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☞ Details: Proposed Audit: Wetland Permitting and Mitigation Programs, Department of Natural Resources

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2005-06

(session year)

### Joint

(Assembly, Senate or Joint)

### Committee on Audit...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

## Record of Committee Proceedings

### Joint Legislative Audit Committee

#### Proposed Audit: Wetland Permitting and Mitigation Programs, Department of Natural Resources

April 5, 2006

#### **PUBLIC HEARING HELD**

- Present: (9) Senators Roessler, Cowles, Miller and Lassa;  
Representatives Jeskewitz, Kaufert, Kerkman,  
Travis and Cullen.
- Absent: (1) Senator S. Fitzgerald.

#### Appearances For

- Todd Ambs, Madison — Administrator, Division of Water, Department of Natural Resources
- Mary Ellen Vollbrecht, Madison — Chief, Rivers and Habitat Protection, Department of Natural Resources
- Katie Mnuk, Madison — Chief of Staff, State Senator Ron Brown's Office
- John Kisiel, Madison — Director, Development Council, Wisconsin Builders Association

#### Appearances Against

- Don Hammes, Middleton — Wetlands Committee Chair, Wisconsin Wildlife Federation

#### Appearances for Information Only

- Janice Mueller, Madison — State Auditor, Legislative Audit Bureau
- Paul Stuiber, Madison — Legislative Audit Bureau
- Erin O'Brien, Madison — Wetland Policy and Conservation Specialist, Wisconsin Wetlands Association

#### Registrations For

- Terry Moulton, Chippewa Falls — Representative, Wisconsin State Assembly

#### Registrations Against

- None.

April 5, 2006

**EXECUTIVE SESSION HELD**

Present: (6) Senators Roessler, Cowles and Lassa;  
Representatives Jeskewitz, Kaufert and  
Kerkman.

Absent: (4) Senators S. Fitzgerald and Miller;  
Representatives Travis and Cullen.

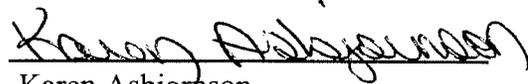
Moved by Representative Jeskewitz, seconded by Senator  
Roessler, that **Proposed Audit: Wetland Permitting and  
Mitigation Programs, Department of Natural Resources** be  
approved according to the scope statement dated March 22, 2006  
prepared by the Legislative Audit Bureau.

Ayes: (6) Senators Roessler, Cowles and Lassa;  
Representatives Jeskewitz, Kaufert and  
Kerkman.

Noes: (0) None.

Absent: (4) Senators S. Fitzgerald and Miller;  
Representatives Travis and Cullen.

ADOPTION RECOMMENDED, Ayes 6, Noes 0



Karen Asbjornson  
Committee Clerk

# Vote Record

## Joint Legislative Audit Committee

Date: 4-5-06  
Bill Number: Wetlands  
Moved by: Jeskewitz Seconded by: Roessler  
Motion: \_\_\_\_\_

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Carol Roessler Co-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Suzanne Jeskewitz Co-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Cowles	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Scott Fitzgerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Mark Miller	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Julie Lassa	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Dean Kaufert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Samantha Kerkman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative David Travis	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative David Cullen	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>6</u>	<u>1</u>	<u>4</u>	<u>1</u>

Motion Carried

Motion Failed





**STATE OF WISCONSIN**

**Legislative Audit Bureau**

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Madison, Wisconsin 53703  
(608) 266-2818  
Fax (608) 267-0410  
Leg.Audit.Info@legis.state.wi.us

Janice Mueller  
State Auditor

DATE: March 22, 2006

TO: Senator Carol A. Roessler and  
Representative Suzanne Jeskewitz, Co-chairpersons  
Joint Legislative Audit Committee

FROM: Janice Mueller *Janice Mueller*  
State Auditor

SUBJECT: Proposed Audit of Wetland Permitting and Mitigation Programs—Background Information

At your request, we have gathered some background information the Joint Legislative Audit Committee may find useful in considering a request from several legislators to audit Wisconsin's wetland permitting and mitigation programs. These programs are administered by the Department of Natural Resources (DNR).

Wetlands are an important part of Wisconsin's natural resources. They provide water quality benefits and flood protection, as well as habitat for many species of plants and animals. Wetlands occur on both private and public lands, and alterations to them are regulated under a complex set of state, federal, and local laws. DNR issues permits for many types of activities that affect wetlands, including grading, filling, removing, or disturbing the soil. Statutes require DNR to charge a fee based on the estimated time it spends in reviewing, investigating, and making permit determinations.

Data reported by DNR indicates that from January through September 2004 it approved 448 wetland permits. More recent data are not readily available.

Two pieces of legislation have had significant effects on the wetland permitting program. 2003 Wisconsin Act 118 was enacted to improve the timeliness of the permit decision making process. Administrative rules implementing the new statute went into effect in May 2005. 1999 Wisconsin Act 147 created a wetland compensatory mitigation program. The program involves the restoration, enhancement, and creation of wetlands to compensate for wetlands lost through the filling or dredging of existing wetlands.

Questions have been raised about how DNR balances the need for wetlands preservation with responsible development practices. In addition, interest has been expressed in assessing the consistency, timeliness, and cost of the procedures used by DNR's regional offices in making permitting decisions.

An audit of DNR's wetland permitting and mitigation programs could:

- review trends in fee revenues, expenditures, and staffing levels;
- review changes in the permitting process resulting from the passage of 2003 Wisconsin Act 118;
- analyze trends in the number of permit applications received, the amount of time taken by DNR for permit determination decisions, the number of acres affected, and permit approval rates;
- analyze the effects of the wetland compensatory mitigation program, including changes in the amount and type of wetlands in Wisconsin;
- analyze performance differences among DNR's regions; and
- review similar wetland permitting and mitigation programs in a few surrounding states, including Minnesota.

If you have any additional questions regarding this request, please contact me.

JM/PS/bm

cc: Senator Robert Cowles  
Senator Scott Fitzgerald  
Senator Mark Miller  
Senator Julie Lassa

Representative Samantha Kerkman  
Representative Dean Kaufert  
Representative David Travis  
Representative David Cullen

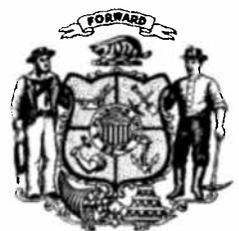
Senator Ronald Brown  
Senator Sheila Harsdorf  
Senator David Zien

Representative Barbara Gronemus  
Representative Robin Kreibich  
Representative Terry Moulton  
Representative Terry Musser  
Representative Mark Pettis  
Representative Scott Suder  
Representative Jeffrey Wood

Scott Hassett, Secretary  
Department of Natural Resources



# WISCONSIN STATE LEGISLATURE





## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Scott Hassett, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TTY Access via relay - 711

**Testimony of Todd Ambs on Behalf of Secretary Scott Hassett  
Regarding the Proposed Audit of the Wetland Permitting Program  
Joint Legislative Audit Committee  
April 5, 2006**

My name is Todd Ambs, Water Division Administrator for the Wisconsin DNR. I am here on behalf of Secretary Hassett in support of an audit of Wisconsin's wetland permitting and mitigation programs. While we are proud of our record of successfully balancing development needs with our responsibility to conserve Wisconsin's valuable wetlands and regularly evaluate what we do, we welcome the opportunity to have the nonpartisan professionals of the Legislative Audit Bureau review these programs.

As the audit scoping document notes, wetlands are regulated under a comprehensive set of state, federal and local laws. We want to make sure that all programs work as effectively together as possible to save Wisconsin's remaining wetlands while assuring timely and consistent decisions for property owners.

Wetlands are critical, not only to our natural resources, but to our way of life and certainly to our economy. Wetlands serve many functions, including serving as a cushion to absorb flood waters. Recent analysis suggests that if Hurricane Katrina had occurred 25 years ago the impact to the city of New Orleans may well have been substantially reduced because that storm would have had to travel over nearly 200 miles of wetlands and land mass that is no longer there. While we don't have to worry about hurricanes in Wisconsin, closer to home we all remember the Mississippi River flood of 1993. Once again, computer modeling there now suggests that the impacts of that flood would have been considerably less had the flooding taken place in the 1940's. Loss of wetlands, buildings in floodplains and other impervious surfaces exacerbated the impacts of those high waters.

Fortunately, Wisconsin values its wetlands. Thanks to strong bipartisan leadership over the years, including by many elected officials still in this Legislature, Wisconsin has put in place wetland permitting and mitigation programs that are regarded as national models.

Our commitment to working upfront with thousands of property owners every year has enabled them to get their projects done while reducing wetland loss to one-quarter the level it was in 1990.

It is also the wetlands of Wisconsin that provide great hunting and fishing opportunities for citizens and visitors creating a strong foundation for our tourism industry. For these reasons and others this Legislature, led by elected officials like Senator Kedzie, Schultz and Cowles, responded quickly in 2001 to protect isolated wetlands left in limbo by the U.S. Supreme Court decision in the SWANCC case. Working in conjunction with builders, conservationists and the DNR, this body acted in a unanimous bipartisan fashion to approve Act 6, which restored state protection to isolated wetlands.

Working carefully with lawmakers in the late 1990's, we designed a wetland compensatory mitigation program that avoids the pitfalls and mistakes that other states and the federal government made with their programs. These problems, identified in a study by the National Academies of Science, are now being addressed as the U.S. Corps of Engineers changes their mitigation requirements to more closely reflect ours. Enacted in 2000, Act 147 was a carefully crafted law that balanced development needs with appropriate safeguards for the state's remaining 5.3 million acres of wetlands. In May of 2005, we delivered a report on the status of the compensatory mitigation program to the Legislature.

The scope of the audit looks appropriately identified. While not specifically listed in the scope, we anticipate that the auditors would include a review of the current laws that apply to wetlands at the federal, state and local levels as the basis for its evaluation of the implementation of the wetland laws.

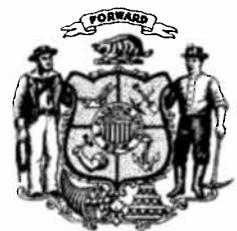
Wetlands' are critical to our ecosystem, quality of life and to our economy. More than half of Wisconsin's adult residents say they watch wildlife, 1.4 million residents fish, and nearly three quarters of a million enjoy hunting. Wetlands provide important habitat for these fish and wildlife, and places for people to enjoy these activities. In short, they are the special places that enrich our lives and anchor Wisconsin's \$12 billion tourism industry.

Wetlands are critical to Wisconsin's economy and to taxpayers. They provide free flood storage, an increasingly important service. Recent studies by the U.S. Geological Survey and the Southeastern Wisconsin Regional Planning Commission show that parts of Wisconsin are flooding more frequently and that flood waters are covering more land and are higher.

We are proud of our performance to successfully balance protection of these valuable natural resources while enabling development to occur. We welcome a review and look forward to working with Janice Mueller and her staff to provide them with the information they need to produce a thorough assessment of our program.



# WISCONSIN STATE LEGISLATURE





**Joint Legislative Audit Committee  
April 5, 2006**

Co-Chairs Roessler and Jeskewitz and Audit Committee members, thank you for scheduling a hearing on our request to audit the Department of Natural Resource's (DNR) wetlands permitting and mitigation programs. This request represents the concerns of the ten Western Wisconsin legislators who signed the original letter requesting the audit, based on feedback from our constituents. I apologize that I cannot be there today to present this testimony to you in person.

Our request for a legislative audit takes two tracks: First, we have asked for a comparison between Wisconsin and Minnesota's wetlands permitting and mitigation programs. We asked for this comparison because like Wisconsin residents, Minnesotans value their natural resources and the water quality benefits their wetlands provide. Therefore, we felt that these two states would be a good source for program comparison. I note that the Audit Bureau suggests that it may look at other state's programs as well, and we welcome a review and comparison of other comparable state programs.

Second, we would appreciate a review and comparison of administrative processes between the various DNR regions within Wisconsin. It has been suggested to us by some of our constituents working in this field that there is significant variety in handling wetlands permitting between the DNR regions. A legislative audit will take an impartial look at the regions' processes and if there are in fact differences, highlight best practices found that can then be incorporated throughout the state.

I want to stress that I believe that like most state agencies, the DNR is staffed with professionals who respond to the public's needs as they administer Wisconsin laws. However, if personalities are unduly entering into the agency's administrative processes, we need to root those problems out and correct them.

Concerns expressed to me over the three-plus years that I've been in office include complaints that wetlands permitting and mitigations involves excessive costs, it includes unclear and/or moving targets for compliance, and the process is all too often adversarial in nature, pitting the state agency against local professionals. To the extent that these concerns are true, these problems jeopardize job growth in Wisconsin and affect our state's economic viability.

It's my hope that a legislative audit will provide an unbiased look at wetlands permitting and mitigation procedures in Wisconsin, highlight what's working and what's not, and provide guidance for improvement. I thank the Committee for its willingness to explore this issue.



# WISCONSIN LEGISLATURE

P. O. Box 7882 Madison, WI 53707-7882

January 3, 2006

The Honorable Carol Roessler, Co-Chair  
Joint Committee on Audit  
Room 8 South, State Capitol  
Madison, WI 53703

The Honorable Sue Jeskewitz, Co-Chair  
Joint Committee on Audit  
Room 314 North, State Capitol  
Madison, WI 53703

Dear Co-Chairs Roessler and Jeskewitz:

We respectfully request that the Joint Committee on Audit conduct an audit of Wisconsin's wetlands permitting and mitigation programs. The audit should include a comparison of Wisconsin's wetlands designation and permitting processes to similar programs in the state of Minnesota, as well as internal review of processes utilized by the Wisconsin Department of Natural Resources (DNR) by comparing process efficiency in three or more of its regions.

The people of Wisconsin and Minnesota value their wetlands for the role they play in conserving wildlife and fish habitat, maintaining floral diversity and providing flood protection. Both states are proud of their natural environments, and each is dedicated to protecting those resources for generations to come through its public policies.

The audit we propose affords the opportunity for a side-by-side review of the two states' programs to determine how they compare in balancing the need for wetlands preservation with responsible economic development. A comparison of each state's laws, policies and procedures regarding wetlands permitting and mitigation standards will provide valuable information for Wisconsin policymakers and program administrators.

We ask that the Audit Bureau include in its examination the following aspects of Minnesota's programming:

- Wetlands classification, mapping and delineation: We understand that both states utilize qualified private sector professionals to review and map wetlands throughout the state. Please review and compare the two state's processes in this area, and the efficiency of the two systems.
- Mitigation ratios: Please review and compare each state's use of mitigation ratios. In addition, we would appreciate an examination of Wisconsin's use of ratios and comparison between DNR regions.
- Use of credits: It's our understanding that Minnesota law includes incentives that promote better overall habitat creation or restoration. We would appreciate a review of Minnesota's system and a comparison to similar provisions in Wisconsin law, rules or policy.

- Permitting rates: Please compare the number of wetland permits requested and granted in the two states annually, for the past ten years.

As a final aspect of the audit, we ask for a review of administrative procedures between the various Wisconsin DNR regions to determine efficiency, efficacy and consistency of processing and decision-making relating to wetlands permit issuance. This should include:

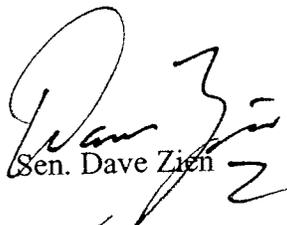
- A review of three DNR regions handling of wetlands permit requests, comparing the West-Central region and two others and including at least the following factors:
  - The number of applications received and number approved over a given time period;
  - A comparison of the length of time, number of steps and amount and type of information required for approval;
  - Frequency and manner of communication with applicants during the course of approval; and
  - The amount of wetlands affected.

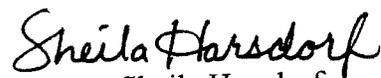
Wisconsin and Minnesota both place a high priority on building a stable economy and protecting the natural beauty of our environment, and our shared values give us an excellent opportunity to learn from each other. A careful review of Minnesota's methods will provide a wealth of information and ideas for Wisconsin policymakers for review of our own wetlands protection efforts.

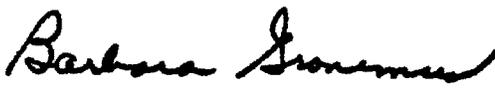
Thank you for your consideration of this request. We stand ready to answer any questions you or committee members have regarding this proposed audit.

Sincerely,

  
Sen. Ron Brown

  
Sen. Dave Zien

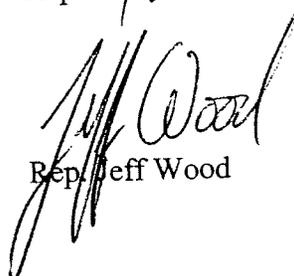
  
Senator Sheila Harsdorf

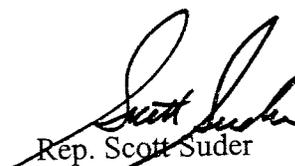
  
Rep. Barbara Gronemus

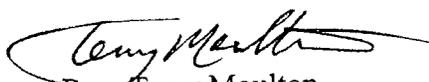
  
Rep. Terry Musser

  
Rep. Mark Pettis

  
Rep. Robin Kreibich

  
Rep. Jeff Wood

  
Rep. Scott Suder

  
Rep. Terry Moulton



# WISCONSIN STATE LEGISLATURE





# Wisconsin Wildlife Federation

720 ST. CROIX ST., SUITE 101, PRESCOTT, WI 54021 • (715) 262-9279 • 1-800-897-4161

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*AFFILIATED WITH NATIONAL WILDLIFE FEDERATION*

## **Public Hearing of the Legislative Joint Audit Committee on the Proposed Audit of Wetland Permitting and Mitigation Programs. April 5, 2006**

My name is Don Hammes and I am the Wetlands Committee Chair for the Wisconsin Wildlife Federation. The Wisconsin Wildlife Federation is a statewide organization made up of 139 sporting clubs and organizations representing thousands of hunters, fishing persons and trappers all across the state. Our Executive Director is George Meyer, the former Secretary of the Wisconsin Department of Natural Resources.

Please let me begin by saying the Federation does not believe an audit of DNR wetland permitting and mitigation programs is needed. The State of Wisconsin is widely recognized as a conservation leader and a leader in the conservation of wetlands throughout the Midwest and the nation. Our permitting process may be viewed by some people as stricter than most other states because for years Wisconsin has set the standard for others to follow when it comes to protecting wetlands. The biggest reason, by far, that Wisconsin is recognized as a leader in the protection of wetlands is because the citizens of Wisconsin demand nothing less. Evidence of this consensus of the populace is plain to see when in 2001, the Supreme Court made it possible to exempt isolated wetlands from the same regulations that govern navigable streams, rivers and lakes. When this decision was made Wisconsin citizens demanded that the State Legislature enact regulations to protect these valuable isolated wetlands located throughout the state. In a bipartisan effort we became the first state in the nation to enact these protective regulations and to date the only state. Clearly, we can see from just this one example that a majority of the citizens of Wisconsin want to see our wetlands strongly protected. Most people in Wisconsin know, for example, that wetlands protect many of our communities from flooding and disasters similar to Katrina. And they know too, that wetlands are important to our economy. Hunters, trappers, anglers, hikers, bird watchers, photographers and other outdoor persons are all attracted to wetlands for the enjoyment of their sport. Together these outdoors enthusiasts represent more than a billion dollars in business revenue for our state each year.

As everyone here knows, Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, together with DNR regulations and local regulations, provide strong wetlands protection in Wisconsin. And, most importantly, the people of Wisconsin.... support strong wetland protection. An audit is just not needed to find this out.

If, however, the Joint Audit Committee decides to perform an audit on the DNR permitting process and mitigation program, for obvious reasons, the Wisconsin Wildlife Federation and many of the other statewide conservation organizations would like to be involved in the proceedings every step of the way. We represent thousands of conservationists in the state and it is our responsibility to represent their views in all such proceedings. We take this job seriously.

-MORE-

Before the Committee gets started we would like you to recognize, if you haven't already, that the proposed audit will necessarily be limited and biased because all the federal, county, and city laws, ordinances and regulations, that play an integral role to the wetland regulatory process, will not be audited. We know that most legislators do not understand how all of these laws, regulations and ordinances work together to protect our wetlands and that is probably one of the reasons they have asked for this audit. Understanding the total regulatory environment will also be one of your greatest challenges.

As part of your investigation we would like the Committee to inventory all the wetlands that have been illegally filled in for the last 10 years and then ponder the question of why this has occurred. You will find the answer if you also analyze the limited staff and staff time DNR employees have for enforcement actions. We ask that you obtain a count of the number of permit applications that are submitted each year and the number of DNR employees available to process those applications. Analyze also the impact of continued DNR budget cuts, which have resulted in the elimination of many wetland enforcement positions.

We encourage the Committee to audit also:

- The number and types of difficulties experienced by DNR staff when undertaking wetland enforcement actions;
- The number of permit applications that have been **withdrawn** after the originator learned about wetland regulations that would affect their proposed project; and
- The number of permit applications that have been **altered** as a result of the required alternatives analysis step that often reveals a compromise that both preserves the wetland and allows a land development project to proceed
- And, if you are going to be considering the record of adjoining states, please be sure and find out the actual loss of wetlands in surrounding states since the enactment of the Clean Water Act.

Before concluding my remarks please let me advise the Audit Committee to be very wary of any suggestions to exempt small wetlands from the regulatory process. As pointed out previously, small isolated wetlands are of high value to wildlife and to the citizens of Wisconsin. The piecemeal destruction of small wetlands is not a good practice for the State of Wisconsin to follow and it is a practice the people of Wisconsin will not tolerate.

Thank you for giving me this opportunity to present the views of the Wisconsin Wildlife Federation. If I may be of any assistance to the Committee I hope you will call on me.

Don Hammes Chair, Wetlands Committee





# Memo



**Date:** April 5, 2006

**To:** Senator Carol Roessler and Representative Suzanne Jeskewitz, Co-chairpersons  
Joint Legislative Audit Committee

**From:** John Kisiel – Wisconsin Builders Association, Development Council

**RE:** Proposed Audit of Wetland Permitting and Mitigation Programs

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Thank you Co-chairs Roessler and Jeskewitz and the Committee for giving me the opportunity to speak in favor of the proposed audit of the Wetland Permitting and Mitigation Programs. My name is John Kisiel and I am the Director of the Development Council for the Wisconsin Builders Association and our over 8,000 members from across the state.

Our members agree that wetlands are an important part of the Wisconsin environmental landscape. Our Association was one of the main proponents along with Sierra Club of Wisconsin Act 6 that dealt with isolated wetlands following the SWANCC decision. Our members recognize that, when managed well, they can be an important asset. They are a natural element for stormwater management systems although here in Wisconsin, unlike Minnesota, this is not the case. Wetland complexes, when properly maintained, have been turned into an aesthetic asset that has been successfully incorporated into many of the new communities built by our members across the State.

In preparation for my testimony today I spoke with a number of consultants who work in this field. These are the same individuals who contact me when problems arise due to interpretations and applications by DNR staff of existing rules. Our members are not looking for a relaxation of the existing rules but rather greater consistency in decision making among the DNR staff. According to the consulting professionals I spoke to this problem unfortunately, has become commonplace in certain DNR regions of the state. Inconsistent applications by DNR staff not just between regions but sometimes between DNR Water Management Specialists in the same region often make it difficult if not impossible for these professionals to navigate the permit system.

Our members would agree that the items identified in the background information prepared by the Legislative Audit are all very important and should be addressed in the audit. In reviewing the items outlined on the second page of LAB's Background Information it is important that three areas be specifically reviewed as part of the audit:

1. Analyze performance differences among DNR regions. This is a critical item to review. The consultants who work in this area that I spoke with identified this as a major problem not just between regions but also within Water Management Specialist in the same regional office. It will be important to look at the training that DNR provides staff and the quality systems that are used to reduce incidents of inconsistency.

2. Review similar wetland permitting and mitigation programs in surrounding states including Minnesota. It is important to continually look to improve programs within state government. These improvements can come from the inside or from similar programs in other states. These other programs could also help identify areas that have not worked in that particular state and help Wisconsin identify similar blind alleys that waste valuable state resources. A comparison of other programs helps determine methods that have been successful and will have historical data that will help support an evaluation of their effectiveness. Such a comparison could help identify areas where Wisconsin could change the programs that are the subject of the audit in order to improve efficiency and consistency within these programs.
3. Analyze the wetland compensatory mitigation program. This is a very confusing program is the common message I get from my members and members of the public. It appears that it is also confusing for DNR staff when presented with a mitigation option. The audit should look at the type of training and educational outreach that is available both to the general public and DNR staff and how this message is being conveyed to the general public and internally to DNR staff. Also, there needs to be an analysis of how often mitigation is even permitted either on-site, within the same watershed or through the mitigation bank program and the average size of the mitigation area.

Our members support the use of the Legislative Audit Bureaus as a way to bring in a “fresh set of eyes” since our industry, the environmental community and DNR are too close to this situation and an outside perspective may be what is needed to give an objective review of this program. The Wisconsin Builders Association asks that the audit include interviews with stakeholder organizations and their members in order to get a true sense of the day-to-day issues and on-going successes that have been achieved under these programs. We also strongly encourage the auditors to interview the members of the professional consulting community who are most familiar with the processes used by the Department for acquiring a permit and the mitigation program in Wisconsin. The auditors may also wish to include Don Reed and his staff at SEWRPC.

Our Association has worked cooperatively in the past with DNR and continues to do so today to help improve the efficiency of the Department and its programs. The Wetland Delineator Assurance program that Senator Miller asked about is an example of how partnerships between diverse groups like 1000 Friends of Wisconsin, the Wisconsin Builders Association Development Council, and the DNR can create public-private partnerships that increase the efficiency of government, do not compromise the high regulatory standards of the State, and provide a high level of protection for the environment. While this program has not been as successful or proceeded as fast as all of the partners had hoped, we are hopeful it will provide a model for the creation of other similar programs in areas like stormwater management and erosion control for example. We are hopeful that this audit will also look for other opportunities where greater efficiency can be achieved through other such partnerships and our Association members stand ready to assist.

I thank you for your time and consideration and reiterate our Association’s offer to help in any way we can as this audit moves forward. Our members and the consultants they work with are very familiar with these programs and will give the auditors their honest opinion of what works and what has not since these programs have been in place. We look forward to working with the staff at LAB and this Committee in the future.





222 S. Hamilton St. #1 Madison, WI 53703

Phone: (608) 250-9971 Fax: (608) 287-1179

www.wiscwetlands.org

**Wisconsin Wetlands Association**  
**Testimony before the Joint Legislative Committee on Audits**  
**On the matter of a proposed wetland regulatory program audit**  
*Presented April 5, 2006*

Good afternoon. My name is Erin O'Brien. I work as a Wetland Policy & Conservation Specialist for the Wisconsin Wetlands Association and I am here to testify on behalf of my organization and our 1,000 members. The Wisconsin Wetlands Association is dedicated to the protection, restoration and enjoyment of wetlands and associated ecosystems through science-based programs, education and advocacy. We are a 501(c)(3) non-profit organization. A substantial number of our members are wetland professionals, many of whom work in the private sector as wetland consultants. Wetland consultants serve as a liaison between the regulated community and the regulators. Their clients include home-builders, commercial and industrial developers, private landowners, road and airport builders and others and their job is to help their clients navigate the wetland regulatory and permitting process in order to move projects forward. We point this out to demonstrate that, in addition to our internal expertise on wetland regulations and regulatory concerns, we represent a professional community with extensive wetland ecology training and substantial hands-on experience with the administration, implementation and enforcement of federal, state, and local wetland regulations.

Because of our organization's specialized focus on wetland concerns, we have many seasoned insights on the causes of wetland regulatory tensions and problems with the administration of Wisconsin's wetland regulations. Some of these we'll share today, however if this audit does proceed we want to participate along the way and believe our participation will be useful to the inquiry.

Section 404(b) of the federal Clean Water Act and NR 103, Wisconsin's water quality standards for wetlands, require developers to first avoid and then minimize wetland impacts in their project design. Permit applicants must first locate the wetland boundaries on their property following a process outlined in the *1987 Army Corps of Engineers Wetlands Delineation Manual*, and then conduct an alternatives analysis to explore options for meeting project goals without filling wetlands. Permission to fill a wetland can only be granted in cases where the project sponsor has demonstrated that no upland alternative exists, and even then only if the wetland-fill will not have a significant adverse impact on the environment. These are our laws, passed by federal and state legislators and delegated to the U.S. Army Corps of Engineers and the Wisconsin Department of Natural Resources to implement and enforce.

Proponents of this audit raise questions about how DNR balances the need for wetlands preservation with responsible development practices, and the consistency of DNR's implementation of wetland regulations between regions. We are here today because some legislators believe we need to relax wetland regulations to create a more business-friendly

Wisconsin. We have seen evidence this legislative session to suggest that we are also here due to the tensions created when people mistake their own lack of understanding of wetland ecology and the wetland regulatory process for administrative inflexibility or inconsistency.

The Legislative Audit Bureau's job is to evaluate state agency operations to determine whether programs are administered effectively, efficiently, and in accordance with the policies of the Legislature and the Governor. We interpret this to mean that if this audit moves forward, it will provide a balanced review of the rules and regulations the DNR is charged to implement and enforce and the job they are doing in meeting this responsibility. Though an evaluation of the popularity of wetland regulations is outside the scope of this inquiry, the gaps in public understanding of the requirements for their implementation is most certainly linked to the efficiency of DNR's activities. We urge the committee to explore this phenomenon and are available to assist at your request.

The citizens of Wisconsin have repeatedly demonstrated their support for strong wetland protection laws, most recently when they successfully urged the state legislature to pass emergency legislation (WI Act 6) to protect isolated wetlands left vulnerable by a federal Supreme Court decision in 2001. We believe the people of Wisconsin would welcome an investment of public resources to evaluate the degree to which wetlands are still being lost, but would certainly not support an audit designed solely to evaluate the speed and ease with which one is able to obtain permission to fill a wetland or any subsequent recommendations to relax Wisconsin's standards. The legislators requesting this audit did so with the concerns of Wisconsin's business community in mind. The citizens of the state of Wisconsin expect that this audit will also consider their interests in wetland regulatory issues, including but not limited to their right to the water quality improvement, drinking water protection, flood protection and wildlife habitat benefits that wetlands provide.

An April 22<sup>nd</sup> Legislative Audit Bureau background memo outlined six items a wetland regulatory audit might review. Please consider the following recommendations to ensure the inquiry into each of those items remains focused on the public's interests and DNR's activities within the boundaries of existing state and federal laws and standards.

**1. Review trends in fee revenues, expenditures, and staffing levels;** The evaluation will be more meaningful if tied to the legal obligations of the program and whether the agency has the resources and authority needed to meet them. We encourage you to evaluate each subcategory of WDNR wetland regulatory operations (e.g., permit review, wetland mapping inventory, mitigation (including compliance monitoring), & enforcement) and to examine how staff and budget cuts interfere with the efficient operation of these programs.

**2. Review changes in the permitting process resulting from the passage of Act 118;** Wisconsin Act 118 did not specifically address wetland permitting requirements, however, it may have led to an increase in illegal wetland fills (due to the perception that wetland permits are not required for certain fill activities) and a reallocation of wetland enforcement resources to Act 118 compliance monitoring. We welcome an examination of these issues.

**3. Analyze trends in the number of permit applications received, the amount of time taken by DNR for permit determination decisions, the number of acres affected, and permit**

**approval rates;** In addition to tallying how quickly DNR processes permits, this audit needs to consider the wetland types and wetland functions lost when wetlands are filled. Please recognize that any evaluation of permit applications processed by DNR will grossly underestimate the acres of wetlands lost each year because it will exclude wetlands filled under general permits, exemptions, memoranda of agreement with other state and federal agencies and illegal fills. The audit bureau will need to be very careful to ensure data compared between states in this regard is comparable and should consult with the U.S. Army Corps of Engineers for assistance with these comparisons.

Processing of wetland fill permits will take longer than other regulatory actions because the wetland boundaries must be delineated and approved as must the alternatives analysis.

Oftentimes, permits that take a long time to process are ones that are difficult to approve. Please consider the possibility that the additional time reflects DNR's effort to work with applicants to modify the project so that it can be approved under state standards.

**4. Analyze the effects of the wetland compensatory mitigation program, including changes in the amount and type of wetlands in Wisconsin;** Numerous studies (citations attached) have demonstrated that, across the nation, wetland mitigation is resulting in a net loss of wetland acres and functions and the conversion of a diverse array of wetland types to open water ponds. These studies also consistently show that wetland mitigation permit conditions are frequently not met, often because the restoration was not successful, or because the project was never even built. Looking strictly at data such as the number of acres filled and subsequent acres of mitigation required, will not provide an accurate indicator of wetland replacement. You will need to review permit conditions and mitigation compliance monitoring reports to determine whether mitigation projects have successfully replaced the types, acres and functions of the wetlands destroyed. An evaluation of whether mitigated wetlands were replaced in the same sub-watershed as those filled would also be appropriate in this evaluation.

**5. Analyze performance differences among DNR's regions;** It is likely that this audit will identify outlier projects in every region where the permit review process proved lengthier than average. The question is... why? An evaluation of when and why the permitting review process breaks down may prove more informative for minimizing future costly delays and regulatory tensions than a region-by-region comparison of the efficiency of DNR staff.

Our experience suggests that if every wetland in the state were on a map and every county, city, village and town had access to and used these maps to alert landowners to when they must obtain permits from the DNR before building, fewer costly project delays would occur. Systematic disclosure of the presence of wetlands in real estate transactions would also help.

In addition to looking at when permit review delays occur, this audit should analyze how and when, with DNR's assistance, projects are redesigned to avoid or minimize wetland impacts while meeting project goals. Pre-application meetings prior to the investment of major dollars in project design have proven highly successful for avoiding costly delays and getting projects approved. But it's the applicant's responsibility to initiate such a meeting. This audit should explore the relationship between project delays and the absence of pre-application consultations.

**6. Review similar wetland permitting and mitigation programs in a few surrounding states, including Minnesota.** The review of other state's programs must consider the ecological

impacts of the policies and procedures that differ from Wisconsin's and any available evaluations of the programs' administration and effectiveness protecting wetland resources. Wisconsin's wetland regulatory programs are integrated with implementation of the federal Clean Water Act which is administered by the U.S. Army Corps of Engineers (Corps). Wisconsin and Minnesota both fall under the jurisdiction of the Corps St. Paul District so will provide the most useful comparison. The Corps of Engineers should be consulted on regional differences in federal Clean Water Act administration if states in other districts are included in this inquiry.

**7. DNR's authority and capacity to respond to illegal wetland fills should be added to the scope of this audit.** Most hunters know you can't shoot a deer out of season. Why? Because if you do, you're going to get a visit from a warden and pay a fine. Enforcement is a tool for educating the general public about how to comply with state laws and can be a very effective deterrent to illegal behavior. This audit must look at the efficiency and effectiveness of Wisconsin's wetland regulatory enforcement program. Though DNR can issue tickets for hunting violations, boating violations, Chapter 30 violations, and many others, they currently have no authority to issue citations for illegal wetland fills. By law, wetland enforcement actions must be referred to the Department of Justice. Is it any wonder that when they do, as occurred in one high-profile case this legislative session, their actions are attacked as draconian? Contrast our culture to the state of Massachusetts. They've embraced and funded a program to use aerial photography to identify illegal wetland fill activity, retroactively issue citations and require restoration for illegal fills occurring anytime in the last several years.

An audit of DNR's wetland enforcement program should examine how the lack of citation authority increase the time and expense for the agency and the violators when DNR initiates enforcement proceedings? How much must DNR pay the Department of Justice to handle enforcement proceedings and does the agency receive any reimbursements from subsequent fines to compensate their wardens? Does our current wetland enforcement program successfully educate the general public about wetland laws and deter illegal wetland fills, or is enforcement so sparse that it encourages violators to take calculated risks due to an unlikelihood of getting caught? In the meantime, how many hundreds or thousands of illegally destroyed wetland acres go undetected each year?

While we recognize the difficult challenge the state must face in balancing wetlands preservation and economic development, it is important to remember that factories and homes built in uplands create jobs too, while destroying wetlands hurts the state's tourism, fishing and hunting economies, the quality of our rivers, lakes and drinking water, and the quality of life for Wisconsin citizens. We've emphasized that the citizens of Wisconsin expect strong wetland preservation policies and we know because we field several inquiries every week from citizens distraught about the proposed wetland impacts of local projects. We sincerely hope that, if this audit proceeds, it will be with the interests of the concerned public and our valuable wetland resources in mind, and that the Legislative Audit Bureau will provide additional opportunities for Wisconsin Wetlands Association's involvement.

**Citations on the effectiveness on wetland compensatory mitigation programs and state wetland regulatory programs:**

1. **Compensating for Wetland Losses Under the Clean Water Act, National Academies Press, 2001** *This report explores the adequacy of science and technology for replacing wetland function and the effectiveness of the federal program of compensatory mitigation in accomplishing the nation's goal of clean water and no net loss of wetlands. Includes a review of many state wetland mitigation program evaluations.*
2. **Indiana Wetland Compensatory Mitigation Study:**  
<http://www.in.gov/idem/water/planbr/401/mitigationmon.html>
3. **Minnesota Center for Environmental Advocacy's First Annual Minnesota Wetlands Report:**  
[http://www.mncenter.org/mcea\\_wetlands\\_initiative/files/MCEA\\_Wetlands\\_Report\\_2006.pdf](http://www.mncenter.org/mcea_wetlands_initiative/files/MCEA_Wetlands_Report_2006.pdf)
4. **Corps of Engineers Does Not Have an Effective Oversight Approach to Ensure That Compensatory Mitigation Is Occurring.** U.S. General Accounting Office publication #: GAO-05-898
5. **Wetlands Protection: Assessments Needed to Determine Effectiveness of In-Lieu-Fee Mitigation.** U.S. General Accounting Office publication #: GAO-01-325
6. **Characterization of Wetland Mitigation Projects in Tennessee, USA,** Kenneth L. Morgan, Thomas H. Roberts, Department of Biology, Tennessee Technological University, Cookeville, Tennessee, USA 38505, E-mail: kmorgan@tntech.edu
7. **Effectiveness of Compensatory Wetland Mitigation in Massachusetts, USA,** Stephen C. Brown<sup>A</sup>, Peter L. M. Veneman<sup>B</sup>, A. Manomet Center for Conservation Sciences, P.O. Box 1770, Manomet, Massachusetts, USA 02345, E-mail: sbrown@manomet.org, B. Department of Plant and Soil Sciences, University of Massachusetts, Amherst, Massachusetts, USA 01003
8. **Guess What! Fake Wetlands Don't Work** (A study by the Michigan Department of Environmental Quality gives poor marks on the success and oversight of the state's wetland mitigation program). <https://www.mlui.org/pubs/glb/glb14-01/print-16.html>





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**DAVID CULLEN**  
**STATE REPRESENTATIVE**

April 7, 2006

Senator Carol Roessler, Co-Chair  
Joint Committee on Audit  
Room 8 South, State Capitol

Dear Senator Roessler,

I wanted to submit to you how I would have voted had I been present for the executive session of the Joint Committee on Audit this past Wednesday, April 5<sup>th</sup>.

Unfortunately, despite being present for most of the public hearing, I had to leave the meeting in order to visit with a group of students from Mother of Good Counsel, a school within my district.

Had I been allowed to vote, I would have voted accordingly:

- Proposed Audit: IT Systems Projects in State Agencies (Yes)
- Proposed Audit: Wetland Permitting & Mitigation Programs, DNR (Yes)
- Proposed Audit: Chronic Wasting Disease (Yes)

Although this may be too late in terms of the executive session vote, I think it is important to note how I would have voted into the committee record.

Sincerely,

A handwritten signature in cursive script that reads 'David Cullen'.

**DAVID A. CULLEN**  
State Representative  
13<sup>th</sup> Assembly District