

**2011 DRAFTING REQUEST**

**Bill**

Received: **09/01/2011**

Received By: **mglass**

Wanted: **As time permits**

Companion to LRB:

For: **Neal Kedzie (608) 266-2635**

By/Representing: **Dan Johnson**

May Contact:

Drafter: **mglass**

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

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kedzie@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Wetland regulation, mitigation and fees for DNR permits

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**Instructions:**

See attached

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**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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1/29 12/29 wij

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12/29  
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- A handwritten signature 'RS' is written over the 'Typed' column for P3.  
- A handwritten note '7/15' is written near the 'Proofed' column for P1.  
- A handwritten note 'KJ/KW' is written near the 'Proofed' column for P1.

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*/P7 Wlj 12/13*

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FE Sent For:

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WJ 11/21

<END>

/p5 bluesheet WJ  
11/28

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**Topic:**

Certification for wetland activities and wetland mitigation

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**Instructions:**

See attached

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1/1

mglass

PI WLJ 9/28

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*(Handwritten initials)*

FE Sent For:

<END>

## **Gibson-Glass, Mary**

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**From:** Sen.Kedzie  
**Sent:** Thursday, September 01, 2011 4:43 PM  
**To:** Gibson-Glass, Mary  
**Subject:** legislative draft request - wetlands regulation and permitting

**Attachments:** Wetland Regulation revisions 8.31.11.doc

September 1, 2011

Mary,

I would like to request a preliminary legislative draft to revise current law as it relates to the regulation and permitting of wetlands projects and activities. Attached is an outline with general and specific instructions. I understand there may be concerns regarding some of the generalities contained within these instructions, which is why I am requesting a preliminary draft. The contact person in my office for this draft is Dan Johnson, and you may call or write him anytime with any such concerns.

Thank you very much.

**Neal Kedzie**

Chair, Senate Natural Resources and Environment Committee  
State Senator  
11<sup>th</sup> Senate District



Wetland  
gulation revisions

**Wetland Regulation Draft Request  
State Senator Neal Kedzie – September 1, 2011**

I am requesting a preliminary draft bill (P1) for revisions to ss. 281.36, 281.37, 281.22, 30.28, and 23.321 Stats., in the following manner:

**281.36 Water quality certification for wetlands.**

Strike “non-federal” wherever it appears in s. 281.36

Repeal: s. 281.36(1)(am); Repeal: s. 281.36(1)(c); Repeal: s. 281.36(1)(cm)

Under 281.36(1) Add: “Practicable alternative” means available and capable of being implemented after taking into consideration cost; available technology; logistics, including adjacency and proximity to the proposed site; and overall project purposes.

Clarify that “permit” has the same meaning/implication/effect as a water quality certification issued under this section.

Repeal all of s. 281.36(1m)

Revise sections 281.36(2) and 281.36(8) as needed to reflect a General and Individual Permit process, as follows:

*exception*  
**General Permits**

*GP*

Eligibility The Department of Natural Resources shall establish **Reporting and Non-Reporting General Permits** consistent with the federal Clean Water Act 404(1)(b) guidelines. *?* The Department shall include with the General Permits the applicable eligibility standards, conditions, and exclusions. General Permit categories may include:

*no rule-making authority for nr gp*

*now reporting general only*

1. Clean up of hazardous and toxic waste – up to 2 acres of wetland fill or disturbance
2. Temporary Construction, Access, and Dewatering – up to 2 acres wetland disturbance
3. Utility line discharges – up to 10,000 square feet wetland fill or 2 acres temporary wetland disturbance
4. Structural member discharges (utility pole, bridge support, ramp surface, or retaining wall) – up to 10,000 square feet of fill
5. Commercial development – up to 10,000 square feet of fill
6. Residential development – up to 10,000 square feet of fill
7. Industrial development, including landfills – up to 10,000 square feet of fill
8. Agricultural development – up to 10,000 square feet of fill
9. Municipal development – up to 10,000 square feet of fill
10. Recreational development – up to 10,000 square feet of fill
11. Renewal of an expired Wetland Water Quality Certification
12. Other activities as defined by the Department



NRGP

Permit Process For a **Non-Reporting General Permit**, no application is required. However, the project proponent may request a Non-Reporting Eligibility Determination, similar to the Exemption determination process under s. 30.12 (2r).

For a **Reporting General Permit**, an application and fee will be required. The permit application process would include the following criteria:

seeking  
authori-  
ation

G-P

1. The application shall provide an explanation detailing why the wetland impact can not be avoided, category-specific alternatives that were considered, and how the wetland impacts were minimized to the greatest extent practicable.
2. The Department has 30 days for completeness review, but has one opportunity to request additional information from the applicant.
3. If the Department fails to issue the notice of incompleteness within 30 days, the application shall be considered approved. The applicant must meet all the standards and conditions of a presumptively approved and applicable general permit.
4. Once all the information requested is submitted, the Department shall issue a decision within 30 days of receipt of that information. If the Department fails to issue a decision within 30 days, the application shall be considered approved.

**Individual Permit in lieu of a General Permit**

The Department may require a Reporting General Permit in lieu of a Non-Reporting General Permit, or an Individual Permit in lieu of a General Permit if either:

later  
2+

1. the Department determines the proposed activity is not authorized under the Non-Reporting provisions; or,
2. the Department has conducted an investigation and site visit, and determined the conditions specific to the site require restrictions on the activity in order to provide reasonable assurance that significant adverse impacts to wetland functional values and water quality will not occur. *See s. 30.12(2m) as an example.*

Procedure The Department establishes General Permits by administrative procedure under the following structure:

1. Upon compliance with notice and hearing requirements, the Department may issue general permits for categories of activities.
2. A general permit issued under this paragraph constitutes the state's water quality certification decision for that activity under this subchapter.
3. A general permit is valid for a period of five years, and an activity authorized by the Department by general permit remains authorized until the activity is complete.

not  
needed

?

Yes

(2)

4. The Department may renew, modify, or revoke a general permit issued under par. (#) upon compliance with the notice and hearing requirements, and until such renewal, modification, or revocation, the general permit shall remain in effect.
5. The Department shall circulate notices of its intent to issue a general permit to interested and potentially interested members of the public.
6. Notice shall be provided by class 1 notice under c. 985 or by use of an electronic notification system established by the Department.
7. A copy of the notice shall be provided to any person or group upon request.
8. Opportunity for a hearing shall be made available upon request within 30 days of notice.

Standards A General Permit issued under this section shall be consistent with the state water quality standards adopted under s. 281.15, Stats.

Surcharge A Wetland Habitat and Restoration surcharge is added for General Permits issued for commercial, residential, and industrial development projects.

### **Individual Permits**

Eligibility A project not eligible for a General Permit is eligible for an Individual Permit

Process A permit application and fee is required, as is a pre-application meeting. Wetland delineation is required along with a 30-day public notice and comment period. Individual permits **are not** automatically or presumptively approved if the Department fails to meet any deadline.

Once application is received, the Department has 30 days to review for completeness, and has one opportunity to request additional information, or notify if the application is complete. If the application is complete, a notice of completeness is issued.

When all requested information is submitted, the DNR shall notify the applicant within 10 days of receipt of those additional materials and the application shall be deemed complete.

Notice of a complete application shall be made on a Web-based notice system, along with the 30-day comment period, and if applicable, a public informational hearing date, if requested by the applicant. The Department has 15 days after the notice of a complete application to determine if a hearing is warranted, regardless if a public request for hearing has been made or not.

The Department shall issue a decision within 30 days after a public hearing is held, or if no public hearing is held, within 30 days of the end of the public comment period.

Standards Applicant shall provide and the Department shall consider practicable alternatives to the proposal which will avoid and minimize adverse impacts to wetlands and not result in other significant adverse environmental consequences. The alternatives analysis shall consider significant direct, secondary, and cumulative adverse impacts on wetland functional values. An individual permit issued under this section shall be consistent with the state water quality certification standards under s. 281.15

The Department shall conduct an examination of the practicable alternatives to the proposed discharge the will not result in significant adverse impacts to functional values, significant adverse impacts to water quality, or other significant adverse environmental consequences.

The Department shall limit the scope of the practicable alternative analysis for avoid alternatives to the project site and adjacent parcels, if all of the following are met:

- The project will result in demonstrable public economic benefit
- The wetland is not a rare wetland type
- The wetland is highly disturbed and degraded
- The wetland fill will not result in significant adverse impacts to wetland functional values or other adverse environmental consequences

Wetland mitigation will be required to compensate for authorized wetland loss with consideration for on-site natural resource benefits resulting from the proposed project.

Repeal all of s. 281.36(7)

Revise s. 281.36(9) as needed to establish <sup>Parties</sup> inspection and penalty provisions for wetland permitting similar to provisions in ss. ~~30.291, 30.292, 30.294,~~ and 30.298.

**281.37 Wetlands; compensatory mitigation.** If possible, fold this section into s. 281.36.

Repeal all of s. 281.37(1)(a)

*RP, (3) + (3m)*

Revise sections 281.37(2) and (3) as needed to reflect the following:

1. The Department shall establish a compensatory mitigation program which allows such mitigation to be accomplished by either purchasing credits in an approved mitigation bank, or by payment of a fee under an in-lieu mitigation program established by the Department and approved by the US Army Corps of Engineers.

*not off site*

2. The Department may consider on-site wetland creation or restoration if the project and site are suitable, however mitigation banking or the in-lieu fee are preferred. The Department shall establish a process to determine a market-based fee.

3. The Department shall establish mitigation ratios consistent with federal guidelines, however the minimum ratio shall be 1.2 acres of wetland mitigation for every 1 acres of wetland fill.

4. The appropriation of in-lieu wetland mitigation fees shall be deposited in a segregated Wetland and Habitat Restoration Program 4 account, to be administered by the Department for wetland restoration and enhancement projects. The Department may administer such projects or contract with federal, state, or private sector partners.
5. Projects which utilize funds from the Wetland and Habitat Restoration account must be open to public hunting, fishing, and trapping.
6. Mitigation sites must have plans and mechanisms to assure long-term maintenance.
7. Authorize two Program Revenue positions to coordinate and implement compensatory wetland mitigation, including the development of the in-lieu fee program.

*Program Revenue*

**Wetland Identification Services – Section 23.321**

Repeal s. 23.321(2)(a); Repeal s. 23.321(3)(a); Repeal s. 23.321(4)(a)1.

Amend s. 23.321 (4)(a) 2 and 3 in the following manner:

2. Provide a wetland identification not later than ~~30~~ 60 days after a person files a request, in the manner and form required by the department, for a wetland identification.
3. Provide a wetland confirmation not later than ~~30~~ 60 days after a person files a request, in the manner and form required by the department, for a wetland confirmation.

Create a provision under s. 23.321(3) to establish a Fee for an Expedited Fee; that is, the Department may charge a supplemental fee for a service provided under this section that is in addition to the fee charged under this section if all of the following apply:

1. The applicant requests in writing the service be provided within a time period that is less than the time period established under this section for that service.
2. The Department verifies that it will be able to comply with the request.

Modify the 3 Program Revenue project positions created under 2009 WI Act 373 to 3 Program Revenue positions.

**Section 281.22 – Fees and Time Limits;** Revise this section in the following manner:

(1) AMOUNT OF FEES. The department shall charge a fee for determining whether a project complies with the standards of water quality promulgated by rule under s. 281.15 that are applicable to wetlands. The fee ~~for each project~~ shall be ~~\$100.~~ \$500 for a Reporting General Permit and \$800 for an Individual Permit.

The Department shall establish a surcharge amount for specified general permits, based on a sliding scale, not exceed half the market rate for mitigation bank credits per acre. The surcharge shall be deposited in the Wetland and Habitat Restoration program 4 account.

Repeal s. 281.22(2)(c); Repeal s. 281.22(4)

Revise Section 30.28(2)(a) in the following manner:

(2) AMOUNT OF FEES. (a) For fees charged for permits and approvals under ss. 30.10 to 30.205 and 30.21 to 30.27, the department shall set the fees as follows:

1. General Permit - \$300
2. Individual Permit - \$600
3. The Department may establish a fee for navigability, ordinary high water mark, or other department determination.

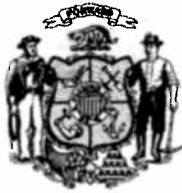
Repeal s. 30.28(2m)(c)

#### **Department of Transportation exemption**

Clarify that the DOT is exempt from the process requirements set forth in this section, and that inter-agency agreements must be consistent with the standards set forth in this section. The DOT may meet mitigation requirements by purchasing credits in an approved mitigation bank, or by payment of an in-lieu mitigation fee.

#### **Effective Date**

Make the effective date of this bill 90 days after the date of publication.



State of Wisconsin  
2011 - 2012 LEGISLATURE



RHR

LRB-2803/A P 1  
MGG:.....

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please

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

LPS: Please check spacing.

Gen Cat

1

**AN ACT ...; relating to:** permits for discharges into wetlands, wetland mitigation, granting and rule-making authority.

2

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

3

**SECTION 1.** 30.025 (1b) (b) of the statutes is amended to read:

4

30.025 (1b) (b) "Permit" means an individual permit, a general permit, an

5

approval, or a contract required under this subchapter or subch. II, a permit or an

6

approval required under ch. 31, a storm water discharge permit required under s.

7

283.33 (1) (a), or a water quality certification an individual or general state wetland

plain space → Δ

8

permit required under s. 281.36 or under rules promulgated under subch. II of ch.

9

281 to implement 33 USC 1341 (a).

SECTION 2

INS  
2-1  
INS 2-1 B

1 SECTION 2. 227.01 (13) (ru) of the statutes is created to read:

2 227.01 (13) (ru) Is a general state wetland permit issued under s. 281.36.

↑ as created by 2011 Wisconsin Act 63

3 SECTION 3. 281.165 (4) (a) 1m. of the statutes is amended to read:

strike extra space

4 281.165 (4) (a) 1m. The wetland area is ~~a nonfederal wetland, as defined in s.~~

5 281.36 (1) (c) ~~not subject to federal jurisdiction under 33 USC 1344~~ and the activity

6 will affect less than 3 acres of that wetland area.

plain

xHistory: 1999 a. 9; 2011 a. 6.

7 SECTION 4. 281.22 (4) of the statutes is amended to read:

8 281.22 (4) TIME LIMITS. The department shall promulgate a rule to establish

9 time limits for the steps involved in processing, approving, and denying applications

10 for determinations that the department makes as to whether projects comply with

11 the standards of water quality established by rules promulgated under s. 281.15 that

12 are applicable to wetlands ~~other than nonfederal wetlands, as defined in s. 281.36~~

13 (1) (c) that are subject to federal jurisdiction under 33 USC 1344. Upon referral of

14 any proposed rule under this subsection to the presiding officer of each house of the

15 legislature under s. 227.19 (2), the presiding officers shall refer the proposed rule to

16 a senate committee and an assembly committee concerned with the environment.

xHistory: 1995 a. 27; 1995 a. 227 s. 398; Stats. 1995 s. 281.22; 1997 a. 27; 2001 a. 6.

\*\*\*\*NOTE: I realize that the drafting instructions state that s. 281.22 (4) will be repealed. However, until that repeal is included in a later version of this draft, I am just amending s. 281.22 (4) to make it consistent with the rest of this current version of the draft.

17 SECTION 5. 281.36 (title) of the statutes is repealed and recreated to read:

18 281.36 (title) **Permits for discharges into wetlands; wetland mitigation.**

19 SECTION 6. 281.36 (1) (am) of the statutes is repealed.

20 SECTION 7. 281.36 (1) (bg), (c) and (cm) of the statutes are repealed.

21 SECTION 8. 281.36 (1) (cp) of the statutes is created to read:

SECTION . SRP; 227.01 (13) (r)

1 281.36 (1) (cp) <sup>means</sup> "Practicable alternatives" / alternatives that are available and  
 2 capable of being implemented after taking into consideration, cost, available  
 3 technology, logistics, siting, and the overall purpose of a discharge.

4 SECTION 9. 281.36 (1) (cr) of the statutes is repealed.

5 SECTION 10. 281.36 (1m) of the statutes is repealed.

6 SECTION 11. 281.36 (2) (title) of the statutes is repealed.

7 SECTION 12. 281.36 (2) (a) of the statutes is renumbered 281.36 (3b) and  
 8 amended to read:

9 281.36 (3b) REQUIREMENTS. No person may discharge dredged or fill material  
 10 into a ~~nonfederal~~ wetland unless the discharge is authorized by a ~~water quality~~  
 11 ~~certification~~ general or individual state wetland permit issued by the department  
 12 under this section. No person may violate any condition ~~imposed by the department~~  
 13 ~~in a water quality certification~~ contained in a general or individual state wetland  
 14 permit issued by the department under this section. The department may not issue  
 15 a ~~water quality certification~~ general or individual state wetland permit under this  
 16 section unless it determines that the discharge authorized pursuant to the general  
 17 or individual permit will comply with all applicable water quality standards.

18 SECTION 13. 281.36 (2) (b) of the statutes is repealed.

19 SECTION 14. 281.36 (3) of the statutes is renumbered 281.36 (2m) and amended  
 20 to read:

21 281.36 (2m) DELINEATION PROCEDURES. For purposes of delineating the  
 22 boundary of a ~~nonfederal~~ wetland, <sup>plain</sup> the department and the person who is applying  
 23 for or who holds a ~~water quality certification~~ under this section shall use for purposes  
 24 of this section. <sup>the</sup> the procedures contained in the wetlands delineation manual  
 25 published by the U.S. army corps of engineers shall be used. The edition of the



1 manual that shall be used shall be the 1987 edition of the manual and any document  
 2 that the U.S. army corps of engineers issues interpreting that manual, unless the  
 3 U.S. army corps of engineers publishes an edition of the manual after  
 4 January 9, 2001, and the department by rule designates that edition as the one to  
 5 be used under this subsection. If the U.S. army corps of engineers issues a guidance  
 6 document interpreting the edition of the wetlands delineation manual that the  
 7 department is required to use under this subsection and if that guidance document  
 8 is issued after May 8, 2001, the department shall notify the appropriate standing  
 9 committee of each house of the legislature, as determined by the speaker of the  
 10 assembly and the president of the senate, of the issuance of the guidance document  
 11 and whether the department intends to promulgate a rule incorporating the  
 12 provisions of the guidance document.

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.) (title)

13 SECTION 15. 281.36 (3g) of the statutes is created to read:

14 281.36 (3g) GENERAL STATE WETLAND PERMITS.

15 SECTION 16. 281.36 (3g) (b) of the statutes is created to read:

16 281.36 (4) (3g) (b) *Additional permits.* ~~In addition to the state general wetland~~  
 17 ~~permits required under par. (a),~~ the department may issue general state wetland  
 18 permits to regulate other discharges that affect wetlands located in this state.

19 <sup>in addition to those required under par. (a);</sup> SECTION 17. 281.36 (3g) (c) of the statutes is created to read:

20 281.36 (3g) (c) *Period of validity; subsequent actions.* A state general wetland  
 21 permit issued under par. (a) or (b) is valid for <sup>STATE</sup> a period of 5 years, and any discharge  
 22 that the department determines is authorized by <sup>the</sup> a general state wetland permit  
 23 remains authorized under that general permit until the discharge is completed  
 24 regardless of whether the general permit expired before the discharge is completed.

1 The department may renew<sup>3</sup> or modify, or revoke a general state wetland permit  
2 issued under par. (a) or (b) upon compliance with the requirements under pars. (d)  
3 and (e); and until such renewal, modification, or revocation, the general permit shall  
4 remain in effect.

5 SECTION 18. 281.36 (3g) (d) of the statutes is created to read:

6 281.36 (3g) (d) *Notice of intent to issue.* The department shall circulate to  
7 interested and potentially interested members of the public notices of its intention  
8 to issue a state general wetland permit under par. (a) or ~~(a)(1)~~<sup>(b)</sup>. Procedures for  
9 providing public notices shall include all of the following:

10 STEI 1. A procedure for publishing a class 1 notice under ch. 985 or circulating the  
11 notice by use of an electronic notification system established by the department.

12 2. A procedure under which a copy of the notice is provided to any person or  
13 group upon request of the person or group.

14 SECTION 19. 281.36 (3g) (e) of the statutes is created to read:

15 281.36 (3g) (e) *Request for public hearing.* The department shall provide an  
16 opportunity for any interested state agency or federal agency or person or group of  
17 persons to request a public hearing with respect to the department's intention to  
18 issue a state general wetland permit under sub. (1) (a) or ~~(a)(1)~~<sup>(b)</sup>. Such request for a  
19 public hearing shall be filed with the department within 30 days after the circulation  
20 of the public notice under par. (d).

\*\*\*\*NOTE: The above notice and hearing procedures differ somewhat <sup>from</sup> those found  
in ASA 1 to 2011 AB 177. Please review and let me know if you want any changes. Note  
that the 30-day limit in par. (e) is a time limit for requesting a hearing and not a limit  
upon when the hearing must be held. OK? Ch. 227 procedures will apply to the hearing  
process. OK?

21 SECTION 20. 281.36 (3g) (f) of the statutes is created to read:

1           281.36 (3g) (f) *Procedures for discharges under general state permits.* 1. A  
2 person wishing to proceed with a discharge that may be authorized under a general  
3 state wetland permit shall apply to the department, with written notification of the  
4 person's wish to proceed, not less than 30 days before commencing the discharge  
5 authorized by the general permit. The application shall provide information  
6 describing the discharge in order to allow the department to determine whether the  
7 discharge is authorized by the general state wetland permit and shall give the  
8 department consent to enter and inspect the site, subject to sub. (9).<sup>✓</sup> The application  
9 shall be accompanied by the fee set under.....<sup>✓</sup> The department may ~~may~~ make  
10 a request for additional information one time during this 30-day period.

\*\*\*\*NOTE: I did not include the language regarding category-specific alternatives.  
I did not see how this could be applicable. This language seems more appropriate for  
individual permits. If you do want to specify what types of information are required to  
be submitted to assist DNR in determining whether the discharge is covered by a general  
permit, let me know.

11           2. If, <sup>✓</sup> within 30 days after <sup>✓</sup> a <sup>✓</sup> application under subd. 1. is submitted to the  
12 department, the department does not either request additional information or  
13 inform the applicant that an individual state wetland permit will be required as  
14 provided in par. (g), the discharge shall <sup>✓</sup> be considered to be authorized under the  
15 general state wetland permit<sup>✓</sup> and the applicant may proceed without further notice,  
16 hearing, permit or approval if the discharge is carried out in compliance with all of  
17 the conditions of the general permit.

18           3. If the department requests additional information under subd. 1.,<sup>✓</sup> the  
19 30-day period is tolled from the date the person applying for authorization to proceed  
20 receives the request until the date on which the department receives the additional  
21 information.

22           **SECTION 21.** 281.36 (3g) (g) of the statutes is created to read:

1 281.36 (3g) (g) Individual permit in lieu of general permit. For a proposed  
 2 discharge for which <sup>an</sup> application has been submitted under par. (f), the department  
 3 may ~~decide to~~ <sup>require that</sup> ~~a person who submitted the application to apply~~ <sup>an applicant</sup> for an ~~individual state wetland permit~~ <sup>STET</sup> if the department has inspected the site as provided  
 4 individual state wetland permit <sup>STET</sup> if the department has inspected the site as provided  
 5 in par. (f) and has determined that conditions specific to the site require additional  
 6 restrictions on the discharge in order to provide reasonable assurance that no  
 7 significant adverse impacts to the functional values of the wetland will occur.

8 SECTION 22. 281.36 (3m) of the statutes is created to read:

9 281.36 (3m) INDIVIDUAL PERMITS. (a) When permit required. Any person <sup>submit an application</sup>  
 10 wishing to proceed with a discharge into any wetland in this state shall ~~apply~~ <sup>submit an application</sup> for  
 11 an individual state wetland permit under this subchapter unless the discharge has  
 12 been authorized under a general state wetland permit as provided in sub. (3g) or is  
 13 exempt under sub. (3t) or (4). Before submitting the application, the applicant shall  
 14 meet with the department to determine whether an individual state wetland permit  
 15 is required, whether the discharge may be authorized under a general state wetland  
 16 permit, or whether the discharge may be exempt under sub. (3t) or (4). An applicant  
 17 may include in the application a request for a public hearing on the application. The  
 18 application shall be accompanied by the fee set under.....

\*\*\*\*NOTE: As drafted, a person will need an individual state permit for a discharge into a "federal wetland" that is subject to a general federal permit. Is that the intent?

\*\*\*\*NOTE: I did not know what was the purpose of the preapplication meeting so I took a guess. The statutes need to specify the meeting's purpose.

\*\*\*\*NOTE: I did not draft anything about wetland delineation in this provision. Please review the language in s. 281.36 (3), as renumbered in this draft, and let me know if you want anything additional.

19 (b) Procedure for completing applications. 1. In issuing an individual state  
 20 wetland permit under this subsection, the department shall initially determine  
 21 whether a complete application for the individual permit has been submitted and,

\*\*\* NOTE: Do you want a provision similar to § 30.206(3r), which authorizes a person to apply for an individual permit instead of seeking authorization under a general permit?

1 no later than 30 days after the application is submitted, provide a notice to the  
 2 applicant in writing about the initial determination of completeness. If the  
 3 department determines that the application is complete, the department shall issue  
 4 a notice of ~~completeness~~ <sup>complete application</sup> within the 30 day period.

5 2. If the department determines that the application is incomplete, the  
 6 department may make one request for additional information within the 30-day  
 7 period specified under subd. 1. The request shall state the reason for determining  
 8 the application to be incomplete and the specific items of information necessary to  
 9 make the application complete. Within 10 days after the receipt of the additional  
 10 information, the department shall make a determination as to whether the  
 11 application is complete and shall inform the applicant of that determination. If the  
 12 application is determined to be incomplete, the department may not act on the  
 13 application.

\*\*\*\*NOTE: The last sentence is necessary to cover the scenario when the application is still not complete after DNR receives the information in response to the one-time request. If the intent is to say the application is considered complete after the submission of the information (and DNR will rely on only the information that has been submitted), this needs to be redrafted.

14 3. Any rules promulgated under s. 299.05 that apply to this subsection apply  
 15 only to applications for individual state wetland permits that the department has  
 16 determined to be complete.

17 (c) *Notice of complete application.* Upon determination by the department that  
 18 an application submitted under par. (b) is complete, the department shall provide  
 19 notice of ~~complete application~~ <sup>completeness</sup> by an electronic notification system established by the  
 20 department. Before providing this notice, the department shall determine whether  
 21 there is a significant public interest in holding a hearing if the applicant has not  
 22 requested a public hearing in the application submitted under par. (a). If a public

1 hearing will be held, the notice of complete application shall contain a notice of public  
 2 hearing and the date of the public hearing. The notice of complete application shall  
 3 also state that there is a 30<sup>e</sup>-day public comment period as provided in par. (d). The  
 4 department shall provide the notice within 15 days after making the determination  
 5 that the application is complete.

\*\*\*\*NOTE: Limiting the notice only to an electronic notification system may not be adequate due process. You may wish to model the manner in which notice will be given after the language in ASA 1 to 2011 AB 177.

6 (d) *Public comment.* The department shall provide a period for public comment  
 7 after the department has provided a notice of complete application under par. (b)  
 8 during which time any person may submit written comments with respect to the  
 9 application for <sup>an</sup> individual state wetland permit. The department shall retain all of  
 10 the written comments submitted during this period and shall consider all of the  
 11 comments in rendering a decision on the application. The period for public comment  
 12 shall end on the 30th day following the date on which the department provides the  
 13 notice of complete application.

14 (e) *Decision.* The department shall render a decision on the application <sup>e</sup>within  
 15 30 days after the date the period for public comment under par. (d) <sup>e</sup>ends unless a  
 16 public hearing is held. If a hearing is held, the department shall render the decision  
 17 within 30 days after the date the public hearing is concluded.

concluded 9  
 \*\*\*\*NOTE: Under s. 30.208 (4) (b) the public comment period goes on after the date the hearing is concluded. The above language differs; OK?

\*\*\*\*NOTE: Please review <sup>s.</sup> 30.208(4)(d) and the requirements for notices under s. 30.208 (5) (b) and let me know if you want any similar provisions in this bill.

18 (f) *Review for practicable alternatives.* An applicant shall include in an  
 19 application submitted under par. (b) a description of practicable alternatives that  
 20 will minimize or avoid the significant adverse impacts the discharge <sup>e</sup>may cause to  
 21 the wetland, and to its functional values, and that will not result in any significant

1 adverse environmental consequences. The types of the significant adverse impacts  
2 to be addressed in the application shall consist of primary, secondary, and cumulative  
3 impacts.

4 (g) *Scope of analysis.* The department may limit its analysis of the practicable  
5 alternatives presented in the application under par. (f) to those that will have an  
6 impact on the site of the discharge and areas that are adjacent to the site if the  
7 department determines that all of the following apply:

- 8 1. The project of which the discharge is a part will result in an demonstrable  
9 economic benefit to the public.
- 10 2. The wetland is not a rare type of wetland.
- 11 3. The wetland is degraded to a great degree.

\* \*\*\*\*NOTE: The <sup>fourth</sup> 4th point in the instructions seemed circular so I did not include it.

\*\*\*\*NOTE: The concept of "adjacent parcels" could be subject to various meanings. "Areas adjacent to the site" is vague, but DNR appears to uses this notion of being adjacent" in NR 103 and 150. \*

12 (h) *Requirements for issuance.* 1. After conducting its analysis of practicable  
13 alternatives, the department shall issue <sup>an</sup> (a) individual state wetland permit if it  
14 determines that the discharge will comply with all of the applicable water quality  
15 standards. In determining whether the discharge complies with all of these water  
16 quality standards, the department shall consider mitigation under the program  
17 established under sub. (3r) for individual state wetland permits it issues under this  
18 subsection for discharges into wetlands that are other than those wetlands that are  
19 subject to general state wetland permits or to federal general permits issued under  
20 33 USC 1344 (e) that are applicable to wetlands.

\*\*\*\*NOTE: The last phrase in <sup>par. (h)</sup> the paragraph is another example of when the use of permit to describe 2 different concepts becomes confusing. Again, I recommend returning to using the term "certification" \*

\*\*\*\*NOTE: It is my understanding the federal general permits have their own mitigation requirement. Therefore, although a person must get an individual state

Wetland

^ permit for a discharge into a "federal wetland" that is subject to a federal general permit (see above), a state mitigation program would be inapplicable because the federal general permit would already require mitigation. Is that correct?

1           **SECTION 23.** 281.36 (3r) of the statutes is created to read:

2           281.36 (3r) MITIGATION. (a) The department shall establish a mitigation  
3 program <sup>that</sup> ~~which~~ allows mitigation to be accomplished by any of the following:

4           1. Payment of a fee to the department to be used for creating or restoring  
5 wetlands, in amount equal to the amount that would be necessary necessary to  
6 purchase the required amounts of <sup>e</sup>credits from a wetland mitigation bank.

7           2. Purchasing credits from a wetlands mitigation bank.

8           3. Restoring or creating wetlands to compensate for adverse impacts to other  
9 wetlands.

10           (b) Under the program, <sup>e</sup>the types of mitigation specified in par. (a) 1. and 2.  
11 mitigation banking and an in lieu fee program shall be the preferred types of  
12 mitigation. The type of mitigation specified in par. (a) 3. shall be limited to on-site  
13 creation or restoration of a wetland.

14           (c) Under the program, the mitigation procedure specified in par. (a) 1. shall  
15 be approved by the U.S. army corps of engineers.

16           (d) The department shall establish under the program mitigation ratios that  
17 are consistent with federal guidelines for wetland mitigation and wetland mitigation  
18 banks developed jointly by the department and the U.S. army corps of engineers, but  
19 the minimum ratio shall be <sup>e</sup>at least 1.2 acres for each acre affected by the discharge.

20           **SECTION 24.** 281.36 (3t) of the statutes is created to read:

21           281.36 (3t) STATE EXEMPTIONS. (a) *Applicability.* The permitting requirement  
22 under sub. (3b) does not apply if a <sup>e</sup>discharge is into a wetland that is not subject to



1 federal jurisdiction under 33 USC 1344 and if the discharge is part of any <sup>e</sup>of the  
2 following:

3 1. A discharge <sup>that</sup> is necessary for the treatment or disposal of hazardous waste <sup>e</sup>  
4 or toxic pollutants, if the discharge does not contain hazardous waste or toxic  
5 pollutants and <sup>e</sup>does not affect more than 2 acres of wetland.

\*\*\*\*NOTE: Does this achieve the desired intent? I have omitted <sup>e</sup>discharges that contain hazardous wastes or toxic pollutants.

\*\*\*\*NOTE: I changed the wording to make it more consistent with the language found in other state environmental laws. Do you want to incorporate the definition of "hazardous waste" found in s. 289.01 (12) or the definition of "toxic pollutant" found in s. 283.01 (17)?

6 2. A <sup>e</sup>discharge that is temporary in nature, that is part of a construction project <sup>s</sup>,  
7 and that is necessary for access to the project and for dewatering <sup>e</sup>at the project, if  
8 the discharge does not <sup>e</sup>affect more than 2 acres of wetland.

9 3. A permanent discharge that is part of a utility line project, if the discharge  
10 does not affect more than 10,000 square feet of wetland.

11 4. A temporary discharge that is part of a utility line project, if the discharge  
12 does not affect more than 2 acres of wetland.

13 5. A discharge that involves the placement of a utility pole, bridge support,  
14 ramp surface, or retaining wall, if the discharge does not affect more than 10,000  
15 square feet of wetland.

16 6. A development for commercial residential, industrial, agricultural, waste  
17 disposal, municipal, or recreational purposes, if the discharge does not affect more  
18 than 10,000 square feet of <sup>e</sup>wetland.

19 7. Any other discharge the department exempts by rule.

\*\*\*\*NOTE: For <sup>sub to</sup> ~~para~~ above, do you want any size limit?

\*\*\*\*NOTE: I did not include "renewal of an expired wetland water quality certification" because I could not understand how an exemption would apply to an

"expired wetland water quality certification." If you think some language is necessary, please call me to discuss this.

1 (b) *Exemption determinations.* 1. A person may submit to the department a  
2 written statement requesting that the department determine whether a proposed  
3 discharge is exempt under par. (a).<sup>✓</sup> The statement shall contain a description of the  
4 proposed discharge and site and shall give the department consent to enter and  
5 inspect the site.

6 2. The department shall do all of the following within 15 days after receipt of  
7 a statement under <sup>Subd. 1.</sup> ~~par. (a)~~:

8 a. Enter and inspect the site on which the discharge is located, subject to sub.  
9 (9),<sup>✓</sup> if the department determines such an inspection is necessary.

10 b. Make a determination as to whether the discharge is exempt under par. (a).<sup>✓</sup>

11 c. Notify in writing the person submitting the statement which general state  
12 wetland permit is applicable or whether an individual state wetland permit will be  
13 required for the discharge, if the department determines that the discharge is not  
14 exempt under par. (a).<sup>✓</sup>

15 3. If the department does not take action under subd. 2.<sup>✓</sup> within the 15-day  
16 limit, the department may not require at any time that the person proposing to  
17 engage in the discharge apply for an individual state wetland permit or seek  
18 authorization under a general state wetland permit unless required to do so by a  
19 court or hearing examiner.

20 4. If a statement under subd. 1.<sup>✓</sup> does not give consent to inspect, the 15-day  
21 ~~time~~ limit under subd. 2. <sup>e</sup> does not apply.

22 (c) *General or individual permit in lieu of exemption.* For a proposed discharge  
23 for which a statement has been submitted under par. (b),<sup>✓</sup> the department may ~~decide~~ <sup>start</sup>

STET  
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1 to require that a person who submitted the statement to seek authorization under  
 2 a general state wetland permit or apply for an individual state wetland permit if the  
 3 department has inspected the site as provided in par. (b) and has determined that  
 4 conditions specific to the site require additional restrictions on the discharge in order  
 5 to provide reasonable assurance that no significant adverse impacts to the functional  
 6 values of the wetland will occur.

7 SECTION 25. 281.36 (4) (intro.) of the statutes is amended to read:

8 281.36 (4) ~~EXEMPTIONS~~ FEDERAL EXEMPTIONS. (intro.) Except as provided in sub.  
 9 (5), the ~~certification~~ permitting requirement under sub. (2) (3b) does not apply to any  
 10 discharge into a wetland that is not subject to federal jurisdiction under 33 USC  
 11 1344. that is the result of any of the following activities:

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

12 SECTION 26. 281.36 (4) (b) of the statutes is amended to read:

13 281.36 (4) (b) Maintenance, emergency repair, or reconstruction of damaged  
 14 parts of structures that are in use in a nonfederal wetland.

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

15 SECTION 27. 281.36 (4) (e) 1. of the statutes is amended to read:

16 281.36 (4) (e) 1. That the flow and circulation patterns and chemical and  
 17 biological characteristics of the affected nonfederal wetland are not impaired.

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

18 SECTION 28. 281.36 (4) (e) 2. of the statutes is amended to read:

19 281.36 (4) (e) 2. That the reach of the affected nonfederal wetland is not  
 20 reduced.

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

21 SECTION 29. 281.36 (4) (e) 3. of the statutes is amended to read:

22 281.36 (4) (e) 3. That any adverse effect on the aquatic environment of the  
 23 affected nonfederal wetland is minimized to the degree required by the department.

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

1 SECTION 30. 281.36 (5) (intro.) of the statutes is amended to read:

2 281.36 (5) INAPPLICABILITY OF FEDERAL EXEMPTIONS. (intro.) Notwithstanding  
3 sub. (4), a discharge that would be exempt under sub. (4) is subject to the certification  
4 permitting requirement under sub. (2) (3b) if the discharge is incidental to an activity  
5 that has as its purpose bringing a nonfederal wetland, or part of a nonfederal  
6 wetland, into a use for which it was not previously subject and if the activity may do  
7 any of the following:

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

8 SECTION 31. 281.36 (5) (a) of the statutes is amended to read:

9 281.36 (5) (a) Impair the flow or circulation of any nonfederal wetland.

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

10 SECTION 32. 281.36 (5) (b) of the statutes is amended to read:

11 281.36 (5) (b) Reduce the reach of any nonfederal wetland.

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

12 SECTION 33. 281.36 (6) (title) of the statutes is amended to read:

13 281.36 (6) (title) RULES FOR FEDERAL EXEMPTIONS.

← INSERT  
15-13

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

14 SECTION 34. 281.36 (7) ~~and (8)~~ of the statutes ~~are~~ <sup>is</sup> repealed.

15 SECTION 35. 281.36 (8) (title) of the statutes is repealed.

16 SECTION 36. 281.36 (8) (a) of the statutes is repealed.

17 SECTION 37. 281.36 (8) (b) of the statutes is repealed.

18 SECTION 38. 281.36 (8) (bn) 1. of the statutes is <sup>e</sup>renumbered <sup>e</sup>to 281.36 (3g) (a)

19 and amended to read:

20 281.36 (3g) (a) Required permits. The department shall issue general water  
21 quality certifications state wetland permits that are consistent and correspond with  
22 all of the federal general permits issued under 33 USC 1344 (e) that <sup>plain</sup> applied on

1 January 8, 2001 to nonfederal <sup>o</sup> that apply to any of the wetlands located in this state  
2 that are subject to federal jurisdiction under 33 USC 1344. <sup>o</sup> plain

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

3 SECTION 39. 281.36 (8) (bn) 2. of the statutes is repealed.

4 SECTION 40. 281.36 (8) (c) of the statutes is repealed.

5 SECTION 41. 281.36 (8) (d) of the statutes is repealed.

6 SECTION 42. 281.36 (8) (e) of the statutes is repealed.

7 SECTION 43. 281.36 (9) (a) (intro.) of the statutes is amended to read:

8 281.36 (9) (a) (intro.) For purposes of determining whether to issue an  
9 individual state wetland permit, whether authorization to proceed as authorized  
10 under a general state wetland permit is appropriate, or whether an exemption under  
11 sub. (3t) or (4) is appropriate and for purposes of enforcing this section, any employee  
12 or other representative of the department, upon presenting his or her credentials,  
13 may do any of the following:

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

14 SECTION 44. 281.36 (9) (a) 1. of the statutes is <sup>o</sup> amended to read:

15 281.36 (9) (a) 1. Enter and inspect any property on which is located a nonfederal  
16 wetland; or part of a nonfederal wetland, for which an application for a water quality  
17 certification has been submitted to the department. <sup>o</sup> plain period

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

18 <sup>o</sup> Please fix comp. SECTION 45. 281.36 (9) (a) 2. of the statutes is <sup>o</sup> renumbered 281.36 (9) (a) 2.  
19 amended to read:

20 281.36 (9) (a) 2. Enter and inspect any property on which is located a nonfederal  
21 wetland to investigate a discharge of dredged or fill material <sup>o</sup> that the department  
22 has reason to believe is in violation of this section. <sup>o</sup> plain space

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

23 SECTION 46. 281.36 (9) (a) 3. of the statutes is amended to read:

1           281.36 (9) (a) 3. ~~Gain access to and inspect any records that the department~~  
 2           requires a holder of a ~~water quality certification to an individual state wetland~~  
 3           permit or a person acting under the authority of a general state wetland permit is  
 4           required by the department to keep.

xHistory: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

5           **SECTION 47.** 281.36 (9) (am) to (c) of the statutes are repealed.

6           **SECTION 48.** 281.36 (9) (d) and ~~(e)~~ of the statutes are created to read:

7           281.36 (9) (d) The department shall provide reasonable advance notice to the  
 8           property owner before entering and inspecting property as authorized under par (a).

9           (e) If the owner of the property refuses to give consent for the entry and  
 10          inspection, the department may do any of the following:

- 11           1. Apply for, obtain, and execute a special inspection warrant under s. 66.0119.
- 12           2. If the entry or inspection involves a general state wetland permit, deny  
 13          authorization to proceed under the general permit as provided in sub (3g).

\*\*\*\*NOTE: Regarding inspection authority under current law, please review the changes in this draft to s. 281.36 (9) and the incorporation of the provisions from s. 30.291.

14          **SECTION 49.** 281.36 (10) of the statutes is repealed.

15          **SECTION 50.** 281.37 (title) of the statutes is repealed.

16          **SECTION 51.** 281.37 (1) (intro.) of the statutes is repealed.

17          **SECTION 52.** 281.37 (1) (a) of the statutes is repealed.

18          **SECTION 53.** 281.37 (1) (b) of the statutes is repealed.

19          **SECTION 54.** 281.37 (1) (d) of the statutes is renumbered 281.36 (1) (e) and  
 20          amended to read:

21           281.36 (1) (e) "Wetlands mitigation bank" means a system of accounting for  
 22          wetland loss and compensation that includes one or more sites where wetlands are

1 restored, ~~enhanced~~ or created to provide transferable credits to be subsequently  
2 applied to compensate for adverse impacts to other wetlands.

3 <sup>x</sup>History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

SECTION 55. 281.37 (1) (e) of the statutes is repealed.

SECTION 56. 281.37 (1) (f) of the statutes is repealed.

SECTION 57. 281.37 (2) of the statutes is repealed.

6 SECTION 58. 281.37 (2m) of the statutes is renumbered 281.36 (8m) and 281.36  
7 (8m) (a) 1. and 2. <sup>and (b) 1. as renumbered are</sup> amended to read:

8 281.36 (8m) SUBSEQUENT PROTECTION FOR WETLANDS (a) 1. A person who is the  
9 holder of a <sup>strike extra spaces</sup> individual state wetland permit or other approval that authorizes a  
10 mitigation project of the type specified under sub. (3r) (a) 3. shall grant a  
11 conservation easement under s. 700.40 to the department to ensure that a wetland  
12 that is being restored, ~~enhanced~~, or created will not be destroyed or substantially  
13 degraded by any subsequent proprietor of or holder of interest in the property on  
14 which the wetland is located. The department shall revoke the permit ~~or other~~  
15 approval if the holder of the individual permit ~~or other approval~~ fails to take these  
16 measures.

17 2. A person who is restoring, ~~enhancing~~, or creating a wetland to provide  
18 transferable credits as part of a wetlands mitigation bank shall grant a conservation  
19 easement under s. 700.40 to the department, to ensure that the wetland will not be  
20 destroyed or substantially degraded by any subsequent proprietor of or holder of  
21 interest in the property on which the wetland is located.

22 (b) 1. The department determines that part or all of the restored, ~~enhanced~~ or  
23 created wetland ceases to be a wetland.

24 SECTION 59. 281.37 (3) of the statutes is repealed.

\*\*\*\*NOTE: Please review the topics for rules under s. 281.37 (3) and let me know if you want any of this language included

1  
2  
3  
4

**SECTION 60.** 281.37 (3m) of the statutes is repealed.

**SECTION 61.** 281.37 (4) of the statutes is repealed.

**SECTION 62.** 281.37 (5) of the statutes is repealed.

(END)

← INSERT  
19-3



Ins 2-1A

SECTION # <sup>(CS)</sup> RP; ~~CR~~ 30.2065 ~~(10)~~

~~30.2065 (10) Section 281.36~~

\*\*\* <sup>(CS)</sup> NOTE: I repealed S. 30.2065. You

may well wish to otherwise treat this section

but it must be reconciled with the new provisions in S. 281.36. <sup>If you do not want to repeal it,</sup> Please review S. 30.2065

and let me know what ~~subsections~~ provisions you want to retain.

Section #. 30.298 (3) of the statutes is amended to read:

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

**History:** 1987 a. 374; 2003 a. 118; 2009 a. 391.

1

Section #. 281.36 (6) (a) of the statutes is amended to read:

281.36 (6) (a) The department shall promulgate rules to interpret and implement the provisions under subs. (4) and (5). In promulgating these rules, the department shall do all of the following:

- 1. Make the rules consistent with existing federal law.
- 2. Incorporate any applicable additional federal law or interpretation into the rules.

History: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro).

109

plain period

or interpretation

(intro.)

Section #. 814.04 of the statutes is amended to read:

(intro.)

**814.04 Items of costs.** (Except as provided in ss. 93.20, 100.195 (5m) (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), ~~281.36 (2) (b) 1.~~, 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

(1) ATTORNEY FEES. (a) When the amount recovered or the value of the property involved is greater than the maximum amount specified in s. 799.01 (1) (d), attorney fees shall be \$500; when it is equal to or less than the maximum amount specified in s. 799.01 (1) (d), but is \$1,000 or more, attorney fees shall be \$300; when it is less than \$1,000, attorney fees shall be \$100. In all other cases in which there is no amount recovered or that do not involve property, attorney fees shall be \$300.

(c) No attorney fees may be taxed on behalf of any party unless the party appears by an attorney other than himself or herself.

(2) DISBURSEMENTS. All the necessary disbursements and fees allowed by law; the compensation of referees; a reasonable disbursement for the service of process or other papers in an action when the same are served by a person authorized by law other than an officer, but the item may not exceed the authorized sheriff's fee for the same service; amounts actually paid out for certified and other copies of papers and records in any public office; postage, photocopying, telephoning, electronic communications, facsimile transmissions, and express or overnight delivery; depositions including copies; plats and photographs, not exceeding \$100 for each item; an expert witness fee not exceeding \$300 for each expert who testifies, exclusive of the standard witness fee and mileage which shall also be taxed for each expert; and in actions relating to or affecting the title to lands, the cost of procuring an abstract of title to the lands. Guardian ad litem fees shall not be taxed as a cost or disbursement.

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

LRB-2803?dn  
MGG:.....

WJ

Date

Attention: Dan Johnson

I decided to draft the core of this draft (the treatment of ss. 281.36 and 281.37) and get it through the editing process and out to you. While the interested parties are reviewing this, I shall continue to draft the other remaining parts which include:

1. The creation of parallel provisions in s. 281.36 that are based on ss. 30.292, 30.294, and 30.298. Provisions based on s. 30.291 are contained in this draft.
2. Items 4, 5, and 7 on p. 5 of the drafting instructions. Item 6, which deals with long-term maintenance is at least partially addressed in the treatment of s. 281.37 (2m) in this draft. Let me know if you want anything additional.
3. Changes in s. 23.321, 281.22, and 30.28.
4. The DOT exemption.
5. The appropriation and position provisions.

\*  
\*

↑ which is  
renumbered  
s. 281.36 (8m)<sup>A</sup>

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

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

LRB-2803/P1dn  
MGG:wlj:rs

September 30, 2011

Attention: Dan Johnson

I decided to draft the core of this draft (the treatment of ss. 281.36 and 281.37) and get it through the editing process and out to you. While the interested parties are reviewing this, I shall continue to draft the other remaining parts which include:

1. The creation of parallel provisions in s. 281.36 that are based on ss. 30.292, 30.294, and 30.298. Provisions based on s. 30.291 are contained in this draft.
2. Items 4, 5, and 7 on p. 5 of the drafting instructions. Item 6, which deals with long-term maintenance, is at least partially addressed in the treatment of s. 281.37 (2m), which is renumbered s. 281.36 (8m), in this draft. Let me know if you want anything additional.
3. Changes in s. 23.321, 281.22, and 30.28.
4. The DOT exemption.
5. The appropriation and position provisions.

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

## Gibson-Glass, Mary

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**From:** Lehmann Kerler, Liesa K - DNR [Liesa.LehmannKerler@Wisconsin.gov]  
**Sent:** Thursday, October 13, 2011 3:23 PM  
**To:** Johnson, Dan; Gibson-Glass, Mary  
**Cc:** Bruhn, Michael L - DNR; Siebert, David R - DNR  
**Subject:** RE: Questions regarding the fees for wetland "approvals"

Yes, you're correct on all counts Dan.

~Liesa

 *Liesa Lehmann*

Waterways and Wetlands Section Chief  
Bureau of Watershed Management, Madison  
Wisconsin Department of Natural Resources  
phone: (608) 264-8554

---

**From:** Johnson, Dan [mailto:Dan.Johnson@legis.wisconsin.gov]  
**Sent:** Thursday, October 13, 2011 02:02 PM  
**To:** Gibson-Glass, Mary - LEGIS  
**Cc:** Lehmann Kerler, Liesa K - DNR; Bruhn, Michael L - DNR; Siebert, David R - DNR  
**Subject:** RE: Questions regarding the fees for wetland "approvals"

Mary,

The \$500 General Permit fee should apply to items 1, 2, and 3. Since the fourth type of permit (which we've loosely referred to as a non-reporting permit) does not require the person to notify the Department of the activity, then no application or fee is required. I believe the surcharge based on a sliding scale would only apply to those General Permits issued for residential, commercial, and industrial development – but I am copying the DNR on this message to make sure I have that right.

I believe the fee would cover both the water quality determination under 281.22 as well as the authorization for a person to proceed under the General Permit. But again, I'd like to get the DNR's input on that.

Dan Johnson  
**State Senator Neal Kedzie**  
11<sup>th</sup> Senate District  
608.266.2635

---

**From:** Gibson-Glass, Mary  
**Sent:** Thursday, October 13, 2011 1:11 PM  
**To:** Johnson, Dan  
**Subject:** Questions regarding the fees for wetland "approvals"

Dan

In the original materials for the wetlands draft, there is a fee of \$500 for a "reporting general permit". There is also a "surcharge", based on a sliding scale, related to the market price for wetland mitigation bank credits, for certain specified general permits.

At our meeting yesterday, my understanding was that we are having 4 types of general permits.

1. The 6 specified state general permits that DNR **will issue** that correspond to the existing federal permits.
2. State permits that **will be issued** to correspond to any federal general permits that may be issued in the future.
3. Additional state permits that DNR **may issue** that require the person wanting to proceeding under the general permit to notify DNR.
4. Additional state permits that DNR **may issue** that do not require the person wanting to proceeding under the general permit to notify DNR.

Which fees and surcharges to you want to apply to each of these 4 permits. I assume the \$500 is a fee to request authorization to proceed under a general permit since general permits are not being issued upon the request of a developer or other entity. Am I right about that?

Thanks,

Mary Gibson-Glass  
Senior Legislative Attorney  
Legislative Reference Bureau  
608 267 3215




DNR Comments on LRB-2803/P1

✓ Page 3, line 12; delete, "that are subject to federal jurisdiction under 33 USC 1344" *RP; 28122 (4)*  
 (this should apply to all wetlands, not just to those that are subject to federal jurisdiction)

*No redundant*

Page 3, line 17; use the term "wetland compensatory mitigation" *why? else where in draft?*

✓ Page 3, lines 22-23; revise sentence to end in the following manner: "...taking into consideration, cost, available technology, logistics, including adjacent and proximity to the proposed site and overall project purposes." 

✓ Page 4, line 9 after the word "section." insert "or the activity is exempt under [insert cite]..."

Page 5, line 11; revise title to read, "Wetland General Permits" *why throughout draft*

Insert 281.36 (3g) (a) – (d)

(a) The Department shall establish wetland general permits that identify application requirements, eligibility standards, terms and permit conditions. Application requirements shall include a detailed explanation of why the wetland impact cannot be avoided, ~~category-specific alternatives that were considered~~, and how the wetland impacts ~~were~~ minimized to the greatest extent possible. Eligibility standards shall include exclusions for specifically identified wetland types.

*What happens to courses not fed*

*mandatory*

✓ (b) The department shall establish general permits for the following activities. *will be* *Move language from Section 27 [page 13, line 1 through 17] as the list of activities eligible for a general permit.*

Page 5, line 13; renumber to (c)

*DN* Insert 281.36(3g)(d) The Department may identify activities that are conditionally exempt from a general permit. *?*

✓ Page 5, lines 18-21: delete everything after "period of five years..." through end of line 21

✓ Page 5, line 25; after "effect.", insert: "Anyone who is authorized to fill under the authority of an existing general permit may rely on that permit for a period of five years from the date of authorization." *how does this work w/ lang p. 5 lines*

*to proceed with a under general 17+18*  
*Authorization for a discharge is valid for 5*  
*the date the notification the discharge is considered years*  
*to be authorized*

Page 6, line 1; renumber to (e)

Page 6, line 10; renumber to (f)

Insert (g) – A wetland restoration surcharge shall be required for general permits issued under ... (cross-reference commercial, residential, industrial categories)

Page 6, line 16; **Embedded Note** – This language appears OK; we recommend that the procedures and timelines under ch. 30 and 281 be identical, except no presumptive approval for wetland Individual Permits

but in 2 bills

Page 7, line 5; **Embedded Note** – See suggested revisions for page 5

Page 7, line 12; before “condition”, insert, “terms and” No

NO don't want

Page 8, line 1 Replace “discharge” with “activity” ?

(or) already in draft see (3g) (g)

Page 8, line 2; **Embedded Note** – Yes, we recommend a provision similar to 30.206(3)

Page 8, lines 9-12; after “shall”, delete “meet with the department to...” to end of sentence. Replace with “discuss the details of the proposed project and applicable wetland permit application and delineation requirements.”

In 8-4 Here

Page 8, line 13; **Embedded Notes**

- Note 1 – No, that is not the intent. what
- Note 2 – see revisions above
- Note 3 – see revisions above

Page 9, lines 10-11; after “the department...” delete “may not act on the application” and replace with “shall dismiss the application without prejudice.”

Page 10, line 3; **Embedded Note** - Recommend class 1 notice or electronic notification process options, for both ch. 30 and ch. 281

Page 10, line 15; **Embedded Notes** 1 and 2 – recommend language be same as 30.208 (4)

Page 10, line 18 to Page 11, line 2; Delete to end of section and replace with “... will avoid and minimize adverse impacts to wetland functional values, and that will not result in significant adverse environmental consequences. The alternatives analysis shall consider significant direct, secondary, and cumulative impacts on wetland functional values.”

ABH

✓ Page 11, line 3; change “may” to “shall”

✓ Page 11, line 7-8; revise to read “The proposed project will result in a demonstrable economic benefit to the public.”

✓ Page 11, line 9; revise to read: “The wetland is not a rare, uncommon or imperiled wetland type.”

✓ Page 11, line 10; revise to read: “The wetland is highly disturbed and degraded.”

*do here*  
✓ Page 11, line 15; replace “consider” with “require”

✓ Page 11, lines 16-19; end sentence after “individual state wetland permits.” Delete rest of sentence through end of line 19.

✓ Page 11, line 19; **Embedded Note** – The intent is to only require state mitigation for Individual Permits.

*No* ✓ Page 12, line 2; revise title to read, “Compensatory Mitigation”

✓ Page 12, lines 4-7; recommend the order of 1. and 2. be switched

Page 12, line 4; delete “to the department”

✓ Page 12, line *here* 8; revise to read: “Restoring, enhancing, or creating wetlands within ½ mile of the site of wetland impact.” (taken from NR 350 definition of on-site)

✓ Page 12, lines 11-12 Delete last sentence in (b) ~~“The type of mitigation...of a wetland.”~~

✓ Page 12, line 13; before the word “program”, insert “in lieu fee”

✓ Page 12, lines 20-23; Delete those lines

✓ Page 13, line 18 through Page 14, line 19; delete those lines

✓ Page 15, line 4 and Page 15, line 21; delete “federal”

LRB 2803/P1 – ADDENDUM to DNR Comments  
October 7, 2011

✓ Page 16, line 8 Delete: FEDERAL (no title change)

✓ Page 16, lines 21-22 Delete: that are subject to federal jurisdiction under 33 USC 1344.

✓ Page 17, lines 6 Delete: sub. (3t) or

Page 17, lines 10-12: Revise those lines to read as follows:

“Enter and inspect any property on which is located a wetland, or part of a wetland, for which an application for a wetland permit has been submitted to the department.”

✓ Page 18, line 10 DELETE – do not repeal 281.37(1)(b)

ON ✓ Page 18, lines 11-16 DELETE – do not renumber or revise definition in 281.36(1)(e)

✓ Page 19, lines 2, 7 and 12 – Do not delete “enhanced” or “enhancing”

✓ Page 19, line 14 Repeal 281.37(3)(j) only, keep remainder of 281.37(3)

Page 19, line 14 Create new section 281.37(3d) to read:

SERVICE AREA SIZE. The Department shall establish service areas for each mitigation bank, consistent with federal rules regarding mitigation bank service areas, and considering service areas that are watershed based and meet market conditions.

Page 19, line 17 DELETE – do not repeal 281.37(5)

*does not cover exemption or general permit*

# Federal exemptions

33 USCS § 1344

NAVIGATION & NAVIGABLE WATERS

(e) **General permits on State, regional, or nationwide basis.** (1) In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall (A) be based on the guidelines described in subsection (b)(1) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.

(2) No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

(f) **Non-prohibited discharge of dredged or fill material.** (1) Except as provided in paragraph (2) of this subsection, the discharge of dredged or fill material—

(A) from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;

(E) for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

(F) resulting from any activity with respect to which a State has an approved program under section 208(b)(4) [33 USCS § 1288(b)(4)] which meets the requirements of subparagraphs (B) and (C) of such section, is not prohibited by or otherwise subject to regulation under this section or section 301(a) or 402 of this Act [33 USCS §§ 1311(a), 1342] (except for effluent standards or prohibitions under section 307 [33 USCS § 1317]).

ide basis. (1) In carrying dredged or fill material under opportunity for public hearing nationwide basis for any dredged or fill material if the category are similar in nature, effects when performed have adverse effect on the subsection shall (A) be (b)(1) of this section, and shall apply to any activ-

n shall be for a period of and such general permit offer opportunity for public hearing authorized by such instrument or such activities permits.

material. (1) Except as discharge of dredged or fill

anching activities such as harvesting for the production of soil and water conserva-

emergency reconstruction iceable structures such as piers, causeways, and bridge structures;

ence of farm or stock ponds inage ditches;

ry sedimentation basins on cement of fill material into

ance of farm roads or foraging equipment, where such accordance with best management patterns and chemical waters are not impaired, reduced, and that any adverse effects be minimized;

which a State has an ap- USCS § 1288(b)(4)] which and (C) of such section, tion under this section or 1311(a), 1342] (except for 07 [33 USCS § 1317]).

(2) Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.

(g) **State administration.** (1) The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto) within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program.

(2) Not later than the tenth day after the date of the receipt of the program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall provide copies of such program and statement to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

(3) Not later than the ninetieth day after the date of the receipt by the Administrator of the program and statement submitted by any State, under paragraph (1) of this subsection, the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such program and statement to the Administrator in writing.

(h) **Determination of State's authority to issue permits under State program; approval; notification; transfers to State program.** (1) Not later than the one-hundred-twentieth day after the date of the receipt by the Administrator of a program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall determine, taking into account any comments submitted by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, pursuant to subsection (g) of this section, whether such State has the following authority with respect to the issuance of permits pursuant to such program:

(A) To issue permits which—

(i) apply, and assure compliance with, any applicable requirements of this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, and sections 307 and 403 of this Act [33 USCS §§ 1317, 1343];

Husband. "Knowing endangerment" under the Clean Water Act and the Resource Conservation and Recovery Act: be aware of this toxic crime. 31 NH BJ 89, 1990.

Lozeau. Preliminary injunctions and the Federal Water Pollution Control Act: the clean water permit program as a limitation on the courts' equitable discretion. 42 Rutgers L Rev 701, 1990.

Baur; Irvin; Misenko. Symposium: Changing Tides In Ocean Management: Putting "Protection" Into Marine Protected Areas. 28 Vt L Rev 497, Spring 2004.

## PERMITS AND LICENSES

### CROSS REFERENCES

This subchapter is referred to in 33 USCS §§ 1313, 1386.

### § 1341. Certification

(a) **Compliance with applicable requirements; application; procedures; license suspension.** (1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act [33 USCS §§ 1311, 1312, 1313, 1316, 1317]. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 301(b) and 302 [33 USCS §§ 1311(b), 1312], and there is not an applicable standard under sections 306 and 307 [33 USCS §§ 1316, 1317], the State shall so certify, except that any such certification shall not be deemed to satisfy section 511(c) of this Act [33 USCS § 1371(c)]. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

(2) Upon receipt of such application and certification the licensing or permit-

ting agency shall immediately and certification. When the Administrator, the contractor within thirty days of license or permit shall be issued by the agency, and the application, such other State of its waters so as to vi within such sixty-day permitting agency in w or permit and requests permitting agency shall hearing submit his eval objection to the licensi recommendations of su evidence, if any, prese license or permit in su with applicable water cannot insure such cor permit.

(3) The certification o with respect to the cor of this subsection with Federal license or per after notice to the certi be, which shall be give for such operating lice agency or the Admin receipt of such notice will be compliance wi 306, and 307 of this because of changes sir issued in (A) the cons istics of the waters int criteria applicable to other requirements. T the applicant for such certifying State, or, if tor, with notice of any the facility with respe granted, which change or 307 of this Act [33

(4) Prior to the initial ity or activity which and with respect to paragraph (1) of this Federal operating lice

ting agency shall immediately notify the Administrator of such application and certification. Whenever such a discharge may affect, as determined by the Administrator, the quality of the waters of any other State, the Administrator within thirty days of the date of notice of application for such Federal license or permit shall so notify such other State, the licensing or permitting agency, and the applicant. If, within sixty days after receipt of such notification, such other State determines that such discharge will affect the quality of its waters so as to violate any water quality requirement in such State, and within such sixty-day period notifies the Administrator and the licensing or permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. The Administrator shall at such hearing submit his evaluation and recommendations with respect to any such objection to the licensing or permitting agency. Such agency, based upon the recommendations of such State, the Administrator, and upon any additional evidence, if any, presented to the agency at the hearing, shall condition such license or permit in such manner as may be necessary to insure compliance with applicable water quality requirements. If the imposition of conditions cannot insure such compliance such agency shall not issue such license or permit.

(3) The certification obtained pursuant to paragraph (1) of this subsection with respect to the construction of any facility shall fulfill the requirements of this subsection with respect to certification in connection with any other Federal license or permit required for the operation of such facility unless, after notice to the certifying State, agency, or Administrator, as the case may be, which shall be given by the Federal agency to whom application is made for such operating license or permit, the State, or if appropriate, the interstate agency or the Administrator, notifies such agency within sixty days after receipt of such notice that there is no longer reasonable assurance that there will be compliance with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act [33 USCS §§ 1311, 1312, 1313, 1316, 1317] because of changes since the construction license or permit certification was issued in (A) the construction or operation of the facility, (B) the characteristics of the waters into which such discharge is made, (C) the water quality criteria applicable to such waters or (D) applicable effluent limitations or other requirements. This paragraph shall be inapplicable in any case where the applicant for such operating license or permit has failed to provide the certifying State, or, if appropriate, the interstate agency or the Administrator, with notice of any proposed changes in the construction or operation of the facility with respect to which a construction license or permit has been granted, which changes may result in violation of section 301, 302, 303, 306, or 307 of this Act [33 USCS §§ 1311, 1312, 1313, 1316, 1317].

(4) Prior to the initial operation of any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters and with respect to which a certification has been obtained pursuant to paragraph (1) of this subsection, which facility or activity is not subject to a Federal operating license or permit, the licensee or permittee shall provide




## Gibson-Glass, Mary

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**From:** Lehmann Kerler, Liesa K - DNR [Liesa.LehmannKerler@Wisconsin.gov]  
**Sent:** Thursday, October 13, 2011 3:23 PM  
**To:** Johnson, Dan; Gibson-Glass, Mary  
**Cc:** Bruhn, Michael L - DNR; Siebert, David R - DNR  
**Subject:** RE: Questions regarding the fees for wetland "approvals"

Yes, you're correct on all counts Dan.

~Liesa

 *Liesa Lehmann*

Waterways and Wetlands Section Chief  
Bureau of Watershed Management, Madison  
Wisconsin Department of Natural Resources  
phone: (608) 264-8554

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**From:** Johnson, Dan [mailto:Dan.Johnson@legis.wisconsin.gov]  
**Sent:** Thursday, October 13, 2011 02:02 PM  
**To:** Gibson-Glass, Mary - LEGIS  
**Cc:** Lehmann Kerler, Liesa K - DNR; Bruhn, Michael L - DNR; Siebert, David R - DNR  
**Subject:** RE: Questions regarding the fees for wetland "approvals"

Mary,

The \$500 General Permit fee should apply to items 1, 2, and 3. Since the fourth type of permit (which we've loosely referred to as a non-reporting permit) does not require the person to notify the Department of the activity, then no application or fee is required. I believe the surcharge based on a sliding scale would only apply to those General Permits issued for residential, commercial, and industrial development – but I am copying the DNR on this message to make sure I have that right.

I believe the fee would cover both the water quality determination under 281.22 as well as the authorization for a person to proceed under the General Permit. But again, I'd like to get the DNR's input on that.

Dan Johnson  
**State Senator Neal Kedzie**  
11<sup>th</sup> Senate District  
608.266.2635

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**From:** Gibson-Glass, Mary  
**Sent:** Thursday, October 13, 2011 1:11 PM  
**To:** Johnson, Dan  
**Subject:** Questions regarding the fees for wetland "approvals"

Dan

In the original materials for the wetlands draft, there is a fee of \$500 for a "reporting general permit". There is also a "surcharge", based on a sliding scale, related to the market price for wetland mitigation bank credits, for certain specified general permits.

At our meeting yesterday, my understanding was that we are having 4 types of general permits.

1. The 6 specified state general permits that DNR **will issue** that correspond to the existing federal permits.
2. State permits that **will be issued** to correspond to any federal general permits that may be issued in the future.
3. Additional state permits that DNR **may** issue that require the person wanting to proceeding under the general permit to notify DNR.
4. Additional state permits that DNR **may** issue that do not require the person wanting to proceeding under the general permit to notify DNR.

Which fees and surcharges to you want to apply to each of these 4 permits. I assume the \$500 is a fee to request authorization to proceed under a general permit since general permits are not being issued upon the request of a developer or other entity. Am I right about that?

Thanks,

Mary Gibson-Glass  
Senior Legislative Attorney  
Legislative Reference Bureau  
608 267 3215

## Gibson-Glass, Mary

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**From:** Siebert, David R - DNR [David.Siebert@Wisconsin.gov]  
**Sent:** Thursday, October 13, 2011 12:56 PM  
**To:** Gibson-Glass, Mary  
**Cc:** Lehmann Kerler, Liesa K - DNR  
**Subject:** Mitigation info  
**Attachments:** 33cfr332.pdf

Link to our guidance on mitigation:  
[http://dnr.wi.gov/org/es/science/publications/wetland\\_mitig.pdf](http://dnr.wi.gov/org/es/science/publications/wetland_mitig.pdf)

From this pdf:

***In-lieu fee program*** means a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.

***In-lieu fee program instrument*** means the legal document for the establishment, operation, and use of an in-lieu fee program. -----

Dave Siebert  
WI Dept. of Natural Resources  
Director, Office of Energy and Environmental Analysis  
(608) 264-6048

## **Gibson-Glass, Mary**

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**From:** Johnson, Dan  
**Sent:** Tuesday, October 18, 2011 12:16 PM  
**To:** Gibson-Glass, Mary  
**Subject:** RE: Surcharge fee for certain general wetland permit discharges

Mary,

The surcharge would be submitted along with the permit application fee at the time of application.

The DNR would identify the surcharge amount on the fee sheet so the applicant could total up the applicable fees and submit one payment with their application. If someone applies for a GP, the only reason it would not be approved is if their project doesn't qualify for a GP, in which case they'd need an IP. In the event that happens, the DNR could either transfer their past payment over to the IP, or do a refund and they could resubmit a new fee with their IP application.

Dan Johnson  
**State Senator Neal Kedzie**  
11<sup>th</sup> Senate District  
608.266.2635

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**From:** Gibson-Glass, Mary  
**Sent:** Monday, October 17, 2011 4:52 PM  
**To:** Johnson, Dan  
**Subject:** Surcharge fee for certain general wetland permit discharges

Dan:

Is the surcharge fee that is applicable to certain general permits to be submitted along with the application fee? Or is it imposed only if authorization to proceed under the general permit is granted?

Thanks,

Mary

Mary Gibson-Glass  
Senior Legislative Attorney  
Legislative Reference Bureau  
608 267 3215