

Permitting Disaster in WI:

How the Government Allows Developers to Build in High Flood Areas and How Congress Wants to Make Wetland and Flood Destruction Worse

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This report was prepared by the Sierra Club Midwest Office.
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The Sierra Club has over 400 local groups working to protect America's environment, for our families and for our future. Other reports available from the Sierra Club Protect Our Families From Floods Project: Floods, Deaths, and Wetland Destruction, Subsidizing Disaster, and Red River Rampage.

Table of Contents

Flooded Families-- A Sad Story Too Often Told.....	2
Overview.....	2
Wetland Destruction Increases Flooding in Wisconsin and America.....	4
Permitting Disaster in Wisconsin and America.....	5
Some in Congress Want to Increase Wetland Destruction and Flood Risk to our Families.....	7
What You can Do to Protect Your Home and Family from Floods.....	9
Tables.....	12-15
Endnotes.....	16

Flooded Families --A Sad Story Too Often Told

Permitting Disaster in Wisconsin Sierra Club May 1998

Frank Haas' Message to Congress and President Clinton, Protect Our Homes and Families from Floods -- Enforce and Strengthen Wetland Protections

Frank and Rachel Haas knew they had a problem when three feet of floodwater swept down their street in west Milwaukee. "I have lived in this neighborhood for 60 years and have never seen flooding like this," Frank said. The flood caused over \$80 million in damages in the Milwaukee metro area in 1997, according to the Wisconsin Emergency Management.

"I had seven feet of water in my home, partly thanks to developers who have destroyed most of the wetlands that soak up floodwater," said Haas. "We need stronger wetland rules to protect our homes and families from floods in Wisconsin, not weaker protections."

"Not only did it mess up our home, it threatened our health with all kinds of nasty diseases," said Haas. "After the flood, I was sick for weeks. That flood water is dangerous stuff."

Overview

"Floods have caused greater loss of life and property, and disrupted more families than all other natural hazards combined. In recent decades, over 80 percent of presidentially declared disaster areas have been floods that resulted in billions of dollars of losses."

--FEMA Director James Lee Witt¹

Sadly, Frank and Rachel Haas are not alone. The flooding dangers are getting worse for many Wisconsin families and communities with six Presidential major disaster designations since 1990, according to the Wisconsin Emergency Management Agency.² Between 1988 and 1997, floods killed 26 people and caused \$133 million average annual damage in Wisconsin, according to the Army Corps of Engineers. Nationwide, floods killed 892 people between 1988-97, and cost an average of \$4.3 billion each year over the same time period.³

You would think that federal and state government leaders would stop allowing people to build in flood-prone wetlands and floodplains. Sadly the opposite is true -- state and federal governments approved of virtually all or 97% of the wetland destruction permits in Wisconsin between 1988 and 1996, according to the Army Corps of Engineers' own data, the federal agency in charge of wetland destruction permitting. In Wisconsin, two-thirds of the wetland destruction permits were granted in counties that were federally-declared flood disaster areas between 1988-96.

Developers were granted wetland destruction permits to destroy between 7,000-10,500 acres of

wetlands in the same time period, potentially putting thousands of Wisconsin families and homes at risk from greater flooding. One-in-eleven or 9% of the destruction was “easy” destruction permits for isolated wetlands, called Nationwide Permit 26.

The problem is that the federal and state governments are not protecting our families from floods or the wetlands that soak up flood waters. In Wisconsin, federal and state agencies granted 97% of the wetland destruction permit requests. Two-thirds of these were in federally declared flood disaster counties.

There is also a political problem -- some in Congress such as Mark Neumann (R-Janesville) want to weaken wetland protections and increase flood risks. He has consistently voted to weaken wetland protections and now has a bill, HR 2155 that would open up wetlands up to 10 acres to destruction.

To protect yourself, your family and home from floods, you can:

1. **Get flood insurance.** Call your local planning department or realtor to find out if your home is in a floodplain. If you are in or near a floodplain, get flood insurance to help cover some of the flood costs. Call 1-800-638-6620.
2. **If buying a new home, make sure it's not in a floodplain** or destroyed wetland.
3. **Protect local wetlands.** Contact your local conservation agency or planning department to find out where the local wetlands are and what the government is doing to protect them and your neighborhood from flooding.
4. **Stop efforts to destroy more wetlands.** Call Congressman Neumann and other likeminded lawmakers. Ask them to quit trying to open wetlands to developers and withdraw his “Flood our Families Act.” Call Neumann at 414-637-0510. You can also see a sample letter to him at the end of this report.
5. **Conduct Flood Risk Impact Studies.** Call or write President Clinton and Vice President Gore and ask them to stop allowing wetland destruction to put our families at risk from flooding. Tell them to conduct Flood Risk Impact Studies on all wetland destruction activities, and increase their goal of restoring 100,000 acres of wetlands per year to protect your home and family from flooding.

Wetland Destruction and Flooding in Wisconsin and America

Sadly, Frank and Rachel Haas are not alone. Thousands of American and Wisconsin families have been flooded from their homes, and many killed by floods. Wisconsin Emergency Management Agency estimates that floods caused half of the disaster costs since 1971 or \$1.26 billion are flood costs.

Doris Wilson's home near Louisville, KY was flooded last year after a nearby developer destroyed a three acre wetland that stored rainwater and protected her home from floods for more than 20 years. The developers, Army Corps, and local government have refused to take responsibility for the damage to her home and life.

Historically, the country and Wisconsin have allowed almost half of their wetlands to be destroyed by developers and farmers. The Wisconsin DNR estimates that "about 25 percent of the state was covered by wetland prior to man's drainage and filling efforts."⁴ These wetlands were drained to allow water to run off the farm fields faster and to build in floodplains and low-lying areas. Wisconsin DNR reports that:

"Approximately 3.2 million acres of Wisconsin's wetlands have been drained for agriculture at some time...most of the wetlands drained for agriculture are being farmed..."⁵

Those farmed wetlands have a loophole and do not require wetland destruction permits under the Clean Water Act, like other destructive practices. In some parts of southern Wisconsin, we destroyed more than 80% of our original wetlands. Sadly, the Wisconsin legislature and Congress are contemplating easing wetland protections to allow more destruction by developers.

Wetlands are critical for flood protection. Marshes, bogs, and potholes soak up floodwater and release them slowly, like sponges. An acre of wetland can store up to five feet, or 1.5 million gallons of floodwater according to one study of prairie potholes, and average about three feet of flood storage.⁶ Another study in Restoration Ecology estimated that restoring just half of the original wetlands in the Upper Mississippi River basin could have soaked up the flood water in the 1993 flood, and potentially saved 50 lives and \$15 billion in home and property damage.⁷

The Illinois State Water Survey found that destroying 1% of wetlands increases total flood volume by 6.9% in a watershed. The researchers found that increasing wetlands by 1% can reduce flood flows by 3.7%.⁸ This clearly shows that destroying wetlands can increase flood risk to people in high wetland destruction counties. It also shows that protecting people from floods is a compelling reason to protect wetlands everywhere.

According to the U.S. Fish and Wildlife Service, "the record-setting floods occurring and expected around the country would likely be worse if not for nature's safety net of wetlands." Last year, the

U.S. Fish and Wildlife Service estimated that farmers and developers destroyed an average of 117,000 acres of wetlands each year.⁹

In places such as the Midwest and the West Coast, experts warn that this year's flooding could exceed 100-year record levels. It is important to protect wetlands because they are nature's sponges that soak up, then slowly release, rain and runoff. This softens the blow of devastating floods and reduced flood peaks.

U.S. Fish and Wildlife Service Director John Rogers said, "Water held in undrained wetlands won't be flooding roads, farms, and homes across the country." Although millions of acres of wetlands nationwide have been lost to urbanization and agricultural conversion, partnerships among the Service, states, other Federal agencies, conservation groups, and private landowners are making progress toward reversing that trend."¹⁰

One study by the USDA, Soil Conservation Service (now NRCS) showed that wetland restoration can reduce major flood peaks by 10%, and by almost 40% with other conservation measures, such as the Conservation Reserve Program.¹¹

Permitting Disaster in Wisconsin and the Nation

Statewide in Wisconsin, the Army and state regulators gave developers 97% of the wetland destruction permits they requested between 1988-1996. Two-thirds, or 62%, of the wetland destruction was in counties that were Presidential Federal Flood Disaster Areas, according to the Army Corps of Engineers and the Federal Emergency Management Agency (FEMA). See Table One on page 12 and 13.

The counties that have been federal disaster areas three times between 1988-1996 are Crawford, Juneau, Richland, Sauk, and Vernon Counties. The Army granted an average of 162 wetland destruction permits in those counties, or 95% of the permits requested.

The counties designated FEMA flood disasters twice in that time period were Brown, Buffalo, Calumet, Dane, Fond du Lac, Grant, Green, Iowa, Jackson, Lafayette, Monroe, Outagamie, Pepin, Rock, Trempealeau, and Winnebago, and destruction approval averaged 97.5%

In 1991, Wisconsin instituted a state wetland water quality standards program which appears to make a major improvement to protect wetlands. This program cut permitted wetland destruction to 328 acres/year from 1,440 acres per year.¹² However, this program does not stop illegal destruction, cover farm wetland destruction, and still does not fully protect people from floods.

Wetland Destruction is High in Most Flooded Counties

Times County Was Made Federal Disaster Area Between 1988-1996	Number of Counties Made Federal Disaster Area Between 1988-1996	Average Number of Wetland Destruction Permits Granted per County, 1988-1996	Percentage Wetland Destruction Permits Granted
Three Times	5	162	95%
Two Times	16	276	97.5%
One Time	50	274	97%

Source: FEMA and Army Corps of Engineers. See Table One for more information.

Permitted wetland destruction is also a major problem for the Great Lakes region and the country. Between 1988-1996, Great Lakes states allowed developers to destroy over 28,000 acres of wetlands, according to the Army Corps. One-in-five of the destruction permits were using the easy wetland destruction permit for isolated wetlands, Nationwide 26. Great Lakes states have allowed over half, 56%, of their wetlands to be destroyed. See Table Two on page 14.

Nationwide Permit 26 accounts for almost one-fifth, or 18%, of the wetland destruction in Great Lakes states. The range is 1% of wetland destruction for Michigan to 53% in Ohio. Wetland destruction permits granted range from 90% in Michigan to 99.9% in Pennsylvania. Michigan is the only state that has a state-delegated wetlands program, meaning the state grants the wetland destruction permits rather than the Army Corps of Engineers. The wetland destruction in that state may not show up on this database.

Nationally, Nationwide Permit 26 accounts for 40% or almost half of the permitted wetland destruction between 1988-1996, according to the Army Corps' data. All Nationwide Permits accounted for 78,000 acres of wetland destruction, and Nationwide 26 for isolated wetlands accounted for 31,109 acres of destroyed wetlands. NWP 26 accounts for 69% of the wetland destruction in the Southeast Region and only 12% of the destruction in the Mid-Atlantic states. See Table Three, Summary of Wetland Destruction in the United States, page 15.

Army Corps' RAMS data is incomplete

We used data obtained from the US Army Corps of Engineers by the Environmental Working Group, a non-profit research organization, through a Freedom of Information Act request. The data comes from the Army Corps' Regulatory Analysis and Management System (RAMS) database for wetland

destruction permits granted under Section 404 of the Clean Water Act between June 1988 through July 1996.

Although RAMS data is incomplete, it still points to significant wetland destruction as described below. It also points to the Army Corps negligence in protecting critical wetlands that protect us from floods, filter our drinking water, and provide habitat for wildlife, waterfowl, fish, and shellfish

For all the fuss over wetlands and flooding in capitols around the country, you would think the Army Corps, the federal lead agency, would have better quality information about how much wetland destruction and flood disaster they are permitting.

Some in Congress Want to Increase Wetland Destruction and Flood Risk to our Families

“The reason they call them floodplains is that it is plain that they flood.”

--Vice President Al Gore, 1995

Environmental policy in Congress is under pressure from big money developers and special interests that want to weaken wetland protections and open up floodplains and wetlands to more building. In 1995, these special interests helped write and pass a bill through the House of Representatives that would have opened up 73 million acres or 71 percent of the country’s wetlands to development and destruction, according to the Swamped with Cash report by the Environmental Working Group. The EWG report showed that political action committees for companies that lobbied to weaken these protections gave members of Congress and political candidates over \$25 million between 1990-1994.¹³

In May 1995, the U.S. House of Representatives including Congressman Mark Neumann (R-Janesville, WI) voted to open more than 50 percent of Wisconsin’s wetlands to developers and destruction. Congress did this by voting to change the definition of wetlands to require the area to be wet for a longer period of time -- three weeks in the summer.

Under this definition, large parts of Horicon Marsh and the Everglades would not be considered wetlands, and similar unprotected wetlands could be opened to developers. This definition is too weak to protect flood-prone wetlands and floodplains, since it does not protect a wetland area that could be flooded in March, but the ground could be dry by June. Therefore the area would not be given wetland protection.

The New York Times called this bill the “Dirty Water Act” because it would have weakened wetland protections and eased clean water rules. Congressman Scott Klug, Republican from Madison, Wisconsin said he voted against this bill because:

“The Clean Water Act is one of our country’s most successful environment bills. When Congress tried to weaken the Clean Water Act last year, I said no. I voted against final passage of the Republican leadership’s plan because it revoked too many important anti-pollution and wetland protection rules.”¹⁴

The bill would have cut spending for Wisconsin Clean Water Programs by 50% and could have significantly raised local water and sewer rates. Fortunately that bill died thanks to opposition from Senators.

Congressman Neumann, a former developer from Janesville, is the only member now serving in the Wisconsin delegation who voted for the “Dirty Water Act.”

Last year, Congressman Neumann introduced a bill, the so-called “Flood Our Families Act,” HR 2155, which would allow developers to destroy up to 10 acres of flood-prone wetlands without notifying the DNR, the neighbors like Frank Haas, or considering increased flood risks. This bill would increase the limit that developers can destroy under Nationwide Permit 26 from 3 to 10 acres and continue this loophole of uncontrolled wetland and stream destruction. This permit allows developers to destroy up to 500 feet of a stream, this could pollute drinking water, destroy prime fishing and wildlife habitat, and increase flood risks, according to the Clean Water Network.

Why would Congressman Neumann do this? According to records from the Federal Election Commission reviewed by the Environmental Working Group, Congressman Neumann took over \$200,000 from developers, oil companies, and special interest political action committees that would directly profit from weaker wetland protections. Those gifts include \$5,500 from Exxon, \$2,000 from Amoco Oil, and \$11,000 from homebuilding developers.

"We ask Congressman Neumann to put the concerns of flood victims before developers," said flood victim Haas. "Weakening the wetland rules puts homes at risk."

This wetland destruction loophole, Nationwide Permit 26, has been condemned by groups as diverse as the National Academy of Science to the Wisconsin Wetlands Association.

"If it looks like a skunk, and walks like a skunk, and smells like a skunk, it must be a skunk. Government agencies, independent scientists, and conservation groups all agree that Nationwide Permit 26, which allows developers to destroy up to 10 acres of isolated waters and headwater wetlands, is a skunk. But Wisconsin Congressman Mark Neumann has flunked the skunk test. Neumann introduced legislation last July to save NWP 26, after the Army Corps of Engineers had agreed to phase it out."

--Comments from Tom Boswell, Wisconsin Wetlands Association¹⁵

"The scientific basis for special permitting of wetlands in headwaters or isolated waters is weak. Nationwide Permit 26 has been controversial because of the cumulative wetland losses that can result through its application. Consequently, Nationwide Permit 26 should be reviewed for validity in the context of the Clean Water Act and for consistency with other permitting practices."

--National Academy of Sciences, the nation's foremost scientific body¹⁶

"Nationwide Permit 26 is the single largest source of permitted wetlands loss in America, and it suffers from very serious environmental, scientific, and legal flaws."

--The Clean Water Network

"Nationwide Permit 26, which authorizes discharges of dredged or fill material into headwaters and isolated waters, is the most controversial of the Sec. 404 general permits, and for good reason: it appears to be the single biggest source of wetlands loss in the Sec. 404 regulatory program."

--Natural Resource Defense Council¹⁷

"Since NWP 26 was first issued, there has been general concern over its potential environmental impact... In addition, smaller scale analyses of NWP 26 have indicated that the impact of this permit may not be minimal."

--The U.S. Environmental Protection Agency¹⁸

Thanks to other programs in the Clean Water Act, Wisconsin has a water quality certification program, NR 103, that does not allow Nationwide Permit 26 to destroy more than 3 acres of wetlands. Unfortunately, the DNR board is considering allowing developers to do shellgame schemes where developers destroy some wetlands if they promise to protect a few wetlands elsewhere. This is called mitigation. Most of these mitigation schemes would not have helped Frank and Rachel Haas and other flood victims, because the wetlands would not have been mitigated in the watershed, so they would lose flood protection.

What You Can Do to Protect Your Home and Family from Floods

As you can see, state and federal governments are not doing nearly enough to protect you and your family from flooding. What can you do as a private citizen to protect yourself from flooding? See recommendation above and send letters like these below to protect yourself, your home, and family from flooding.

stream for two and a half miles!

Because of the harmful impacts upon fish and wildlife habitat, increased flood risk and worsen water quality when building on or alongside streams, I believe that the 500 foot limit should be reduced to 200 feet. Finally, I support the ban on the use of "stacking" multiple

NWPs to use in a single development project. If a development project is large enough to require more than one NWP, then it deserves the scrutiny of an individual permit, not a rubber stamp.

I would also like you to instruct the Army Corps of Engineers to prove that each wetland destruction permit does not increase flood risk to homeowners, neighbors, or communities. Although I support the changes to NWP 26, I believe that they must go farther to protect our families and the environment. I urge the Corps to revoke NWP 26 immediately. Thank you for your attention to these comments.

Sincerely,

Acknowledgements

We would like to thank all of those who reviewed this document, including,

Don Reed, Chief Biologist, Southeastern Wisconsin Regional Planning Commission, Waukesha, WI;
Tom Bernthal and David Siebert, Wisconsin DNR, Madison, WI;
Al Piet, The Wetland Initiative, Chicago, IL; and
Kathy Nemsick, The Clean Water Network, Washington, D.C.;
Larry Larson, Association of State Floodplain Managers, Madison, WI.

Table One

Table Two

Table Three

ENDNOTES

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- ¹ FEMA, National Mitigation Strategy, 1995, page 1.
- ² Sell, Steven D. "Annual Natural Disaster Damage Report to Governor Thompson," Wisconsin Emergency Management, 12/8/97, page 1.
- ³ U.S. Army Corps of Engineers, Total Damages Suffered in FY 1997, by State, see at www.usace.army.mil/inet/functions/cw/cecwe/table2htm.
- ⁴ WI DNR, "Wetland Use In Wisconsin, Historical Perspective & Present Picture," 1976, page 29.
- ⁵ *Ibid*, page, 33-34.
- ⁶ Best, R.G., "The Utilization of Infrared aerial photography to characterize prairie potholes," Percora IV Proceedings of the symposium, National Wildlife Federation Science Technical Series Three, 1978, pages 180-187.
- ⁷ Hey, Don, "Commentary: Flood Reduction through Wetland Restoration," Restoration Ecology, Volume 3, No. 1, pages 4-17.
- ⁸ Demissie, Misganaw and Abdul Kahn, "Influence of Wetlands on Streamflows in Illinois," Illinois State Water Survey Contract Report 561, October 1993.
- ⁹ USFWS, National Wetland Inventory, 1997.
- ¹⁰ U.S. Fish and Wildlife Service, "Press Release: WETLANDS HELP CONTROL FLOODING," May 9, 1997, Contact: Larry Dean 202-208-5634, Martha Naley 703-358-2201.
- ¹¹ Scientific Assessment and Strategy Team, "A Blueprint for Change, Part V, Science for Floodplain Management for the 21st Century," Interagency Floodplain Management Review Committee, June, 1994, page 157.
- ¹² WI DNR, "Permitted Wetland Losses, 1982-1995," fax from DNR on May 18, 1998.
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- ¹⁷ Caputo, Andrew and Robbin Marks, "Comments and Notice on Proposed Agency Action Concerning Nationwide Permits," NRDC, 8/3/96, page 2.
- ¹⁸ Peck, Gregory, "EPA's draft comments on 1996 Proposed NWPs," 8/3/98, page 10.