

Clean Water Action Council

OF NORTHEAST WISCONSIN

— CELEBRATING 37 YEARS OF WORKING TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT IN NORTHEAST WISCONSIN —



WINTER 2021-2022

Using Local, State, and Federal Laws to Protect the Waters of Northeast Wisconsin



Introduction by CWAC President Dean Hoegger

Arlen Christenson, Co-Founder of Midwest Environmental Advocates stated, “Environmental laws don’t enforce themselves and the environment doesn’t have a voice unless we speak up for it.” The Clean Water Action Council of Northeast Wisconsin Board of Directors strongly agree with Arlen and we would like to share strategies with you for using legal means to guide our voices.

The U.S. and Wisconsin constitutions grant citizens rights to our waters. Federal acts and state laws grant us powers to enforce those rights.

Sometimes court action is required, often preceded by Freedom of Information Act requests for documents held

by government agencies. Other times legal action may be in the form of filing a petition for compliance with an act or law. When current law is insufficient, that may mean urging our elected officials to pass more protective rules.

Using whatever means are prudent, we endeavor to make the most of those powers to protect the waters of Northeast Wisconsin, and we invite you to join us in those efforts.

In this issue, you will learn more about citizen rights and methods to use those rights to protect our water resources. In our e-mailed *Weekly Update*, you will find specific environmental actions you can take as they arise. E-mail us if you would like to be added to the recipient list which is e-mailed BCC.

Where does our right to the waters of our state originate?

By Lauren Felder

We, as citizens of the United States and of Wisconsin, have the right to access clean, safe water for several uses. These include for recreation, for drinking, and for industry. But where does this right come from? It is not articulated in the U.S. Constitution.

It may not be directly articulated in the Constitution, but this pivotal document is the basis of clean water legislation in the United States. Article I, Section 8 of the U.S. Constitution is commonly known as the Commerce Clause and grants Congress the power to regulate intra- and interstate commerce. This includes transportation of goods between the states, which includes the use of rivers, creeks, and streams, collectively known as “navigable waters.”

The Public Trust Doctrine is the basis for many protections of public resources in the U.S. This principle was applied to water resources in 1892 by the Supreme Court decision in *Illinois Central Railroad v. Illinois*. The Court declared that navigable waters should be held in the public trust and thus should be protected by the government for enjoyment and use by the people.



Wetland, photo courtesy of Ryan Hagerty, U.S. Fish and Wildlife Service

The Clean Water Act of 1972 is the strongest articulation of water rights in the U.S. and is based in both the Commerce Clause and the Public Trust Doctrine. The purpose of the act is to protect against excessive point source pollution in navigable waters. This protection was extended to wetlands adjacent to navigable waters in 1985 with the Supreme Court decision in *United States v. Riverside Bayview Homes, Inc.*

Wisconsin has followed the Public Trust Doctrine since 1787 when it was articulated in the Northwest Ordinance. This framework governed the then-territory of Wisconsin and promulgated the rule that navigable waterways in the state were to be available for public use. Article IX, section 1 of the Wisconsin Constitution carries this law into modern government. It grants the state jurisdiction to govern waters

within the state and concurring jurisdiction with waters on its borders.

Most importantly to citizen water rights, the passage states “... [navigable waters within the state] shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost or duty therefor.” Some of the protected rights are listed in the footnotes of the article and include “boating, swimming, fishing, hunting, and preserving scenic beauty.”

Wisconsin also protects the rights of individuals (and corporations) to use water under the principle of riparian water rights. According to the footnotes of Article IX, common law riparian rights protected under Wisconsin law include:

~~~~~

...the right to reasonable use of the waters for domestic, agricultural, and recreational purposes; the right to use the shoreline and have access to the waters; the right to any lands formed by accretion or reliction; the right to have water flow to the land without artificial obstruction; the limited right to intrude onto the lakebed to construct devices for protection from erosion; and the right, conditioned by statute, to construct a pier or structure in aid of navigation.

~~~~~

These specific rights were articulated in 2018 by the Wisconsin Supreme Court in its decision in *Movrich v. Lobermeier*. Basically, these rights mean anyone who owns property adjacent to a waterway may use the water in a reasonable way that does not degrade the quality of downstream water or preclude the public from using the water.

Both riparian and public trust rights are protected by the state constitution. However, public rights always take precedent over riparian rights because the state has a duty to protect navigable waters for citizen use (as stated in *ABKA Limited Partnership v. Wisconsin Department of Natural Resources*, Wisconsin Court of Appeals, 2001). The previously mentioned *Movrich* decision also expanded these public trust protections to include not only navigable waters, but anywhere within the high-water mark of a given body of water.

The Wisconsin Department of Natural Resources has been tasked with protecting the waters in Wisconsin held within the public trust. This task was reaffirmed most recently this past July in *Clean Wisconsin, Inc. v. Wisconsin Department of Natural Resources* when the Wisconsin Supreme Court affirmed the duty of the Wisconsin DNR to implement regulations to protect Wisconsin waters.

In this case, the court affirmed the DNR's duty to deny permits for high-capacity wells that would negatively impact the waters of Wisconsin. This duty to protect waters in the public trust is codified in Wis. Stat. § 281.11 and supported by the Constitution.



Groundwater well system, photo courtesy of Victor M. Ponce

Selected sources:

Wisconsin Constitution, Article IX, Section 1

Why We Regulate Waterways: The Public Trust Doctrine
https://dnr.wisconsin.gov/topic/Waterways/about_us/whyRegulate.html

The Clean Water Act: Legal Basis and Intent
<https://www.aqualisco.com/the-clean-water-act-legal-basis-intent/>

Clean Wisconsin, Inc. v. Wisconsin Department of Natural Resources
<https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=386188>

CWA Gives “Power to the People”

By Jim Wagner

When it comes to a more important piece of legislation to restore and maintain the beauty of America’s natural resources, it’s hard to top the Clean Water Act (CWA). Passed by Congress and signed into law in 1972, the law established science-based water quality targets to be met by point-source polluters – businesses, municipal wastewater treatment facilities and agricultural entities like Concentrated Animal Feeding Operations (CAFO).

CWA is technically called the Federal Water Pollution Control Act, a rewrite of the 1948 legislation that first attempted to regulate water quality in the U.S. The CWA has also subsequently been amended over the years, in 1977 and then again under the Water Quality Act of 1987. Despite the linkages, the CWA does not cover groundwaters; that water source is largely covered under the Safe Drinking Water Act.

Where the U.S. stands, as of 2017, shows there is a long way to go before realizing anything close to the intentions of the law’s authors.

Part of the problem with the law is determining which waters in the U.S. fall under the CWA. The original law called for surface waters with a significant nexus to navigable waters, but environmentalists and businesses differed on what could be considered either a significant nexus or navigable water. Legal battles over the definition have made their way to the Supreme Court (in 2006), which didn’t stop either the Obama or Trump administrations from attempting to make their own definitions in recent years. The Biden administration is currently working on revising the “Waters of the United States” first adopted by Obama’s EPA and subsequently squashed by Trump’s EPA. You can find more information about where it stands here:

<https://www.epa.gov/wotus>

Today, it also stands as the most effective avenue for Wisconsin residents to file suit against the state Department of Natural Resources (DNR) and EPA when the CWA’s water quality standards aren’t adequately enforced. Wisconsin, until 1995 when it was defunded and disbanded by then-Gov. Tommy Thompson, once had the Public Intervenor’s Office, which was legislatively mandated to champion public natural resources rights.

The law’s citizen suit provision allows any person (or people, like the Clean Water Action Council of Northeast Wisconsin) to file a civil action against any person, to include the United States or any other governmental agency, that violates an effluent standard or limitation.

Recognizing the importance of state government’s role in establishing, restoring, maintaining, and enforcing water quality standards, the CWA allowed the EPA to delegate CWA to the states. To keep this delegation, Wisconsin must:

- Develop water quality standards for all waters in the state, subject to a triennial review.
- Keep a list of and publicize all impaired or threatened waters that don’t meet those standards.
- Develop total maximum daily loads (TMDL) for those impacted waterways.
- Issue Wisconsin Pollutant Discharge Elimination System (WPDES) and enforce permits that allow point-source polluters to discharge into waterways.

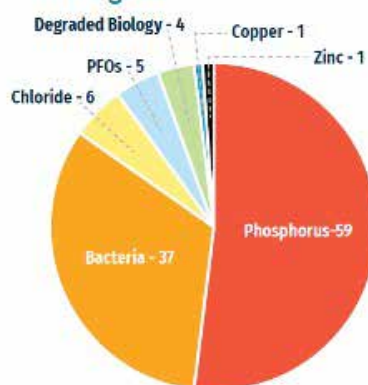
	Size of Water							
	Rivers and Streams (Miles)	Lakes, Reservoirs, and Ponds (Acres)	Bays and Estuaries (Square Miles)	Coastal Shoreline (Miles)	Ocean and Near Coastal (Square Miles)	Wetlands (Acres)	Great Lakes Shoreline (Miles)	Great Lakes Open Water (Square Miles)
Good Waters	518,293	5,390,570	11,516	1,298	726	569,328	106	1
Threatened Waters	4,495	30,309						
Impaired Waters	588,173	13,208,917	44,625	3,329	6,218	672,924	4,354	39,230
Total Assessed Waters	1,110,961	18,629,795	56,141	4,627	6,944	1,242,252	4,460	39,231
Total Waters	3,533,205	41,666,049	87,791	58,618	54,120	107,700,000	5,202	196,343
Percent of Waters Assessed	31.4	44.7	63.9	7.9	12.8	1.2	85.7	20.0

(Good vs. threatened and impaired waters in the United States, 2017, information courtesy of U.S. Environmental Protection Agency (EPA):
https://ofmpub.epa.gov/waters10/attains_nation_cy.control)

With no intervenor's office forcing the state legislature and executive branches to heed citizen complaints, the diligence of DNR enforcement has relied on the environmental enthusiasm of the elected governor. So, in effect, if you get a pro-business governor, you're going to see enforcement favoring business interests.

How does water quality look in Wisconsin? According to the draft DNR 2022 Water Quality Lists, Wisconsin has delisted 22 waterways while adding 115 impacted or impaired waterways to the list, bringing it to 1,526. With 7,841 waterways on the healthy waters list, that means nearly 20% of all Wisconsin surface water is impacted or impaired. You can download the list of waters to see if any are near you here: <https://dnr.wi.gov/water/wsSWIMSDocument.ashx?documentSeqNo=281568259>

New Listings



(New 2022 pollutant listings by count and percent. Information courtesy of the DNR's 2022 Water Quality Lists FAQ Sheet: <https://dnr.wi.gov/water/wsSWIMSDocument.ashx?documentSeqNo=281568305>)

In the absence of adequate enforcement, environmental groups have taken to the courts to ensure state and federal governments are compelled to provide that enforcement. See Dean Hoegger's story in this newsletter, "Citizens use the courts to protect the waters of the state." for actions CWAC has taken on behalf of Wisconsin residents.

What Can You Do?

The CWAC *Weekly Update* includes public notices from the DNR from proposed WPDES permit applications. These notices allow for public comment from anyone; take advantage of that comment period. ***Make your voice heard!***

Using the Safe Drinking Water Act to Protect Human Health

By Alexandra Davis, CWAC Intern

The Safe Drinking Water Act (SDWA), passed by Congress in 1974, has a direct impact on life here in northeastern Wisconsin.

The SDWA was passed to protect the public's health by regulating the nation's public drinking water supply. Areas that require protection are rivers, lakes, reservoirs, springs, and groundwater wells. Here in northeastern Wisconsin, Lake Michigan and Lake Winnebago are of interest because water from these lakes provide drinking water to thousands of Wisconsinites. The Environmental Protection Agency (EPA) is responsible for setting national health-based standards for drinking water to protect the public from man-made and naturally occurring contaminants.



Picture courtesy of Pxfuel.

Contaminants:

- Improperly Disposed Chemicals
- Animal Waste
- Pesticides
- Agricultural Pollution
- Wastewater
- Garbage

SDWA applies to all public water systems found in the United States. "There are currently more than 170,000 public water systems providing water to almost all Americans at some time in their lives" reports the EPA. The EPA, states, tribes, and public water systems are responsible for making sure that a water system is producing safe drinking water. The reason safe drinking water is crucial is because contaminated drinking water can cause adverse health effects, especially for infants, children, pregnant women, elderly, and the immuno-compromised.

The national standards, National Primary Drinking Regulations, were produced by the EPA after consideration of available technology and cost. They are science-based standards that include the maximum contamination in drinking water and require ways to treat and/or remove the contaminations. The reason for setting a national standard is to help ensure quality for the nation's water supply for all Americans.

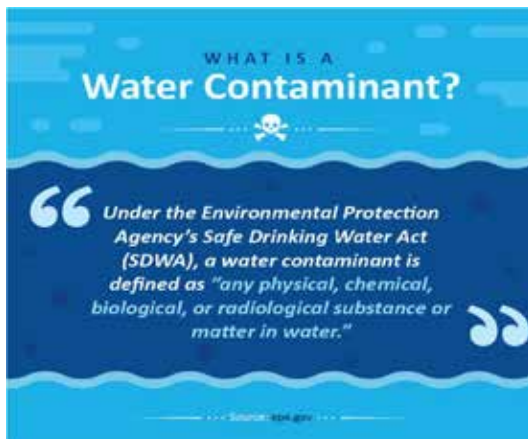


Photo Courtesy of Waterlogic.

National Primary Drinking Water Regulations for Contaminants:

- Microorganisms
 - * Examples: Bacteria, fungi, and yeast
- Disinfectants
 - * Examples: Chlorine dioxide and chloramines
- Inorganic and Organic Chemicals
 - * Organic chemical examples: Hydrocarbon, sulfur compounds, and nitrogen compounds
 - * Inorganic chemicals
 - Examples: Carbides, carbonates, and carbon disulfide.
- Radionuclides
 - * Examples: Radium, cesium, strontium

The SDWA provides numerous strategies to combat water pollution. These strategies include but are not limited to water source protection, treatment, distribution system integrity, and public information. SDWA also requires all water suppliers to do testing and to notify the public if there is an issue with water quality.

Since the EPA holds authority and responsibility for the SDWA, when citizens feel like the EPA failed to perform their duty, such as not stepping in when companies and states are not following the National Primary Drinking Water Regulations, citizens can file petitions to be reviewed in court to challenge the actions of the EPA.

Past SDWA Petitions to the EPA

► October 22, 2014

Clean Water Action Council, et al

Requested to have federal actions on groundwater contamination issues in Kewaunee County.

► March 23, 2016

National Resources Defense Council

Citizens petition to repeal or amend the EPA's aquifer exemption regulation to protect underground sources of drinking water.

► March 29, 2016

North Carolina Department of Environmental Quality
Petitions for rulemaking to strengthen the Lead and Copper Rule under the SDWA.

► January 1, 2019

Waterkeeper Alliance

Petitions for rule makers to hold farms responsible for pollutants from animal waste.

CWAC & SDWA

October 22, 2014, the Clean Water Action Council, along with Midwest Environmental Advocates, Clean Wisconsin, Environmental Integrity Project, Midwest Environmental Defense Center, and Kewaunee CARES filed a written petition for the emergency action of the EPA under the Safe Drinking Water Act and other federal pollution cleanup laws.

Thirty percent of tested drinking water in Kewaunee County was found to have unsafe levels of pollutants that are associated with agriculture. These pollutants include bacteria and high levels of nitrate.

Petitioners asked the EPA to investigate the source of contamination, take action, and help provide clean water to the residents of Kewaunee County. The petition looked to build on local efforts from the Kewaunee County Board of Supervisors from September 2014 and April 2015 meetings in which the local municipalities voted to place a county ordinance that would limit winter manure spreading in areas that are more susceptible to groundwater contamination.

Within the first year, the DNR convened workgroups to combat the contamination issues in Kewaunee County. The petition submitted in 2014 stated, "The workgroups are a first step, but Kewaunee County residents need more. Kewaunee County residents need their government to provide reliable access to clean drinking water because government agencies have failed to protect their aquifer."

June 2016, the DNR presented what the purpose of the workgroups was. They provided short-term and long-term goals. The short-term goal was to review and define possible solutions. One long-term goal was to define sensitive areas that are at high risk for groundwater contamination. One success that came out of the petition was that the DNR revised livestock manure spreading rule, NR 151, to help protect the groundwater located in Kewaunee County. While the rules were revised and approved in 2018, the depth to bedrock levels still needed to be measured.

MEA continues to work with residents in Kewaunee County on these issues. MEA attorney Adam Voskuil has been a key part of the recent communications with the DNR. "I've worked with residents seeking to comment on a variety of wastewater discharge permits in the county. They typically approach me with environmental concerns or histories of noncompliance, and we work to aggregate resources and comments to submit to the DNR," he stated. Going forward, mapping of the bedrock needs to be updated to ensure that spreading restrictions of NR 151 are being followed.

The Safe Drinking Water Act has been very important

to Northeastern Wisconsin. Without the guidelines put into place by this Act, residents of Kewaunee County would not be able to petition the EPA. The petition originally submitted in 2014, is ongoing, but thanks to our partners and the SDWA, we see some improvements in water quality. Recent well sampling by UW-Stevens Point showed that of the 299 wells sampled, 23% of the wells tested positive for bacteria and 9% for high levels of nitrates.

For More Information:

If you would like more information about the Safe Drinking Water Act or about past petitions and CWAC's involvement you can visit:

<https://www.epa.gov/ground-water-and-drinking-water>

<https://www.epa.gov/petitions/petitions-office-water>

<https://www.epa.gov/sdwa>

<https://midwestadvocates.org/issues-actions/actions/safe-drinking-water-act-petition-to-epa>

Wisconsin's Public Records Law

By Andy Wallander

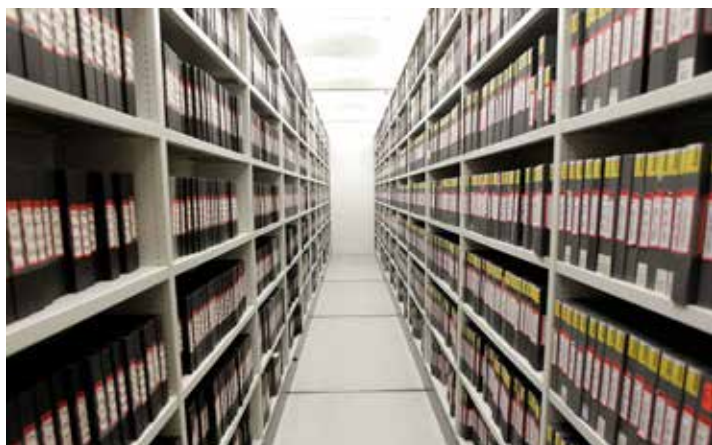


Photo Courtesy of Wikimedia Commons

In 1981, the Wisconsin State Legislature enacted the Public Records Law (PRL). The PRL sets requirements for the disclosure of public records by all public bodies. Within specified limitations, the PRL allows anyone to inspect and obtain copies of all public records prepared, possessed, used by, or in the control of any public office. Notably, contractors' records are disclosable under the Act to the same extent as if the records were maintained by a government authority.

This access to government information is fundamental to the system of open government in Wisconsin, and to the rights of citizens to be informed about the actions of public offices on matters of public concern. It mirrors the rights found in the federal Freedom of Information Act. Anyone, including individuals, groups, associations, corporations, firms, partnerships, or organizations may access government-held information.

Some examples of the records available under the PRL

are orders, rules, policy statements, planning policies and decisions, reports or studies, public contracts, the names, titles, and salaries of public employees, and the voting records of all public bodies. E-mail communications are typically considered a public record.

The PRL applies to any material on which written, drawn, printed, spoken, visual, or digital information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority.

The PRL permits requestors to inspect or obtain copies of public records maintained by government authorities. Authorities include any of the following that have custody of a record: a state or local office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule, or order; a governmental or quasi-governmental corporation; a local exposition district or a long-term care district under certain conditions; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50% of its funds from a county or a municipality and which provides services related to public health or safety to the county or municipality; or a formally constituted subunit of any of the previous entities.

Under the PRL, every public body must make its existing records available to the public. The PRL does not require these bodies to answer specific questions, create new records or keep a central library or index of all government records.

How to Make a Request

Put it in writing. Though Wisconsin does not require that a request be submitted in writing to be official, a written request will allow a requestor to take advantage of the time limits and appeal mechanisms provided in the PRL. The requestor should date and keep a copy of the letter. Also, if the requestor sends his or her request by certified mail and requests a return receipt, they will be able to prove the date on which the request was received.

Be sure to check with the public body from which information is being requested to determine if there are specific requirements for filing a public records request. Some public bodies require certain forms to submit a request or require that requests be delivered in person. Keep in mind that a public body may not require a requesting party to identify themselves or list a reason for the request in either a written or in person records request.

Be specific. The request must specify the records desired. If all records of a broad category are requested, collecting them might unduly burden the public body, which could justify a delay or refusal to release the records. If a requestor wants information on a specific topic, but knows there are some kinds of material they do not want (e.g., newspaper clippings, or records created before or after a certain date), that requestor can ask that these materials be omitted. A party seeking records should also state his or her preferred format (e.g., paper copy or digital media). A

specific request could avoid confusion and high copying fees.

Under the PRL, fees can only be assessed for the “actual, necessary, and direct cost” of reproducing records. If locating the requested records would cost more than \$50, a government body may assess an additional location fee for such efforts. It is important to note that in Wisconsin, a governmental authority can demand prepayment of fees for requests exceeding \$5.00. Public bodies may provide copies of a record without charge or at a reduced charge where the authority determines that waiver or reduction of the fee is in the public interest.

Additional Resources:

Midwest Environmental Advocates

<https://midwestadvocates.org/assets/resources/Open-Government-Guide.pdf>

Wisconsin's Public Records Law Basics

<https://etf.wi.gov/boards/joint/publicrecordslaw/direct>

Wisconsin Department of Natural Resources (DNR)

<https://dnr.wisconsin.gov/contact/OpenRecordsRequest.html>

Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP)

https://datcp.wi.gov/Pages/About_Us/PublicRecords.aspx

United States Environmental Protection Agency (EPA)

<https://www.epa.gov/foia>

Government databases can be used to monitor pollution permits.

By Sydney Gang, CWAC intern

Citizens can play an important role in ensuring that pollution permits are not being violated. By using state and federal permit databases, compliance can be monitored by local citizens.

One way information can be accessed is on the United States Environmental Protection Agency's (EPA) page at <https://echo.epa.gov/>. It offers compliance updates for both air and water pollution permits at Enforcement and Compliance History Online (ECHO). The website also provides tutorials on how to navigate the site.

The information comes from local, state, and tribal environmental agency compliance and enforcement records.

These agencies, such as the Wisconsin Department of Natural Resources (WDNR) provide reports to the EPA's national database which provides the public with updated information.

The database allows searches for facilities by name, location, or the type of pollution permit.

It also gives users the ability to create enforcement-related maps and analyze trends in compliance and enforcement data.

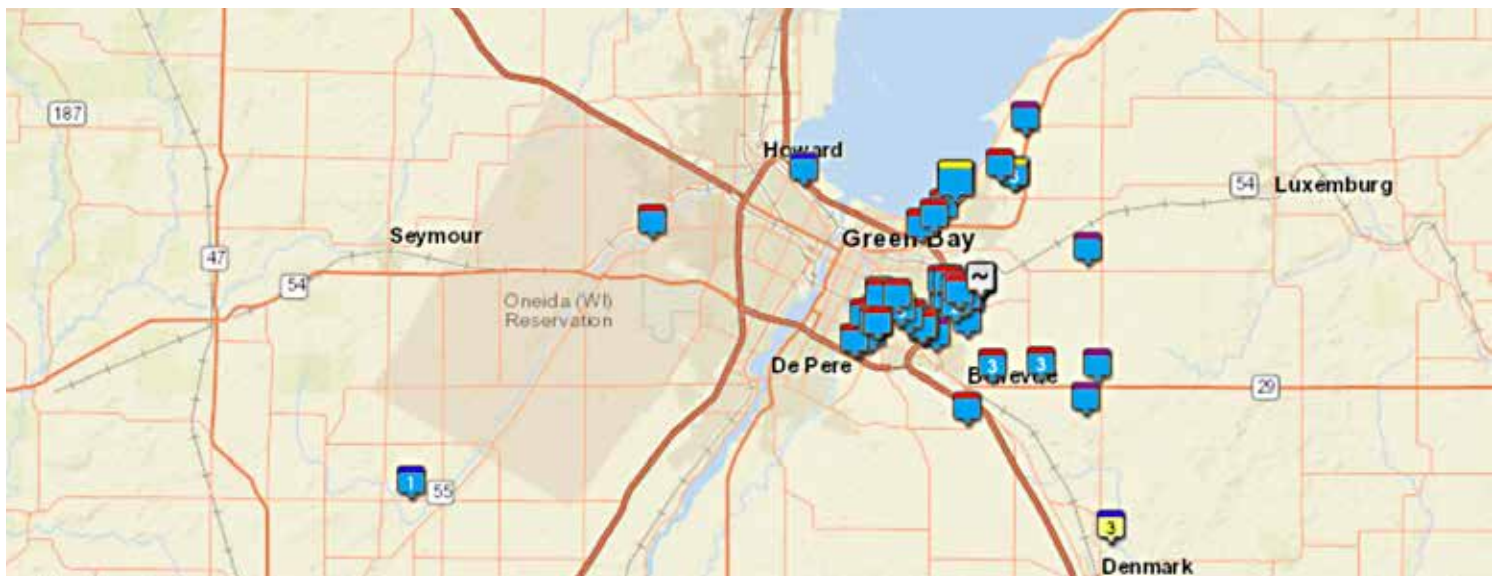
By searching a location, multiple facilities appear, along with the reports written about them. Citizens can then track to see if permit holders are following their issued permits correctly.

ECHO also has a tab for members of the community to report a violation directly to them. When evaluating the tips and complaints, the EPA will decide if they want to open an investigation regarding the issued complaint. There is a short form that citizens can fill out to report a violation they have observed.

The Clean Water Action Council of Northeast Wisconsin uses ECHO to monitor compliance with permits. The Executive Director Dean Hoegger, explained why the ECHO database is a key component in the enforcement of permits. “The Clean Water Action Council reviews the echo database for serious permit violations, and when found we refer those to attorneys at Midwest Environmental Advocates. One example was an air pollution permit violation by Appleton Coated. Reporting this violation led to an agreement to replace a coal-fired boiler with a natural gas boiler.”



CWAC photo



Reports made to EPA in the general Green Bay Area as found on <https://echo.epa.gov/>.

The DNR's webpage also has the option to browse active permits. The permits issued by the DNR have requirements that require businesses to monitor and report their pollution discharges.

If a citizen is unsure if a violation has occurred, the WDNR webpage is a great tool to learn the environment laws in Wisconsin. The webpage can be accessed at <https://dnr.wisconsin.gov/>, then type in 'pollution permits' in the search bar, or click on 'Environment' at the top of the page. The webpage gives summaries of several laws that citizens can view. It also links the webpage of the Wisconsin State Legislature for the specific chapters of the law it is referencing.

The Clean Water Action Council also provides information on the newest Wisconsin Pollution Discharge Elimination System (WPDES) permits in the *Weekly Update*, which is another way to monitor new permits, renewals, and requests for variances in northeast Wisconsin. Variances have been a special area of concern especially for increased releases of mercury into the waters of the state.

In addition to ECHO and the DNR, the Department of Agriculture, Trade and Consumer Protection (DATCP) provides a wide range of information regarding licenses and permits for the public to view. Their webpage can be found at <https://datcp.wi.gov/Pages/Homepage.aspx>

On DATCP's webpage underneath "Licenses/Permits" is a list of all the permits in Wisconsin related to agriculture and the environment. Citizens can use these permits to monitor local farms, businesses, etc. to make sure they are not violating the requirements of their permits.

By utilizing the EPA, DNR, and DATCP databases, the public can monitor permit compliance from the comfort of their own home. By monitoring permits, citizens can inform government agencies that compliance action is needed. If the agency does not act, then citizens and environmental groups may need to take legal action.

Citizens use the courts to protect the waters of the state.

By Dean Hoegger

As you may have already read in this issue, the federal Clean Water Act (CWA) and the federal Safe Drinking Water Act have provisions for citizen lawsuits against polluters as well as opportunities for citizens to object to Wisconsin Pollution Discharge Elimination System (WPDES) permits. These acts also allow citizens the right to sue government agencies when they believe permits should not have been issued or that permit enforcement is insufficient.

This year, we have seen Wisconsin Manufactures and Commerce (WMC) take aim at the Wisconsin DNR's authority over hazardous chemicals. After the DNR settled a lawsuit brought by WMC to limit the agency's authority to order PFAS testing and making the results public, red flags went up in the environmental community.

Observers at Midwest Environmental Advocates acted when WMC filed a second lawsuit against the DNR to limit its authority to enforce provisions of the Spills Law. Although the case focused on PFAS, the case could have broad impacts on the DNR's enforcement authority over many other hazardous chemicals. This prompted MEA to make efforts for citizens to have a voice in this case.

A "**Motion to Intervene** and Alternative Motion to File Non-Party Brief and Conditional Motion to Intervene" was filed on behalf of Citizens for a Clean Wausau, Clean Water Action Council of Northeast Wisconsin (CWAC), River Alliance of Wisconsin, Wisconsin Environmental Health Network, and Doug Oitzinger. The court denied our request to become interveners in the case, which would have given us the right to not only argue that the merits of the lawsuit were unfounded, but also to not accept an unsatisfactory settlement between the DNR and WMC.

A strategy left to us was to file an **Amici Curiae brief** to have the court consider our concerns when making a ruling or accepting a settlement between the parties. The case will be heard on **December 21st**. The Link to view remote proceedings is on this website: <https://www.wicourts.gov/courts/livestream.htm>. It is the Waukesha, Branch 1 court.

We saw similar efforts by the Dairy Business Association when they sued the DNR in 2017 to limit the agency's authority to enforce the CWA in agricultural settings. In this case, the DNR settled with the DBA giving up some of its authority to protect water quality from runoff from concentrated animal feeding operations. However, in this case, **CWAC, along with several other environmental groups, sued the DNR** regarding their agreement with the DBA. The Milwaukee County Circuit Court Judge William Pocan found the agreement between the Wisconsin Department of Natural Resources and the State's largest dairy business lobby violated state law, thereby reinstating some of DNR's authority.

Sometimes it is necessary to sue polluters when violations of their permit persist, and a government agency has not ordered a correction. By monitoring permit compliance in the EPA's ECHO data base as well as state data bases, uncorrected violations can be found, as was the case with Utica Energy of Oshkosh. A notice of intent to sue under the CWA is the first step in seeking a remedy.

Negotiations can sometimes be successful without going to court. This was the case with giving notice to Appleton Coated, LLC which resulted in closing a coal-fired boiler. But not so with Utica. That case was won in federal court, our attorneys were reimbursed for legal fees, and the court ordered damages that went to Winnebago County Land and Water for



Stream bank erosion is mitigated on Sawyer Creek with riprap and native plantings using funds from the Utica settlement.
Photo courtesy of Winnebago Land and Water Conservation Department.

water quality improvements for the stream where the illegal discharge was occurring.

As you can see, state and federal courts can offer opportunities to bring polluters and government agencies to task. CWAC thanks Midwest Environmental Advocates for their tireless efforts in representing our members for most of our legal actions in the last 12 years. Legal actions are costly, so we welcome donations for this need. With your help this year, we were able to donate \$1200 to MEA.

Make sure your voice is heard. Contact your state legislator.

By Andy Wallander

As a constituent, you can contact your legislators for any number of reasons. One of the most common reasons for contacting legislators may be to share your thoughts on a specific piece of legislation that will be up for debate and voting, or a general topic that the legislature is likely to take up in the future. You may agree or disagree with your legislator's position on the subject. Whatever the case, a brief phone call or short e-mail message may be all that is needed to register your position. Legislative office staff will record this information, so that the legislator knows his or her constituents' viewpoints.

A contact may be made to request legislation on a specific issue. Ideas for legislation come from many sources. The most important source is from individuals like yourself. Your suggestion for a piece of legislation may relate to public policy, such as taxes or addressing adequate funding for a particular program, or it may be a very specific request pertaining to a particular situation that you have encountered.

Most legislators maintain regular local "office hours" or hold local "listening sessions" back home in their districts. These sessions provide an opportunity to give constituents direct local access to the legislator. Check with the local newspaper or the legislator's website for announcements, or

call the legislator's Capitol office for specific dates, times and locations.

Be as specific and clear as possible. If you are contacting your legislator regarding legislation, be sure you know and cite the exact bill number. If you are making contact to recommend legislation, describe the specific problem that you believe needs to be addressed. And, if you have a particular solution in mind, describe that as well. Be sure to clearly state any personal reasons for the positions you want your legislator to take.

Describe your opinions and wishes clearly. Give as many of the details as you can. Do not withhold any information. The legislator's staff people will need a complete picture of the problem if they are to help you.

If you want to influence a vote, you need to get your correspondence to your legislator before the vote is taken. Take the time to learn about the issue and then sit down and write an e-mail or letter in your own words or make a phone call stating your own thoughts. On controversial topics, advocacy groups will provide legislators with hundreds, if not thousands of identical post cards or phone calls. Legislator staffs do count and record these contacts, but naturally give them less weight than individually composed personal communications.

Base your comments on your own personal experiences. A personal story will have a stronger impact than a generic statement of position. If you are contacting your legislator because you disagree with them, remember to be courteous and respectful. Your first two-way contact will likely be with your legislator's staff. Legislative staff will usually have as thorough a knowledge of an issue, if not more than the legislator they work for. These staff people will work with you in any way they can, even if you disagree with your legislator.



Wisconsin State Assembly Chamber (Photo courtesy of Wikipedia Commons)

An easy tool to find out who your specific legislator is can be found on the Wisconsin legislature's home page at <http://legis.wisconsin.gov>. In the center of that page is a button labeled "Who Are My Legislators," where you can type in your home address.

If you do not have computer access, you can call your local town, village, or city clerk's office to find out who represents you in the state legislature. The local library may be able to help as well.

There are a few ways that you can contact your legislator. You can contact your legislator by phone, either back in your district, or at their capitol office in Madison. You can find legislator's phone numbers on their home pages. To locate their home page, go to the Wisconsin legislature's home page, at <http://legis.wisconsin.gov>, click on "Senators" or "Representatives," and then scroll down to find a specific legislator.

You can also contact your legislator by mail at one of the following addresses:

For Representatives whose last names begin with a letter from A through L;
P.O. Box 8952, Madison, 53708-8952.

For Representatives whose last names begin with a letter from M through Z;
P.O. Box 8953, Madison, 53708-8952.

All Senators can be mailed at the following address;
P.O. Box 7882, Madison, 53707-7882.

The e-mail addresses of members of the Wisconsin Legislature share the same format:

For Assembly Representatives, the form is Rep.Jones@legis.wisconsin.gov

For Senators, the form is Sen.Jones@legis.wisconsin.gov

Always provide your name and contact information. Include contact information on any written correspondence you send in case the envelope is lost or discarded after being opened. Also provide your mailing address on any e-mail communication that you send as well.

When citizens act together to make their voices heard, there is a greater chance of influencing legislation. **Make sure your voice is heard!**



The Role of Local Government: Understanding How to Leverage the Power of Your City, Village, County, and Town Board

By Adam Voskuil

Wisconsin is made up of 72 counties, 1253 towns, 190 cities, and 411 villages, all of which are distinct units of local government. Though their jurisdiction may overlap, each unit has some degree of independent authority. However, local government's authorities come from different sources of law, meaning counties, towns, cities and villages are not all able to pass the same laws. As such, understanding the differences between local government units can inform communities, letting them know what they can and should ask for from their representatives.

Cities and Villages

For almost 100 years, cities and villages have exercised power known as "constitutional home rule authority," which provides those government units with the power to determine local affairs. This expansive authority gives cities and villages the exclusive power to regulate matters concerning their local matters and limits the span of that authority only when matters of broader, statewide concern or state law applies to every city or village.

Cities and villages have also been granted statutory home rule authority, which is distinct from constitutional home rule authority. Through statutory home rule authority, cities and villages also have the power to regulate matters of statewide concern unless otherwise overruled by state law.

This very broad power gives a city or village authority over municipal property, finances, highways, streets, navigable waters, and the public service. Statutory home rule authority also empowers a government unit to act for the government and good order of the municipality, for its commercial benefit, and for the health, safety, and welfare of the public through license, regulation, taxes, appropriation, fine, confiscation, and other necessary or convenient means. In sum, cities and villages have very broad grants of power to regulate within their boundaries.

Counties

Unlike cities and villages, counties have only the powers given to them in state statute. The Legislature has granted what is known as "administrative home rule," which is similar to constitutional home rule in that counties can regulate matters of purely local concern unless superseded by state law that applies uniformly to all counties.

Those local functions typically include the power to collect property taxes, construct and maintain highways, engage in land use planning, and maintain parks and recreational facilities. Beyond those powers, administrative home rule simply allows counties to organize their internal departments. As such, administrative home rule is more limited than constitutional home rule. For example, when an issue is of both statewide and local concern, state law will typically overrule county law addressing the same or similar issue.

Towns

Like counties, Wisconsin towns are creatures of state law. Generally, towns have not been granted the powers associated with constitutional or statutory home rule authority, and only have limited powers to regulate the affairs of the town. However, towns may choose to have greater planning and regulatory authority by adopting what is known as "village powers,"

allowing the town to exercise what amounts to statutory home rule authority.

Adopting village powers is not a trivial act; town electors must authorize the town board to exercise village at a town meeting through a resolution. The resolution, and consequently the village powers, remain in effect until the board or electors rescind those powers.

Notably, it may be difficult to determine whether a town has adopted village powers, and community members who are uncertain should contact their town clerk for assistance and review past meeting minutes. If a town has not adopted village powers, the town board's authority to draft and enact protective ordinances is severely limited.

What this means

Clearly, the powers of local governments vary drastically. However, regardless of size, one universal requirement is that local governments must consider current state law. Legislation that applies generally across the state will overrule local laws. Moreover, state law that conflicts with local laws may be subject to lawsuits.

Given the variability in authority, some ordinances may only be possible at particular levels of local government. As outlined above, cities, villages, and towns with village powers have broader authority to pass ordinances responding to public concerns, particularly ordinances meant to protect the health, safety, and welfare of the general public.

For example, in Kewaunee County, a number of towns with village powers have passed manure spray irrigation ordinances. Similarly, the village of Nashotah and the city of Delafield both passed ordinances mandating that any fertilizer, including manure, that is spread within their municipal border, must be produced within the municipal border. The power to pass local laws is not limited to agriculture, and additional examples are available upon request from the author. Ultimately, there are many regulatory options available to local governments.

In sum, though county-wide regulation would seem to be the most effective way to effectuate change in your community, limitations on local authority may prevent county-wide action. Rather, the constitutional and statutory home rule authority of cities, villages, and towns that have adopted village powers may be the best option to pass protective laws in your community.

About the author: Adam Voskuil is a staff attorney at Midwest Environmental Advocates. He graduated from the University of Wisconsin-Madison with degrees in Conservation Biology and Sociology and certificates in Environmental Studies and the Integrated Studies of Science, Engineering, and Society. Adam earned his law degree from the University of Minnesota-Twin Cities with an Environmental and Energy Law concentration. Adam can be reached at avoskuil@midwestadvocates.org.



Passing legislation is like makin' sausage.

By Andy Wallander

Otto von Bismarck, who lived in the late 1800s, was a conservative German statesman, diplomat, and writer. He is credited with saying, "If you like laws and sausages, you should never watch either one being made." In other words, the legislative process, or how a bill becomes a law, though messy and sometimes unappetizing, can produce healthy, wholesome results.

To find legislative documents and follow the legislative process can be found at https://legis.wisconsin.gov/lc/media/1387/citizen_legislative_process.pdf.

A bill may be introduced in either the State Assembly or Senate, where it is read by the legislative body's Chief Clerk. This is known as the "First Reading." The proposed bill is then published in the legislative body's Journal and referred to an appropriate standing committee.

An introduction to the state's legislative bodies and structure can be found at https://legis.wisconsin.gov/lc/media/1386/citizen_intro.pdf.

The standing committee carefully reviews, studies, and debates the bill. It will often host one or more public hearings on the bill where the public will have opportunities to provide comments on the proposal. A guide describing how to testify at a public hearing can be found at https://legis.wisconsin.gov/lc/media/1389/citizen_testify_final.pdf. The standing committee will hold a vote and report the bill out of committee.

The bill is usually referred to the legislative body's Rules Committee, where this committee can then either place the bill on the calendar for a "Second Reading" followed by debate before the entire legislative body, or vote to take "No Action."

The Second Reading is the stage where the bill is debated and amendments to the bill are considered. Amendments can be either "simple" or "substitute" amendments. A simple amendment makes changes to parts of the original bill or substitute amendment. A substitute amendment completely rewrites and replaces a proposed piece of legislation. At the successful conclusion of this phase the bill is placed on the calendar for the "Third Reading" and final passage.

After passing one house of the legislature, the bill will go through the same process in the other house (i.e., Assembly or Senate). If any amendments are made to the bill in one house, they must be agreed with or concurred with by the other house. The bill must pass both houses in identical forms to become law. When the identical form of the bill is accepted in both houses, it is signed by the respective legislative leaders and sent to the Governor.

The Governor may either sign the bill into law or veto all or parts of the bill. If vetoed, the legislature may override a veto with a two-thirds vote in each house. If the Governor

fails to act on the bill within a specific time frame it may become law without the Governor's signature.

A glossary of common legislative terms can be found at https://legis.wisconsin.gov/lc/media/1393/citizen_glossary.pdf

More on how a bill becomes law can be found at: <https://legis.wisconsin.gov/assembly/acc/media/1106/howabillbecomeslaw.pdf>

Local resolutions can be powerful political tools.

By Casey Hicks

Resolutions are often the pieces of policy that are joked about by politicians and elected officials for being “feel-good” statements that sit gathering dust in an untouched file cabinet. In some cases this may be true, but when crafted with actionable next steps and with the intention to build grassroots support beyond the resolution, they are powerful tools for change locally and beyond.

For the last few years, Wisconsin Conservation Voters, has been engaging local communities to commit to 100 percent clean energy by passing resolutions at the local level. The strategy is much more complex than creating “warm-fuzzy feelings,” as some would like you to believe.

The most immediate impacts can be felt within the community where they are passed. In Brown County, for example, our goal was to pass a resolution that created a goal of reaching 100% clean energy and would setup a committee to work toward realizing that goal. The resolution to “Establish an Energy Subcommittee” passed in 2021, thus creating the county’s Energy Subcommittee. The subcommittee has already begun engaging consultants to benchmark the county’s energy usage to develop a climate action plan.

Local governments can do even more with resolutions. When we campaigned for Green Bay Area Public School District to pass a resolution committing to 100 percent clean energy by 2050, they inserted a clause launching a capital



WCV activist Grace Quinn, speaks at a recent Appleton City Council meeting in favor of creating a 100% clean energy resolution.

improvement fund meant specifically for energy efficiency and clean energy installation. They wrote a statement updating their student health policy to incorporate the effects of climate change. They designated a staff member to lead the charge on planning and implementation.

Local governments are often the largest ratepayers for utilities, given that they own large expanses of buildings that can consume large amounts of energy. If multiple governments are making clean energy commitments, it sends a clear message of what local demand is to utilities. In fact, many of Wisconsin’s major investor-owned utilities are committed to becoming net-zero by 2050 or earlier. Passed en masse, these resolutions can also influence the next levels of government.

When local clean energy resolutions are passed that identify actionable steps to take, they create a need for local governments to fill. That need comes in the form of funding, technical assistance, partnerships, and much more. Sometimes these needs can’t be met because of limitations local governments often face, levy limits, budget constraints, and lack of available expertise or resources. These needs put heavier pressure on the state and federal government to help local government. And in fact, we are seeing the effect of that pressure happening in real-time.

In 2009, Congress passed the American Recovery and Reinvestment Act to ease the hardship of the Great Recession and pump up the economy. In total, the federal government would spend \$831 billion dollars by the year 2019. The package included \$90 billion for “strategic” investments in clean energy and incentivized approximately \$150 billion in private investments. A paltry sum out of the entire package. In 2009, local clean energy and climate commitments were almost nonexistent. If they did exist, they were often buried deep within one section of 10-year comprehensive plans – not stand-alone policy such as resolutions.

Today, those numbers have grown exponentially. When you zoom out to look at the entirety of the United States, there are over 200 local governments with clean energy commitments. Those local resolutions and policies are one reason why we now have \$555 billion proposed solely for climate in the Build Back Better Act. Which constitutes almost half the total cost of the framework.

Communities have also passed resolutions to effect other environmental change. The Town of Peshtigo is situated within the third worst PFAS contamination area in country. They recently passed a resolution calling on the state legislature to pass the CLEAR Act – the most comprehensive set of PFAS solutions to be introduced yet in the state. The resolution pressured Senator Eric Wimberger to co-sponsor the bill since Peshtigo is in his district. However, he has yet to do so. State standards for PFAS are a must for protecting drinking water because local governments cannot pass their own standards. In this case, one of the few tactics this small town has left is to pass a resolution to pressure the legislature. These types

of resolutions also compel constituents to take individual action.

When crafted with the intention of mobilizing constituents to take action, determining what the next actionable next steps should be, and then putting pressure on other levels of government, resolutions can be dynamic tools for change.

As the old saying goes, all politics is local. And real change can begin at home.

About the author: Casey Hicks is an organizing director for the Wisconsin Conservation Voters. He leads a team of field organizers to expand the voice of conservation voters and advance clean energy, water, and democracy priorities throughout Wisconsin.

Denying a Social License

By Dean Hoegger

When all else has failed, it may be time to deny what is referred to as a social license. While not an official license issued on paper, a social license is granted when the public generally supports or at least does not actively oppose a permit or action. When a company is not in violation of a law, or a government agency is failing to act as needed, then applying public pressure might be a useful strategy. Using the “court of public opinion” can motivate elected officials to put pressure on agencies to act.



Image courtesy of No Back Forty Mine Facebook page.

Denying a social license is especially useful when a private company is seeking investors or could be financially harmed by public opposition to a permit or project. That has been one of the strategies used to oppose the construction

of the Back Forty Mine along the Menominee River in the upper peninsula of Michigan. Educator and unsafe mining operations opponent Dr. Al Gedicks has developed the social license concept by promoting numerous writing campaigns to the mine investors—and with success. The mine has yet to be built! CWAC actively participated in that effort.

CWAC used a similar strategy to stop the Oneida Seven Generations Corporations from building a gasification incinerator in Green Bay. In that case, the Oneida tribe was the investor along with government grants. So, petitions were circulated with signers not only saying they did not want the incinerator built, but that they would also not support tribal businesses until the project was scrapped. Over 1,000 petitions were delivered to both Oneida tribal officials and the Green Bay City Council with the media watching. The incinerator was not built.

Similarly, we successfully convinced over a dozen town boards to pass manure spraying bans using petitions and by petitioning in person at town meetings. Another five towns

acted on their own after seeing the public sentiment.

While these are only a few examples, they are local and successful. Please contact us if we can support your efforts to deny polluters their social license to conduct business as usual.



The Action in Clean Water Action Council

By Dean Hoegger, CWAC President

Thank you to the many members who renewed in 2021, supported the banquet and fundraiser, and volunteered at Packers game concessions! All these efforts helped pay for our work in 2021.

It is time to renew for 2022 with this winter newsletter.

Even if you did not renew in 2021, we kept your membership active. If renewal slipped your mind, you could make a more generous donation at this time. A monthly payment plan can also be set up using the link below. To check your membership status, look at this newsletter label which shows your last renewal year. E-mailed newsletters include the last renewal year in the body of the e-mail. Membership donations provide funding for many of our operations, and we offer the opportunity to sponsor a newsletter or an intern, beginning at the \$250 level.

You can mail your membership donation with the enclosed form, or go online to <http://www.cleanwateractioncouncil.org/membership/>

Read below about the actions we have taken in the last three months. Be sure to contact us if an environmental issue arises in your community. CWAC is here to support citizen action.

Legal Actions

As a citizen organization, an important function of CWAC is to take legal actions on behalf of our members to protect human health and the environment. Because individual members may be reluctant or unfamiliar with how to file a legal action, the CWAC Board of Directors believes that taking legal action on behalf of our members is an important part of our mission. Here are some current legal actions and our efforts to improve environmental laws.

Actions to Stop the License Extension of the Point Beach Nuclear Reactors

Since the beginning of the year, we have been working with the nonprofit group Physicians for Social Responsibility-Wisconsin (PSR-W) to stop the license extension. While there are many reasons to oppose the license extension from 60 to 80 years, the primary reason is the threat to human health. Our first effort was to help find intervenors who could represent concerned citizens by providing testimony to the Nuclear Regulatory Commission (NRC).

On March 23, 2021, PSR-W filed a legal request on

behalf of its Wisconsin members and ten local intervenors for a hearing on the 20-year license extension application for the Point Beach Nuclear Reactors located near Two Rivers, Wisconsin. That request for a hearing was denied.

An appeal of the decision was then filed, which is currently being decided by the head commissioners of the NRC. In the meantime, we are urging our readers to submit comments on the Draft Environmental Impact Statement. The deadline is January 3, 2022.

There will be two public meetings on December 8, 1-3 PM and 5-7 PM. More information about why residents of Northeast Wisconsin should be concerned, what to include in your comments and where to send them, and details about the December 8 meeting can be found at <https://www.closepointbeachnuclear.org/eis> and additional information is available at <https://mailchi.mp/ec15200c623f/action-deis-comments>.

CWAC Seeks to Intervene in the WMC vs WDNR Waukesha Circuit Court Case

On June 14th, CWAC, together with several other organizations and one individual filed for intervenor status in a Waukesha County circuit court case. We believe the Wisconsin Manufacturers and Commerce brought the suit to limit the Department of Natural Resources' (DNR) ability to investigate and remediate environmental contamination under the Spills Law.

At risk in this case is the DNR's broad authority under the Spills Law, which gives the department the flexibility to address the spill of any substance that poses a hazard to public health or the environment as the need arises, such as the case with extensive PFAS contamination in Wisconsin.

On September 17 the court heard our motion for intervenor status. Although the motion was denied, the judge seemed receptive to hearing our concerns submitted as a friend of the court brief. This Non-Party Amici Curiae Brief was filed on October 1. We await a decision by the court.

Midwest Environmental Advocates is representing our group in the case. CWAC was able to raise \$1000 for some of the legal costs of the case from donations and the October banquet and fundraiser.

CWAC Monitors for Plowing Violations.

We resumed monitoring this fall with the use of a drone to find violations where cultivation was occurring within five feet of a stream bank. Close cultivation creates a greater risk of soil and nutrients entering the watershed and finding their way to Green Bay and Lake Michigan.

Several potential violations were submitted to county conservation offices, which will need follow up in the spring. By reporting previous violations, we helped bring about several 35' conservation easements, which provided significant protection to those waterways.

CWAC Alerts Readers about Pollution Permits and Other Actions

We monitor notices for new water pollution permits and renewals, and alert readers by way of our *Weekly Update* e-mailed to over 1,200 people. We suggest actions regarding pending or needed legislation.

PAH and Coal Tar Sealant Ban

Coal tar-based sealant for asphalt pavement is known to be a serious health threat because it contains polycyclic aromatic hydrocarbons or PAHs. According to the Army Corps of Engineers, children living near surfaces treated with this sealant have a 13-fold increased risk of developing certain cancers and a lifetime exposure can result in a 38-fold higher risk of cancer.

Since the legislature has not acted to protect citizens from this hazard, working with local governments to ban the use of the sealant will be a top priority for the spring of 2022. It is imperative that we act to protect our children in schools, daycare centers, churches, and apartment complexes where there is asphalt pavement. Green Bay, De Pere, Sturgeon Bay, and other communities along the lakeshore have already done so.

Contact us to help get a ban passed in your community. Click this link for a slide presentation on the topic: <https://www.youtube.com/watch?v=0xjvi-leDHg&feature=youtu.be>

The Petitions to the EPA for Corrective Action for Administration of the Clean Water Act and The Safe Drinking Water Act

These petitions are still active. Our paralegal interns assisted Midwest Environmental Advocates this summer by reviewing the status of the CWA petition in preparation for future meetings with the Environmental Protection Agency. CWAC Director Dean Hoegger met with MEA attorneys this fall to review the status of SDWA petition and plan future action.

Educational Efforts in the Community

CWAC Annual Banquet and Fundraiser

The Dine and Bid for the Environment event was held on October 7 at the Riverside Ballroom with 140 in attendance. Midwest Environmental Advocates Director Tony Willken-Gibart gave a presentation about legal actions to protect the waters of the state. Dr. Al Gedicks was recognized as CWAC's Environmental Citizen for 2021 for his work to educate the public about environmental threats from mining. Phil and Barbara Nelson performed during the silent auction, which provided funds for legal fees and other operational expenses.

LLI Presentation

About 50 Lifelong Learning Institute members attended our presentation in September at UW-Green Bay about progress and problems related to water quality in northeast Wisconsin. Another presentation is planned for April which will focus on legal actions to protect our waters.

Food Waste Composting Education

We hosted a workshop on September 14 where three composters were sold and another 4 were sold at the banquet for total of 60 composters placed in the community to keep food waste out of our landfills where it can release harmful methane gas.

PSR-W Point Beach License Extension Presentation

We hosted a presentation by Physicians for Social Responsibility about why citizens should act to Stop the License Extension of the Point Beach Nuclear Reactors at UW-Green Bay on November 9.

Presentations Available

Here is a list of current presentations that can be given in-person or via Zoom. The presentations can be tailored to your group's geographic location, age, and available time. Also, contact us if you would like us to promote or co-sponsor your event or presentation.

- Citizen Action to Protect the Waters of Northeast Wisconsin
- Using Local, State, and Federal Laws to Protect the Waters of Northeast Wisconsin
- Communities on the Road to Zero Waste
- The Health Hazards of Burn Barrels
- The Health and Quality of Life Hazards from Manure Spraying
- The Health Threat from Coal Tar Pavement Sealants
- Micro-plastic Pollution from Clothing

Newsletter Outreach

The fall newsletter, The Search for Sustainability was sent to 550 members in September, and more were given away at the LLI presentation and the CWAC banquet. There are limited printed fall and winter newsletters remaining should you want to distribute them to a group or organization. Newsletters are also available on our website at: <https://www.cleanwateractioncouncil.org/newsletter/>

Get Our Weekly Update by E-mail

Each Tuesday we e-mail the CWAC *Weekly Update* with actions, alerts, events, and the latest information on topics of concern. Send your postings by Monday evening. If you are a member with an e-mail address and you are not getting the CWAC *Weekly Update*, check your spam folder before e-mailing us to request to be put on the mailing list. If you are a member and getting more than one *Update*, let us know and we will fix that.

If you are reading this newsletter as a non-member, e-mail us at contact@cleanwateractioncouncil.org to be placed on the free *Weekly Update* mailing list. E-mails are sent via BCC to protect your privacy.

Again, not receiving the *Update*? Send us an e-mail request. It is sent out once a week via BCC e-mail.

Health Forums

We are researching potential presenters and seeking funding to host one or more presentations regarding how environmental factors can negatively affect genetic risk factors for breast cancer.

Contact us if you have suggestions for other topics or speakers. We are **seeking business or member sponsors for individual health forums beginning at the \$200 level.**

Outreach through Newspaper and Radio

CWAC sends press releases to local media, and we are often contacted to comment on developing environmental issues.

Website Updates

Past newsletter issues can be found on the website as well as updated articles and additional resources at <https://www.cleanwateractioncouncil.org/>

CWAC Provides Interns with Valuable Experiences

We provide our interns with valuable experiences and strategies for managing a non-profit organization. We were pleased to have Alexandra Davis and Sydney Gang as fall interns. Sadie Hunter and Bricken Brown will be interning during the Spring Semester.

We are thankful for the 2021 and 2022 intern sponsorships by Marge and Ken Bukowski. Contact us if you would like to learn more about sponsoring a student intern.

Attendance at Conferences and Meetings with Other Environmental Groups

We participated in the Sustainable Rural Agricultural Project's Building a Socially Responsible Food Future over three days in December.

We attended many of the biweekly meetings with the No Back 40 Mine group, monthly meetings with directors of other state environmental groups, and worked closely with Physicians for Social Responsibility to prepare literature and website postings to educate the public about the 20-year license extension of the Point Beach Nuclear Reactors.

Water Sampling

For the fifth consecutive year, CWAC participated in the DNR's Lower Fox River water sampling program. This was the fourth year of water sampling and stream assessments for Baird Creek on Green Bay's east side. Samples were taken June through October and submitted to the DNR.

CWAC's Non-Profit Status

To learn more about our non-profit status and financials, go to the Wisconsin Department of Financial Institutions, Credential Lookup, and then go to Credential Search for Clean Water Action Council (<https://www.wdfi.org/ice/berg/Registration/Financials.aspx?chid=933009&h=1122515367>)

Citizen Complaints

Many of our more extensive actions, some requiring legal work, resulted from a follow-up of citizen complaints. Keep us in mind if you have an environmental concern, and our support is needed.

ONLINE EVENTS:

1st and 3rd Saturdays, 9:00 a.m. – 2:00 p.m.

Market on Military

The Plaza on the Corner of W. Mason and Military Avenue in the former Old County Buffet, Green Bay, WI

Enjoy an indoor farmers market on the 1st and 3rd Saturday of the month from November 6 to April 16 with lots of local sourced products. Small businesses will also be present and will be a must-attend event.

More information here: <https://militaryave.org/news/market-on-military/>

Saturday, December 18, 9:00 – 10:30 a.m.

Winter Bird Watching

Devil's Lake State Park, Baraboo, WI

Enjoy the changing of the seasons as we hike, look and listen for birds inhabiting our forests and lake this winter.

The naturalist will cover basic bird identification skills as well as suggest some good birding apps & tools. Meet at the Nature Center.

For more information, please contact Susan.

Johansenmayoeth@wisconsin.gov or call 1-608-256-8301 x.140

Saturday, December 18

Christmas Bird Count

Oshkosh, WI

On the annual Oshkosh Christmas Bird Count (CBC), observers record all the birds seen or heard within a fifteen-mile diameter around Oshkosh in one day in mid- to late-December. In addition to the count, species seen during the count but not recorded on the count day are also included in the results. The Oshkosh CBC has been conducted every year since 1964. The results are submitted to the National Audubon Society and the Wisconsin Society for Ornithology.

Please e-mail Tom Ziebell for more information:

ctiebell@new.rr.com

Saturday & Sunday, December 18-19

Christmas Bird Counts

Sturgeon Bay, WI

This is the time of the year when we begin organizing the annual Christmas Bird Counts.

We encourage more people to participate in these counts by contacting the coordinator to learn how they can help. The data that participants collect goes to the National Audubon Society and is available to researchers who study birds, habitats, and migration patterns. The future of wild birds is being affected by global climate change, and we may be able to help mitigate these conditions if we learn more about winter populations in various parts of the country.

Interested in helping with the two upcoming bird counts?

E-mail pr@ppulse.com and use the subject line, "Connect with Charlotte Lukes"

Tuesday, December 21, 9:00 – 10:30 a.m.

Nature time: Be-Kind-To-Earth-Gifts

Havenhoods State Forest, Milwaukee, WI

Preschool-aged kids 4 and under and parents are welcome to attend. After an introduction, we'll read a book, go for a nature walk if the weather is mild, and do a craft project! Some projects contain paint so please dress accordingly. Boots are encouraged in case of snow.

For more information, please contact Andrew.brawn@wisconsin.gov, or call 1-414-527-0232

Saturday, January 29

Toward Harmony with Nature

Oshkosh Convention Center, 2 N. Main St., Oshkosh

Celebrate the 25th annual Toward Harmony with Nature conference for an exciting all-day program of expert speakers, exhibitors and vendors, and networking with like-minded natural landscaping enthusiasts.

The event will feature keynote speaker Douglas W.

Tallamy, who is a Nationally Renowned Native Plant Advocate and Environmental Speaker. Tallamy is proposing that by adopting a new relationship with our environment, we can save nature and ourselves.

After the keynote speaker there will be a book signing, silent auction, lunch service, and more. This is a great opportunity to meet others that share the love for the environment.

For more information:

<https://www.towardharmonywithnature.org/schedule.html>

Saturday, January 29, 10:00 a.m. – 4:00 p.m.

Wisconsin Farmers Union 91st Annual State Convention Virtual Event

Ninety-one years ago, the founders of the Wisconsin Farmers Union knew family farms were worth fighting for. They gathered in solidarity to set policy that would improve life on their family farms and in their communities.

There will be a "Special order of business" which lists the most important items to the organization. These are prioritized based on the influence of the members. Bring your energy to the convention and help signal how the Wisconsin Farmers Union should focus their advocacy efforts on.

For more information: <https://wisconsinfarmersunion.growthzoneapp.com/maincalendar/details/wfu-91st-annual-state-convention-virtual-476409>

Tuesday & Wednesday, March 8-9

23rd Annual Fox-Wolf Watershed Conference

Virtual or at Hotel Northland, Green Bay

Experts across the state and country will join us (in-person and remotely) to speak on topics you care about including regulation & guidance, building resiliency to climate change, watershed recovery, green infrastructure, and more!

Watch for registration info in the weekly update in February.

MARK YOUR CALENDAR!

PERMITS

Submit comments by January 3:

STOP THE LICENSE EXTENSION OF POINT BEACH NUCLEAR REACTORS

Wisconsin Physicians for Social Responsibility

Point Beach Nuclear Power Plant (PBNP) has two reactors, Unit 1 and Unit 2. The plant is in Manitowoc County near Two Rivers, WI on the shores of Lake Michigan. The operating company that owns Point Beach is NextEra Energy.

Unit 1 was granted an operational license in 1970 and the current license expires in 2030. Unit 2 was granted an operational license in 1973 and the current license expires in 2033. NextEra Energy has applied for a subsequent license of extension of 20 years for both reactor units. This would bring the reactors allowed life to 2050 and 2053, meaning the reactors would be in operation for 80 years.

For additional information see the attached flyer. E-mail CWAC for a long list of operational concerns and violations. For more information or to request a presentation to your group, contact PSR Wisconsin info@psrwisconsin.org 608-232-9945 720 Hill St, Suite 200, Madison, WI 53705.

Submit comments on Draft Environmental Impact Statement (DEIS) comment process by January 3, 2022: E-mail comments to PointBeach-SLRSEIS@nrc.gov {OR} visit <https://www.regulations.gov> and search for Docket ID NRC-2020-0277 2.

Call or message your Federal Senators and Representatives Senator Tammy Baldwin (920-498-2668) <https://www.baldwin.senate.gov/contact> and Senator Ron Johnson (920-230-7250) <https://www.ronjohnson.senate.gov/email-the-senator>

Learn more here: <https://www.closepointbeachnuclear.org/>
And more information can be found here: <https://mailchi.mp/ec15200c623f/action-deis-comments>

Deadline for comment submissions: January 2, 2022

CAFO Updates

By Dean Hoegger

The Sustainable Rural Agricultural Project (SRAP) reports that of 15 Wisconsin facilities that are currently enrolled in California's cap-and-trade program, there has been an increase of over 15,000 animals since 2013 and another four are proposing expansions of an additional 2,700 animals. Expansion of these facilities further threatens our ground and surface waters.

Expansions are an even greater concern now that the Wisconsin Department of Natural Resources has abandoned rulemaking for nitrates, one of the most common groundwater contaminants affecting over 80,000 wells that do not meet the less than 10 parts per million standard. This is especially concerning in areas where large volumes of manure are being spread over sensitive karst landscape, such as in Kewaunee County and parts of Brown County. The Wisconsin Central Sands region is also highly susceptible to agricultural contamination.

While many area CAFOs have made use of grants and cost share agreements with money ultimately coming from the public to build digesters, nitrates and phosphorus are not removed and pathogens are only partially reduced through bio-digestion. A case in point is the **Dairy Dreams** CAFO. Owner Don Niles made the claim this summer that "We have to demonstrate that we've destroyed 999 organisms out of 1,000 (before land spreading the manure)."

CWAC paid for a freedom of information request to the DNR to obtain the manure analysis data on treated manure waste from Dairy Dreams digesters. The data showed that at an application rate of 13,500 gallons per acre there could still be as many as 281,528 colony forming units of fecal coliform bacteria (post treatment) per square foot of field surface area in liquid manure being spread on Kewaunee County fields. This is nowhere close to the 99.9% reduction that Niles claimed. It is therefore no surprise that more wells in the vicinity of Dairy Dreams tested with unsafe levels of pathogens this summer.

On July 8, 2021, the Wisconsin Supreme Court issued a ruling in the **Kinnard Farms** case that affirmed the DNR's authority to protect water resources from manure pollution. A group of Kewaunee County residents, represented by Midwest Environmental Advocates (MEA), challenged the CAFOs water discharge permit because it did not go far enough to protect water resources. The MEA press release reported that this is "a victory that many in the environmental law community have called one of the most significant Wisconsin court decisions of the last 50 years." Time will tell if the DNR uses the authority confirmed by the Court.

We will continue to investigate the cap-and-trade program that 15 Wisconsin facilities are enrolled in, and we await the publication of the updated SRAP Rap sheets which document hundreds of alarming violations by 16 dairy CAFOs in Kewaunee County. For more information on both topics, go to <https://sraproject.org/research-resources/srap-resources/>

Have you renewed your membership?

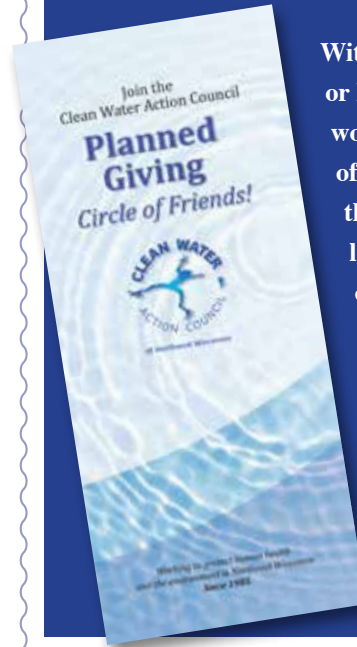
*See your newsletter label
or e-mail notice
which indicates the last year
that you donated.*

Thank you!

...to the many donors who made the fall banquet and fundraiser a success!

Ahnapee Brewer	Kavarna Café & Coffee
Al Woods	Keggers Bar
Andera	Kick Coffee
Andy & Kim Wallander	Kim & Andy Wallander
Angela Lensch Gallery	Kocken Chiropractic, De Pere
Art Street Artist	Longhorn Steak House
Back 9 Pizza	Luna Coffee Roasters
Believe LTD	Luxemburg-Casco Art Students
Bellevue Target	Madison Ave. Market
Bev Watkins	Maren Van Kirk
Bonnie Dennis	Mark Kolinski
Broken Spoke	Mary Carlson
Buffalo Wild Wings	Mckenna Giminder
Caffe' Tlazo	Mick Sagrillo
Captain's Walk Winery	Milwaukee Admirals
Carla Martin	Moe's
Carol Pearson	Monticello on Jefferson
Charlie Frisk	Nadler Automotive
Christine Lightener	Neville Museum
Curt Andersen	NextGen Golf
Dancing Bear	Noble Roots Brewery
Dan Eisenschink Remodeling	Oilerie
Danielle Brosig	Olive Garden
Dave Verhagen	Olive's Pizza
De Pere True Value	Olson Ford
Denny's Supervalu Foods	Passion for Hair
Door County Coffee	PDQ
Door 44	Popelka-Trenchard Glass
Dos Caminos	Rebecca Woodbury
Elaine Jones	Rose's Family Restaurant
Ellen Levenhagen	Sara Ramaker
Emily Ropsen	Scenic Shore Inn
Evelyn Pearson	Schroeder's Flowers
Festival Foods	Sher Brandl
Firehouse Subs	St. Brendan's Inn
Foxy Pedaler	Starbucks De Pere
Gallagher's Pizza & Village Grill	Steve Smith Birdhouses
Gary Austin	Strada Pizzeria
Gordon Engel	Susie Vania
Green Bay Botanical Garden	Tattoo Shop
Green Bay Packers	Terry Auger
Hannabella's Design	Texas Roadhouse
Harmony & Health Wellness Center	The Bike Hub
Haulin Pollen Apiaries	The Farm
Healthy Way Market	The Hairapist
Hoegger Pottery	The Riverside Ballroom
Jeff Miller	Village Roasters
Jersey Mikes	Von Stiehl
Jim Olson Motors	Wander Springs Golf Course
Jim Wagner Welding	Wave Pointe
Jodi Parins	Wendy Peche
John Filcher	White Lace Inn
John Rybski	Wisconsin Maritime Museum
John Wiater	Wisconsin Timber Rattlers
Joyce Fritz	Woodman's Grocery
Judith Rybicki	Yardstick Books
Judy & Nick Lom	

Join Our Planned Giving Circle of Friends



Without planned giving donations or legacies, our organization would not be able to do the work of protecting human health and the environment at its current level. Please consider supporting our endowment fund at the Greater Green Bay Community Foundation with a gift in your will or bequest.

*Contact us for a
Planned Giving
Brochure*



**Help Your Community Stop
the License Extension of
Point Beach Nuclear Reactors
from 60 to 80 years!**

See "Mark Your Calendar" and "Action in CWAC" in this issue for more Information.



Please follow us on Facebook.
Click here for our page: [Facebook](#)

Join or Renew Your Membership to Clean Water Action Council for 2022!

☐ Renewal ☐ New Member Date _____

() \$25 Individual () \$35 Family (**this amount would really help**)

() \$50 Sustaining () \$100 Donor () \$500 Benefactor

() Non-member donation of \$ _____ for _____

() Other \$ _____

() Please send me information about making a planned gift to CWAC

Name(s) _____

Address _____

City _____ State _____ Zip _____

Phone _____

E-mail _____

Receive FREE newsletters with each membership.

Please choose one...

☐ Printed version ☐ E-mailed version

PLEASE VOLUNTEER! (BE SURE TO PROVIDE PHONE NUMBER ABOVE)

☐ the newsletter ☐ events ☐ work at office ☐ mailings

☐ joining or leading one of the committees ☐ other

Send check or money order to: **Clean Water Action Council**
P.O. Box 9144
Green Bay, WI 54308

*CWAC is a registered non-profit organization.
Your contributions may be tax-deductible. **Thank you!***

Office location:
A307 MAC Hall, UW-Green Bay
2420 Nicolet Drive
Green Bay, WI 54311

www.cleanwateractioncouncil.org



Find us on [Facebook](#) or updates on hearings
and current or upcoming events.

The newsletter, "Clean Water Action Council of N.E. WI" is published quarterly by
the Clean Water Action Council of Northeast Wisconsin, Inc., P.O. Box 9144, Green Bay, WI
54308, a registered non-profit charitable, educational organization.
Contributions may be tax-deductible.

BOARD MEMBERS

Dean Hoegger

President & Executive Director
Door County
920-495-5127

Charlie Frisk, Vice President

Brown County
920-406-6572

John Hermanson, Treasurer

Door County
920-615-5978

Rebecka Eichhorn, Secretary

Brown County
920-290-2199

Lauren Felder

Jefferson County

Richard Kloes

Oconto County

Carol Pearson

Brown County

David Verhagen

Brown County

Jim Wagner

Brown County

Andy Wallander

Kewaunee County

INTERNS

Alexandra Davis

Sydney Gang

NEWSLETTER

Dean Hoegger, Editor

Bev Watkins, Graphic Design

<https://www.beverlyjanedesign.com>

CONTACT US

By phone: 920-421-8885

*If you leave us a message, we will try
to get back to you within 24 hours.*

By mail:

Clean Water Action Council
P.O. Box 9144, Green Bay, WI 54308

By e-mail:

contact@cleanwateractioncouncil.org



Clean Water Action Council
of Northeast Wisconsin
P. O. Box 9144
Green Bay, WI 54308



in this issue...

Page 1:

- **Using Local, State, and Federal Laws to Protect the Waters of Northeast Wisconsin**

Page 2:

- **Where does our right to the waters of our state originate?**

Page 3:

- **CWA Gives “Power to the People”**

Page 4:

- **Using the State Drinking Water Act to Protect Human Health**

Page 6:

- **Wisconsin’s Public Records Law**

Page 7:

- **Government data bases can be used to monitor pollution permits.**

Page 8:

- **Citizens use the courts to protect the waters of the state.**

Page 9:

- **Make sure your voice is heard. Contact your state legislator.**

Page 10:

- **The Role of Local Government: Understanding How to Leverage the Power of Your City, Village, County, and Town Board**

Page 11:

- **Passing legislation is like makin’ sausage.**

Page 12:

- **Local resolutions can be powerful political tools.**

Page 13:

- **Denying a Social License**
- **The Action in Clean Water Action Council**

Page 16:

- **Mark Your Calendar**

Page 17:

- **CAFO Updates**

Page 18:

- **Thank You to the Donors for the Fall Banquet**



For previous newsletters, go to: www.cleanwateractioncouncil.org