federal wetlands.

WPDES Discharge Permit: The Wisconsin Pollutant Discharge Elimination System (WPDES) is a federally mandated program and required under ss. 281 and 283 Wis. Stats. At the current time, the law requires the DNR to issue discharge permits for fish farms with annual production levels greater than 20,000 pounds of cold water fisheries or 100,000 pounds of warm water fish; or facilities that feed more than 5,000 pounds of food per year. WPDES permits may be required for fish farms that are determined to be a significant pollutant contributors. The type and amount of discharge determine WPDES permit fees and water quality monitoring is required.

Existing Fish Farms

You’ll find it easy to work with your regional Fish Farm Environmental Permit Coordinator to determine if you have obtained the necessary environmental permits. Two of the most common permits that apply to fish farm facilities include:

Natural Water Body Permit: If the fish farm meets the definition of a Natural Water Body and has not been permitted as private through a ch. 30 or 31 permit, you will need this permit. See the Natural Body of Water Factsheet for more information (PUB-FH-060-2009).

Chapter 30 or 31 Permits: Many fish farm ponds were constructed before permits were required by the DNR. However, fish farmers may find it advantageous to obtain ch. 30 or 31 permits even after the work has been done. By obtaining your ch. 30 or 31 permit, the fish farm may be declared private and avoid the need for a Natural Water Body permit. A permit was likely required if the pond was built after 1961 and it is within 500 feet of a public water or is connected to a public water.

Other permits: Check to see if any of the other permits highlighted in this factsheet apply. ❖

*Work with your regional Fish Farm
Environmental Permit Coordinator to determine if
you have obtained the necessary environmental
permits.*

Starting a New Fish Farm

If you are looking at using an existing water body or constructing a new water body for a fish farm that was not registered a 1997 DNR licensed hatchery, you will have to work closely with DNR staff to make sure the fish farm can comply with the permitting requirements.

Continued on page 3



Many streams are navigable public waterways, and permits are required to make waterway modifications.

GLOSSARY

DREDGING: means 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: means 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).

FREEZE-OUT POND: means a natural, self-contained body of water in which freezing or anoxic conditions prevent the body of water from naturally sustaining a fish population at least twice every 5 years (s. 29.001(29) Wis. Stats.).

NATURAL BODY OF WATER: means any spring, stream, pond, lake or wetland, that was historically present in a natural state but may have been physically altered over time. Waterways permitted as private by a ch. 30 or 31 permit are exempt from this definition (NR 19.91(3) Wis. Adm. Code).

ORDINARY HIGH-WATER MARK (OHWM): means 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 WATERWAY: means 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: means any waterway that does not have an open or closed outlet that discharges to another waterbody.

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

WPDES: This acronym stands for Wisconsin Pollutant Discharge Elimination System. This permitting system is a federally mandated program that requires the DNR to develop Water Quality Standards (see NR 102-106 Wis. Adm. Code) for the discharge of regulated fish farms.

Step 1. Collect Information

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

- Location of the water body, nearby waterways and wetlands
- Previous DNR permits or licenses issued for the waterway
- Historical maps of the waterway prior to any modifications
- Any proposed modifications to waterway (dredging, culverts, structures, outflow modifications, etc.)
- Proposed fish farm operation plan (species, annual production, etc.)
- Location of fish farm inflow and outflow
- Location of floodplain and shoreland boundaries
- Riparian ownership of the waterway

Step 2. Meet with DNR Staff

Schedule a meeting with your regional DNR Fish Farm Environmental Coordinator to review the information and determine which permits are required and what restrictions might apply. Since there may be multiple DNR permits required for each waterway, you will likely work with 2 or 3 different DNR staff.

- Natural Water Body permit: Regional Fisheries Supervisor
- Ch. 30 & 31 permits: Water Management Specialist
- Well permits: Regional Water Supply Specialists
- Discharge permits: Basin Wastewater Specialists

Step 3. Obtain DNR Permits Prior to Operation

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) or you can work through your Environmental Permit Coordinator.

After a complete application has been submitted, DNR staff will determine if the permit standards can be met. In many instances this requires a site visit and a permit review by the DNR fisheries, wildlife, and water quality managers. The next step is to comply with any public notice requirements 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

How do I know if my fish farm requires a natural water body permit?

Historical information is critical to be able to determine if the pond is a natural water body. By definition, if the fish farm waterway existed in a natural state as a wetland, pond, stream, or lake, then it will be considered a Natural Water Body. If your pond was constructed in an area “high and dry,” it is not a natural water body, regardless if you had to obtain ch. 30 or 31 permits. Historical information like air photographs, county maps and the original governmental survey of 1848 can help.

Can I construct my new fish pond in a wetland?

With most DNR permits, each permit decision is determined on a case by case basis. Remember, that ponds constructed in wetlands meet the definition of natural body of water and will require a NR 19 permit – unless a ch. 30 permit for a private pond was issued. Probably more importantly, there are many practical reasons not locate your fish farm 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 anoxic conditions – none of which are favorable to growing fish. Introducing fish into a system that naturally does not contain fish (like shallow wetlands) can significantly damage the populations of 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.

When will I likely obtain a permit to construct a new fish farm?

All permit applications under ch. 30 are reviewed on a case by case basis. DNR resource managers are trained to examine the potential impacts of a proposed project on the public rights and interests associated with the waterway. However, fish farms meeting the following design recommendations may be more likely permitted:

- Raceways placed outside of wetland boundaries, fed by a high capacity well where the raceway discharge to a non-public warm-water stream or wetland.
- Ponds constructed adjacent to, or on non-public (i.e. non-navigable) warm water streams that do not impact wetlands and that are properly approved as an unconnected or ultimately connected pond by ch 30 and 31 permit and not declared public by condition of the permit. ❖

High Capacity Well Permit: If your well withdraws 70 gallons of water per minute, you will need to obtain a high capacity well permit from the DNR. Specific well design requirements are also required (see s. 280 and 281 Wis. Stats and NR 812 Wis. Adm. Code). ❖

DNR Contacts

The DNR has identified a Fish Farm Environmental Permit Coordinator for each of the five DNR regions. The Coordinator does not handle each of the different types of permits, but can direct you to the appropriate DNR staff to assist you with your permit or answer your question. ❖

South Central Region:

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