

2009 DRAFTING REQUEST

Bill

Received: 11/10/2009

Received By: rkite

Wanted: As time permits

Identical to LRB:

For: Spencer Black (608) 266-7521

By/Representing: himself

This file may be shown to any legislator: NO

Drafter: rkite

May Contact:

Addl. Drafters:

Subject: Nat. Res. - wet/shore/flood

Extra Copies:

Submit via email: YES

Requester's email: Rep.Black@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

General permit for wetland restoration

Instructions:

See attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
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| /P1 | rkite 12/01/2009 | bkraft 12/08/2009 | mduchek 12/10/2009 | _____ | lparisi 12/10/2009 | | |
| /P2 | rkite 03/04/2010 | bkraft 03/04/2010 | rschluet 03/05/2010 | _____ | cduerst 03/05/2010 | | State |
| /1 | rkite 03/11/2010 | bkraft 03/11/2010 | jfrantze 03/12/2010 | _____ | mbarman 03/12/2010 | sbasford 03/12/2010 | |

FE Sent For: '1' @ intro. 3/15/10

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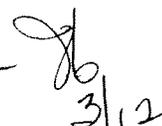
Instructions:

See attached

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| /P2 | rkite 03/04/2010 | bkraft 03/04/2010 | rschluet 03/05/2010 |  | cduerst 03/05/2010 | | |

FE Sent For:

1 bjk 3/12  3/12  **<END>**

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FE Sent For:

1/P2 bjk 3/4

3510

<END>

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| 1? | rkite | 1/PI bjk 12/8 | MD 12/8 | AD RS 12/10 | | | |

FE Sent For:

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Tradewell, Becky

From: Rep.Black
Sent: Tuesday, November 10, 2009 11:52 AM
To: Tradewell, Becky
Cc: Zimmerman, Terri; Brody, Ashley
Subject: Bill draft

Becky

Could you draft the following for me. Plz call with ? Thanks

Spence

Wetland Restoration General Permit Statutory Language

30.2065 Wetland Restoration General Permit. (1) STANDARDS FOR ISSUING GENERAL PERMIT. (a) The department may issue a statewide general permit for wetland restoration projects that are funded in part or whole by federal government agencies and regulated under ss. 30.12, 30.123, 30.19, 30.20 and ch. 31.

(b) A permit issued pursuant to this section may be issued for up to five years. Upon expiration, the permit will continue in effect until a subsequent permit is reissued by the department. A permit shall be reissued pursuant to the procedures set out in this section.

(c) to ensure that the cumulative adverse environmental impact of the activities authorized by a general permit is insignificant and that the issuance of the general permit will not injure public rights or interests, cause environmental pollution, as defined in s. 299.01 (4), or result in material injury to the rights of any riparian owner, the department may impose any of the following conditions on the permit:

1. Construction and design requirements that are consistent with the purpose of the activity authorized under the permit.
2. Location requirements that ensure that the activity will not materially interfere with navigation or have an adverse impact on the riparian property rights of adjacent riparian owners.
3. Restrictions to protect areas of special natural resource interest.

(2) PUBLIC NOTICE. The general permit shall be issued pursuant to the public notice provisions as described

in s. 283.39 and rules developed pursuant thereto.

(3) PUBLIC HEARING. The department shall provide the opportunity for public hearing pursuant to the provisions of s. 283.49 and rules developed pursuant thereto.

(4) PROCEDURES FOR CONDUCTING ACTIVITIES UNDER GENERAL PERMITS. Permitted activities shall be conducted pursuant to the provisions described in ss. 30.206 (3).

(5) INDIVIDUAL PERMIT IN LIEU OF GENERAL PERMIT. The department may require a general permit applicant to apply instead for an individual permit or permits pursuant to the requirements described in ss. 30.206 (3r).

(6) FAILURE TO FOLLOW PROCEDURAL REQUIREMENTS. Failure of an applicant to follow the procedural requirements of this section may result in forfeiture but may not, by itself, result in abatement of the project.

(7) REQUEST FOR INDIVIDUAL PERMIT. A person proposing an activity for which a general permit has been issued may request an individual permit under the applicable provisions of this subchapter or ch. 31 in lieu of seeking authorization under the general permit.



State of Wisconsin
2009 - 2010 LEGISLATURE

RM run
PI
LRB-3836
RNK.....
Lbk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA
X-ref

D-Note

In 12/1

and granting
rule-making
authority

1

AN ACT ^{gen.}...; relating to: general permits for certain wetland restoration activities

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2

SECTION 1. 30.206 (2) of the statutes is created to read:

3

30.206 (2) GENERAL PERMIT FOR WETLAND RESTORATION ACTIVITIES. (a) Δ The

4

department may issue a general permit under this section for wetland restoration

5

activities that require one or more permits or approvals under this chapter or ch. 31

6

and that are funded in whole or in part with federal funds. The department may

7

issue a general permit under this subsection that provides coverage for a period of

8

up to 5 years. The department may renew coverage of an activity under a general

9

permit issued under this subsection upon request. If a timely request for renewal

10

of coverage is made under this subsection, the activity remains covered under the

1 general permit until coverage is renewed by the department or the department
2 denies renewal of coverage.

3 (b) The department shall promulgate by rule procedures for circulating to
4 interested and potentially interested members of the public notices of each complete
5 application for coverage under a general permit issued under this subsection.

6 (c) The department shall provide an opportunity for the applicant, any affected
7 state, the U.S. environmental protection agency, any interested state or federal
8 agency, person, or group of persons to request a public hearing with respect to an
9 activity for which an applicant requests coverage under a general permit issued
10 under this subsection. Such request for a public hearing shall be filed within the time
11 specified by the department by rule and shall indicate the interest of the party filing
12 the request and the reasons why a hearing is warranted.

13 (d) The department shall hold a public hearing if a request for public hearing
14 is made by the U.S. environmental protection agency, any affected state, on the
15 petition of 5 or more persons, or if the department determines that there is a
16 significant public interest in holding such a hearing.

17 (e) If a request for a public hearing is filed with the department under this
18 subsection, the time limits under sub. (3) are tolled from the date that the
19 department receives the request until the request for public hearing is denied or, if
20 approved, until the department conducts the public hearing.

21 (f) The department shall promulgate by rule procedures for the conduct of
22 public hearings held under this subsection. Hearings held under this subsection are
23 not contested cases under s. 227.01 (3).

24 **SECTION 2. Nonstatutory provisions.**

1 (1) The department of natural resources shall submit in proposed form the
 2 rules required under section 30.206 (2) of the statutes, as created by this act, to the
 3 legislative council staff under section 227.137 (1) of the statutes no later than the first
 4 day of the 7th month beginning after the effective date of this subsection.

5 (2) Notwithstanding section 227.137 (2) of the statutes, the secretary of
 6 administration may not require the department of natural resources to prepare an
 7 economic impact report for the rules required under section 30.206 (2) of the statutes,
 8 as created by this act.

9 **SECTION 3. Effective dates.** This act takes effect on the day after publication,
 10 except as follows:

11 (1) The creation of section 30.206 (2) of the statutes takes effect on the first day
 12 of the 13th month beginning after publication.

13 (END)

D-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

Date

(P1)
LRB-3836/dn
RNK:.....
Lbjk

> This draft authorizes the Department of Natural Resources to issue a general permit to cover federally funded wetland restoration activities for which individual permits would otherwise be required under chs. 30 and 31. Because your instructions for the draft were based on the general permit procedures under s. 30.206, stats., I have placed the permit language in that section of the statutes rather than create an entirely new statutory section. Please note the following:

1. This draft does not describe the kinds of wetlands restoration activities that may qualify for coverage under a general permit. Do you want the draft to be more specific on this issue?
- > 2. Your instructions specify that the public hearing provisions under s. 283.49, stats., should apply to a request for coverage under a general permit for wetland restoration activities. Because s. 283.49 concerns pollution discharge permits and not permits under ch. 30 or 31, and to avoid conflicts between the deadlines under ss. 283.49 and 30.206 (3), I have changed the language of s. 283.49 as necessary and incorporated that language into s. 30.206 (2), as created in this draft. Please review this language closely to ensure that it meets your intent.
- > 3. You also requested that the draft specify that a wetland restoration general permit would be valid for a period of up to 5 years and specify that DNR may reissue the permit upon expiration. You also requested that the draft provide that the permit would remain in effect after expiration until reissued. I have assumed for purposes of this draft that your intent was that a wetland restoration activity that is authorized under a general permit is covered for a period of up to 5 years and that if ^{the} applicant applies for renewal of coverage and makes a timely application, coverage remains in effect after expiration until DNR renews or denies renewal of coverage. Please let me know if I have misunderstood your intent.
- > 4. Section 30.206 (7), stats., provides that the general permit provisions of s. 30.206 do not apply to a general permit for the Wolf River and Fox River basin area and certain other designated areas. As drafted, that exemption also applies to the general permit provisions created in this draft. Did you intend to include that exemption under the provisions of this draft?

- > 5. The penalty under current law for violating a general permit under s. 30.206, stats. is a forfeiture of not less than \$10 nor more than \$500 for a first offense and a forfeiture of not less than \$50 nor more than \$500 for a subsequent offense. This penalty applies to the general permit created in this draft. Is this penalty O.K.?

6. I have included a nonstatutory provision that provides a deadline for submission of proposed rules and have also included a delayed effective date to give DNR time to promulgate the required rules. Again, if you do not want to include these provisions, please let me know and I will redraft accordingly.

I have prepared this draft in preliminary form to facilitate any necessary redrafting. Please feel free to contact me if you have any questions with regard to this draft.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3836/P1dn
RNK:bjk.md

December 10, 2009

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Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

Kite, Robin

From: Denboer, Katherine
Sent: Monday, February 22, 2010 10:12 AM
To: Kite, Robin
Subject: RE: wetlands general permit draft

Hi Robin,

I just spoke with Spencer and he said that you have his permission to contact DNR regarding the permit.

Thank you!
Katie

From: Kite, Robin
Sent: Friday, February 19, 2010 8:54 AM
To: Denboer, Katherine
Subject: RE: wetlands general permit draft

Katie:

I just spoke with Erin O'Brien from the Wisconsin Wetlands Association. She gave me more information on the underlying issues relative to this drafting request. As we talked, it became clear to both of us that I will need to talk to DNR in order to get the specific information necessary to draft this proposal. Do I have Rep. Black's permission to talk to DNR on this draft?

Robin

From: Denboer, Katherine
Sent: Thursday, February 11, 2010 11:10 AM
To: Kite, Robin
Subject: RE: wetlands general permit draft

Robin,

I have been speaking with both George Meyer and Erin O'Brien today and yesterday so hopefully we can clear some of this up!

We definitely want your most recently suggested solution to the 283.49 problem: draft the rules with regard to public hearings into the statutes. That is perfect. Erin and George both said that they don't actually care about 283.49 being included in the bill but they just like the process and ideas that go along with it. So if we can recreate that process in chapter 30, that would be wonderful.

Erin said that her most important points with this bill are: 1) not wanting constant public comment and avoiding the long process that wetland restoration can be (because we want to encourage people to do it), and 2) wanting streamlined rules for the process.

As for the five year reauthorization issue, Erin said she understands that most general permits are for ongoing projects but in this case, the general permit refers to the construction activity, not the actual wetland. I think we want the permit to be open-ended so that people can complete their wetland restoration in whatever way necessary under one permit. When the restoration activity is completed there will be a restored wetland and the construction aspect of the general permit will be over. There is precedent for this under current WDNR rules (NR 353), but the rules have some limitations which is why we're looking for the streamlined process for the federally-sponsored projects.

Both Erin and George said they would be happy to speak to you about further questions or comments. Erin is the Policy Director of the Wisconsin Wetlands Association (608.250.9971) and George is the Executive Director of the Wisconsin Wildlife Federation (608.516.5545). George told me yesterday that he would try to contact you today or tomorrow. I, of course, want to be a part of the process but it seems I'm just playing middleman for the moment.

Let me know what else you need! I'm around today until five.
Thank you!
Katie

From: Kite, Robin
Sent: Wednesday, February 10, 2010 11:19 AM
To: Denboer, Katherine
Subject: RE: wetlands general permit draft

One more thing: One way to resolve the problem about the rules under s. 283.49 would be to simply draft the rules with regard to public hearings into the statutes. The rules are not very long or complicated and this would ensure that the same procedure would be used for wetlands general permits as is used in rules under s. 283.49.

Robin

Thanks Katie. The bottom line is that I don't really understand the explanation given in the responses to my drafter's note. On the one hand, the response says that the permit is only good for 5 years unless reauthorized. A general permit typically authorizes a type of activity to occur within the scope of a permit. But the response goes on to suggest that it is actually the activity that would be authorized because the response says that once an activity is completed, no reauthorization is needed. So my question is this: is the permit intended to be for a specific project? If so, I don't think a general permit is what is intended. I think that perhaps the you want a process that combines several individual permits under a single application. I would be happy to discuss this with you or Erin O'Brien if that would help.

Secondly, with regard to the procedure under s. 283.49: That statute requires a public hearing with respect to permits issued under ch. 283. It requires DNR to promulgate rules for the conduct of the hearings. Therefore, the rules promulgated in current law are promulgated under the authority of s. 283.49 and not under the authority of ch. 30. While I can try to draft some language so that the rules apply to ch. 30 permits, this is not typical in the statutes. It is also confusing because when someone looks at the rules, they will contain no reference to ch. 30 permits.

Let me know if you have any other questions.

Robin

From: Denboer, Katherine
Sent: Wednesday, February 10, 2010 10:19 AM
To: Kite, Robin
Subject: wetlands general permit draft

Hi Robin,

I just wanted to check in with you about the wetlands general permit draft. Erin O'Brien from the Wetlands Association called me to talk about our progress. I returned her call but had to leave a voicemail so hopefully we will be chatting soon. I wanted to make sure I was up to date on all your questions about the draft before I talk to her so I can discuss anything we need to work on. The big issues you and I talked about were 1) that the intention of the draft was a bit fuzzy (I hope that the info I sent you was helpful!) and 2) that 283.49 is an air pollution legislation so it may be difficult to transfer the same type of ruling to wetlands. I will talk to Erin about these things and hopefully clear everything up very soon. If you have any additional questions or comments, please let me know!

Thank you!

Katie Den Boer
Representative Black's Office
608.266.7521
katherine.denboer@legis.wisconsin.gov

Kite, Robin

From: Kite, Robin
Sent: Friday, February 19, 2010 9:02 AM
To: Kite, Robin
Subject: LRB-3836

Talked to Erin O'Brien of the Wetlands Association today. The problem: DNR has authority to issue general permits for wetlands activities under NR 353 but must promulgate rules. The wetlands association wants to expedite the process and not require rules for federal projects although they do want to have a public hearing process. I told her that it wasn't clear to me if these were general permits under ch. 281 or ch. 30. Also, I wondered whether we couldn't simplify the draft to provide that for general permits for these specific projects within certain parameters, no rule making is required. She said that this would work but that they want DNR to be able to modify a permit as well without rule-making. I told her that I needed more information to understand exactly what permits were involved and under what authority DNR issues them. She said that she did not know the answer to this and said that I should talk to Sheree Hagen (715-635-4034) at DNR or Linda Leyman at DNR. I told her that I would talk with Rep. Black's office to determine whether I have authority to do so. I also explained that this is an extremely busy time of the year for the LRB and she said that she understood this. She also understands that I will need a lot more information before I can redraft this proposal.

Robin Kite, Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703
(608) 266-7291

1/18/10

Erin O'Brien from wetlands assoc called +
left message

250-9971 - work

240-0380 - home

called Erin back - left message

2/26 -

Called Megan Cornell - 6-2132

Wetlands Permit Restoration Memo

Problems with current legislation:

The current wetland restoration permit law requires a lengthy administrative rule-making process to issue and revise general permits (GPs) for wetland restoration. Many of the wetlands restoration projects must obtain permits or approval under sections 30.12, 30.123, 30.19, 30.20 and ch. 31, Wis. Stats. Because of the lengthy time necessary to issue such permits, substantial funding has been lost for such projects by the state. In addition, the elaborate, lengthy process of receiving a permit for private land owners deters some property owners from partaking in wetland restoration programs. More extensive streamlining for the permit review would facilitate the efficient implementation of the major federal and state programs.

Solution:

The Solution is to create section 30.2065, Wetlands Restoration General Permit, allowing DNR to create and update a five-year general permit for wetlands restoration activities regulated under 30.12, 30.123, 30.19, 30.20 and ch. 31 by administrative procedures in s. 30.206 (This will decrease process time from 12-18 months down to 3 months). The new legislation should:

- Create authorization for DNR to issue (or withdraw, modify or revoke) a general permit for wetland restoration.
- Establish that the general permit would be issued for up to 5 years.
- Create a public notice process in requiring a class 1 notice and mailing to interested parties upon request, of a proposed general permit, and a 30-day comment period following publication of the notice
- Create a public hearing opportunity allowing the public to request a public hearing within 30 days of the notice of the proposed wetlands restoration general permit.
- Establish that expired general permit continues in effect until DNR reissues a new general permit.

This bill encourages wetland restoration by streamlining the permit review and approval process for projects sponsored or funded by the USDA-Natural Resource Conservation Service (NRCA) and the U.S. Fish and Wildlife Service (USFWS). The streamlined regulatory process will increase the number of wetlands restoration project that can be constructed in the state and increase the number of federal, state and private dollars that be captured to build such projects. It will reduce the amount of time necessary to have a wetland restoration general permit issued; thus, more wetlands acres will be restored sooner.

The goals of the revisions are to reduce the federal wetland permit review process to 15 days. It will also reduce the workload for both state and federal staff and help direct more program funds to projects by reducing costly, administrative delays.

Pros:

- The bill will help Wisconsin leverage federal funding to restore 50 to 75 thousands acres of wetlands in the next 5 years.
- The bill will facilitate the efficient implementation of the major federal programs.
- The bill will reduce workload for both state and federal staff.
- By reducing costly administrative delays, there will be more program funds for projects.
- The bill will increase landowners participation by decreasing administrative requirements
- This bill will increase the total acres of restored wetlands sooner which will greatly benefit Wisconsin in many ways including: providing habitat for many of Wisconsin's fish and wildlife– like northern pikes, blue herons, and musky – support numerous aquatic plants, help protect water quality by having the plants store and filter pollutants, help prevent floods, protect lakes and streams from eroding, replenish groundwater supplies, and provide recreational opportunities for wildlife watchers, anglers, hunters, and boaters.

Changes to Wetland Restoration Permit Bill
February 4, 2010

Responses to Drafter Questions:

- 1) Q: This draft does not describe the kinds of wetlands restoration activities that may qualify for coverage under a general permit. Do you want the draft to be more specific on this issue?
A: No, between the federal funding statutes and regulations and the language that will be crafted in the general permit with public input, we won't need to describe wetland restoration activities. ✓
- 2) Q: Your instructions specify that the public hearing provisions under s. 283.49, stats., should apply to a request for coverage under a general permit for wetland restoration activities. Because s. 283.49 concerns pollution discharge permits and not permits under ch. 30 or 31, and to avoid conflicts between the deadlines under ss. 283.49 and 30.206 (3), I have changed the language of s. 283.49 as necessary and incorporated that language into s. 30.206 (2), as created in this draft. Please review this language closely to ensure that it meets your intent.
A: We would like the bill to reflect the objective of granting the WDNR the authority to authorize a general permit through an administrative procedure rather than a rulemaking process. I see that you have used 30.206 as a model, but we would like an alternative procedure to that outlined in 30.206. The drafter is right---there is a conflict between deadlines between those in 283.49 and 30.206 (3). We favor the 283.49 process. The way that this was put into the new 30.206 (2) (c) means there would need to be another round of rulemaking which would mean the loss of two construction seasons and two years of federal funding. The rules for 283.49 are already in place so we incorporated the statutory reference to 283.49 and the rules adopted pursuant thereto into the attached draft language.
- 3) Q: You also requested that the draft specify that a wetland restoration general permit would be valid for a period of up to 5 years and specify that DNR may reissue the permit upon expiration. You also requested that the draft provide that the permit would remain in effect after expiration until reissued. I have assumed for purposes of this draft that your intent was that a wetland restoration activity that is authorized under a general permit is covered for a period of up to 5 years and that if the applicant applies for renewal of coverage and makes a timely application, coverage remains in effect after expiration until DNR renews or denies renewal of coverage. Please let me know if I have misunderstood your intent.
A: The draft provides for issuance of a GP that is valid for 5 years, but doesn't follow the intent of the request that DNR may reissue the permit upon expiration. The draft assumes it is the wetland restoration activity that is authorized for 5 years and eligible for renewal, rather than the general permit itself. What we're after is a process where WDNR can reauthorize the GP every 5 years. My

assumption is that once a restoration activity is approved and the project built, no subsequent reauthorizations are required for the activity (unlike WPDES permits which require ongoing authorization). The language requesting that the general permit remain in existence, even beyond the five years, until it was either reissued or denied was done to make sure that there was not a gap which would mean new projects could not be reauthorized while DNR was still going through the permit issuance process. Once a project has been authorized pursuant to the general permit, it continues in existence permanently.

The draft also applies public notice and public hearing provisions to requests for coverage under the general permit rather than to the general permit itself. In other words, the draft requires WDNR to promulgate rules for public input that require public notice for each completed application for coverage (lines 4-6) and public hearing upon request with respect to an activity for which an applicant requests coverage (lines 7-13). Our intent is for the DNR to offer public notice and hearing opportunities when the general permit is first drafted, and at the time of any updates to the terms of the GP, but there should not be public notice for all activities covered under the GP. We would also like WDNR to have the authority to modify the GP at any time in the 5-year coverage window so long as public notice and opportunity for comment is provided.

- 4) Q: Section 30.206 (7), stats., provides that the general permit provisions of s. 30.206 do not apply to a general permit for the Wolf River and Fox River basin area and certain other designated areas. As drafted, that exemption also applies to the general permit provisions created in this draft. Did you intend to include that exemption under the provisions of this draft?
A: The exemptions for the Wolf River and Fox River basin areas should not apply....we want to encourage wetland restoration in those areas (the WPDES exemptions are to require individual permit review for additional discharges).
- 5) Q: The penalty under current law for violating a general permit under s. 30.206, stats., is a forfeiture of not less than \$10 nor more than \$500 for a first offense and a forfeiture of not less than \$50 nor more than \$500 for a subsequent offense. This penalty applies to the general permit created in this draft. Is this penalty O.K.?
A: Yes, the current penalties are fine. ✓
- 6) Q: I have included a nonstatutory provision that provides a deadline for submission of proposed rules and have also included a delayed effective date to give DNR time to promulgate the required rules. Again, if you do not want to include these provisions, please let me know and I will redraft accordingly. ✓
A: The nonstatutory provision should be deleted. The effective date of the statute should be immediate. We don't want to include additional rulemaking.

Incorporating the procedures in 283.49 and the rules adopted pursuant thereto obviate the need to have more rulemaking. As far a public input on the general permit that will occur as part of the general permit issuance process.

Additional Comments:

Going to the actual draft bill language:

1. 30.206 (b) and (c) require rulemaking for the public notice and public hearing process. This delays implementation by 9 to 12 months even if DNR overworked staff are able to make this its highest priority. Both the DNR and our group are satisfied with the WPDES process in 283.49 and rules adopted pursuant thereto.
2. Subsection 30.206 (2) (f) again calls for rulemaking.
3. Nonstatutory provisions (see above # 6).

Everyone involved in this process including the DNR believe that the delays built into 30.206 should not be applicable to these governmental reviewed, pro-wetland projects and that is why a separate statute avoiding the 30.206 drawbacks was proposed.

Robin,

Thank you so much for your efforts. I hope that I have appropriately responded to your questions. Please let me know if something is fuzzy or if I should do some additional research.

Thank you again.

Katherine Den Boer
Representative Black's Office
608.266.7521
katherine.denboer@legis.wisconsin.gov

Draft

Wetland Restoration General Permit Statutory Language

30.2065 Wetland Restoration General Permit. (1) STANDARDS FOR ISSUING GENERAL PERMIT. (a) The department may issue a statewide general permit for wetland restoration projects that are funded in part or whole by federal government agencies and regulated under ss. 30.12, 30.123, 30.19, 30.20 and ch. 31.

(b) A permit issued pursuant to this section may be issued for up to five years. Upon expiration, the permit will continue in effect until a subsequent permit is reissued by the department. A permit shall be reissued pursuant to the procedures set out in this section.

(c) to ensure that the cumulative adverse environmental impact of the activities authorized by a general permit is insignificant and that the issuance of the general permit will not injure public rights or interests, cause environmental pollution, as defined in s. 299.01 (4), or result in material injury to the rights of any riparian owner, the department may impose any of the following conditions on the permit:

1. Construction and design requirements that are consistent with the purpose of the activity authorized under the permit.
2. Location requirements that ensure that the activity will not materially interfere with navigation or have an adverse impact on the riparian property rights of adjacent riparian owners.
3. Restrictions to protect areas of special natural resource interest.

(2) PUBLIC NOTICE. The general permit shall be issued pursuant to the public notice provisions as described in s. 283.39 and rules developed pursuant thereto.

(3) PUBLIC HEARING. The department shall provide the opportunity for public hearing pursuant to the provisions of s. 283.49 and rules developed pursuant thereto.

(4) PROCEDURES FOR CONDUCTING ACTIVITIES UNDER GENERAL PERMITS. Permitted activities shall be conducted pursuant to the provisions described in ss. 30.206 (3).

(5) INDIVIDUAL PERMIT IN LIEU OF GENERAL PERMIT. The department may require a general permit applicant to apply instead for an individual permit or permits pursuant to the requirements described in ss. 30.206 (3r).

(6) FAILURE TO FOLLOW PROCEDURAL REQUIREMENTS. Failure of an applicant to follow the procedural requirements of this section may result in forfeiture but may not, by itself, result in abatement of the project.

(7) REQUEST FOR INDIVIDUAL PERMIT. A person proposing an activity for which a general permit has been issued may request an individual permit under the applicable provisions of this subchapter or ch. 31 in lieu of seeking authorization under the general permit.

Kite, Robin

From: Denboer, Katherine
Sent: Thursday, February 04, 2010 12:23 PM
To: Kite, Robin
Subject: wetland restoration permit bill comments/revisions

Attachments: Changes to Wetland Permit Restoration Bill.doc; Wetland Restoration General Permit Statutory Language2.doc; DraftingQuestions.txt

Dear Robin,

Thank you for your work on the Wetland Restoration Permit Bill. Attached are the revisions we'd like to see in addition to the original draft and the wetland restoration general permit statutory language. Please let me know if you have questions or comments – I am new to the office (and the process!), so if I have not gone about something in the right way, feel free to contact me.

Thank you!

Sincerely,

Katherine Den Boer
Representative Black's Office
608.266.7521
katherine.denboer@legis.wisconsin.gov

Katie



Changes to
Wetland Permit Rest.oration General P€



Wetland



DraftingQuestions.t
xt (7 KB)

*2/5/10 -
called Katie - left message*



(soon)
State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3836/P1

RNK:bjk:md

RM run
P2
L stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In
3/4

SA
x-ref

Insert

D-Note

providing a penalty

regen.

1 AN ACT *to create* 30.206 (2) of the statutes; **relating to:** general permits for
2 certain wetland restoration activities and ~~granting rule-making authority~~

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 30.206 (2) of the statutes is created to read:

4 30.206 (2) GENERAL PERMIT FOR WETLAND RESTORATION ACTIVITIES. (a) The
5 department may issue a ^{statewide} general permit under this section for wetland restoration
6 activities that require one or more permits or approvals under ~~this chapter~~ or ch. 31
7 and that are funded in whole or in part with federal funds. The department may
8 issue a general permit under this subsection that provides coverage for a period of
9 up to 5 years. The department may renew ~~coverage of the activity under~~
10 permit issued under this subsection upon request. If a timely request for renewal

1 of coverage is made under this subsection, the activity remains covered under the
2 general permit until coverage is renewed by the department or the department
3 denies renewal of coverage.

4 (b) The department shall promulgate by rule procedures for circulating to
5 interested and potentially interested members of the public notices of each complete
6 application for coverage under a general permit issued under this subsection.

7 (c) The department shall provide an opportunity for the applicant; any affected
8 state; the U.S. environmental protection agency; or any interested state or federal
9 agency, person, or group of persons to request a public hearing with respect to an
10 activity for which an applicant requests coverage under a general permit issued
11 under this subsection. Such request for a public hearing shall be filed within the time
12 specified by the department by rule and shall indicate the interest of the party filing
13 the request and the reasons why a hearing is warranted.

14 (d) The department shall hold a public hearing if a request for public hearing
15 is made by the U.S. environmental protection agency, any affected state, on the
16 petition of 5 or more persons, or if the department determines that there is a
17 significant public interest in holding such a hearing.

18 (e) If a request for a public hearing is filed with the department under this
19 subsection, the time limits under sub. (3) are tolled from the date that the
20 department receives the request until the request for public hearing is denied or, if
21 approved, until the department conducts the public hearing.

22 (f) The department shall promulgate by rule procedures for the conduct of
23 public hearings held under this subsection. Hearings held under this subsection are
24 not contested cases under s. 227.01 (3).

25 **SECTION 2. Nonstatutory provisions.**

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~~(1) The department of natural resources shall submit in proposed form the rules required under section 30.206 (2) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 7th month beginning after the effective date of this subsection.~~

~~(2) Notwithstanding section 227.137 (2) of the statutes, the secretary of administration may not require the department of natural resources to prepare an economic impact report for the rules required under section 30.206 (2) of the statutes, as created by this act.~~

~~**SECTION 3. Effective dates.** This act takes effect on the day after publication, except as follows:~~

~~(1) The creation of section 30.206 (2) of the statutes takes effect on the first day of the 13th month beginning after publication.~~

(END)

INSERT

INSERT

1 SECTION 1. 30.2065 of the statutes is created to read:

2 ^B
30.2065 General permit for certain wetlands restoration projects. (1)

3 DEFINITION. In this section, "activity" means a wetland restoration activity funded
4 in whole or in part with federal funds.

5 (2) ISSUANCE; VALIDITY. ^A(a) Upon compliance with the requirements under subs.
6 (3) and (4), the department may issue a general permit that authorizes a person to
7 conduct an activity. A permit issued under this ~~section~~ ^{subsection} is in lieu of any permit or
8 approval required for that activity under s. 30.12, 30.123, 30.19, or 30.20 or ch. 31.

9 (b) A general permit issued under this ~~section~~ ^{subsection} is valid for a period of 5 years
10 except that an activity that the department determines is authorized by a general
11 permit remains authorized under the permit until the activity is completed. The
12 department may renew or modify a general permit issued under this ~~subsection~~ ^{subsection}.

13 (c) To ensure that the cumulative adverse environmental impact of the
14 activities authorized by a general permit is insignificant and that the issuance of the
15 general permit will not injure public rights or interests, cause environmental
16 pollution, as defined in s. 299.01 (4), or result in material injury to the rights of any
17 riparian owner, the department may impose any of the following conditions on the
18 permit:

19 1. Construction and design requirements that are consistent with the purpose
20 of the activity authorized under the permit.

21 2. Location requirements that ensure that the activity will not materially
22 interfere with navigation or have an adverse impact on the riparian property rights
23 of adjacent riparian owners.

3. Restrictions to protect areas of special natural resource interest.

1
2 (3) PUBLIC NOTICE. (a) The department shall ~~promulgate by rule procedures~~
3 ~~circulate~~ ^{circulate} to interested and potentially interested members of the public notices
4 of its intention to issue a general permit. Procedures for the circulation of public
5 notices shall include at least the following:

- 6 1. Publication of the notice as a class 1 notice under ch. 985.
- 7 2. Mailing of the notice to any person or group upon request.

8 (b) The department shall provide a period of not less than 30 days following the
9 date of the public notice during which time interested persons may submit their
10 written views on the department's intention to issue a general permit under ~~this~~
11 ~~section~~ ^{sub(2)}. All written comments submitted during the period for comment shall be
12 retained by the department and considered in the issuance of the general permit.

13 (c) ~~The department shall by rule prescribe the form and content of public~~
14 ~~notices issued under this subsection.~~ Every notice issued by the department of the
15 department's intention to issue a general permit under ~~this section~~ ^{sub(2)} shall include a
16 description of the activities proposed to be authorized under the general permit.

17 (4) PUBLIC HEARING. (a) 1. The department shall provide an opportunity for
18 any affected state, the U.S. environmental protection agency, ^{or} any interested state or
19 federal agency, ^{or} person or group of persons to request a public hearing with respect
20 to the department's intention to issue a general permit under ~~this section~~ ^{sub(2)}. Such
21 request for a public hearing shall be filed with the department within 30 days after
22 the circulation of the public notice under sub. (3) and shall indicate the interest of
23 the party filing the request and the reasons why a hearing is warranted.

1 2. The department shall hold a public hearing upon a request under subd. 1.
2 if the department determines that there is a significant public interest in holding
3 such a hearing.

4 ~~3. The department shall promulgate by rule procedures for the conduct of~~
5 ~~public hearings held under this section.~~ Hearings held under this section are not
6 contested cases under s. 227.01 (3).

7 (b) ~~1.~~ Public notice of any hearing held under this section shall be circulated
8 in accordance with the requirements of sub. (3).

9 ~~2. The form and content of the public notice shall be established by the~~
10 ~~department by rule.~~ ^(c) Procedures for conducting activities.

11 (5)(a) A person wishing to conduct an activity under the authority of a general
12 permit issued under sub. (2) shall apply to the department, with written notification
13 of the person's wish to conduct the activity, not less than 30 days before commencing
14 the activity. The notification shall provide information describing the activity in
15 order to allow the department to determine whether the activity is authorized by the
16 general permit and shall give the department consent to enter and inspect the site,
17 subject to s. 30.291. The department may make a request for additional information
18 one time during the 30-day period. If the department makes a request for additional
19 information, the 30-day period is tolled from the date the person applying for
20 authorization to conduct the activity receives the request until the date on which the
21 department receives the information. ~~The department shall provide public notice of~~

22 ~~a completed application in the manner provided under sub. (3).~~

23 (b) If within 30 days after a notification under par. (a) is submitted to the
24 department the department does not require any additional information about the
25 activity that is subject to the notification and does not inform the applicant that an

1 individual permit will be required, the activity will be considered to be authorized
2 under the general permit and the applicant may proceed without further notice,
3 hearing, permit, or approval if the activity is carried out in compliance with all of the
4 conditions of the general permit.

5 (6) INDIVIDUAL PERMIT IN LIEU OF GENERAL PERMIT. (a) The department may
6 decide to require a person who has applied under sub. (5) for authority to conduct
7 an activity under a general permit to apply for and be issued an individual permit
8 ~~or be granted a contract~~ if either of the following applies:

9 1. The department determines that the proposed activity is not authorized
10 under the general permit.

11 2. The department has conducted an investigation and visited the site and has
12 determined that conditions specific to the site require restrictions on the activity in
13 order to prevent significant adverse impacts to the public rights and interest,
14 environmental pollution, as defined in s. 299.01 (4), or material injury to the riparian
15 rights of any riparian owner.

16 (b) A decision by the department to require an individual permit under this
17 subsection shall be in writing.

18 (7) COMPLETION OF ACTIVITIES. Upon completion of an activity that the
19 department has authorized under a general permit, the person conducting the
20 activity shall provide to the department a statement certifying that the activity is in
21 compliance with all of the conditions of the general permit and a photograph of the
22 activity.

23 (8) FAILURE TO FOLLOW PROCEDURAL REQUIREMENTS. Failure of an applicant to
24 follow the procedural requirements of this section may result in forfeiture but may
25 not, by itself, result in abatement of the activity.

1 **(9) REQUEST FOR INDIVIDUAL PERMIT.** A person proposing to conduct an activity
2 for which a general permit has been issued may request an individual permit under
3 the applicable provisions of this subchapter or ch. 31 in lieu of seeking authorization
4 under the general permit.

5 **SECTION 2.** 30.298 (3) of the statutes is amended to read:

6 **30.298 (3)** Any person who violates a general permit under s. 30.206 or 30.2065
7 shall forfeit not less than \$10 nor more than \$500 for the first offense and shall forfeit
8 not less than \$50 nor more than \$500 upon conviction of the same offense a 2nd or
9 subsequent time.

History: 1987 a. 374; 2003 a. 118.

10 **SECTION 3.** 227.01 (13) (rt) of the statutes is created to read:

11 **227.01 (13) (rt)** Is a general permit issued under s. 30.2065.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3836/P2dn

RNK:.....

Lbjk

Date

I have redrafted this proposal so that it is clear that the general permit created in the draft may be issued in lieu of certain permits that may otherwise be required under chs. 30 and 31 for a federally funded wetlands restoration project. The draft does not establish a fee for an application to proceed under the authority of such a permit. Please let me know if you want the draft to establish such a fee.

As requested, this draft is based in part on the language in current law under s. 30.206 as well as language in ss. ~~281.39 and 281.49~~ ^{28.3039 and 28.3049}. Because the procedural requirements under all of those provisions are not entirely consistent, I had to make some changes to the language borrowed from those provisions. Please review the draft very closely to ensure that the resulting language in the draft meets your intent.

This version of the draft is still in preliminary form to facilitate any further redrafting.

Please feel free to contact me if you have any questions with regard to this draft.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3836/P2dn
RNK:bjk:rs

March 5, 2010

I have redrafted this proposal so that it is clear that the general permit created in the draft may be issued in lieu of certain permits that may otherwise be required under chs. 30 and 31 for a federally funded wetlands restoration project. The draft does not establish a fee for an application to proceed under the authority of such a permit. Please let me know if you want the draft to establish such a fee.

As requested, this draft is based in part on the language in current law under s. 30.206 as well as language in ss. 283.39 and 283.49. Because the procedural requirements under all of those provisions are not entirely consistent, I had to make some changes to the language borrowed from those provisions. Please review the draft very closely to ensure that the resulting language in the draft meets your intent.

This version of the draft is still in preliminary form to facilitate any further redrafting. Please feel free to contact me if you have any questions with regard to this draft.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

Kite, Robin

From: Erin O'Brien [Erin.O'Brien@wisconsinwetlands.org]
Sent: Tuesday, March 09, 2010 9:33 AM
To: Kite, Robin
Cc: Hagen, Cherie L - DNR
Subject: restoration permit fees

Robin,

Kyle on our staff has told me that when he worked at WDNR, fees for federal projects were waived. He thinks this was as per an MOU but we don't have the documentation to support that. Hopefully Cherie can clarify.

Regards,

Erin

Wetland Policy Director

Wisconsin Wetlands Association

222 S. Hamilton St., Suite 1

Madison, WI 53704

www.wisconsinwetlands.org

608-250-9971

From: Erin O'Brien [mailto:Erin.O'Brien@wisconsinwetlands.org]
Sent: Monday, March 08, 2010 5:12 PM
To: 'Denboer, Katherine'; 'georgemeyer@tds.net'; 'Correll, Megan E - DNR'
Cc: 'Hagen, Cherie L - DNR'
Subject: Comments on LRB 09-3836/P2 Topic: General permit for wetland restoration

Katie & Robin,

Wisconsin Wetlands Association's comments on the Wetland Restoration GP bill are pasted below. I am available all day tomorrow, except between 12-1:30, if you have questions.

Regards,

Erin O'Brien

Wetland Policy Director

Wisconsin Wetlands Association

03/09/2010

222 S. Hamilton St., Suite 1

Madison, WI 53704

www.wisconsinwetlands.org

608-250-9971

<< Message: Federal Wetland Conservation Blanket GP Conditions >>

1. Re: fees, they should be waived or comparable to whatever fees are required for GP coverage under NR 353.
2. Page 2, lines 11-20 outline the types of conditions WDNR may impose on the permit. We agree that these types of conditions should be included as part of the GP WDNR issues as they are needed to clearly define what types of activities are and are not eligible for coverage. It would be counterproductive to the intent of this bill (i.e., streamlining), however, if this language also means that WDNR can attach special conditions (above & beyond what's written in the GP) on individual projects.
3. Page 2, lines 17-19: Though we assume the intent of this section is for WDNR to release the draft GP for public review & comment as part of the public notice, it reads as if the public notice is more akin to a scoping process. It would be helpful to clarify that the draft GP should be released as part of the notice.
4. Page 3, lines 19-25 and Page 4, Lines 1-5. The 30-day timeline is too long to meet the intent of the bill (i.e., streamlining). An e-mail from Cherie Hagen dated 3/13/2009 (attached) shows the Department's intent to work under a 15-day approval timeline as follows: *water regulation staff will have 15 days to provide a response confirming project meets "blanket GP" or stating project does not qualify for "blanket GP" for "x" reason. If you do not receive a response from Department staff within 15-days, project has presumptive approval and project may move forward.* The language should be modified to reflect this process. This would mean that WDNR would have to exercise their request for additional information on or before 15 days.

In addition, we would like to see something added that requires WDNR to clearly define the contents of a complete application. One problem partners run into is that the approval clock does not start running until the Department has deemed the application complete and that determination can differ in the hands of different staff members. Defining the contents of a complete application would alleviate any ambiguity on what's needed to get the review clock running.

5. Page 4, line 11: the reference to hearings is not necessary since there are no hearings allowed for individual activities covered under the GP.
6. Page 4, lines 24-25: As per comment #4 above, the statute should specify that WDNR must notify applicants within 15 days of any determination that an individual permit is required.

Kite, Robin

From: Correll, Megan E - DNR [Megan.Correll@wisconsin.gov]
Sent: Monday, March 08, 2010 12:59 PM
To: Denboer, Katherine; Kite, Robin
Subject: RE: Draft review: LRB 09-3836/P2 Topic: General permit for wetland restoration

Robin and Katie,

Thanks for the draft. DNR will have some comments, however, I am leaving for meetings up north momentarily and will not be back until Wednesday. We have scheduled an internal meeting on Thursday to compile comments and will provide them as soon as we can--I'm assuming I can continue to work directly with Robin?

Thanks!

Megan E. Correll
Attorney
Bureau of Legal Services
Wisconsin Department of Natural Resources
(* phone: (608) 266-2132
(* fax: (608) 266-6983
(* e-mail: megan.correll@wisconsin.gov

-----Original Message-----

From: Denboer, Katherine [mailto:Katherine.Denboer@legis.wisconsin.gov]
Sent: Monday, March 08, 2010 10:40 AM
To: Erin O'Brien; Meyer, George; Correll, Megan E - DNR
Subject: FW: Draft review: LRB 09-3836/P2 Topic: General permit for wetland restoration

Hi all,

Here is Robin's latest draft. We want to keep up the momentum of the bill, to get it through this session, so please let me know if you have comments or changes ASAP.

Thank you!
Katie Den Boer
266.7521

Kite, Robin

From: Maycroft, John
Sent: Thursday, March 11, 2010 8:59 AM
To: Kite, Robin
Cc: Rep.Black; Denboer, Katherine
Subject: Final revisions to LRB 09-3836
Importance: High

Hi Robin,

Here are the final revisions to the wetlands general permit bill. Is it possible to incorporate these and send it back as a /1 by the end of the day?

John Maycroft
Office of Rep. Black
6-7521

1. Section 30.298, Stats. and associated rules contain permit fee language that would be applicable to this new permit. No additional language is needed in this bill.
2. To be consistent with the purpose and applicability, DNR recommends replacing the word "person" or "applicant", with the phrase "federal agency", wherever those words appear in this bill.
3. Page 1, line 7 - The intent of DNR and our federal partners is that this bill allow creation of a general permit for projects sponsored by a federal agency, in other words where these agencies are the responsible party for the project. So DNR recommends deleting the phrase "...funded in whole or part with federal funds." and replacing it with something like "...sponsored, led and conducted by a federal agency." While the Natural Resource Conservation Service and the US Fish and Wildlife Service are the two federal agencies we routinely work with on these projects, we can address the specific agency in the general permit, and in the MOU we have with these agencies.
4. Page 1, line 11 - The list of other statutes in this line should be the following: "...under ch.30, s. 31.02, s. 31.12, s. 31.33, s. 281.15, and s. 281.36."
5. 30 days in subsection 5 should be changed to 15 days

Kite, Robin

From: Maycroft, John
Sent: Thursday, March 11, 2010 2:02 PM
To: Hagen, Cherie L - DNR; Kite, Robin
Cc: Correll, Megan E - DNR
Subject: RE: Applicant

Sounds good to me.

From: Hagen, Cherie L - DNR [mailto:Cherie.Hagen@Wisconsin.gov]
Sent: Thursday, March 11, 2010 2:01 PM
To: Kite, Robin; Maycroft, John
Cc: Correll, Megan E - DNR
Subject: RE: Applicant

I will defer to Megan, but that sounds acceptable to me.

From: Kite, Robin [mailto:Robin.Kite@legis.wisconsin.gov]
Sent: Thursday, March 11, 2010 1:50 PM
To: Maycroft, John - LEGIS; Hagen, Cherie L - DNR
Cc: Correll, Megan E - DNR
Subject: RE: Applicant

I recommend that the draft require that the person "wishing to proceed with an activity" apply for authority to proceed under the permit. I recommend further, that the draft specifically authorize the federal agency that is the sponsor of the activity to file the application on behalf of the person "wishing to proceed" with the activity. This language (i.e. "wishing to proceed") comes from s. 30.206 (3) in current law.

Robin

From: Maycroft, John
Sent: Thursday, March 11, 2010 1:42 PM
To: Hagen, Cherie L - DNR; Kite, Robin
Cc: Correll, Megan E - DNR
Subject: RE: Applicant

Sorry I'm not clear what you're agreeing with. Is the applicant the person who is conducting the activity, or the person on whose property the activity is being conducted? And should we state that a federal agency may file an application on behalf of the applicant if the applicant has authorized the federal agency to do so?

John

From: Hagen, Cherie L - DNR [mailto:Cherie.Hagen@Wisconsin.gov]
Sent: Thursday, March 11, 2010 1:19 PM
To: Kite, Robin; Maycroft, John
Cc: Correll, Megan E - DNR
Subject: RE: Applicant

03/11/2010

I agree.

From: Kite, Robin [mailto:Robin.Kite@legis.wisconsin.gov]
Sent: Thursday, March 11, 2010 1:18 PM
To: Hagen, Cherie L - DNR; Maycroft, John - LEGIS
Cc: Correll, Megan E - DNR
Subject: RE: Applicant

Cherie and John:

The issue of who the applicant is under this draft is extremely important. The reason that it is important for us to know who the applicant is is because the draft imposes legal responsibilities on the applicant and also imposes penalties. So I think that the draft needs to specify that the applicant is either the person who is conducting the activity or the person on whose property the activity is being conducted. But the draft could also provide that a federal agency may file an application on behalf of the applicant if the applicant has authorized the federal agency to do so. Will that work? Do you agree John?

Robin

From: Hagen, Cherie L - DNR [mailto:Cherie.Hagen@Wisconsin.gov]
Sent: Thursday, March 11, 2010 11:56 AM
To: Kite, Robin
Cc: Correll, Megan E - DNR
Subject: Applicant

Hi Robin -- After we spoke I wanted to clarify who the applicant is for these projects. The applicant is both the federal agency sponsoring the project and the actual landowner(s) of the property where the project is being constructed. It is important to distinguish this because for many Chapter 30 activities and WQC the applicant needs to be the landowner to apply for the permit and is the owner of a structure that is placed on their property, i.e. a structure in a watercourse (dam/culvert/weir/etc.) To streamline the permit process, the NRCS/FWS can serve as the *agent* on behalf of the landowner with permission from the landowner to help streamline the permit process (eliminates the need for landowner signature). Our current NRCS/FWS application in the signature section reads:

Section VIII: Certification and Permission

I am the owner of the riparian property or am the duly authorized representative and may sign this application on behalf of the owner(s) of said property. I hereby certify that the information contained herein is true and accurate. I have read and understand all of the conditions listed in this permit and in the instructions. I will construct the above-mentioned project in compliance with all such conditions. I hereby give the Department permission to enter and inspect the site at reasonable times, to evaluate this application and to monitor compliance with any resulting permit. I understand that failure to comply with any or all of the provisions of the permit renders the authorization contained herein null and void and may result in a fine and/or imprisonment or forfeiture under the provisions of ch. 30, Wis. Stats.

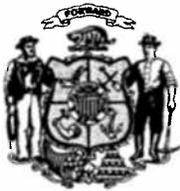
Let me know if you have any questions. Thanks for all your work on this!

Cherie L. Hagen
 Wetland Team Leader & Policy Coordinator
 810 West Maple Street
 Spooner, WI 54801
 715-635-4034 (phone)

715-635-4260 (fax)
cherie.hagen@wisconsin.gov



dnr.wi.gov/wetlands



Fri. 3/12
State of Wisconsin
2009 - 2010 LEGISLATURE

In 3/11 3:40 pm

Rm run
LRB-3836/22
RNK:bjk:rs
Lstays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA

2009 BILL

regen.

1 AN ACT to amend 30.298 (3); and to create 30.2065 and 227.01 (13) (rt) of the
2 statutes; relating to: general permits for certain wetland restoration activities
3 and providing a penalty.

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

Insert Analysis

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 30.2065 of the statutes is created to read:

3
activity

5 30.2065 General permit for certain wetlands restoration projects. (1)

6 DEFINITION. In this section, "activity" means a wetland restoration activity funded
7 in whole or in part with federal funds sponsored by a federal agency

this chapter

8 (2) ISSUANCE; VALIDITY. (a) Upon compliance with the requirements under subs

9 (3) and (4), the department may issue a general permit that authorizes a person to
10 proceed with

11 an activity. A permit issued under this subsection is in lieu of any permit
or approval required for that activity under ~~§. 30.12, 30.123, 30.19, or 30.20 or ch. 31~~

ch. 30 or 30.3002, 30.12, 30.33, 28.15 or 28.36

1 (b) A general permit issued under this subsection is valid for a period of 5 years
2 except that an activity that the department determines is authorized by a general
3 permit remains authorized under the permit until the activity is completed. The
4 department may renew or modify a general permit issued under this subsection.

5 (c) To ensure that the cumulative adverse environmental impact of the
6 activities authorized by a general permit is insignificant and that the issuance of the
7 general permit will not injure public rights or interests, cause environmental
8 pollution, as defined in s. 299.01 (4), or result in material injury to the rights of any
9 riparian owner, the department may impose any of the following conditions on the
10 permit:

11 1. Construction and design requirements that are consistent with the purpose
12 of the activity authorized under the permit.

13 2. Location requirements that ensure that the activity will not materially
14 interfere with navigation or have an adverse impact on the riparian property rights
15 of adjacent riparian owners.

16 3. Restrictions to protect areas of special natural resource interest.

17 **(3) PUBLIC NOTICE.** (a) The department shall circulate to interested and
18 potentially interested members of the public notices of its intention to issue a general
19 permit. Procedures for the circulation of public notices shall include at least the
20 following:

21 1. Publication of the notice as a class 1 notice under ch. 985.

22 2. Mailing of the notice to any person or group upon request.

23 (b) The department shall provide a period of not less than 30 days following the
24 date of the public notice during which time interested persons may submit their
25 written views on the department's intention to issue a general permit under sub. (2).

1 All written comments submitted during the period for comment shall be retained by
2 the department and considered in the issuance of the general permit.

3 (c) Every notice issued by the department of the department's intention to issue
4 a general permit under sub. (2) shall include a description of the activities proposed
5 to be authorized under the general permit.

6 (4) PUBLIC HEARING. (a) 1. The department shall provide an opportunity for any
7 affected state, the U.S. environmental protection agency, or any interested state or
8 federal agency or person or group of persons to request a public hearing with respect
9 to the department's intention to issue a general permit under sub. (2). Such request
10 for a public hearing shall be filed with the department within 30 days after the
11 circulation of the public notice under sub. (3) and shall indicate the interest of the
12 party filing the request and the reasons why a hearing is warranted.

13 2. The department shall hold a public hearing upon a request under subd. 1.
14 if the department determines that there is a significant public interest in holding
15 such a hearing. Hearings held under this section are not contested cases under s.
16 227.01 (3).

17 (b) Public notice of any hearing held under this section shall be circulated in
18 accordance with the requirements of sub. (3).

19 (5) PROCEDURES FOR CONDUCTING ACTIVITIES. (a) A person wishing to ~~conduct~~
20 proceed with an activity under the authority of a general permit issued under sub. (2) shall apply
21 to the department, with written notification of the person's wish to ~~conduct~~ proceed with
22 the activity, not less than ~~30~~ ¹⁵ days before commencing the activity. The notification shall
23 provide information describing the activity in order to allow the department to
24 determine whether the activity is authorized by the general permit and shall give the
25 department consent to enter and inspect the site, subject to s. 30.291. The

The federal agency sponsoring the activity may file the application on behalf of the person wishing to proceed with the activity if the person authorizes the federal agency to do so.

15 x2

1 department may make a request for additional information one time during the
 2 30-day period. If the department makes a request for additional information, the
 3 30-day period is tolled from the date ~~the person applying for authorization to conduct~~
 4 ~~the activity necessary~~ for additional information is received the request until the date on which the department receives the
 5 information.

6 (b) If within 30 days after a notification under par. (a) is submitted to the
 7 department the department does not require any additional information about the
 8 activity that is subject to the notification and does not inform the ~~operator~~ that an
 9 individual permit will be required, the activity will be considered to be authorized
 10 under the general permit and the ~~activity~~ activity may proceed without further notice,
 11 hearing, permit, or approval if the activity is carried out in compliance with all of the
 12 conditions of the general permit.

13 (6) INDIVIDUAL PERMIT IN LIEU OF GENERAL PERMIT. (a) The department may
 14 decide to require a person who has applied under sub. (5) for authority to ~~conduct an~~
 15 proceed with an activity under a general permit to apply for and be issued an individual permit if any
 16 of the following applies:

- 17 1. The department determines that the proposed activity is not authorized
 18 under the general permit.
- 19 2. The department has conducted an investigation and visited the site and has
 20 determined that conditions specific to the site require restrictions on the activity in
 21 order to prevent significant adverse impacts to the public rights and interest,
 22 environmental pollution, as defined in s. 299.01 (4), or material injury to the riparian
 23 rights of any riparian owner.

24 (b) A decision by the department to require an individual permit under this
 25 subsection shall be in writing.

person wishing to proceed with the activity or the federal agency sponsoring the activity

federal agency that sponsored

1 (7) COMPLETION OF ACTIVITIES. Upon completion of an activity that the
2 department has authorized under a general permit, ~~the person authorized~~
3 activity shall provide to the department a statement certifying that the activity is in
4 compliance with all of the conditions of the general permit and a photograph of the
5 activity.

6 (8) FAILURE TO FOLLOW PROCEDURAL REQUIREMENTS. Failure of ~~an applicant~~
7 follow the procedural requirements of this section may result in forfeiture but may
8 not, by itself, result in abatement of the activity.

wishing to proceed with

9 (9) REQUEST FOR INDIVIDUAL PERMIT. A person ~~proposing to conduct~~
10 for which a general permit has been issued may request an individual permit under
11 the applicable provisions of this ~~sub~~ chapter or ch. 31 in lieu of seeking authorization
12 under the general permit.

13 SECTION 2. 30.298 (3) of the statutes is amended to read:

14 30.298 (3) Any person who violates a general permit under s. 30.206 or 30.2065
15 shall forfeit not less than \$10 nor more than \$500 for the first offense and shall forfeit
16 not less than \$50 nor more than \$500 upon conviction of the same offense a 2nd or
17 subsequent time.

18 SECTION 3. 227.01 (13) (rt) of the statutes is created to read:

19 227.01 (13) (rt) Is a general permit issued under s. 30.2065.

20 (END)

the person authorized to proceed under the general permit, or the federal agency that sponsored the activity,

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3836/lins.
RNK:.....

INSERT ANALYSIS

> Under current law, the Department of Natural Resources (DNR) regulates certain activities that occur in or near navigable waterways. In order for a person to conduct such an activity, the person may be required to obtain one or more permits from DNR. Among the permits that DNR issues are permits to construct, operate, and maintain dams, to place structures or deposit material, permits to construct or maintain bridges, permits to enlarge or connect waterways or to grade or remove top soil from banks along navigable waterways, permits to change the courses of streams and rivers, and permits to remove material from beds of navigable waterways. Current law also prohibits a person from discharging dredged or fill material into certain wetlands unless the discharge is authorized by a certification from DNR that the discharge will meet all applicable state water quality standards. ^Δ

Five
> This bill authorizes DNR to issue a general permit for wetland restoration activities sponsored by a federal agency (wetlands general permit) in lieu of issuing certain individual permits or water quality certifications that would otherwise be required for those activities. Under the bill, a wetlands general permit is valid for 5 years except that an activity that DNR determines is authorized by a wetlands general permit remains authorized under the permit until the activity is completed. The bill authorizes DNR to renew or modify a wetlands general permit. The bill requires DNR to provide public notice of its intention to issue a wetlands general permit and to provide an opportunity for certain interested persons to request a public hearing with respect to DNR's intention to issue a wetlands general permit. DNR must hold a public hearing if it determines that there is significant public interest in holding the hearing.

> Under the bill, a person who wishes to proceed with an activity under the authority of a wetlands general permit must file an application with DNR not less than 15 days before commencing the activity. The bill authorizes the sponsoring federal agency to file the application on behalf of the person wishing to proceed with the activity if that person authorizes the federal agency to do so. The bill also authorizes DNR to request additional information before determining whether the activity is authorized by the wetlands general permit. If, within 30 days after application, DNR does not inform the person wishing to proceed with the activity or the sponsoring federal agency that an individual permit will be required, the activity is considered to be authorized under the wetlands general permit. The bill authorizes DNR to require a person to apply and obtain an individual permit if DNR determines that the activity is not authorized under the wetlands general permit or that site specific conditions require restrictions on the activity. The bill also authorizes a person wishing to proceed with an activity for which a wetlands general permit has been issued to request an individual permit in lieu of seeking authorization under the general permit. ^Δ

> For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

Basford, Sarah

From: Maycroft, John
Sent: Friday, March 12, 2010 2:45 PM
To: LRB.Legal
Subject: RUSH: Draft Review: LRB 09-3836/1 Topic: General permit for wetland restoration

Please Jacket LRB 09-3836/1 for the ASSEMBLY.

Please rush; we need to introduce this right away. Thank you!