

**STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES**

**Dredging, Grading, Bridge/WQC Permit**

**IP-2007-N8501 through IP-2007-N8969**

Guardian Pipeline, LLC, (Guardian) is hereby granted under Sections 182.017, 30.12, 30.123, 30.19, 30.20, 281.15, 281.36, Wisconsin Statutes, and Chapters NR 102, 103, 115, 116, 117, 150, 299, 216, 320, 341, 345, Wisconsin Administrative Code, a permit to place temporary bridges and related structures in or adjacent to navigable waterways listed in Table 1, a permit to grade in excess of 10,000 sq. ft. on the bank of navigable waterways, a permit to remove materials from below the ordinary high water mark of navigable waterways, and a wetland water quality certification to discharge fill in wetlands listed in Table 1, for the purpose of constructing approximately 120 miles of new 30-inch and 20-inch diameter natural gas pipeline from its current terminus in Ixonia, to near Green Bay, Wisconsin.

**PERMIT CONDITIONS**

**General Conditions**

1. This permit is predicated on a worst-case analysis of impacts and thus the most protective measures practicable for each waterway and wetland crossing are prescribed. Changes to the prescribed crossing techniques may occur only if approved by the Department in writing as described in conditions below.
2. You shall hire Independent Environmental Monitors (IEM) that are approved by the Department.
3. You must supply a copy of this permit to every contractor associated with this project.
4. You must post a copy of this permit at a conspicuous location on the project web site for at least five days prior to construction, and remaining at least five days after construction. You must also keep a copy of the permit and approved plan available at all times until the project is complete at all field offices and construction sites. All employees, consultants and contractors who are working on the project must be made aware of the permit and its conditions and all appropriate managers and supervisors in charge of or working on construction or compliance must be provided with copies of the permit.
5. You must compile and submit a document that will be used as an Environmental Construction Plan (ECP) prior to work commencing for each construction spread.

6. If new information is presented in the ECP, it will require written approval before work can begin for that spread.
7. You shall submit no more than 5 ECPs. The ECP for each spread shall include, at a minimum:
  - A. Any proposed modifications to the construction activities by this approved permit.
  - B. Environmental Alignment Sheets, including construction method, station numbers, waterways and wetland locations, proposed erosion control, endangered resources management protocol locations, permanent right-of-way (ROW) limits, temporary workspace (TWS) limits, and Extra Workspace (EWS) limits;
  - C. Endangered resources management plan;
  - D. Final wetland restoration plan that addresses soil compaction, surface area and species diversity of wetlands disturbed by construction within the spread;
  - E. Invasive species management plan;
8. The Department will issue a decision to approve or require changes to the ECP within 30 days of receipt. Upon receipt of an ECP for any spread, the Department will meet with the applicants within 20 days to provide comments and work with the applicants to resolve any issues.
9. If the applicant needs to modify the approved ECP, the applicant must submit an updated ECP or formal Variance Request (VR) to the Department for review and written approval. The Department can modify permit conditions as needed based on the Department review and approval of the ECP or VR.
10. You shall post an electronic version of all final plans and ECPs on the applicant's project website when the hard copy documents are approved by the Department. These plans shall be organized, including a table of contents, and remain on the website until the project is completed.
11. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.
12. Site specific waterway and wetland restoration and management plans that are approved by the Department must be implemented by the permittee.

13. You must notify the Department Water Management Specialist, Benjamin Callan, at phone (608) 266-3524, before starting construction and again not more than 5 days after the project is complete.
14. You must complete construction of the project, including final site stabilization, as described in this permit, on or before **December 31, 2011**. If you will not complete the project by this date, you must submit a written request for an extension prior to the expiration date of the permit. Your request must identify the requested extension date and the reason for the extension. A permit extension may be granted, for good cause, by the Department. You may not begin or continue construction after the original permit expiration date unless the Department grants a new permit or permit extension in writing.
15. The applicant and/or its contractor shall provide financial assurance mechanism(s) in a form satisfactory to the Department and in an amount sufficient to assure performance of restoration and monitoring requirements of this permit.
16. You are responsible for obtaining any federal, state and local permits or approvals that may be required for your project.
17. You are not authorized to do any work other than what is specifically described in your application and supplemental materials submitted during the application review, and as modified by the conditions of this permit and reflected in Permit Table 1. Final Department approved plans and accompanying documents, as well as plans developed and approved pursuant to conditions of this permit, are a part of, and are conditions of, this permit. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department. Permit conditions are based on information included in the "Chapter 30 and Wetland / Water Quality Certification Application" (including all site specific plans and maps, and Binders 1 through 4), dated April 2007 (rev. June 2007, October 2007, December 2007), and Permit Table 1.
18. You must follow field protocols for activities in proximity to known landfills and any solid waste encountered shall be disposed of in accordance with NR 500, solid waste regulations.
19. All construction activities shall be conducted in accordance with the avoidance and minimization measures for rare species agreed to by Guardian and the Department and/or included in the Incidental Take Authorizations.
20. You shall allow access to your project site during reasonable hours to any Department employee or state-authorized monitor who is investigating the project's construction, operation, maintenance or permit compliance.

21. The Department may modify or revoke this permit if the project is not completed according to the terms of the permit, or if the Department determines the activity is detrimental to the public interest.
22. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 30.292, Wis. Stats., for any violations of Chapter 30, Wisconsin Statutes or this permit.
23. Nothing in the plans, or the financial assurance mechanism(s) as specified in conditions above, substitutes for or restricts the Department statutory authority to enforce its permits or Wisconsin laws and environmental regulations, including its authority to require the cessation of unlawful activities causing environmental harm.
24. No more than 30 days after the pipeline construction is completed, you must submit to the Department (through the state-authorized independent environmental monitor (IEM)), photographs of all waterway crossings, in .jpg format on a CD or DVD. All photographs must be clear, and must document required restoration.
25. This permit does not authorize any future waterway or wetland work within the existing Right-of-way (ROW), temporary work space (TWS), or extra workspace (EWS).
26. You assume all responsibility and liability for any direct or indirect damage caused or resulting from the installation and maintenance of this pipeline and hold the State of Wisconsin, and its employees, harmless.
27. Upon completion of pipeline installation, all wetland elevations and streambed elevations must be restored to pre-existing conditions. You shall document compliance with this condition by comparing pre- and post-construction elevation data.
28. Dewatering of excavated work areas shall be conducted in accordance with the standards of the applicable general permit under Wisconsin's Pollutant Discharge Elimination System, measures in Wisconsin's Construction Site Best Management Practices handbook, or applicable Department approved technical standards.
29. At no time shall dewatering activities directly discharge to wetlands or waterways without prior effective water quality treatment. If dewatering discharging to wetlands or waterways is cloudy or exceeds 40 mg/l of total suspended solids (TSS), you shall immediately stop dewatering and contact the IEM to determine an adequate dewatering method.

30. You are required to have all necessary equipment available on site prior to commencing any waterway or wetland crossing.
31. The timing restrictions in Table 1 apply to placing or removing bridges, and work below the ordinary high water mark (OHWM), on waterways that have standing or flowing water.
32. You are required to maintain the pipelines to ensure that they cannot cause deleterious impacts to waterways, wetlands, and groundwater.

**General Erosion Control** – *in addition to conditions above*

33. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters and wetlands. All erosion control measures must meet or exceed the Department approved technical standards.
34. Any area where topsoil is exposed during construction shall be stabilized to prevent soil from being eroded and washed into a waterway or wetland.
35. You must maintain a log of the erosion control inspections, repairs made, and rain events. This must be made available to any IEM and Department personnel upon request.
36. You may not remove vegetative cover earlier than authorized under the applicable ECP or on-site changes approved by the Department or the state-authorized monitor pursuant to this permit.
37. The removal of vegetative cover and exposure of bare ground must be restricted to the minimum amount necessary for construction. Areas where soil is exposed must be protected from erosion as soon as possible after removal of the original ground cover as described in the Department approved technical standards, or site-specific erosion control plan approved by the Department.
38. This permit has been issued with the understanding that any construction equipment used is the right size to do the job, and can be brought to and removed from the project's site without unreasonable harm to vegetative cover or fish or wildlife habitat.
39. You must minimize the storage of dredged materials in wetlands, below the ordinary high water mark, and in the floodway of any waterway unless specifically authorized by this permit or plans or on-site changes approved pursuant to this permit.
40. You must minimize the need to operate any construction equipment on the bed (below the ordinary high water mark) of any waterway.

41. Appropriate erosion control measures must be in-place and effective during every phase of this project.
42. Erosion control measures must be in place at the end of each working day.
43. Erosion control measures must be inspected, and any necessary repairs or maintenance performed, after every rainfall exceeding 1/2 inch and at least once per week.
44. Site stabilization between October 1 and April 15 requires sodding or dormant seeding and mulching (with a non-toxic tackifier).
45. The post-construction banks must be restored to a stable slope. Site specific requests for restoration slopes steeper than 2-feet horizontal to 1-foot vertical after construction, including waterways where pre-construction bank slopes were steeper, must be authorized by the IEM.
46. After the site is at least 70% stabilized, or prior to at the direction of the Department, all temporary erosion control measures must be removed and disposed of properly.

**Waterways - Temporary Bridge Conditions** – *in addition to conditions above*

47. The construction ROW for all waterways shall be no more than 75 feet, unless authorized by IEM through a VR.
48. Unless specifically noted on Permit Table 1, all vehicles and equipment that need to cross waterways must use bridges, and are not authorized to cross waterways by driving on the bed unless approved by the IEM.
49. This permit authorizes the placement of temporary bridges (TB) and is not an approval for channel relocation.
50. This permit does not authorize the removal of any material below the ordinary high water mark for the placement of temporary bridges (TB).
51. You must inspect the bridge openings periodically for debris, and following any rainfall exceeding ½ inch, and must remove any restriction of flow. Any debris must be deposited in an upland site and out of any floodplain.
52. You must ensure that all bridges and mats are secure and prevent them from being transported downstream during high flow and conditions.
53. No approach fill shall be placed in the floodway or below the ordinary high water mark (OHWM) of any navigable waterway. If an approach must be located in the floodway, it shall be open ramp style construction only.

54. All bridges must be removed in compliance with timing restrictions.
55. Bridges must be removed no later than 7 days after the necessary waterway crossing activities have been completed.
56. All bridges across navigable waterways shall either maintain a clearance of not less than 5 feet, or comply with requirements of s. NR320.04(3), Wis. Adm. Code.
57. All clear span bridges shall completely span the waterway from top of channel to top of channel with no support pilings in the waterway.
58. Construction of pipeline and placement of all TBs shall minimize the removal of trees, shrubs and other shoreline vegetation.

**Waterways - Dredging Conditions** – *in addition to conditions above*

59. Bottom materials must be removed by equipment which is designed to minimize the amount of sediment that can escape into the water. Equipment must be properly sized so that excavation conforms to the plans submitted and allows the work to be done from the banks rather than in the waterway.
60. The stream bed backfill material shall be consistent with the pre-existing and adjacent bed material. If the stream bed in the crossing location has a unique substrate feature, it shall be replaced (i.e. cobbles, boulders, riffles, etc).
61. Restoration of streambed substrate, elevations, and slope to preconstruction conditions must be approved by IEM.
62. All dewatering activities, including dredging, must comply with Department Technical Standard 1061 (<http://www.dnr.state.wi.us/org/water/wm/nps/stormwater/techstds.htm#Construction>).
63. If the water discharged from the dredge site exceeds the limits identified above, you shall submit a stream restoration plan that must be authorized by the Department in writing.
64. You shall not dredge deeper than 10 feet below pre-existing streambed elevation in any waterway unless approved by the IEM.
65. You shall not permanently place any dredged material below the OHWM or in any wetland unless specifically authorized in the approved plans, the ECP or by the IEM.

66. You are not allowed to do construction during periods of high water levels if it could overwhelm the proposed crossing technique.
67. For each waterway crossing, the contractor shall have appropriate equipment available to handle high flow conditions.
68. Construction of the pipeline across waterways shall be completed as quickly as possible in order to minimize disruption.
69. Construction of the pipeline shall minimize the removal of trees, shrubs and other shoreline vegetation above the OHWM.
70. Spills of hazardous or toxic materials that pose a threat to human health, safety or the environment must be cleaned up to the extent practicable. All spills should be reported immediately to the DNR using the 24-hour toll free hot line, **1-800-943-0003**. For more information, please visit the spills program web page: [www.dnr.state.wi.us/org/aw/rr/spills/index.htm](http://www.dnr.state.wi.us/org/aw/rr/spills/index.htm).
71. Any proposed changes to approved waterway crossing method must be approved by the Department.
72. This permit does not authorize any “wet trenching” through waterways unless the waterway has no flow during the entire crossing process.
73. Crews that install the pipeline across any waterway with standing water by “wet trenching” must properly install and maintain a minimum of one sediment control device (e.g. silt curtain) downstream of the trenching location.
74. Waterways that are dry or have no flow during the entire crossing process can be constructed using a “wet trench” technique.
75. You must inspect and maintain the dam, pumps, and flumes daily for debris, and within 12 hours following any rainfall exceeding ½ inch.
76. You shall remove any restriction of flow affecting the stream bypass system. Any debris must be deposited in an upland site and out of any floodplain.
77. Pump intakes shall prevent impacts to fisheries, wildlife, and their habitat.
78. Pump intakes must be placed to avoid the disturbance and removal of bed material.
79. Pump discharges shall have energy dissipation devices installed to prevent disturbance and scour of bed material.

80. Flume discharges shall be designed, installed and maintained to prevent bed disturbance and scour.
81. Quantity and placement of flumes must minimize the disturbance and scour of bed material.
82. No earthen coffer dams are allowed.
83. You must ensure that all machinery and equipment used for the project has been adequately de-contaminated for aquatic invasives prior to being used in non-infested waters of the state. All equipment that comes in contact with infested waters including, but not limited to, tracked vehicles, barges, boats, turbidity curtain, aquabarrier bladders, sheet pile, and pumps must be thoroughly disinfected. ([http://dnr.wi.gov/fish/documents/disinfection\\_protocols.pdf](http://dnr.wi.gov/fish/documents/disinfection_protocols.pdf))
84. You shall remove all coffer dams gradually, in such a way that minimizes the release of sediment and other downstream impacts.

**Wetland Conditions** – *in addition to conditions above*

85. Preconstruction wetland elevation data must be collected prior to any topsoil stripping or grading. This data will be utilized to ensure post-construction wetland elevations are properly restored.
86. No wetlands may be disturbed other than where specifically authorized in the ECP or by the IEM pursuant to this permit.
87. This permit does not authorize any permanent or temporary gravel roads in wetlands.
88. The construction ROW for all wooded wetlands shall be no more than 50 feet, unless authorized by IEM through a VR.
89. The construction ROW for the portions of “farmed wetlands” that include actively cropped agricultural fields or actively grazed pasture shall be no more than 110 feet (30-inch pipe) or 95 feet (20-inch pipe).
90. Any proposal to utilize more than a 75 foot ROW through non-wooded wetlands that are not actively cropped fields or actively grazed pasture requires IEM authorization through a VR.
91. Proposed modifications to approved wetland impacts must include, but are not limited to, characterizations of soil, hydrology, construction alternatives, and construction logistics.

92. Any springs that cannot be avoided by construction must be characterized and documented prior to disturbance. These springs must be restored to pre-existing flow regimes and conditions.
93. All wetland boundaries shall be clearly staked in the field prior to clearing activities, and shall remain during construction. If markings need to be temporarily removed, they must be replaced at the end of the working day.
94. Unless conditions are frozen or stable (rutting < 6 inches), construction equipment passage in wetlands shall be limited and must travel on construction mats.
95. Mats placed in wetlands shall not be removed until final cleanup is complete.
96. Any EWS requests within the wetland setback that are not covered in Permit Table 1 must be approved by the state-authorized IEM through a VR.
97. You shall submit the final acreage of wetland impacts as displayed in Table 1.

**Wooded Wetland Conditions** - *in addition to conditions above*

98. Unless in conflict with federal safety requirements, deciduous wooded wetlands in the ROW outside of the trenchline shall be allowed to grow back by stump sprouting which means no stump grinding, cutting below grade, or herbicide treatment.
99. Removal of stumps outside of the trenchline in wooded wetlands to address safety concerns may be authorized by the IEM.

**Restoration and Monitoring** - *in addition to conditions above*

100. All wetlands must be restored to pre-construction topographic elevations and flow regimes for the purposes of restoring pre-construction wetland functions, unless specifically authorized in writing by the Department.
101. You shall provide a summary of construction method and document any problems encountered for every waterway and wetland crossing.
102. The restoration plan must address stabilization and revegetation of streambanks, wetlands, and uplands.
103. Final site stabilization in wetlands requires seeding of an annual cover crop, and the re-establishment of vegetation at least 70 percent of the type, density, and distribution of the vegetation that was documented in the pre-construction field delineation.
104. The monitoring plan shall include post-construction waterway and wetland monitoring. After completion of the project, all wetlands shall be monitored

within 3 months after the first growing season to ensure that the vegetation in it has been properly stabilized. The monitoring plan shall propose specific waterways and wetlands requiring monitoring beyond the first year after construction. At a minimum 50% of the wetland crossings shall be monitored annually for 3 years. At a minimum 40% of the non-wooded wetlands shall be monitored for 5 years post construction. At a minimum 40% of the wooded wetland sites must have annual monitoring for at least 10 years. The monitoring plan shall outline the parameters to be measured each year of the plan and a clear timeline for annual monitoring report submittals to the Department.

105. If construction activities result in wetland violations of this permit, these areas shall require a minimum of 5 years of post-construction monitoring. This will result in an increase of monitoring locations under Condition 104.

**Riprap**

106. All existing riprap banks must be restored to pre-construction conditions.
107. This permit does not authorize any new riprap placement.

**IEM Authority** - *in addition to conditions above*

108. Additional IEM responsibilities other than those conditioned in this permit will be determined by the Department after the IEMs are hired.

**Other Conditions** – *in addition to conditions above*

109. You shall complete a site inspection prior to construction activities at the four locations where great egrets are or may be present (MP 32.3, 46.6, 71.0, 77.6) to ensure that there is no construction activity within 1000 feet of an active nest between April 1 and September 30.
110. Vegetation clearing of the non-cultivated area along the Rock and Rubicon River construction corridor shall not occur between MP 9.7 and 10.4 between May 10 and August 30 to protect nesting Prothonotary Warblers.
111. You shall provide a plan for avoiding incidental take of Blanding's and wood turtles to the Department's Office of Energy (OE) for review and concurrence prior to initiating construction activities. Exclusion fencing must be installed no later than March 15 unless otherwise approved by the Department.
112. A biological survey must be completed according to Guardian's September 2006 (modified 2007) species survey plan, for the following tracts where there was no access during the 2007 field season: G2-FD-180.00, G2-CA-360.00, G2-BR-402.00, G2-OU-548.60, G2-OU-549.60, G2-OU-550.60, G2-CA-296.00. The results of the surveys shall be provided to OE for approval prior to

initiating construction activities on these tracts unless otherwise approved by the Department.

113. Unless otherwise authorized by the OE, no more than one month prior to initiating disturbance, mussels shall be relocated outside the affected area by a qualified individual at the Rubicon River crossing between MP 12 and 13, and the West Branch of the Milwaukee River near MP 38. The search area, search protocol and relocation site shall be approved by the OE prior to relocation.
114. All construction waste materials shall be removed from wetlands in a timely manner.
115. Spills which are below the following threshold quantities have to be cleaned up but do not have to be reported unless human health, safety or the environment is threatened. Spill reporting thresholds are:
  - Petroleum reportable quantities:
    - A. Lightweight petroleum (gasoline, kerosene, aviation fuel) - one gallon or more released must be reported.
    - B. Heavyweight petroleum (fuel oil, diesel, waste oil, hydraulic oil, mineral oil, etc) - five gallons or more released must be reported.
  - Agricultural Chemical reportable quantities:
    - A. 250 pounds or more of dry fertilizer is released
    - B. 25 gallons or more of liquid fertilizer is released
    - C. any pesticide which, when diluted per label instructions, would cover one acre or more for field application.
116. Pipeline easements must not include language that prevents waterway and wetland restoration and management activities as required by this permit.
117. You must notify the IEM within 15 minutes of any confirmed frac-out during directional drilling or directional boring.
118. You shall report any violations of this permit that you become aware of to the OE. You shall include the Guardian response and resolution to permit violations.
119. You are required to collect data on no fewer than 12 perennial streams for pre-construction, construction, and post-construction water quality monitoring (including at least: flow, TSS, BOD, conductivity). The streams selected must include a variety of sizes, substrates, flow regimes, and watershed types.

## FINDINGS OF FACT

1. Guardian Pipeline, LLC (“Guardian”), owned by Oneok Partners Partners, LP, has filed an application for permits to place temporary clear span bridges across waterways, temporary bridges with supports or culverts in waterways, to grade in excess of 10,000 square feet on the bank of waterways, to dredge in waterways, to authorize equipment to drive on the bed of waterways, and to discharge fill in wetlands listed in Table 1 for the purpose of constructing a new natural gas pipeline from Ixonia to the Green Bay area, Wisconsin.
2. The proposed project is to construct approximately 120 miles of new 30-inch and 20-inch diameter natural gas mainline pipeline and new 20-inch, 16-inch, and 12-inch natural gas branch pipelines. Additional facilities will include seven new meter stations, six main line valves, and two sets of launcher/receiver facilities in Wisconsin. Combined, these facilities are included as part of the “Guardian 2 Project” (“Guardian Project”, “Extension Project”, “Expansion Project”, “the project”, or “G2 Project”). The project will start at the current terminus in Ixonia, and run in a northerly direction approximately 120 miles to a new terminus west of Green Bay. The line passes through part of Jefferson, Dodge, Fond du Lac, Calumet, Brown, and Outagamie Counties.
3. The Guardian Project includes approximately 84 miles of 30-inch diameter mainline pipe in Jefferson, Dodge, Fond du Lac, Calumet, Brown, and Outagamie Counties. There will also be approximately 31 miles of 20-inch diameter mainline pipe in Brown and Outagamie Counties. Additionally, there will be 1.4 miles of 16-inch diameter branch line pipe and 1.8 miles of 20-inch diameter branch line pipe in Brown County, and 0.8 miles of 12-inch diameter branch line pipe in Outagamie County.
4. The Guardian Project will be capable of transporting approximately 537 million cubic feet of natural gas per day from the Joliet, Illinois hub to various parts of Wisconsin.
5. The new pipeline will be placed within a 50’ permanent right-of-way (ROW). The temporary workspace will generally be 110’ wide, including the permanent ROW. In forested uplands and most wetlands, the temporary workspace will be limited to 75’. In farmed portions of wetlands (i.e. cropped agricultural fields or actively grazed pasture), the pipeline will be constructed using the same methods as adjacent agricultural uplands.
6. The fundamental project purpose stated by the applicant is to provide increased supply of natural gas on a regionally constrained pipeline system to help satisfy increasing demand for natural gas in Wisconsin. The applicant also indicates that the Expansion Project will establish a second interstate natural gas pipeline serving eastern Wisconsin, which is expected to benefit consumers through increased capacity, increased choice, competition and reliability in natural gas transportation services.

7. The Department provided Guardian with information relative to Department authorities, the need to avoid or minimize waterway and wetland impacts, endangered and threatened species and habitats, and other areas of concern prior to the submittal of their application.
8. The Department informed Guardian that additional permits or approvals may be necessary from the Army Corps of Engineers (ACOE), and local units of government.
9. The Department had numerous pre-application meetings or discussions with Guardian.
10. On May 7, 2007, the Department received application materials (under cover letter dated April 27, 2007), relative to a Chapter 30 permit and wetland water quality certification.
11. The Department issued a letter, including notice of complete application, a public notice, and a notice of public hearing, to Guardian on June 19, 2007. The notice indicated that the Department determined the application complete, pursuant to s. 30.208, Wis. Stats., and chs. NR 299, 300, 310, 320, and 345, Wis. Adm. Code. By requirement of the Department, the applicants published the notice as a Class 1 Notice in local newspapers, and mailed the notice to individual property owners.
12. The Department received updated application materials from Guardian on October 17 and December 21, 2007.
13. Any proposed wetland compensatory mitigation plan is intended to address federal requirements. The Department has not considered wetland mitigation under the requirements of NR103 and NR350.
14. The June 19, 2007, Public Notice included language regarding WEPA compliance pursuant to s. 1.11, Wis. Stats., (WEPA) and ch. NR 150, Wis. Admin. Code.
15. Pursuant to s. 30.208, Wis. Stats., the Department scheduled one public informational hearing to receive public comment on the application. The hearing was held from 3 – 5 p.m. and 6 – 8 p.m. on Tuesday, July 10, 2007, at the Fond du Lac City Hall, in Fond du Lac, Wisconsin.
16. To avoid disruption to fish species and their habitat, the Department has considered limiting construction timeframes or methods during specific time periods listed in Table 1.
17. Impacts to aquatic resources and wetlands are considered to be temporary, and the resources are expected to fully recover after pipeline installation.

18. The Department has reviewed and considered information presented in the application materials including: air photos of existing ROW and adjacent lands, proposed waterway crossing locations, wetland fill (stockpile and backfill) locations, temporary workspace (TWS) impacts associated with clearing and construction, and extra workspace (EWS) impacts associated with clearing and construction.
19. Department staff toured site specific crossing locations where access was granted, as well as the remainder of the line using the nearest legal access points to observe conditions. Department staff also consulted with Department resource staff, federal regulators, and pipeline construction and inspection experts.
20. This project will include 124 waterway crossings. Waterway crossings include placement of temporary equipment bridges, dredging, grading on the bank, placement of the pipeline below the ordinary high water mark, backfilling to the pre-construction elevations with appropriate substrate, and bank restoration.
21. Pipeline construction across waterways can be completed by horizontal directional drill (HDD), directional bore, open-cut dry trench, and open-cut wet trench.
22. The approval of dredging for waterway crossings is limited to waterways within the project right-of-way that cannot be avoided by horizontal directional drill, directional bore, or jack and bore.
23. Work below the ordinary high water mark and the placement of temporary bridges (TB's) is limited to the timeframes established in NR320 and NR345, unless otherwise approved by the Department's local fisheries biologists.
24. In general, impacts to water quality and aquatic habitat are minimized if the construction zone is isolated from the waterway by HDD, directional bore, or dry trenching.
25. The benefits to water quality of silt curtain use during wet trench construction is limited in waterways where flow is 1 foot per second or faster.
26. Clear span bridges are expected to have less impact on water quality and stream flow patterns than the use of bridges with supports, culverts or fords.
27. The project will not result in the permanent filling of wetlands. Wetland impacts include 100 individual wetland complexes, totaling approximately 52 acres of temporary disturbance.
28. The project will impact no more than 23 forested wetland complexes.
29. Based on Department review of the application materials, modifications have been made in the construction footprint, construction techniques and restoration measures to avoid or minimize wetland impacts.

30. If constructed according to the permit, no wetlands will be converted to uplands. The impacts are of a temporary nature and the only fill will result from the pipe being placed in wetlands. The top of the pipelines will be placed a minimum of 3 feet below ground surface.
31. Based on the information provided by the applicants and the conditions of this permit, the Department has determined that there are not practicable alternatives to the wetland impacts.
32. Pursuant to s. NR 103.08, Wis. Adm. Code, the proposed project, if constructed in accordance with this permit, will not result in significant adverse impacts to wetland functional values, significant adverse impacts to water quality or other significant adverse environmental consequences.
32. The proposed project, if constructed in accordance with this permit will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats.
33. The proposed project, if constructed in accordance with this permit and protection measures required and recommended by the Department's Office of Energy and Bureau of Endangered Resources, will avoid or minimize impacts to endangered resources. Specifically, for state-listed threatened or endangered animals, where avoidance measures can be successfully implemented an incidental take authorization will not be required pursuant to Wisconsin's Endangered Species Law (29.604, Wis. Stats.). For state-listed threatened or endangered animals where avoidance measures cannot be successfully implemented, the appropriate course of action will be pursued under Wisconsin's Endangered Species Law.
34. The Department developed an Environmental Assessment (EA) that provided a description of the proposed project, described the existing environment, evaluated alternatives, and described the socio-economic and environmental impacts expected from the various alternatives. After release of the EA on June 19, 2007, the Department received comments and responded to those comments. The Department certified the EA on July 26, 2007.
35. It is the final decision of the Department that preparation of an Environmental Impact Statement (EIS) is not required and that WEPA compliance has been completed pursuant to s. 1.11, Wis. Stats., (WEPA) and ch. NR 150, Wis. Admin. Code.
36. The Department and the applicants have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 1.11, 182.017, 30.12, 30.123, 30.19, 30.20, 281.15, 281.36, Wis. Stats., and Chapters NR 102, 103, 115, 116, 117, 150, 299, 320, 341, and 345 of the Wis. Adm. Code.

37. The attached Table 1 prescribes construction requirements for each waterway and wetland crossing.

### **CONCLUSIONS OF LAW**

1. The Department and the applicant have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 1.11, 182.017, 30.12, 30.123, 30.19, 30.20, 281.15, 281.36, Wis. Stats., and Chapters NR 102, 103, 115, 116, 117, 150, 299, 320, 341, and 345 of the Wis. Adm. Code.
2. The Department has authority under the above indicated Statutes and Administrative Codes, to issue a permit for the construction and maintenance of this project.

### **NOTICE OF APPEAL RIGHTS**

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 shall be filed.

To request a contested case hearing pursuant to section 30.209, Wis. Stats., or 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, P.O. Box 7921, Madison, WI, 53707-7921.

A request for contested case hearing for the wetland water quality certification decision must follow the form prescribed in section NR 2.05(5), Wis. Adm. Code, and must include the following information:

1. A description of the Department's action or inaction which is the basis for the request;
2. The substantial interest of the petitioner which is injured in fact or threatened with injury by the Department's action or inaction;
3. Evidence of legislative intent that this interest is not to be protected;
4. An explanation of how the injury to the petitioner is different in kind or degree from the injury to the general public caused by the Department's action or inaction;
5. That there is a dispute of material fact, and what the disputed facts are.

To request a contested case hearing for the Chapter 30 decision under Section 30.209, Stats., the petition shall describe the petitioner's objection to the permit or contract and shall contain all of the following:

1. A description of the objection that is sufficiently specific to allow the department to determine which provisions of Chapter 30, Wis. Stats., may be violated if the proposed activity is allowed to proceed;

2. A description of the facts supporting the petition that is sufficiently specific to allow the department to determine how the petitioner believes the activity or project, as permitted, may result in a violation of Chapter 30, Wis. Stats.;
3. A commitment by petitioners to appear at the administrative hearing and present information supporting the objection.

If you are seeking a stay under the provisions of Subsection 30.209(1m)(c), Wis. Stats., you must provide information in your petition to showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

If a party other than the applicant is requesting a hearing under Section 30.209, Wis. Stats., that party shall provide a copy of the petition to the applicant at the same time the petition is filed with the department. See subsection 30.209 (1m)(e), Wis. Stats.

You also have the right to file a petition for judicial review as provided in section 227.53, Wis. Stats. The petition must be filed within 30 days after the date of this decision. The Wisconsin Department of Natural Resources must be named as respondent in the petition for judicial review.

This notice is for the purpose of ensuring compliance with section 227.48 (2), Wis. Stats.

Dated at Madison, Wisconsin on February 28, 2008.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES  
For the Secretary

By \_\_\_\_\_  
Benjamin Callan  
Water Management Specialist