

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
DETERMINATION ON
WISCONSIN ENVIRONMENTAL POLICY ACT (WEPA) COMPLIANCE
For
City of Waukesha
Proposed Great Lakes Diversion
December 2019**

INTRODUCTION

The Wisconsin Environmental Policy Act (WEPA), s. 1.11. Wis. Stats., requires state agencies to fully consider and disclose the environmental impacts of agency actions. Chapter NR 150, Wis. Admin. Code, outlines policy and procedures for implementing WEPA for the Department of Natural Resources (Department). Section NR 150.35, Wis. Admin. Code, requires a final written determination regarding WEPA compliance.

The City of Waukesha (Applicant) has proposed a diversion of Lake Michigan water, with return flow to Lake Michigan, as a long-term solution to its current water supply problems. The Applicant relies on a deep aquifer groundwater supply. Depressed water levels in the deep aquifer have compounded a problem of radium concentrations that are higher than the U.S. Environmental Protection Agency's water quality standard for radium. The Applicant is under an amended court order to comply with radium standards by September 1, 2023.

In May 2010, the Applicant submitted an application to the Department for an approval to divert water from Lake Michigan (Diversion Application) as a "Community in a Straddling County" under the Great Lakes– St. Lawrence River Basin Water Resources Compact (Compact) and the Great Lakes–St. Lawrence River Basin Sustainable Water Resources Agreement. In October 2013, the Applicant submitted an updated application.

The Department conducted an extensive Technical Review of the Diversion Application and worked with the Applicant on modifications to the Diversion Application to meet Compact review criteria. In January 2016, the Department forwarded the Diversion Application, a final Technical Review, and a document entitled "Preliminary Final Environmental Impact Statement" to the Great Lakes-St. Lawrence River Water Resources Regional Body (Regional Body) and the Great Lakes-St. Lawrence River Basin Water Resources Council (Compact Council). The Regional Body issued a Declaration of Finding approving the diversion with conditions in May 2016. The Compact Council approved the diversion with conditions in June 2016.

The Department used the environmental impact statement (EIS) process to analyze the environmental impacts of the Applicant's proposed project, and alternatives to that project, under s. NR 150.30, Wis. Admin. Code. Public feedback was elicited throughout the process, and as part of the Department's review of the Diversion Application and of applications submitted by the Applicant for a Waterway and Wetlands Permit and a Wisconsin Pollutant Discharge Elimination System Permit. The Department has published a final EIS.

FINDINGS OF FACT

1. Section NR 150.20, Wis. Admin. Code, establishes procedures to fulfill the requirements of s. 1.11 (2) (c), Wis. Stats., setting minimum procedural requirements for WEPA compliance. The Department determined to follow the Environmental Impact Statement (EIS) process as outlined in s. NR 150.30, Wis. Admin. Code.
2. On December 4, 2009, the Department notified the Applicant of its determination to complete an EIS process for the proposed project.
3. To determine the scope of the EIS analysis, the Department relied on its expertise and conferred with the Public Service Commission of Wisconsin, county and municipal governments in areas potentially affected by the proposed project, and American Indian Tribes in Wisconsin. The Department also relied on public scoping comments, the Applicant's initial environmental impact report (EIR), and other information.
4. On February 5, 2010, the Department sent a letter to interested parties, via electronic mail, inviting them to review and comment on a list of potential topics for the EIS. Recipients included environmental organizations, county and municipal government officials, members of the Wisconsin State Senate and Assembly representing areas potentially affected by the proposed project, and tribal government officials from the Native American communities in Wisconsin.
5. On May 25, 2010, the Department received an application for an approval to divert water from Lake Michigan for public water supply purposes (Diversion Application) from the Applicant, including an initial EIR describing the proposed project, alternatives, and the Applicant's analysis of their potential environmental impacts.
6. Throughout the EIS process, the Department requested and received information from the Applicant on the proposed project, alternatives, and potential environmental impacts. This included but was not limited to information provided in the Applicant's EIR and subsequent revisions, updates and supplements to the EIR.
7. On July 12, 2011, the Department publicly announced a Notice of Complete Application, as well as a series of public information meetings in which to introduce the Diversion Application, the review process and review criteria, and to invite the public to comment on the scope of the EIS analysis. The announcement was provided by a class 1 notice, as defined by ch. 985, Wis. Stats., which was published in the Racine Journal Times on July 12, 2011, and in the Milwaukee Journal Sentinel and the Waukesha Freeman on July 13, 2011. This public review period was set to run until August 13, 2011.
8. The Department held public informational hearings to receive public comments on the scope of the EIS, and to introduce the Diversion Application, review process, and review criteria, on July 26, 2011 at Waukesha County Technical College in the City of Waukesha, on July 27, 2011 at Hart Park in the City of Wauwatosa, and on July 28, 2011 at DNR Service Center in the City of Sturtevant.
9. Verbal comments on the scope of the EIS were received at the hearing, and written comments were accepted in letter or electronic mail formats through August 13, 2011.
10. In February 2012, the Department received a revised EIR from the Applicant.

11. On October 14, 2013, the Department received an updated Diversion Application from the Applicant, including an updated EIR describing the proposed project, alternatives, and the Applicant's analysis of their potential environmental impacts.
12. On October 27, 2014, the Department held a meeting with the Applicant and requested additional information on potential environmental impacts of the proposed project and its alternatives.
13. In February 2015, the Department received technical memoranda from the Applicant on potential environmental impacts of the proposed project and alternatives.
14. The Department prepared a draft EIS (hereafter referred to as "the 2015 draft EIS").
15. On June 25, 2015, the Department announced the availability of the 2015 draft EIS and a draft Technical Review of the Diversion Application for public review and comment, and announced a public informational hearing to receive comments on both documents. As required by s. 1.11 (2) (d), Wis. Stats., the hearing announcement was provided by a class 1 notice, as defined by ch. 985, Wis. Stats., which was published in the Milwaukee Journal Sentinel, the Racine Journal Times, and the Waukesha Freeman on July 30, 2015, and in the Wisconsin State Journal on July 31, 2015. The public review period was set to run until August 28, 2015.
16. Copies of the 2015 draft EIS were made available to the Governor's office and the public through the Department's internet site.
17. The Department held public informational hearings to receive public comments on the 2015 draft EIS and draft Technical Review of the Diversion Application on August 17, 2015 at Carroll University in the City of Waukesha, on August 18, 2015 at the University of Wisconsin-Milwaukee in the City of Milwaukee, and on August 18, 2015 at the Racine Masonic Center in the City of Racine.
18. Verbal comments on the 2015 draft EIS and draft Technical Review were received at the hearings, and written comments were accepted in letter or electronic mail formats through August 28, 2015.
19. In late 2015, the Department prepared a document entitled "Preliminary Final Environmental Impact Statement" (hereafter referred to as "the preliminary final EIS").
20. On January 7, 2016, the Department completed and announced the availability of the preliminary final EIS, along with a draft Technical Review and a summary of the public comments received on these documents and the Department's responses to the comments. The Department forwarded these documents along with the Diversion Application to the Great Lakes-St. Lawrence River Water Resources Regional Body (Regional Body) and Great Lakes-St. Lawrence River Basin Water Resources Council (Compact Council).
21. Copies of the preliminary final EIS were made available to the Governor's office and the public through the Department's internet site.
22. On May 18, 2016, the Regional Body issued a Declaration of Finding on the Diversion Application.
23. On June 21, 2016 the Compact Council approved the Diversion Application with conditions.

24. On June 26, 2017 the Department requested that the Applicant provide additional information necessary for the Department to complete a final EIS reflecting refined information generated by the Applicant's planning and design work. The Department recommended that the information be provided in a format that would meet the WEPA compliance requirements of both the Department and the Public Service Commission of Wisconsin.
25. On November 29, 2017, the Applicant notified the Department that it was entering into a contract to obtain Lake Michigan water from the City of Milwaukee, instead of the City of Oak Creek, which the Applicant had previously identified as its preferred supplier, and requested that the Department notify the Compact Council of this development. This letter stated that Applicant had been approached by the City of Milwaukee with a proposal to supply water and that the proposal would save the Applicant an estimated \$40 million on account of a shorter pipeline route. It also stated that the Compact Council's decision did not require or specify a particular water supplier.
26. On November 30, 2017, the Department notified the Compact Council of the Applicant's agreement with the City of Milwaukee to become its water supplier. This letter stated that the Department had "reviewed the documents relating to the [Diversion] Application, including its Technical Review and preliminary final [EIS], and concludes that there would be no adverse impact to the environment caused by changing the source of Lake Michigan water from Oak Creek to Milwaukee."
27. On March 23, 2018, the Department received a supplemental EIR from the Applicant. This supplemental EIR contained updated information on the water supply service area included in the June 2016 Compact Council approval and the potential environmental impacts of Milwaukee water supply alternatives, Root River return flow alternatives, and associated facilities as determined through more detailed studies completed after the Compact Council diversion approval.
28. On September 13, 2018, the Department submitted a series of questions to the Applicant for updated information on various aspects of the proposed project, including alternative water supply and return flow pipeline routes, and their potential environmental impacts.
29. On September 21, 2018, the Department received information from the Applicant on some of the questions the Department submitted on September 13, 2018.
30. On October 22, 2018, the Department received information from the Applicant on some of the questions the Department submitted on September 13, 2018.
31. On October 26, 2018, the Department held a telephone conference call with the Applicant and asked for additional information on the proposed project and its potential impacts on archaeological and historical resources, and wetlands.
32. On November 1, 2018 the Department received information from the Applicant on the questions the Department asked during the telephone conference call on October 26, 2018.
33. The Department prepared a revised EIS (hereafter referred to as "the 2019 revised draft EIS").

34. On August 6, 2019 the Department announced the availability of the 2019 revised draft EIS for public review and comment, and announced a public informational hearing to receive comments on the 2019 revised draft EIS and on the City of Waukesha's application for a Waterway and Wetland Permit. As required by s. 1.11 (2) (d), Wis. Stats., the hearing announcement was also provided by a class 1 notice, as defined by ch. 985, Wis. Stats., which was published in the Waukesha Freeman on August 3, 2019, in the Milwaukee Journal Sentinel on August 5, 2019, and in the Milwaukee South Now on August 7, 2019. The public review period was set to run until September 19, 2019.
35. Copies of the 2019 revised draft EIS were made available to the Governor's office and the public through the Department's internet site.
36. The Department held a public informational hearing on the City of Waukesha's application for a Wetland and Waterways Permit for the proposed project and the 2019 revised draft EIS on August 20, 2019, at Carroll University in the City of Waukesha.
37. Verbal comments on the 2019 revised draft EIS were received at the hearing, and written comments were accepted in letter or electronic mail formats through September 21, 2019.
38. The Department prepared a final EIS in accordance with sec. NR 150.30(4), Wis. Admin. Code.
39. On December 13, 2019, the Department completed and announced the availability of the final EIS, as well as a summary of the public comments received on the 2019 revised draft EIS and the Department's responses to the comments.
40. The final EIS is available on the Department's website at:
<https://dnr.wi.gov/topic/EIA/Archive.html>.

CONCLUSIONS OF LAW

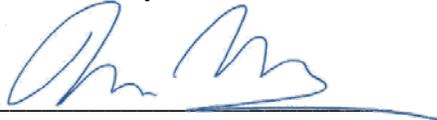
1. The Department of Natural Resources, pursuant to s. 1.11 Wis. Stats., and ch. NR 150, Wis. Admin. Code, has the responsibility to comply with WEPA and the authority to determine its compliance with that Act. The proposed project received environmental analysis through the EIS process under s. NR 150.30, Wis. Admin. Code. The procedure and analysis identified in the Findings of Fact complies with the requirements of s.1.11, Wis. Stats., and ch. NR 150, Wis. Admin. Code.

Dated at Madison, Wisconsin, this the 13th day of December 2019.

STATE OF WISCONSIN

Department of Natural Resources

For the Secretary

By: 

Adam Charles Mednick, AICP, PhD

Environmental Analysis and Sustainability Program