

Important Changes to Environmental Law in the 2015- 2017 Budget

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On July 12, 2015, Governor Walker signed the 2015-2017 biennial state budget, 2015 Wis. Act 55 (the "Budget"). The Budget contains a number of noteworthy changes to environmental law and policy in Wisconsin. These changes include the following:

- Previously, the Wisconsin Department of Natural Resources ("WDNR") administered the Petroleum Environmental Cleanup Fund Award ("PECFA") to reimburse owners of certain petroleum product storage tanks for a portion of the cost of cleaning up discharges from those tank systems. Governor Walker's line item veto set a new deadline of July 20, 2015 by which the WDNR needed to receive a claimant's notification of discharge and a potential PECFA claim, thereby effectively ending eligibility for new participation in the program. Existing PECFA claims will continue until the program ends on June 30, 2020.
- Under prior law, the amount a brownfields grant recipient needed to contribute to the project varied depending on the total cost of the project. In addition, the recommendations of both the Wisconsin Department of Administration and WDNR needed to be considered before a grant was issued. The Budget requires that the recipient of a brownfields grant must contribute to the project an amount that is equal to at least 50 percent of the amount of the grant. In addition, the recommendations of the Department of Administration no longer need to be considered.
- The Budget directs the Wisconsin Public Service Commission (the "PSC") to review existing studies conducted to ascertain the health-related impacts of industrial wind turbines, regardless of ownership or siting, on persons residing near the turbine installations. If the review shows that there are substantially negative health effects on persons residing beyond the 1,250 foot setback distance specified in current PSC rules, the PSC may, no later than 6 months after completing the review, submit a proposal for revisions to those rules to the legislative council staff. While this directive made it through from Governor Walker's proposed budget, the legislature removed any funding for this mandated review. Nonetheless, this directive could potentially lead to revisions of the PSC's existing wind-siting rules, which recently withstood a challenge at the Wisconsin Supreme Court.

- The Budget made several revisions in an attempt to make shoreland development regulations more uniform throughout the state. The revisions prevent counties from adopting shoreland zoning regulations that are more restrictive than the state shoreland zoning regulations. In addition, the WDNR and county shoreland zoning ordinances can no longer make regulations that impair the interest of a landowner in shoreland property with regard to several aspects of land use, including outdoor lighting, nonconforming structures, and vertical expansion. Moreover, neither WDNR nor counties can make regulations that require inspections and upgrades as conditions for sale or transfer of a structure.
- The definition of "lead-bearing paint" as a toxic substance — Wis. Stat. § 254.11(8) — was amended to read that lead-bearing paint is paint that has "more than 0.5 percent lead by weight in the dried film of applied paint" and more than one milligram (instead of 0.7) of lead per square centimeter in the dried film of applied paint. In tandem, the authority of the Wisconsin Department of Health and Human Services to promulgate by rule a more restrictive definition of "lead-bearing paint" to comport with a more restrictive federal standard has been eliminated. The new state definition is consistent with the federal definition for now, but in the event the federal definition becomes more restrictive in the future, the only mechanism to bring the state definition into alignment would be through legislative action. For the time being, the alignment of the state and federal definitions may ease burdens on the paint industry in Wisconsin.
- The WDNR is now permitted to enter into "cooperative agreements" with the United States Department of Agriculture for forestry activities on national forest land located in Wisconsin. Up to 10% of the revenues received by WDNR under such an arrangement will be contributed to the state conservation fund, until the total contributed pursuant to a "cooperative agreement" reaches \$750,000. The budget also requires WDNR to move its forestry headquarters from Madison to somewhere in Northern Wisconsin.
- In a last-minute amendment, counties and municipalities are now prohibited from placing environmental insurance requirements on pipeline owners that are different from state requirements.

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