



Diffuse Surface Water Runoff

Diffuse surface water is water from rainfall, springs or melting snow that lies or flows on the ground surface but which isn't part of a watercourse or lake. As land is graded and buildings go up, surface drainage is often redirected or increased in volume, frequency or duration. Wet basements, erosion gullies and standing water are typical results of changes in surface drainage. Although there are no statewide regulations that impact how one neighbor changes drainage to another, the common law provides recourse for property damage shown to result from surface drainage changes.

What does the law say?

A series of court decisions make up the law regarding diffuse surface water. In 1974, the Wisconsin Supreme Court ruled that a person who diverts surface waters onto the property of another is liable for damages where the diversion is intentional and unreasonable, unintentional but due to negligence or recklessness, or extremely dangerous conditions (*State of Wisconsin v. Deetz*, 66 Wis. 2d 1 {1974}). (Prior to the Deetz decision, Wisconsin courts applied the "common enemy" rule, permitting diversion of water as needed to improve property.)

What do I do now?

Negotiation, mediation or civil lawsuit between concerned parties most often resolves conflicts about diffuse surface water impacts. To begin the process, document the damages on your property (for example, with photographs or receipts from repair supplies and services) and whatever evidence you can gather about the likely cause (photographs or survey of conditions prior to activities you believe caused the drainage change), as well as some ways you think the problem could be solved. Meet with the owner of the property where the change has occurred and describe what you believe occurred, how it has affected you and your suggestions for solving the problem. If an agreement can't be reached, the parties may agree to use a mediation service or you may contact an attorney.

Could the issue be groundwater flooding?

We are also experiencing a time of very high ground water levels across the state. When flooding is caused by high groundwater, there is very little that can be done to lower the shallow groundwater table. Groundwater is like a large underwater lake and pumps/diversions do not often have the capacity to keep up with the volume of groundwater.

It may be difficult to determine if nearby flooding is due to surface water or groundwater flooding. For example, increased groundwater flow to nearby streams and rivers may cause the waterbodies to flood; or storm sewers that typically would drain to rivers don't work properly if too much inflow into the pipes from groundwater is occurring.

What's the state and local government role?

More and more communities throughout the state are adopting stormwater ordinances that help ensure that drainage changes are accommodated as far as possible before runoff leaves a newly developing property. While these programs address large-scale drainage changes, many smaller landscape changes that can cause diffuse surface water problems in the immediate area are intended to be resolved by application of the common law.