

Considerations for Protecting & Improving Wisconsin's Water Resources



As a non-profit environmental law center, Midwest Environmental Advocates provides legal and technical support to individuals and organizations around the state who are working to uphold Wisconsin's strong tradition of safeguarding the health, environment and economy for current and future generations.

Protecting water is at the heart of our work. Since 1999, MEA has used its legal expertise to protect public rights to Wisconsin waters and to ensure that government is held accountable for protecting the state's groundwater and surface waters.

Our work covers the entire state of Wisconsin, the Great Lakes Region and the Mississippi River Basin. We put our years of experience and expertise in the law to work for the citizens of the state and their rights to clean, healthy water.

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MEA's Role in Wisconsin's Conservation Community

As Wisconsin's only non-profit environmental law firm, MEA plays a unique role in the conservation community. Legal action is an effective tool that need not create an adversarial relationship between DNR and MEA. To the contrary, MEA has historically utilized litigation as a way to take positions that ultimately further DNR's mission and goals. We have utilized litigation to shed light on and defend against actions that DNR experts ultimately do not support, such as the issuance of the Meteor Timber wetland fill permit. Litigation has also allowed us to negotiate settlements with DNR and DOJ, to bolster rulemaking efforts, and to otherwise provide an outside legal opinion on many of DNR's policies and programs. As a citizen-driven law center, we bring the perspective and values of a strong grassroots network to the table, and we consistently put the needs of citizens before the politics of the day. We look forward to reviving a collaborative relationship with DNR. We value specific recommendations that DNR may have regarding how to support DNR's efforts during the Year of Clean Drinking Water and beyond.

Current Challenges & Opportunities

WPDES Program Deficiencies

Challenges: In [a 2011 letter to DNR](#), EPA identified 75 WPDES program deficiencies, including conflicts between federal and state law as well as DNR's administration of the program. MEA filed a [Petition for Corrective Action](#) with EPA in 2015. A 2016 audit by the non-partisan Legislative Audit Bureau confirmed that numerous deficiencies remain in the WPDES program.

Opportunities: MEA staff are eager to support DNR staff in bringing the program back into compliance with the Clean Water Act. EPA Region 5 staff have documented problems and outlined the steps necessary to achieve this goal. Prioritizing these issues offers a good opportunity for staff training and restoration of compliant program practices. MEA staff met in early 2019 with DNR attorneys to discuss progress of our Clean Water Act petition, and we intend to continue prioritizing collaboration with EPA and DNR to avoid the need for legal action to resolve deficiencies in the WPDES permitting program. Our priorities include amending statute so that an individual can challenge a WPDES permit; updating antidegradation rules; meaningful citizen participation in settlements; and protection of downstream waters. Other WPDES program priorities include preventing approval of mercury variances that endanger public health and water resources.

Current Challenges & Opportunities (cont.)

PFAS

Challenge: MEA commends DNR, DOJ and the Legislature for beginning to take enforcement action, set standards, and otherwise acknowledge the danger of these “forever chemicals.” Statewide protective standards have yet to be set, and other steps must be taken to ensure adequate protection of public health.

Opportunities: MEA is committed to efforts such as the CLEAR Act that would ensure DNR oversight and enforcement of PFAS issues. MEA also recommends that DNR and DOJ require responsible parties for known contaminated sites to conduct on and off-site investigations as required under NR 716. DNR and DHS should consider the appropriateness of evaluating PFAS as a class of compounds, rather than one by one.

Regulation of High Capacity Wells

Challenge: Legislation that restricts DNR’s authority to consider cumulative impacts of high capacity wells has taken a significant toll in regions like the Central Sands where the operation of high capacity wells for irrigation has compromised the quantity and quality of water that feeds the region’s lakes, streams and rivers.

Opportunity: The high capacity well permitting program can be improved by reaffirming DNR’s authority to consider cumulative impacts on all waters when permitting high capacity wells. In addition, it is recommended that the State clarify DNR’s authority to impose permit conditions or to deny permits for high capacity wells that will impact public trust waters.

Great Lakes Water Diversions

Challenge: MEA believes that DNR shares our concerns that the Racine diversion was approved by an Administrative Law Judge without analysis of the Great Lakes Compact. Unlawful water diversions, whether in Wisconsin or other Great Lakes states, threaten the integrity of the Great Lakes Compact by creating a precedent for future diversions.

Opportunity: MEA stands ready to collaborate with DNR and other Great Lakes partners to watchdog existing and future diversion requests to uphold the Great Lakes Compact and protect the region’s precious freshwater resources. For example, we urge DNR to open the Waukesha Diversion EIS for more public comment in the event of significant changes.

Drinking Water Contamination & Regulation of CAFOs

Challenges: Wisconsin farms are becoming larger in size and smaller in number. This trend has coincided with a decline in the quality of the state’s drinking water and surface waters. MEA has been an active partner in the State’s efforts to revise rules for manure spreading (NR 151), but these efforts have not adequately prevented continued drinking water contamination. In 2016, MEA asked EPA to exercise emergency powers under the Safe Drinking Water Act. Although this led to DNR’s Groundwater Collaboration Workgroup, whose final report resulted in many improvements, there is still much work to be done. Wisconsin still lacks a system to immediately provide safe drinking water to communities impacted by issues such as those facing Kewaunee County residents.

Opportunities: Midwest Environmental Advocates is ready and willing to work with DNR to bring Wisconsin back into compliance with the Clean Water Act and to develop and implement rules and programs that properly balance the state’s agricultural production with the protection of public health and the environment. We recommend working with local land and water departments to implement NR 151 revisions as quickly and effectively as possible in areas of the state where the rule changes already apply. The State should extend similar rule changes to other areas of the state, such as southwest Wisconsin and the Central Sands region, which are equally susceptible to groundwater contamination.

Updates to NR 243 and the Livestock Facility Siting Law are also crucial. It is time to move past short-term fixes and start preventing pollution by requiring compliance with best practices regardless of whether operations receive cost share dollars. DNR has existing authority to better enforce groundwater quality standards during issuance of CAFO WPDES permits.

MEA supports several items from the recent Governor’s biennial budget that were not successfully in the Legislature’s budget. These items include updates to the well compensation program, funding for groundwater mapping, and increased CAFO permitting fees.

Finally, the State should clarify DNR’s authority to modify WPDES permits for certain CAFOs to include an animal unit limit and an off-site groundwater monitoring plan.