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☞ Details: Legislative Audit Bureau Report 07-6: An Evaluation: Wetland Regulatory Programs,
Department of Natural Resources

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

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* Contents organized for archiving by: Stefanie Rose (LRB) (October 2012)



STATE OF WISCONSIN

Legislative Audit Bureau

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Janice Mueller
State Auditor

DATE: May 21, 2007

TO: Lewis Rosser and Pamela Mathews
Committee Clerks to the Joint Legislative Audit Committee

FROM: Janice Mueller
State Auditor *Janice Mueller*

SUBJECT: Report 07-6: An Evaluation: Wetland Regulatory Programs

Enclosed is our evaluation of wetland regulatory programs, as requested by the Joint Legislative Audit Committee. Activities that alter wetlands are regulated under various federal, state, and local laws, but the Department of Natural Resources (DNR) is the primary state agency responsible for their protection and management.

In fiscal year (FY) 2005-06, 19.3 full-time equivalent DNR staff performed wetland permitting, enforcement, mapping, policy coordination, and other regulatory activities, and DNR expended an estimated \$1.75 million on such activities. DNR charges \$500 for most state wetlands permits. However, permit fees do not cover all program costs. In FY 2005-06, general purpose revenue funded 45.5 percent of program expenditures.

From January 2001 through June 2006, DNR approved 3,582 wetland permits, or 82.6 percent of the permit requests it received. Approval rates ranged from 74.0 percent in DNR's Northern Region to 88.0 percent in the South Central Region. Permit requests were generally approved or rejected within statutorily prescribed time frames and, overall, median processing time declined significantly from 2001 to 2005. However, 282 permit decisions took longer than one year.

In evaluating DNR's wetlands regulatory program, we reviewed its efforts to verify compliance with permit requirements. From January 2005 through September 2006, regional staff reported conducting only 27 inspections of completed projects for which permits had been issued. Violations were found at six of these project sites. DNR also identified 325 violations in response to complaints it received from the public or other government officials. More than half of these violations occurred in DNR's Northern Region. DNR issued 229 after-the-fact permits and 69 notices of violation for non-permitted activities. However, we found that regional staff lack clear guidelines for resolving violations.

Compensatory mitigation is the process of restoring, enhancing, or creating wetlands to replace those lost through permitted projects. Some applicants create or restore wetlands on site, while others purchase credits from wetland mitigation banks that provide a market-based system for

restoring or creating wetlands in advance of permitted losses. Wisconsin implemented a voluntary compensatory mitigation program in 2002. As of June 30, 2006, six wetland mitigation banks in Wisconsin had been approved. However, compensatory mitigation provided compensation for a total of only 41.1 wetland acres disturbed by 52 projects, most of which were located in the Southeast Region.

Although consistent, accurate and up-to-date wetland maps are important for a wetland regulatory program, existing maps are outdated, not readily available to the public, and they lack sufficient detail to help landowners locate wetlands on their property. For example, digital wetland maps are available for only 57 of Wisconsin's 72 counties.

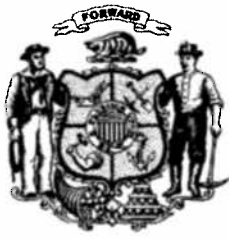
We also reviewed the wetland regulatory programs of other states and identified key differences in regulatory approaches. For example, local governments are responsible for wetland permitting in Minnesota, and the State of Michigan has assumed federal wetland permitting authority. Generally, both DNR and the Army Corps of Engineers approve permits in Wisconsin, but only if wetlands cannot be avoided and if projects will not have significant adverse environmental effects. Indiana, Michigan, and Minnesota exempt activities that result in only small wetland disturbances, but Wisconsin does not. In addition, while compensatory mitigation is voluntary in Wisconsin, it is mandatory under permits issued by some other states.

The report includes seven recommendations for DNR to improve various aspects of wetlands management and five recommendations on other needed improvements that we ask be reported to the Joint Legislative Audit Committee by December 31, 2007.

This report will be released on Tuesday, May 22, at 9:00 a.m. Please contact us if you have any questions.

JM/JC/bm

Enclosures

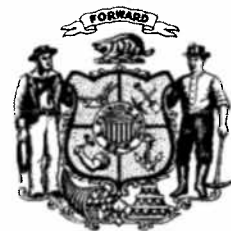


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**Report 07-6
May 2007**

An Evaluation

Wetland Regulatory Programs

Department of Natural Resources

2007-2008 Joint Legislative Audit Committee Members

Senate Members:

Jim Sullivan, Co-chairperson
Julie Lassa
Russell Decker
Alan Lasee
Robert Cowles

Assembly Members:

Suzanne Jeskewitz, Co-chairperson
Samantha Kerkman
Kitty Rhoades
David Cullen
Joe Parisi

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- Appendix 4—Activities Authorized by Federal General Permits in Wisconsin
- Appendix 5—DNR Application for Wetland Water Quality Certification

Response

From the Department of Natural Resources



STATE OF WISCONSIN

Legislative Audit Bureau

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Janice Mueller
State Auditor

May 22, 2007

Senator Jim Sullivan and
Representative Suzanne Jeskewitz, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator Sullivan and Representative Jeskewitz:

As requested by the Joint Legislative Audit Committee, we have completed an evaluation of wetland regulatory programs administered by the Department of Natural Resources (DNR). In fiscal year 2005-06, estimated expenditures for wetland regulatory activities—including permitting, enforcement, and mapping—totaled \$1.75 million, including \$1.43 million in salaries and fringe benefits for an estimated 19.3 full-time equivalent employees.

Most projects that disturb wetlands require approval from both DNR and the United States Army Corps of Engineers. From January 2001 through June 2006, DNR approved 3,582 permits, or 82.6 percent of the applications it received. However, the process is complicated and requires frequent communication with applicants. Although DNR generally issued permits within 120 days, as required by statute, 282 decisions took longer than one year from when the application was received.

Other states differ in the manner and extent to which they regulate wetlands. For example, local governments, rather than state agencies, approve permits for activities that disturb wetlands in Minnesota. Further, most midwestern states require compensation for permitted wetland losses, although Wisconsin does not. As a result, DNR approved only 52 compensatory mitigation projects from February 2002 through June 2006.

We make recommendations to simplify the permitting process and improve program management, including establishing categories of general permits, providing additional guidance to applicants, improving coordination with federal agencies, and tracking permitted wetland losses. We also include recommendations for DNR to report to the Joint Legislative Audit Committee by December 31, 2007, with options for increasing the use of mitigation banking, eliminating duplicative state and federal permits, and improving its wetland maps.

We appreciate the courtesy and cooperation extended to us by DNR and other state and federal agencies. DNR's response follows the appendices.

Respectfully submitted,

Janice Mueller
State Auditor

JM/ss

Report Highlights ■

DNR spent an estimated \$1.75 million on wetland regulatory activities in FY 2005-06.

Other midwestern states exempt activities that result in only small wetland disturbances.

Efforts to verify compliance with wetland permit requirements could be improved.

Compensatory mitigation is voluntary and has not been widely used in DNR permits.

Existing wetland maps are outdated and not readily accessible to the public.

Wetlands—commonly referred to as marshes, bogs, or swamps—provide public benefits such as habitat for plants and animals, flood abatement, water quality protection, and recreational and educational opportunities. Activities that alter wetlands are regulated under various federal, state, and local laws, but the Department of Natural Resources (DNR) is the primary state agency responsible for their protection and management.

Because many wetlands are located on private lands, concerns have been raised about the extent to which Wisconsin's regulatory program balances the public's interest in protecting wetlands with the rights of property owners. In addition, some legislators have questioned the consistency, predictability, and timeliness of DNR's wetland permitting decisions and have asked how wetland regulations in Wisconsin compare to those in other states. To address these concerns, and at the direction of the Joint Legislative Audit Committee, we:

- reviewed DNR revenues, expenditures, and staffing levels from fiscal year (FY) 2001-02 through FY 2005-06;
- analyzed permit approval rates and the timeliness of permitting decisions from January 2001 through June 2006;
- analyzed compliance monitoring and enforcement differences among DNR regions;

- evaluated Wisconsin's wetland compensatory mitigation program, which was created by 1999 Wisconsin Act 147; and
- reviewed wetland regulatory programs in surrounding states, including Minnesota.

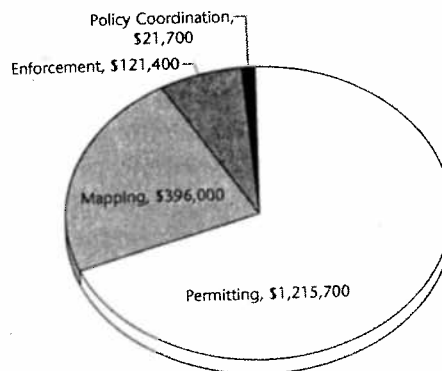
Staffing and Finances

Under the federal Clean Water Act, most activities that involve grading, filling, removing, or disturbing the soil in a wetland—such as residential construction, road building, and pond creation—require approval from both DNR and the Army Corps of Engineers. DNR is also authorized under 2001 Wisconsin Act 6 to regulate activities in small, isolated wetlands that are not subject to federal permitting requirements.

DNR regulates Wisconsin wetlands as part of a larger waterway permitting program. In FY 2005-06, an estimated 19.3 full-time equivalent (FTE) staff performed wetland permitting, enforcement, mapping, policy coordination, and other regulatory activities. Expenditures for these activities were estimated at \$1.75 million, as shown in Figure 1.

Figure 1

Wetland Expenditures by Activity FY 2005-06



DNR charges \$500 for most state wetland permits, regardless of project size, the nature of the disturbance, or the extent of its effects on wetlands. However, wetland permit fees do not cover all program costs. In FY 2005-06, general purpose revenue (GPR) funded 45.5 percent of program expenditures.

Wetland Permits

States differ in the manner and extent to which they regulate wetlands. For example, local governments are responsible for wetland permitting in Minnesota, and the State of Michigan has assumed federal wetland permitting authority. Generally, both DNR and the Corps approve permits in Wisconsin, but only if wetlands cannot be avoided and if projects will not have significant adverse environmental effects.

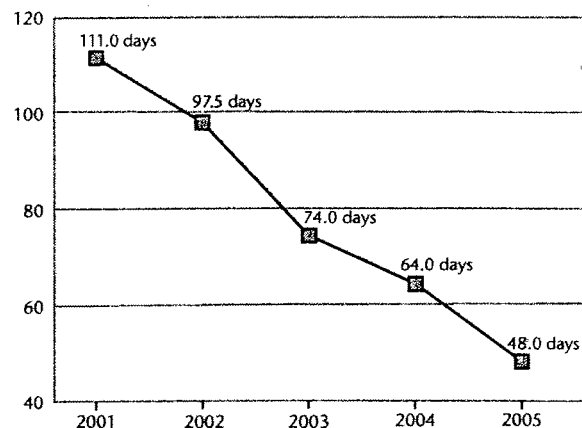
Wisconsin and several other midwestern states regulate at least some activities in wetlands that are not subject to federal jurisdiction. Indiana, Michigan, and Minnesota exempt activities that result in only small wetland disturbances, but Wisconsin does not.

From January 2001 through June 2006, DNR approved 3,582 wetland permits, or 82.6 percent of the permit requests it received. The three most frequently approved activities were pond creation (659 permits), utility projects (555 permits), and residential construction (501 permits). Approval rates ranged from 74.0 percent in DNR's Northern Region to 88.0 percent in the South Central Region. Approved permits disturbed an estimated 867.7 wetland acres.

The Natural Resources Board has directed that wetland permits be issued in a simple, straightforward, and predictable manner. However, the process is complicated and requires frequent communication with applicants. Existing laws give DNR flexibility, but this flexibility can be confusing and frustrating for applicants. Permit requests were generally approved or rejected within statutorily prescribed time frames and, overall, median processing time declined significantly from 2001 to 2005, as shown in Figure 2. However, 282 permit decisions took longer than one year.

Figure 2

Median Time to Reach a Decision on Permit Applications¹



¹ From the date the application was received.

Compliance and Enforcement

Verifying compliance with permit requirements is an important component of a regulatory program. From January 2005 through September 2006, regional staff reported conducting only 27 inspections of completed projects for which permits had been issued. Violations were found at six of these project sites.

DNR also identified 325 violations—including disturbing wetlands without a permit or not following wetland permit requirements—in response to complaints from the public or other government officials. More than half of these violations occurred in the Northern Region, where in 10 of 18 counties, more than 20 percent of the land area is classified as wetland.

According to DNR, most violations are resolved voluntarily. During our audit period, DNR issued 229 after-the-fact permits and 69 notices of violation for non-permitted activities. However, regional staff lack clear guidelines for resolving violations, and our report includes recommendations to ensure consistent enforcement practices.

Compensating for Wetland Losses

Compensatory mitigation is the process of restoring, enhancing, or creating wetlands to replace those lost through permitted projects. Wisconsin implemented a voluntary program in 2002. Applicants are typically required to restore 1.5 wetland acres for each acre lost, but the manner in which that is done varies.

Some applicants create or restore wetlands on site, while others purchase credits from wetland mitigation banks that provide a market-based system for restoring or creating wetlands in advance of permitted losses. As of June 30, 2006, six wetland mitigation banks in Wisconsin had been approved.

Compensatory mitigation was included in only 1.8 percent of permits approved by DNR during our audit period. They provided compensation for a total of 41.1 wetland acres disturbed by 52 projects. Most projects were located in the Southeast Region.

The use of compensatory mitigation in DNR permits is limited by:

- geographic restrictions;
- additional costs to applicants for long-term monitoring and maintenance; and
- state policies that discourage the use of wetland mitigation banks.

In contrast, compensatory mitigation is mandatory, and therefore more widely used, in Department of Transportation projects, as well as under federal wetland permits and those issued by other states. Wetland mitigation banks offer administrative, economic, and ecological advantages, although some believe that increasing their use would reduce wetland quality and protection.

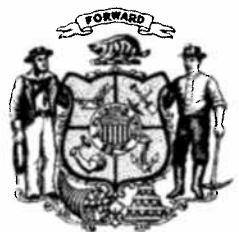
Wetland Mapping

Consistent, accurate, and up-to-date wetland maps are important for measuring program effectiveness, making informed program decisions, and prioritizing limited resources. As required by law, DNR has mapped wetlands larger than five acres. However, existing maps are outdated and not readily available to the public, and they lack sufficient detail to help landowners locate wetlands on their property.

Recommendations

Our report includes recommendations for DNR to:

- ☑ improve its tracking of wetland losses and the timeliness of permit processing, (*pp. 31 and 42*);
- ☑ develop general permits for activities that have minimal effects on wetlands (*p. 38*);
- ☑ increase efforts to monitor compliance and ensure consistent enforcement practices (*pp. 50 and 51*);
- ☑ improve its coordination with federal agencies (*pp. 53 and 62*); and
- ☑ report to the Joint Legislative Audit Committee by December 31, 2007, on:
 - its efforts to ensure that regional staff document consistency in reaching decisions, and to provide permit applicants with additional guidance (*p. 37*);
 - the advantages and disadvantages of increasing the use of wetland mitigation banks (*p. 69*);
 - options for establishing permit fees that better reflect staff and resource costs (*p. 84*);
 - the feasibility of assuming responsibility for administering the federal wetland permit program, as allowed by the Clean Water Act (*p. 86*); and
 - a strategy for updating wetland maps and increasing their availability to the public (*p. 91*).





WISCONSIN STATE LEGISLATURE
Joint Legislative Audit Committee

DRAFT

FOR DISCUSSION PURPOSES

Committee Co-Chairs:
State Senator Jim Sullivan
State Representative Suzanne Jeskewitz

For Immediate Release

May 22, 2007

For More Information Contact:

Representative Suzanne Jeskewitz
Senator Jim Sullivan

(608) 266-3796
(608) 266-2512

Audit Recommends Improvements to Wetlands Regulation in Wisconsin

(Madison) Today, the nonpartisan Legislative Audit Bureau (LAB) released its evaluation of wetland regulatory programs. In a comprehensive report, LAB reviewed revenues, expenditures, and staffing levels at the Department of Natural Resources (DNR); analyzed permit approval rates and the timeliness of permitting decisions; analyzed compliance monitoring and enforcement differences among DNR regions; evaluated wetland compensatory mitigation efforts; and reviewed wetland regulatory programs in surrounding states, including Minnesota.

In fiscal year (FY) 2005-06, 19.3 full-time equivalent DNR staff performed wetland permitting, enforcement, mapping, policy coordination, and other regulatory activities, and DNR expended an estimated \$1.75 million on such activities. From January 2001 through June 2006, DNR approved 3,582 wetland permits, or 82.6 percent of the permit requests it received. However, approval rates varied and ranged from 74.0 percent in DNR's Northern Region to 88.0 percent in the South Central Region. Permit requests were generally processed within statutorily prescribed time frames and, overall, median processing time declined significantly from 2001 to 2005. However, 282 permit decisions took longer than one year.

LAB found that DNR's efforts to verify compliance with permit requirements could be improved. From January 2005 through September 2006, regional staff reported conducting only 27 inspections of completed projects for which permits had been issued. Violations were found at six of these project sites. DNR also identified 325 violations in response to complaints it received from the public or other government officials. More than half of these violations occurred in the Northern Region. In response to violations, DNR issued 229 after-the-fact permits and 69 notices of violation for non-permitted activities. However, LAB found that regional staff lack clear guidelines for resolving violations and recommended that DNR take action to ensure consistent enforcement practices. 2270

LAB found that compensatory mitigation, which was implemented in 2002 as a process for restoring, enhancing, or creating wetlands to replace those lost through permitted projects, was included in only 1.8 percent of permits approved by DNR during the audit period. They provided compensation for a total of 41.1 wetland acres disturbed by 52 projects, most of which were located in the Southeast Region.

Although consistent, accurate and up-to-date wetland maps are important for a wetland regulatory program, LAB found that existing maps are outdated, not readily available to the public, and lack sufficient detail to help landowners locate wetlands on their property. LAB recommends development of a strategy for updating wetland maps and increasing their availability to the public.

LAB also reviewed the wetland regulatory programs of other states and identified key differences in regulatory approaches. For example, local governments are responsible for wetland permitting in Minnesota, and the State of Michigan has assumed federal wetland permitting authority. Generally, both DNR and the Army Corps of Engineers approve permits in Wisconsin, but only if wetlands cannot be

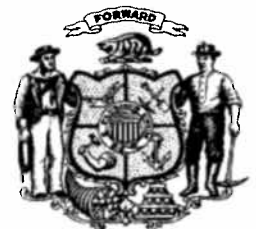
avoided and if projects will not have significant adverse environmental effects. Indiana, Michigan, and Minnesota exempt activities that result in only small wetland disturbances, but Wisconsin does not. In addition, while compensatory mitigation is voluntary in Wisconsin, it is mandatory under permits issued by some other states.

Co-chairs Sullivan and Jeskewitz intend to hold a public hearing on the report this later this summer. Interested members of the public are invited to testify before the Joint Legislative Audit Committee at that time. Copies of the report may be obtained from LAB's Web site at www.legis.wisconsin.gov/lab or by calling (608) 266-2818. A podcast of the report highlights for report 07-6 is also available on LAB's Web site.

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WISCONSIN STATE LEGISLATURE





P.O. Box 152, Hubertus, WI 53033

Website: www.hwjcitizensgroup.org

August 28, 2007

State Representative Suzanne Jeskewitz, Co-Chairperson
Wisconsin Joint Legislative Audit Committee
Room 314 North, State Capitol
P.O. Box 8952
Madison, WI 53708

RE: Follow-up letter to **HIGHWAY J CITIZENS GROUP, U.A.** testimony (oral and written) presented at the July 26, 2007 Wisconsin Joint Legislative Audit Committee's Public Hearing on the Wisconsin Department of Natural Resources (WisDNR) Wetland Regulatory Programs.

Dear Representative Jeskewitz:

Thank you for the opportunity to provide testimony (both oral and written) at the July 26, 2007 Wisconsin Joint Legislative Audit Committee's public hearing on the Wisconsin Department of Natural Resources (WisDNR) Wetland Regulatory Programs.

More specifically, my testimony concerned the Wisconsin Department of Natural Resources' (WisDNR) **continued failure to properly investigate and prosecute** both the Wisconsin Department of Transportation (WisDOT) and its hired roadbuilding contractor (Hoffman Construction Company) for some **very serious environmental violations** committed during the course of their road expansion activities along State Highway 164 in Waukesha County (Sussex/Lisbon area) during the Year 2006. During the July 26th public hearing, I presented you with a detailed packet of information which **full-documented** these violations. (For your convenience, I am enclosing "a text copy only" of my public hearing testimony without the numerous pages of supporting documents which accompanied my original packet given to you.)

As part of my public hearing testimony, I informed you that there were **no written records** in the WisDNR's files to prove that Maureen Millmann (or any other WisDNR employee for that matter) had ever visited the Highway 164 construction site between May 1, 2006 and September 30, 2006 (which is in **direct contradiction** to Ms. Millmann's statements made in her enclosed November 16, 2006 letter to our ecological experts, Cedarburg Science -- where she alleged that she had made "several cursory erosion control inspections" during this time period). More specifically, there were **no written inspection**

reports in the WisDNR's files (which would have been prepared if either Ms. Millmann or any other WisDNR employee actually had visited the construction site).

After reviewing the WisDNR files and finding **no records to corroborate Ms. Millmann's statements**, I immediately contacted her supervisor, Michael Thompson and asked him why there were no inspection reports or any other related documentation in these files. Mr. Thompson told me that his "environmental analysis staff uses discretion, consistent with the DOT Liaison Guidance Handbook, to determine appropriate levels of inspection documentation" for state highway construction projects.

Being concerned that there was **no documentation to prove Ms. Millmann had ever made these alleged visits** to the Highway 164 construction site during the Summer of 2006, I asked Mr. Thompson what mode of transportation WisDNR personnel use when they visit various sites for environmental inspections. Mr. Thompson responded that WisDNR personnel either request the use of a state-owned vehicle (which they have to sign-out and state the purpose of such use) or they use their personal vehicle and then file vouchers for reimbursement of travel costs. Given this information, I then made another open records request to review the travel voucher information and any other travel expense information for Ms. Millmann during the time period from May 1, 2006 thru September 30, 2006 (copies of a WisDNR letter dated August 3, 2007 along with my August 9, 2007 letter to the WisDNR which are relevant to this matter are attached here).

On August 23, 2007, the WisDNR responded by letter (copy attached here) to my latest open records request and stated that Ms. Millmann **did not submit any travel vouchers** for personal vehicle reimbursement between May 1, 2006 and September 30, 2006 and only had used a state-owned vehicle three times during this time period (**none of which were related to any alleged Highway 164 inspections**). With the complete absence of inspection reports in the WisDNR files combined with no travel expense documentation, these facts lead me to the conclusion that **Ms. Millmann did not visit the Highway 164 construction site** during the Summer of 2006 as she had alleged in her November 16, 2006 letter. **Don't you think it is very odd indeed that there is not one single piece of written evidence anywhere in the WisDNR files to corroborate Ms. Millmann's allegations?**

Perhaps **most disturbing** here are the statements made by **Marty Ringquist** (a WisDNR Environmental Enforcement Specialist) in the attached November 7, 2006 e-mail she sent to Assistant Attorney General Thomas J. Dawson of the Wisconsin Department of Justice (WisDOJ) shortly after we had filed a copy of our complaint with his office. In this e-mail, Ms. Ringquist **minimized** the seriousness of these environmental violations and instead, **sarcastically** referred to the Highway J Citizens Group as "having a not in my backyard attitude" and "looking for ways to squelch the Highway 164 road-widening project." The fact that Ms. Ringquist (a WisDNR official who is responsible for enforcing our state's environmental laws) could make such an **appalling public statement** without even making the smallest effort to first investigate our well-supported complaint speaks volumes about the WisDNR's **narrow-minded attitude** when it comes to enforcing environmental violations committed by WisDOT-hired roadbuilding companies in the State of Wisconsin.

According to the 2005-2006 edition of the Wisconsin Blue Book (on page 470), the WisDNR is "responsible for implementing state and federal laws to protect and enhance Wisconsin's natural resources, including its air, land, water, forests, wildlife, fish and plants." By **repeatedly ignoring** our well-documented, environmental concerns along with **concocting a story "after-the-fact"** about alleged site visits when there is **no** supporting documentation to prove that these visits had ever taken place, the WisDNR and its personnel have **failed miserably** in this important public responsibility.

Why **isn't** the WisDNR "doing its job" here? That's the **crucial question** which I am hoping **you** and the other members of the Wisconsin Joint Legislative Audit Committee can answer for me today.

After you have carefully reviewed these new materials along with those previously given to you at the July 26, 2007 legislative public hearing, please **direct the WisDNR to take prompt investigatory and prosecutory action against both the WisDOT and Hoffman Construction Company** for the egregious environmental violations committed during the course of the Highway 164 four-lane expansion in the Sussex/Lisbon area of Waukesha County last year. Thank you again for your sincere interest and thoughtful consideration of this most important matter.

Sincerely,



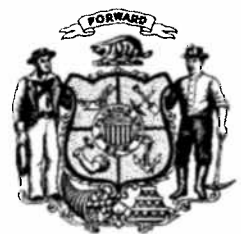
Jeffrey M. Gonyo,
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Enclosures

cc: State Senators Jim Sullivan (co-chairperson), Julie Lassa, Russ Decker, Alan Lasee, and Robert Cowles and State Representatives Samantha Kerkman, Kitty Rhoades, David Cullen and Joe Parisi.



WISCONSIN STATE LEGISLATURE





P.O. Box 152, Hubertus, WI 53033

Website: www.hwycitizensgroup.org

September 20, 2007

Christine L. Thomas, Chairperson
Wisconsin Natural Resources Board
University of Wisconsin-Stevens Point
College of Natural Resources
Stevens Point, WI 54481

RE: Wisconsin Natural Resources Board's **continued inaction** (contrary to state law) on the WisDNR's **failure** to properly investigate serious environmental violations committed along Highway 164 during the Year 2006 road expansion (Sussex/Lisbon area of Waukesha County).

Dear Ms. Thomas:

I am in receipt of your September 11, 2007 letter (copy of which is enclosed here) which was written in response to my August 27, 2007 follow-up letter concerning the Wisconsin Department of Natural Resources' (WisDNR) **continued failure to properly investigate and prosecute** both the Wisconsin Department of Transportation (WisDOT) and its hired roadbuilding contractor (Hoffman Construction Company) for some **very serious environmental violations** committed during the course of their road expansion activities along State Highway 164 in Waukesha County (Sussex/Lisbon area) during the Year 2006. (As part of my testimony given during your June 27, 2007 board meeting, I presented you and the other Natural Resources Board members with a detailed packet of information fully-documenting these egregious violations.)

In your September 11th letter, you state that "**enforcement of Natural Resources policy is a task of the Department [WisDNR] and not of the Board.**" I believe that **your statement is not correct**. On the main page of the Wisconsin Natural Resources Board's official website (www.dnr.wi.gov/org/nrboard), it states that "the Wisconsin Natural Resources Board (NR Board) **sets policy** for the Department of Natural Resources and **exercises authority** and **responsibility** in accordance with governing statutory provisions." Furthermore, on page 470 of the 2005-2006 Wisconsin Blue Book, it states that the Natural Resources Board "**directs** and **supervises** the Department [WisDNR] and acts as a formal point of contact for citizens." (Copies of both of these referenced documents are enclosed.)

Based upon these two specific provisions, it appears that **enforcement of Natural Resources policy is, in fact, a required task of the Wisconsin Natural Resources Board**. Therefore, given these facts, why **isn't** the Natural Resources Board "doing its job" here?

In my first follow-up letter (dated July 24, 2007), I informed you that there were **no written records** in the WisDNR's files to prove that Maureen Millmann (or any other WisDNR employee for that matter) had ever visited the Highway 164 construction site between May 1, 2006 and September 30, 2006 (which is in **direct contradiction** to Ms. Millmann's statements made in her November 16, 2006 letter to our ecological experts, Cedarburg Science -- where she alleged that she had made

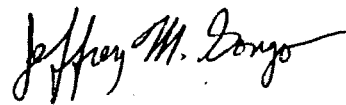
"several cursory erosion control inspections" during this time period). More specifically, there were **no written inspection reports** in the WisDNR's files (which would have been prepared if either Ms. Millmann or any other WisDNR employee actually had visited the construction site).

Being concerned that there was **no documentation to prove Ms. Millmann had ever made these alleged visits** to the Highway 164 construction site during the Summer of 2006, I then made another open records request to review the travel voucher information and any other travel expense information for Ms. Millmann during the time period from May 1, 2006 thru September 30, 2006. On August 23, 2007, the WisDNR responded by letter and stated that Ms. Millmann **did not submit any travel vouchers** for personal vehicle reimbursement between May 1, 2006 and September 30, 2006 and only had used a state-owned vehicle three times during this time period (**none of which were related to any alleged Highway 164 inspections**). With the complete absence of inspection reports in the WisDNR files combined with no travel expense documentation, these facts have led me to the conclusion that **Ms. Millmann did not visit the Highway 164 construction site** during the Summer of 2006 as she had alleged in her November 16, 2006 letter. (All of these additional facts were presented to you in my August 27th letter on this very serious matter.)

With this third letter to you since my appearance at the June 27, 2007 board meeting, I am again requesting that the Wisconsin Natural Resources Board **direct the WisDNR to take prompt investigatory and prosecutory action against both the WisDOT and Hoffman Construction Company** for the egregious environmental violations committed during the course of the Highway 164 four-lane expansion in the Sussex/Lisbon area of Waukesha County last year. To ensure that the Natural Resources Board performs its **statutorily-required** duties here, I am forwarding copies of this letter to: **1) The other six members of your board, 2) State Representative Don Pridemore** (who represents the 99th Assembly District where these environmental violations occurred), **3) To every member of the Wisconsin Joint Legislative Audit Committee** (which recently released a new report concluding that the WisDNR's compliance monitoring of wetlands has been poor and their enforcement of state environmental laws has been "uneven and inconsistent" throughout Wisconsin), and **4) Governor Jim Doyle** (who appoints members to the Natural Resources Board).

If you have any questions or need more information, please either call me at **(262)-644-8334** or write to me at the above address. Thank you for your anticipated cooperation and prompt action.

Sincerely,



Jeffrey M. Gonyo,
Steering Committee Member for the
HIGHWAY J CITIZENS GROUP, U.A.
Phone: (262)-644-8334
E-Mail: jmgonyo@execpc.com

Enclosures

- cc: - Wisconsin Natural Resources Board Members (Jonathan P. Ela, John W. Welter, David Clausen, Gerald M. O'Brien, Howard D. Poulson, and Jane Wiley)
- State Representative Don Pridemore (99th Assembly District)
 - Wisconsin Joint Legislative Audit Committee Members (State Senators Jim Sullivan [Co-Chair], Julie Lassa, Russ Decker, Alan Lasee, and Robert Cowles and State Representatives Suzanne Jeskewitz [Co-Chair], Samantha Kerkman, Kitty Rhoades, David Cullen, and Joe Parisi)
 - Governor Jim Doyle



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary

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

September 11, 2007

Mr. Jeffrey M. Gonyo
Highway J Citizens Group
P.O. Box 152
Hubertus, WI 53033

Dear Mr. Gonyo:

Thank you for your letter dated August 27, 2007. While I understand you may be disappointed that the Department of Natural Resources did not take action you believe appropriate on the Highway 164 issue, enforcement of Natural Resources policy is the task of the Department and not of the Board. As to your allegations that Department staff may not have visited the Highway 164 construction site, I am forwarding your comments to Department Secretary Matthew Frank.

Thank you for your interest in Wisconsin's natural resources.

Sincerely,

Christine L. Thomas
Chair

CLT:ljr

C: Secretary Matt Frank

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About the DNR

Wisconsin Natural Resources Board

The Wisconsin Natural Resources Board (NR Board) sets policy for the Department of Natural Resources and exercises authority and responsibility in accordance with governing statutory provisions.

Chapter 15 of the Wisconsin Statutes delineates the formal duties of the seven-member board. Board Members are appointed by the Governor with the advice and consent of the State Senate. Three members each must be selected from the northern and southern portions of the state and one member serves "at large." Terms expire on May 1.

The Board meets on the fourth Wednesday of each month except for July and November. Board meetings are held at the DNR Building in Madison from November through April and at different locations around the state from May through October. These locations are listed on the Natural Resources Board [Calendar](#).

The meeting [agendas](#) are posted two weeks prior to each meeting and [minutes](#) are posted from previous meetings after Board approval.

Related Sites

- [Wisconsin State Legislature](#)
- [Wisconsin.gov](#)
- [Wisconsin Governor Jim Doyle](#)

Contact Information

General DNR Questions

For information on licenses, hunting regulations and seasons, state parks and forests, or other Department of

Natural Resources issues, please contact:

WDNRInfo@dir.wi.gov

1-888-WDNR INFO (1-888-936-7463)

608-267-6897 (TTY)

You can find specific contact information for DNR staff at

<http://dnr.wi.gov/staffdir/SearchDNREmp.asp>

Feedback Call Line

Give us your feedback about our staff and services.

Weekdays: 7:45 a.m. - 4:30 p.m. by calling, 608.266.0158

Learn more about the Feedback call Line.

Natural Resources Board

If you have questions specifically about the Natural Resources Board, please contact:

Laurie Ross

Executive Staff Assistant

PO Box 7921

Madison WI 53707-7921

(608) 267-7420

Last Revised: Monday September 10 2007

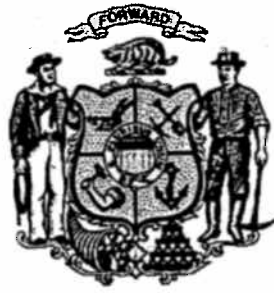


dnr.wi.gov

The Official Internet Site for the Wisconsin Department of Natural Resources

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2005-2006
Blue Book

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South Central: RUTHE BADGER, *director*, (608) 275-3260, 3911 Fish Hatchery Road, Fitchburg 53711, ruthe.badger@

Southeast: GLORIA L. MCCUTCHEON, *director*, (414) 263-8510, 2300 North Dr. Martin Luther King Jr. Drive, P.O. Box 12436, Milwaukee 53212, gloria.mccutcheon@

West Central: SCOTT HUMRICKHOUSE, *director*, (715) 839-3712, 1300 W. Clairemont Avenue, P.O. Box 4001, Eau Claire 54702-4001, scott.humrickhouse@

Publications: *Wisconsin Natural Resources* (bimonthly magazine by subscription – call (608) 267-7410 or (800) 678-9472); *Wisconsin State Parks – Explore and Enjoy*; parks newspapers and visitor guides; hunting, fishing, trapping, snowmobiling, ATV, and boating regulations; various brochures, fact sheets, and reports (lists available). Teachers may write to the Bureau of Communication and Education for a list of publications.

Number of Employees: 2,823.75.

Total Budget 2003-05: \$912,056,700.

Statutory References: Sections 15.05 (1) (c), 15.34, and 15.343; Chapters 23, 26-33, 87, 88, and 160.

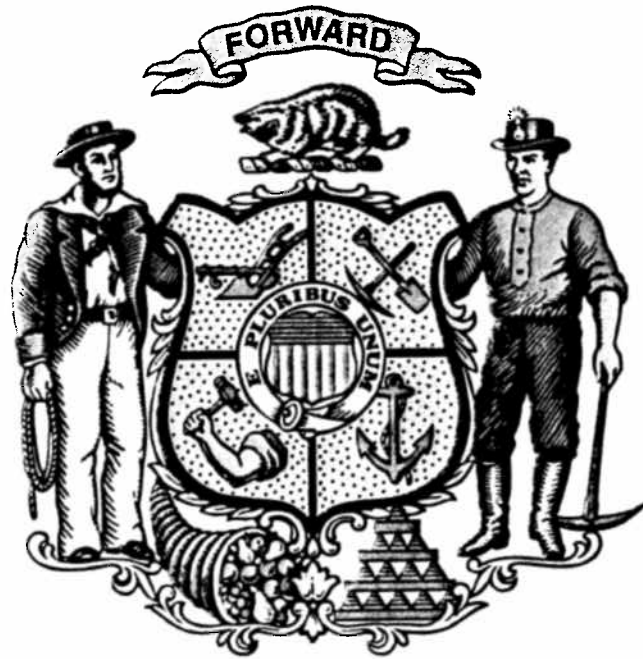
Agency Responsibility: The Department of Natural Resources (DNR) is responsible for implementing state and federal laws that protect and enhance Wisconsin's natural resources, including its air, land, water, forests, wildlife, fish, and plants. It coordinates the many state-administered programs that protect the environment and provides a full range of outdoor recreational opportunities for Wisconsin residents and visitors.

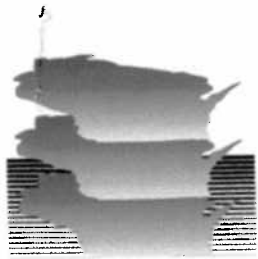
Organization: The 7 members of the Natural Resources Board serve staggered 6-year terms. At least 3 of them must be from the northern part of the state and at least 3 from the southern part. Board members are subject to restrictions on holding DNR permits or depending on permit holders for a significant portion of their income. The board directs and supervises the department and acts as a formal point of contact for citizens.

The department is administered by a secretary appointed by the governor with the advice and consent of the senate. The secretary appoints the department's division administrators from outside the classified service. The regional directors, who are appointed from the classified service, manage all of the agency's field operations for their respective areas and report directly to the secretary.

Unit Functions: The *Division of Air and Waste* protects the state's air quality and general environmental health through air pollution control and solid and hazardous waste management in cooperation with the federal Environmental Protection Agency, international agencies, local governments, private industry, and citizens. It develops air quality implementation plans, monitors air quality, conducts inspections, operates a permit program, and initiates compliance actions in accordance with state and federal requirements. The division's waste management program oversees plan review, licensing, inspection, and compliance actions, relating to the generation, transportation, treatment, storage, reuse, and disposal of solid and hazardous waste materials. It reviews and approves local recycling programs and provides technical and marketing assistance and public outreach in support of recycling efforts and expertise for businesses regarding pollution prevention and waste reduction. It also regulates metallic mining activities and oversees the statewide implementation of county and local nonmetallic mining reclamation programs. The division's remediation and redevelopment program is responsible for the cleanup of contaminated sites that fall under the following legislation: the hazardous substances spills law, the environmental repair law, the abandoned container law, the federal Superfund law, the state land recycling law, and the Resource Conservation and Recovery Act.

The *Division of Customer and Employee Services* provides a variety of customer services including the sale of hunting and fishing licenses, boat, ATV, and snowmobile registration, environmental education programs and public information. It oversees distribution of financial aids for environmental programs that benefit local governments and nonprofit conservation organizations, such as the Clean Water Fund and the Stewardship Fund, and acts as liaison to federal and





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January 31, 2008

Mr. Todd Ambs, Administrator
Division of Water
Wisconsin Department of Natural Resources
101 South Webster Street, AD/5
Madison, WI 53702

Dear Mr. Ambs,

Recently the Wisconsin Land Information Association (WLIA) became aware of Joint Legislative Audit Committee Report 07-6 dated May, 2007. This report is an evaluation of wetland regulatory program administered by the Wisconsin Department of Natural Resources. We have also had the opportunity to review Secretary Frank's response to the report that was submitted on December 18, 2007.

Wetland mapping is a foundational element in the Wisconsin Land Information Program (WLIP), with the WI Wetland Inventory identified as the Program's mapping standard. For this reason, members of our association and others working in land related fields have a deep interest in the quality and currency of wetlands maps. We thoroughly agree with the assessment that wetlands are an important cultural and economic resource in Wisconsin.

We are encouraged to see that your agency wishes to revise and produce digital products on a more timely basis, and that you have assessed the effort and costs to do so. It is also very positive to see the advancements you have made recently to improve access to the maps online, and the expedited wetland-permit process.

Your December response to the Audit Committee did not address several of the points made in the report. More specifically these are 1) DNR's wetland maps are outdated, 2) More accurate maps could help landowners identify wetlands on their properties, and 3) Local governments and nonprofit groups could assist with wetland mapping. In all three of these areas we feel that the WLIA can assist in facilitating program improvements.

Staff in local governments work with wetlands mapping and associated information on a daily basis. In many instances local government ordinances require the precise identification and delineation of wetlands

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for approval of land developments. There is no reason given today's mapping technologies that this more current and accurate information cannot be incorporated into the WI Wetland Inventory. Likewise, counties and municipalities across the state are regularly acquiring high resolution, accurate aerial photography (orthophotography). The potential certainly exists to use this aerial information as a more current and accurate source for identifying wetland existence and location.

We know the importance of accurate wetland mapping because of the role that it plays in protecting one of Wisconsin's most important natural resources. As an organization of professionals that have been responsible for much of the geospatial data development in the state, the WLIA understands the challenges you face to provide accurate wetland mapping, under the staffing and budgetary constraints.

The WLIA has backed Wisconsin's grassroots GIS base data development for over 20 years, has a membership of 500 members, and would like to be involved in the discussion of improving wetland mapping and the issues regarding process and funding. Although we cannot promise up-front solutions to all of the challenges you face with wetland mapping, we can promise to actively participate in a collaborative effort that will provide funding potential, ideas for improved maintenance models, and a mapping process that will yield high quality wetland mapping products that meet the needs of government at all levels, as well as the residents of the state.

We feel that state and local government need to establish a dialogue on this topic and need to work together towards a common goal of developing high-quality wetland maps, at the lowest possible cost to the taxpayers, and in a reasonable amount of time.

Representatives of the WLIA and myself would like to invite you to discuss possibilities on how we can work together towards solutions that benefit all wetland mapping users. I can be reached at 715-421-8478 or jgrueneberg@co.wood.wi.us to schedule a time to meet.

Sincerely,



Jason R. Grueneberg, President
Wisconsin Land Information Association

CC: State Senator Jim Sullivan, Co-Chair, Joint Legislative Audit Committee
State Representative Suzanne Jeskewitz, Co-Chair Joint Legislative Audit Committee
Deputy Administrator Harald (Jordy) Jordahl, Division of Intergovernmental Relations, Department of Administration
Geographic Information Officer Curtis Pulford, Department of Administration