

The Door County Environmental Council News



March 2019



“Fostering the preservation of Door County’s rich heritage of natural resources for the health, welfare, and spiritual uplift not only of its inhabitants, but of generations to come.”

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Stewardship of Door County Wetlands

The political slogan to “drain the swamp” is an unfortunate and misinformed metaphor. It implies that a swamp is a bad thing and draining it is a desirable action. Those with knowledge of the environment know that neither is true. Citizens and policy-makers must understand the importance of wetlands so that they can be preserved and their benefits realized.

In the past, swamps were regarded as wasteland and were drained, filled, or used as dumps. As a result, nationwide we had already lost over 50% of the wetlands in the contiguous 48 states by the 1980s. Twenty-two states lost more than 50% of their wetlands by 1990, ten of those states lost over 70%, and California lost an estimated 91% between the 1780s and 2009. Worldwide, over 50% of wetlands have been destroyed in the past 100 years.

Why the concern? Wetlands store water as part of the water cycle. They help to remove excess nutrients from water, helping to reduce pollution of the aquifer and surface water such as streams and lakes. They provide environments

necessary for the preservation of countless species of wildlife. They also help to prevent flooding. In many areas, wetlands are essential for recharging the aquifer; that is, the water we drink comes from the underground aquifer and removal of water from the aquifer requires that the aquifer be “recharged” by water trickling through filtering layers in the soil and rock layers. Wetlands are also important for various recreational activities such as birding.

The definition of wetlands can be confusing. The EPA defines wetlands as “areas where water covers the soil, or is present either at or near the surface of the soil all year or for varying periods of time during the year, including during the growing season.” The Wetlands Initiative states, “Simply stated, wetlands are parts of our landscape that are defined by the presence of water. More specifically, wetlands are areas where the presence of water determines or influences most, if not all, of an area’s biogeochemistry—that is, the biological, physical, and chemical characteristics of a particular site.” “Only in the 1950s were

scientists beginning to use the term ‘wetland’ as a category that would encompass terms such as bog, swamp, and marsh. Attempts of government agencies to define wetlands began at that time but developed momentum only in the 1970s.”

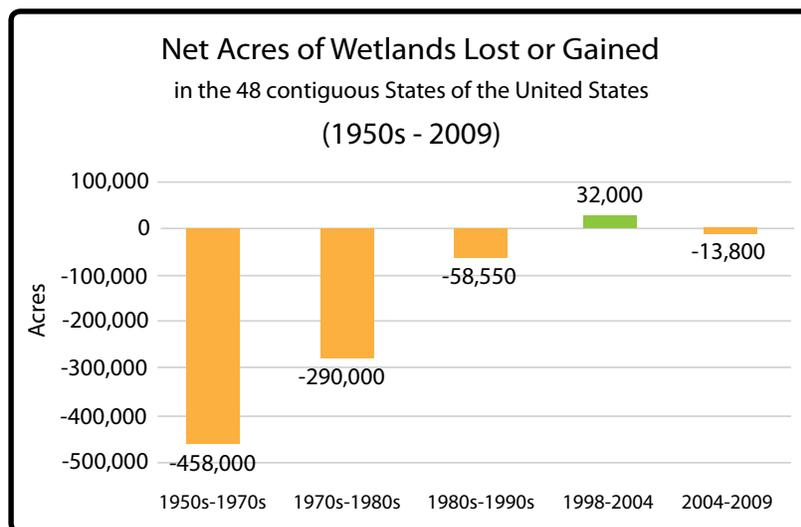
The Committee on Wetlands Characterization provides the following reference definition: “Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.” This broad definition is adequate for the purposes of this article, but for legal purposes in this country three different definitions are recognized: the 1977 USACE definition, the Natural Resources Conservation Service definition (1985 FSA definition), and the 1979 FWS definition, as derived from Cowardin et al. (1979). Those interested in the wording of those are referred to <https://www.nap.edu/read/4766/chapter/5#56>.

Fortunately, policy-makers and contributors in Door County over the years have recognized wetlands as essential to what makes the Door County peninsula the very special place that it is for its residents, visitors, wildlife, including vegetation, and future generations. A Door County

wetlands fact sheet is available (<https://www.wisconsinwetlands.org/wp-content/uploads/2016/04/Door.pdf>) from The Wisconsin Wetlands Association that shows the loss of historic wetlands in Door County over the years as well as over 55,000 acres of currently mapped wetlands.

The North Bay/Mud Lake Preserve consists of over 1,400 acres of high quality wetlands and deep northern forest and belongs to the Nature Conservancy. Also included in the Nature Conservancy list is the 608-acre Shivering Sands Preserve. The Meissner Memorial Wetlands Preserve is at 8587 South Highland Road, not far from Baileys Harbor, and includes hiking trails. These wetlands supply water to Peil Creek which flows into the northern end of Kangaroo Lake, another Nature Conservancy area. Another designated wetland in Door County is the Ephraim Wetlands Preserve. (DCEC had recommended using the Ephraim Wetlands Preserve as a part of the Ephraim Streetscape Project in place of draining unimpeded storm water directly into the bay, but this was rejected.)

Collectively The Door Peninsula Coastal Wetlands complex has been recognized as a



<https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/water/wetlands/>

Wetland of International Importance under the Ramsar Convention, an inter-governmental treaty for protection of exemplary wetland systems around the world. This 11,443-acre area

encompasses Europe Lake, Mink River, North Bay, Mud Lake, Ephraim Swamp, and Ridges Sanctuary and joins only 36 other areas in the USA to hold this designation. “Through the Ramsar designation, they have now been acknowledged as having significant value not only for Wisconsin but globally,” said Nicole Van Helden, Nature Conservancy director of conservation for the Green Bay watershed.

What’s wrong with allowing entities to fill and cover wetlands with the requirement that they build an alternative wetland, a process called mitigation? It depends in large extent on the type of wetland being mitigated. In some cases it would take decades and prohibitive expense to replicate the function, flora, and fauna of the lost wetland. Entities wanting to drain or fill a wetland can sometimes buy mitigation credits. A high profile example is the Foxconn project. Wisconsin law requires a company that fills a wetland to create 1.2 new wetland acres for every acre filled. Act 58, the state Foxconn incentives bill, requires the company to restore 2 acres for every acre filled. Foxconn elected to do that for 16 acres in Area I that will be affected by paying more than \$2 million to the Wisconsin Wetland Conservation Trust. The DNR then uses that money to put out bids for wetlands restoration in the same general watershed areas where the loss occurred. That may satisfy a government requirement, but from an ecological viewpoint this hardly seems like assurance that what has been lost will ever really be regained.

As advocates for the environment of Door County, we are charged with:

- being informed of the importance of wetlands and their preservation,
- being alert to plans to drain or fill wetlands and point out to those concerned the folly of such actions,
- informing property owners and business owners of how healthy Door County wetlands

- help to maintain the value of their holdings,
- informing property owners and business owners who own wetlands of the regulations and best practices regarding their wetlands, and
- weighing in on the EPA’s proposal to change the definition of the WOTUS (waters of the United States), which would remove protection from some wetlands. The agencies (EPA and the Department of the Army) have submitted the proposed rule to the Office of the Federal Register, and it will be published separately in the Federal Register. The comment period on the proposed action will end 60 days after the notice of proposed rulemaking publishes in the Federal Register. The pre-publication version of the proposed rule can be found at <https://www.epa.gov/wotus-rule/step-two-revise> and will be replaced with the official version of the notice after it publishes.

By John Beck

The Door County Environmental Council Position Statement on the Proposed Forestville Millpond Drawdown

The Door County Environmental Council strongly supports a comprehensive cleanup and permanent restoration of water quality in the Ahnapee River and Forestville Millpond. The question is, how is this best accomplished?

Minutes from meetings of the Door County Land Conservation Committee for the past three years reveal a tripling of the average phosphorus levels in the millpond over the last two decades (1994-5 to 2012-13). In 2017 the Door County Soil and Water Conservation Department requested and received a Wisconsin

Department of Natural Resources Lake Planning Grant. The purpose of the grant was to research and collect water samples for the express purpose of providing current and accurate data on water quality. The department's June 2018 final study report revealed high concentrations of total phosphorus in both the pond water and accumulated pond sediment, including elevated levels of oil, grease, and heavy metals in the sediment. But, perhaps the most disconcerting finding was that 25% of the upstream waters exceeded established stream thresholds for total phosphorus concentrations.

It is interesting to note that 88% of the farms upstream are part of the DNR's best management practices for water quality. Either the water quality numbers are inaccurate or the best management practices for water are ineffective. And, while environmental experts have complimented Door County on the study, they have also criticized the county for not making the objectives of the study clearer. Door County must ensure that the proposed millpond drawdown will indeed accomplish those objectives of increased water quality, clarity, and quantity. In addition, these same experts have added that if you want fish, you must ensure that the water quality upstream is such that the millpond will accommodate fish.

Given the above, the Door County Environmental Council does not support a Forestville Millpond drawdown at this time. Because, if the contamination in the upstream waters feeding the millpond is not corrected, the millpond will soon revert to its current status. Rather, we believe more time and more money should be provided to investigate, enforce, and if need be, create clean water standards in the Ahnapee watershed. In order to have a clean Forestville Millpond and Ahnapee River, a comprehensive watershed cleanup program must be employed.

*The Door County Environmental
Council Board of Directors*

Beach Rights or Wrongs?

A few years ago there was much controversy about beach rights in Door County. After some arguments back and forth, the consensus of legal interpretation seemed to be that your feet had to be wet to legally walk along the shore.

In Indiana and Michigan at least, the law currently allows the public to walk along the shore on the strip of beach deemed to be in the public domain. Specifically, that strip is located between the actual waters edge and the normal highwater mark. The highwater mark is a line marked by erosion or vegetation change that indicates the maximum level that the water reaches at times. Some property owners in Indiana have objected to the public walking along beaches in front of their homes, claiming the area is their private property. But multiple cases decided in state courts, including the now famous Michigan case decided by the Michigan State Supreme Court in 2005, have ruled otherwise, holding that beach walking is legal because the strip of beach in question is public land.

So, does that legal precedent apply in Wisconsin? At present, it does not. But that question is complicated. In Wisconsin, like Indiana, the ordinary high-water mark (OHWM) delineates the boundary or lateral extent of a natural stream or lake. Areas below the OHWM are considered part of the lake or stream bed. Areas above the OHWM are considered land. Furthermore, public rights generally stem from constitutional grants of authority. The Wisconsin Constitution provides the state with direct authority over navigable water through the Public Trust Doctrine. The Public Trust Doctrine not only extends to "all natural" navigable water but also to "the lake beds underlying navigable waters" as well.

In the Doemel vs. Jantz case, however, the Wisconsin State Supreme Court held that persons who own land adjacent to a stream or

lake, known as “riparians,” have “the exclusive privileges of the shore for purposes of access to the land and water.” The court determined that public rights extend only to the actual water’s edge. So, indeed your feet had to be wet to not be trespassing.

In 1999, however, Wisconsin legislation was passed which carved out a large exception to this long-standing, common law rule. Under Wisconsin Statute §30.134, a member of the public has the right to use the exposed shore area along navigable streams and rivers without the permission of the riparian when the individual is engaged in “water related recreational activity.” So that law is ambiguous and raises many questions. Regardless, perhaps soon there will be a decision that may well settle the beach rights question in Wisconsin. The U. S. Supreme Court may soon take up a challenge to the Indiana law that allows the public to walk along lakeshores in that strip of beach deemed to be within the public domain.

Let’s review the basic beach rights argument. Attorney Alan Ackerman is perhaps Michigan’s best known property rights attorney. For decades he has battled governments over eminent domain “takings” with cases going back to the classic Poletown dispute when land in Hamtramck and Detroit, Michigan was taken by the government for a General Motors plant.

One might guess that Ackerman would be sympathetic to the property owners in these beach walking cases. But even Ackerman has said that there is no question that the lakes themselves and the strip of beach below the highwater mark are part of the public domain. Ackerman says, “It’s not private property, never has been, and owners of nearby lots with lake views have no right to claim otherwise.”

Michigan and Indiana courts have generally ruled that beach walking is legal, not to mention

a time-honored tradition that is part of the “up north” experience in the Great Lakes states.

Of course, the public needs to exercise some good judgement in those states. Revelers cannot throw wild parties and set up camp in front of someone’s property, public land or not, and generally beach walking is allowed as long as people keep walking and do not otherwise disturb people who own houses near the water.

The counter argument is that this strip of land is private property. Many objections to beach walking attempt to equate the narrow beach walking zone that is public with other types of private property. For example, Patrick Wright, Vice President for legal affairs for the Mackinac Center for Public Policy, a free market think tank, was recently quoted in a Free Press newspaper article equating beach walking cases with other invasions of private property. “Should people be able to stroll through your backyard if they want to be bird-watching?” he asked. “What are people’s rights to exclude that? And if the public is essentially going to be using somebody’s property, should (the owners) be compensated for that?” The fallacy, of course, is that nobody is suggesting that people be allowed to trespass on land that is clearly, and obviously, private, such as someone’s fenced back yard. But let’s not confuse those obvious property rights with the public land on the narrow strip of beach from the waters edge to the ordinary high-water mark.

However, if government takes property via eminent domain and sometimes gets it wrong, so too do the property rights purists.

I certainly understand that buyers who invest hundreds of thousands of dollars in a dream home overlooking Lake Michigan may wish to keep the view all to themselves. However, that wish does not and cannot overrule the long legal tradition that major bodies of water and

the adjacent public strips of beach, at least in Indiana and Michigan, belong to the public.

As long as everyone is reasonable and considerate, there will be no problem. But perhaps that's asking a lot in today's contentious age?

By Steve Eatough

Adapted from article written by John Gallagher and published January 18, 2019 in the Free Press. My thanks to John Gallagher for allowing us to use it.

Climate Change for You and Me

As humanity is confronted with the realization that our climate *is* warming and that the consequences will be severe, many of us have become anxious and wish there was something that we could do individually. We know that it is going to take a global effort by individuals and governments to turn the tides and slow our planet from heating up. It seems that climate change is like a “house of cards,” ready to crumble as we procrastinate, year after year, about doing the things that are absolutely necessary to avoid a global crisis. As we come closer to that fateful temperature that collapses that house of cards, will humanity embrace the tasks required to save ourselves?

One of the things that I particularly fear is the untold volumes of locked up organic methane in the Arctic permafrost soils that will rapidly be released into our atmosphere upon thawing. Methane is a far more potent greenhouse gas than carbon dioxide and its escape will likely create a sudden surge in rising temperatures. Rising seas, displaced populations, crop failures, and offset biorhythms are already being

measured. Our future is at stake and we've seen it coming for decades, but now world climate scientists believe we are entering our final 12 years before we reach the “point of no return.” What can we do?

One of my favorite authors and environmental activists is Dr. David Suzuki, retired genetics professor from the University of British Columbia, Canada. Visiting his foundation's website, <https://davidsuzuki.org>, Dr. Suzuki lists the top 10 actions we all could take to help begin the important movement needed to slow global warming and climate change. Here are some of Dr. Suzuki's suggestions:

1. Push for reduced methane emissions from fracked gas.

Leading scientists estimate this gas alone is responsible for 25% of the observed changes to Earth's climate. Cutting methane emissions is one of the cheapest, easiest and most effective actions that governments can do right now to tackle climate change. Speak to your state and federal representatives and environmental protection agencies.

2. Get charged up with renewables.

The global push for cleaner, healthier energy is on. With costs dropping every day, renewable energy is the best choice for the environment and the economy.

3. Green your commute.

Transportation accounts for 24% of climate polluting emissions, a close second to the oil and gas industry. When you can, take public transit, ride a bike, ride-share, switch to an electric or hybrid vehicle and fly less.

4. Use energy wisely—save money, too.

Become more energy efficient. Use energy efficient lightbulbs, unplug electronics when not in use, wash clothes in cold or warm water (not hot), hang clothes to dry or use dryer balls when

you can't, install a programmable thermostat, buy Energy Star new appliances, winterize and insulate your home better to prevent heat from escaping, and get a home energy audit to identify places you can make energy saving gains.

5. Help put a price on pollution.

Putting a price on carbon is one of the most important pillars of any strong climate policy. Most market economists agree that pricing carbon is an efficient and business friendly way to reduce emissions.

6. Consume less, waste less, enjoy life more.

Focusing on life's simple pleasures—spending time in nature, being with loved ones and/or making a difference to others—provides more purpose, belonging and happiness than buying and consuming. Sharing, making, fixing, upcycling (creative upgrading), repurposing and composting are all good places to start.

7. Divest from fossil fuels.

Let industry know you care about climate change by making sure any investments you are involved in do not include fossil fuels. Meet with your bank or investment advisor and/or join a divestment campaign in your area.

8. Invest in renewables.

Even if you can't install solar panels or a wind turbine, you can still be part of the clean energy economy. Search online for local renewable energy co-ops to join. By becoming a co-op member you will own a slice of renewable energy projects and get a return on your investment. You can also speak to your financial advisor about clean energy/technology investments.

9. Eat for a climate-stable planet.

Here are four simple changes you can make to your diet to reduce its climate impact: eat meat-free meals, buy organic and local whenever possible, don't waste food, and grow your own.

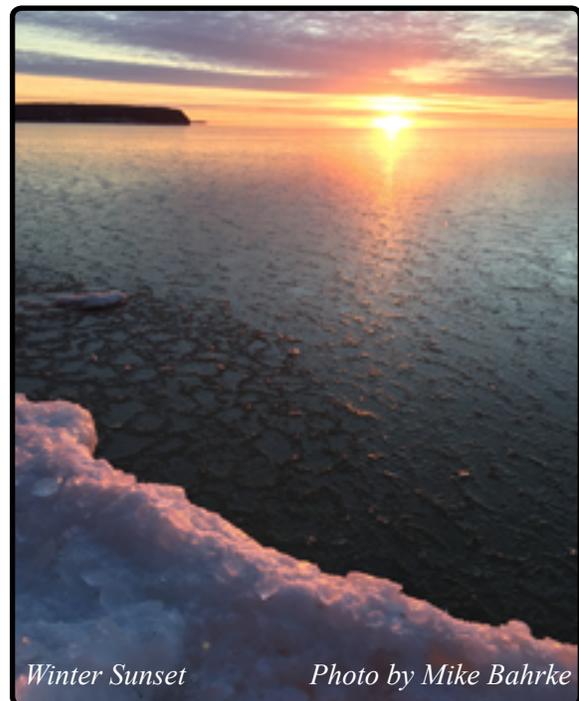
Get more info on how to eat for the climate and how eating less meat will reduce Earth's heat: <https://www.drweil.com/diet-nutrition/nutrition/eating-to-beat-climate-change/> or <https://davidsuzuki.org/queen-of-green/food-climate-change/>.

10. Tell your story, listen to others.

A healthy planet and stable climate aren't political issues. It's all about families, communities, energy systems and humanity's future. It's important to get everyone on board, working toward climate solutions. People are more often influenced by friends than by experts, so make sure to talk about climate change with friends and family.

Many climate scientists agree that big changes in human behavior need to occur by 2030 if we are going to affect climate change. Looking at David Suzuki's top 10 list gives, I believe, a simple place for an individual to begin making positive changes towards a healthier future for our generations to come. The Earth needs you.

By Paul Leline



Why Be Concerned About Air Pollution?

We know that clean air is good for us. In fact, it's essential for us to thrive and live healthy lives. However, when we add it to our ever-growing list of things to worry and care about, it's easy to see how our concern and interest in the quality of the air we breathe may get bumped down on that list. To make you more aware about the air you breathe, here's a list of why you should, in fact, care, and a few easy steps you can take to improve the environment.

Although air pollution most often can't be seen, it still affects you. The United States Environmental Protection Agency states that polluted air can make us sick. "It can irritate your throat and make breathing difficult. In fact, pollutants like tiny airborne particles and ground level ozone can trigger respiratory problems, especially for people with asthma. Today, nearly 30 million adults and children in the U.S. have been diagnosed with asthma. Asthma sufferers can be severely affected by air pollution. Air pollution can also aggravate health problems for the elderly and others with heart or respiratory diseases."

Air pollution has a price tag. As if your health wasn't a price high enough to pay, here are some additional costs of air pollution:

- The health costs of human exposure to outdoor air pollutants range from \$40 to \$50 billion.
- An estimated 50,000 to 120,000 premature deaths are associated with exposure to air pollutants.
- People with asthma experience more than 100 million days of restricted activity, costs for asthma exceed \$4 billion, and about 4,000 people die of asthma.

Air pollution is a global issue, and the global environment and climate are severely affected by it. Acid rain affects our crops, trees, lakes,

and even buildings. Acid deposition and ozone exposure have increased considerably in the past 50 years in Asia, Europe, and the U.S., with many reports of tree/forest decline and increased mortality. In general, the more highly polluted forests have the higher rate of decline and mortality. The effects of bad air quality clearly make an impact.

What small steps can we take to prevent it? First and foremost, make a conscious choice to check the air quality in the area where you live, especially in your neighborhood and/or home. Awareness is the first step to change—knowing what you're dealing with. Once you know, you can take the appropriate steps to secure your home by changing air filters and using air purifiers and switching to greener energy sources. If bad air quality is a problem in your area, see if there are organizations that you can join to discuss what can be done as a community to improve air quality.

In addition, the EPA recommends the following:

- Conserve energy—turn off appliances and lights when you leave the room.
- Recycle paper, plastic, glass bottles, cardboard, and aluminum cans. (This conserves energy and reduces production emissions.)
- Keep woodstoves and fireplaces well maintained. You should also consider replacing old wood stoves with EPA-certified models.
- Plant deciduous trees in locations around your home to provide shade in the summer, but to allow light in the winter.
- Buy green electricity produced by low- or even zero-pollution facilities.
- Connect your outdoor lights to a timer or use solar lighting.
- Wash clothes with warm or cold water instead of hot.
- Lower the thermostat on your water heater

to 120F.

- Use low-VOC or water-based paints, stains, finishes, and paint strippers.
- Test your home for radon, a dangerous, radioactive gas that is odorless and tasteless. If the test shows elevated levels of radon, the problem can be fixed cost effectively.
- Choose not to smoke in your home, especially if you have children. If you or your visitors must smoke, then smoke outside.
- In addition, practice mindful shopping behaviors and choose healthier/green options when possible. Be a smart consumer and realize that you're making a positive impact, one purchase at a time.
- Choose efficient, low-polluting models of vehicles.
- Choose products that have less packaging and are reusable.
- Shop with a canvas bag instead of using paper and plastic bags.
- Buy rechargeable batteries for devices used frequently and unplug or switch off the rechargers when not in use.
- Let's make a difference in improving our air quality.

If you're interested in knowing air quality in your area, information is as close as your phone. There are over 500 phone weather apps available. You can have real-time air quality data when you need it most. Keep your family healthy and environmentally conscious with air quality information available at your fingertips.

Here's a listing of the Best 10 Apps for Air Quality Alerts:

- The Weather Channel: Local Forecast & Weather Maps
- AccuWeather: Weather Forecast Updates & Radar Maps
- 1Weather: Forecast Radar
- Weather forecast
- Weather by WeatherBug: Real Time

Forecast & Alerts

- Weather app
- Free Weather Forecast App
- NOAA Weather Radar Live & Alerts
- What The Forecast
- MyRadar Weather Radar

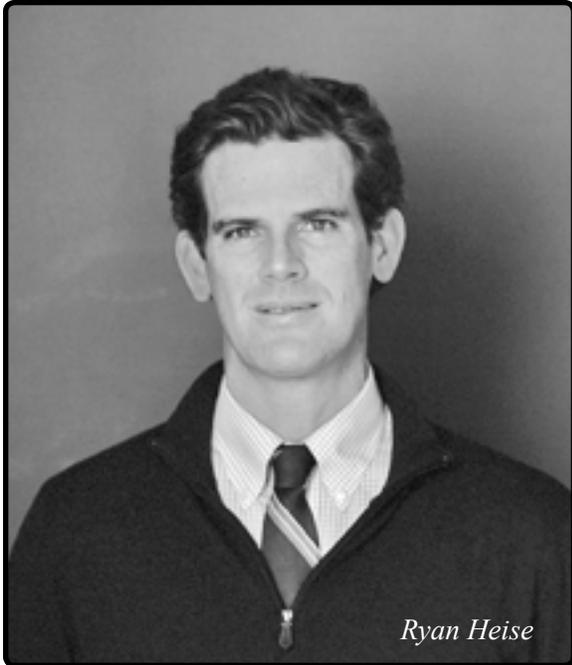
Personally, I use The Weather Channel: Local Forecast & Weather Maps. This app provides, among other things, details of the daily weather, radar and maps, news and videos, health and activities, and air pollution that includes the primary pollutants of ozone (O3), sulfur dioxide (SO2), nitrogen dioxide (NO2), particulate matter less than 2.5 microns (PM2.5), carbon monoxide (CO), and particulate matter less than 10 microns (PM10). The Copernicus Atmosphere Monitoring Service provides the information that is then implemented by the European Commission and European Centre for Medium-Range Weather Forecasts (ECMWF).

In addition to phone apps, the Wisconsin Department of Natural Resources operates a network of air monitors around Wisconsin which provide access to air quality information. The Door County monitoring site, which monitors ozone, is located in Newport State Park near the tip of the peninsula. You can access air quality monitoring in Wisconsin, including monitoring sites, using the following link: <https://dnr.wi.gov/topic/AirQuality/Monitor.html/>.

As the new Foxconn manufacturing facility nears operation, and with air pollution frequently moving northward along the Lake Michigan shoreline from southeastern to northeastern Wisconsin, air quality monitoring in Door County becomes even more important.

By Mike Bahrke

Adapted from: <https://www.cleanalert.com/blog/3-big-reasons-why-you-should-care-about-the-air-you-breathe>.



DCEC Welcomes New Board Member, Ryan Heise

By way of introduction, my name is Ryan Heise, and I currently serve as the Village Administrator for the small, but mighty Egg Harbor, WI. My passion for the environment, and moreover environmental protection, began at a young age when I discovered a passion for fishing. Born and raised in a small rustbelt town in Southern Michigan (Jackson), I found myself walking and biking at every opportunity to the closest rivers and ponds to fish. I was the proud recipient of the limnologist award at 8th grade science camp, and so began my studies in environmental science and continued at Northern Michigan University. I quickly realized that there may be a greater opportunity for affecting change through urban planning, and I moved downstate to attend Western Michigan where I finished my undergraduate degree in regional and urban planning with a minor in water resource management.

I moved to the Sarasota, Florida area in 2005,

and began work for one of the largest “green” communities in the United States, Lakewood Ranch, FL (currently ranked 2nd in nation for home sales). I started as their Environmental Manager, and ten years later left Lakewood Ranch, serving as the Director of Operations. While working in Florida, I completed a Master’s Degree in Public Administration. However, Florida was rapidly outgrowing itself, and sadly has/had limited vision for mass transportation and environmental protection, and I knew that it was time to return to the Midwest. I selected a few Lake Michigan coastal communities with similar attributes to interview for a job. Those attributes included access to world class fishing and abundant parklands. Egg Harbor is where I landed and I’ve never regretted the decision, even with negative 40 degree temperatures. The elected officials and I have agreed that as long as the community stays progressive and continues down the path of smart growth, I’d stick around, so far so good.

I now live in Jacksonport with my fiancé Alicia, and dog Ruby. I fish, perhaps too much, and I surf, not nearly often enough. Door County has been kind to me, and people, both young and old, will continue to come, as I have. It’s important that we protect our natural resources, because the best that the county has to offer belongs to everyone.

Ryan Heise



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