

A Guide to AGENCY PERMITS & APPROVALS for Oil Pipeline Construction in Wisconsin*

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PRODUCED THROUGH A PARTNERSHIP OF MIDWEST ENVIRONMENTAL ADVOCATES & WISCONSIN'S GREEN FIRE

Environmental Review

■ Public input required ■ Public input may be required ■ No public input

The **National Environmental Policy Act** and the **Wisconsin Environmental Policy Act** require federal and state agencies to assess the impacts of their decisions on the environment. For oil pipeline construction in Wisconsin, the **Wisconsin Department of Natural Resources (DNR)** typically leads this assessment for state and federal agencies through the preparation of a **Draft** and then **Final Environmental Impact Statement**. DNR completes the environmental review process before it issues permits. For more information on the environmental review process, go to <https://midwestadvocates.org/assets/resources/EIS-Guide.pdf>.

DNR may use public process to identify issues EIS will address

Public hearing & 30-day comment period on Draft EIS

Endangered Resource Review

The **Federal Endangered Species Act** and the **Wisconsin Endangered Species Act** require state and federal agencies to assess the impacts of their decisions on listed endangered and threatened species. Federal agencies must consult with the **U.S. Fish and Wildlife Service (USFWS)** before taking any action that may impact federally listed species or critical habitat. If those impacts cannot be avoided, USFWS may issue an **Incidental Take Permit**. DNR may also issue an **Incidental Take Permit** when impacts to state listed species cannot be avoided.

60-day comment period on federal incidental take permits

Two-week comment period on state incidental take permits

Eminent Domain & Condemnation

Before constructing an oil pipeline in Wisconsin, pipeline companies must acquire the necessary property interests along the pipeline route. Pipeline companies may apply to the **Public Service Commission of Wisconsin (PSC)** for the power of **eminent domain** to **condemn** those property interests. The PSC may not grant the power of eminent domain without determining that it is in the public interest. For more information on eminent domain and condemnation, go to <https://midwestadvocates.org/assets/resources/PSC-Guide.pdf>.

Public input opportunities may vary, but include:

- Testifying
- Non-party briefs
- Public hearing
- Written comments

Wetland & Waterway Permits

The **U.S. Army Corps of Engineers** and DNR generally have overlapping permitting authority for wetlands and waterways, and typically work together through a joint permit application process known as the **Water Resources Application for Project Permits**. Wetland permits are required for the **discharge of dredged or fill material** into wetlands. Due to wetland impacts from oil pipeline construction along the entire route, a pipeline company usually has to obtain an **individual permit**, which requires mitigation of those impacts. An individual permit is also required to place a pipeline and associated material on or across the bed of a waterway. Permit approval is based on whether the pipeline will obstruct navigation, be detrimental to the public interest, reduce the flood flow capacity of the waterway, or adversely impact fish, wildlife, or scenic beauty. A waterway permit may not be needed when the pipeline is constructed beneath a waterway through methods such as directional boring.

Any person may request that DNR hold a public hearing

Minimum 30-day comment period on permit application

General Permits

Unlike individual permits, which are issued for specific projects, **general permits** are issued for categories of projects that have similar, known impacts that can be regulated using the same permit terms and conditions. Public input opportunities for general permits occur when those permits are issued, not when an applicant seeks coverage under a general permit.

No public input opportunity on a general permit when it is issued for a project.

HYDROSTATIC TESTING DISCHARGE PERMIT

Once a pipeline is constructed, it must be pressure tested. This test is conducted with large amounts of water, which the pipeline company must discharge from the pipeline. To do so, the pipeline company must obtain coverage under a **General WPDES Permit for Hydrostatic Test Water** from DNR.

STORM WATER CONSTRUCTION PERMIT

When the construction of an oil pipeline will disturb one or more acres of land, the pipeline company must obtain coverage under a **General WPDES Permit to Discharge Construction Site Storm Water Runoff** from DNR. This permit requires management of construction runoff to control erosion and protect water quality.

ROAD CROSSING PERMIT

When an oil pipeline will occupy the right-of-way of the State Trunk Highway System (interstate, U.S., and state highways), the pipeline company must obtain a **Permit to Construct, Operate and Maintain Utility Facilities on Highway Right-of-Way** from the **Wisconsin Department of Transportation**.

Review of Other Resource Impacts

AGRICULTURE IMPACT REVIEW

When the construction of an oil pipeline involves the acquisition of property interests in more than five acres of any farm operation, the **Wisconsin Department of Agriculture, Transportation, and Consumer Protection (DATCP)** must prepare an **Agricultural Impact Statement (AIS)**. If an EIS will be prepared, an independent AIS is not necessary, but DATCP must submit the information on agricultural impacts to DNR for inclusion in the EIS.

Public input opportunity during Environmental Review

COASTAL ZONE MANAGEMENT REVIEW

If the construction of an oil pipeline involves federal permitting and will occur in any Wisconsin county with Great Lakes coastline, it is subject to **Federal Consistency Review** under the **Coastal Zone Management Act**. The **Wisconsin Department of Administration** conducts this review and ensures that the project is consistent with **Wisconsin's Coastal Zone Management Program**.

Public input opportunity through permitting process

HISTORIC PRESERVATION CONSULTATION

The **National Historic Preservation Act** requires federal and state agencies to consider the impacts of their actions on historical properties through consultation with State and Tribal Historic Preservation Officers. State law requires state agencies to engage in that consultation even when federal review is not required. Historical properties include any prehistoric or historic districts, sites, buildings, structures, or objects that are or may be listed in the National Register of Historic Places. Also included are any artifacts, records, and remains that are related to and located within historic properties and places of religious and cultural importance to Tribes.

Public comment period to resolve any adverse impacts

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