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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)

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**

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



WISCONSIN STATE LEGISLATURE

Joint Legislative Audit Committee

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

May 13, 2008

Mr. Matthew J. Frank, Secretary
Department of Natural Resources
101 South Webster Street
Madison, Wisconsin 53703

Dear Mr. Frank:

In May 2007, the nonpartisan Legislative Audit Bureau released its evaluation of wetland regulatory programs (report 07-6). One year following the release of this report, we are pleased to note the progress the Department of Natural Resources has made in response to the audit recommendations. For example, as described in your December 2007 follow-up report to the Joint Legislative Audit Committee, the Department has worked to increase the availability of mapping information on its Web site and increased collaboration with local governments to provide wetland toolkits to landowners.

As the Department continues its efforts to fully implement the audit recommendations and improve administration of the wetland regulatory program, we encourage you to maintain your focus on establishing mechanisms for communication and education that will reduce confusion for applicants. To that end, we will continue to monitor the Department's ongoing efforts in this area and ask that you continue to keep us informed of your progress.

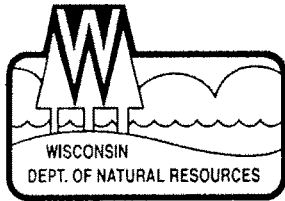
Thank you for your cooperation and assistance.

Sincerely,

Senator Jim Sullivan, Co-chair
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz, Co-chair
Joint Legislative Audit Committee

cc: Janice Mueller
State Auditor



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary

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December 18, 2007

State Senator Jim Sullivan
Co-Chair, Joint Legislative Audit Committee
15 South, State Capitol
Madison, WI 53707

➤ State Representative Suzanne Jeskewitz
Co-Chair, Joint Legislative Audit Committee
314 North, State Capitol
Madison, WI 53707

RE: Wetland Audit Report Follow-Up

Dear Senator Sullivan and Representative Jeskewitz:

We value this opportunity to take an in-depth review of our wetland permit program with your committee and the Legislative Audit Bureau. The results of this evaluation show Wisconsin's wetland protection program balances landowners needs well with protection of our state's valuable wetland resources. The audit evaluated the program from 2001-2006. Over this time period, data shows the following:

- People now receive their permits in half the time they used to.
- We approve the vast majority of projects – only 4.4% are denied.
- Our wetland permit program has cut annual wetland loss by two-thirds.

The report includes several recommendations and additional areas to investigate for further improvement of Wisconsin's wetland regulatory program. We continue to strive for improvement and are already implementing several report recommendations. In addition to the report recommendations, we are requested to report back to your committee on five specific items requiring further investigation. The attached document, "Report to the Joint Legislative Audit Committee on the Legislative Audit Bureau's Evaluation of the Wetland Regulatory Program", includes our findings for each of these five areas.

We are excited to report that several initiatives are already resulting in program improvements. Specifically, the public needs better information about wetland regulation and wetland location. We support legislative efforts to develop wetland notices for property buyers and local permit applicants, including a low cost option for landowners to seek wetland identification assistance from DNR staff. Below are just a few of the actions we are proud to report progress on to help the public.

- In August, the Wisconsin Wetland Inventory (WWI) maps for 57 counties became available to the public on DNR's website. The maps can be viewed and printed at no cost in the Surface Water Data Viewer. This is a big step we have been working to accomplish for some time, but there is still more work to be done to ensure wetland maps are updated and available on the web. Please reference the Wisconsin Wetland Inventory section of the attached report for more details.

- We are working to create a wetland indicator map layer using the Natural Resources Soil Conservation Services (NRCS) soils data that will also be available on our website. This map layer will show landowners if their property contains mapped soils commonly found in wetlands.
- With the assistance of a grant from Wisconsin Coastal Management we are creating a toolkit to help landowners determine if their property contains wetlands and the wetland protection laws that apply. We plan to partner with local governments to help distribute the toolkit to their citizens at the local offices.
- In early 2008 general permits (GP's) for isolated (non-federal) wetlands will be available. To maintain consistency and avoid applicant confusion, the draft GP's for isolated wetlands mirrors the existing federal general permits in Wisconsin.

Our goal is to provide helpful tools and resources for landowners that will allow for early planning and better wetland protection. Public awareness and understanding are keys to the success of any regulatory system for protecting Wisconsin's wetlands.

Thank you for the opportunity to provide this report and we will be happy to answer any further questions you may have and can provide details used in our analysis. Please contact our Wetland Team Leader, Cherie Hagen, at 608-266-7360 with any questions.

Sincerely,



Matthew J. Frank
Secretary

REPORT TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE
ON THE
LEGISLATIVE AUDIT BUREAU'S EVALUATION
OF THE
WETLAND REGULATORY PROGRAM

Prepared by
Wisconsin Department of Natural Resources
December 2007

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I. Wisconsin Wetland Inventory (WWI)

Report Item:

Provide time and cost estimates for (1) obtaining current aerial photography and regularly updating wetland maps using the most efficient mapping techniques available; (2) increasing availability of wetland maps to local governments and the public by making maps readily available on the internet; and (3) completing state digital wetland maps for the entire state.

Response Overview:

We would like to update the WWI on a 10-year cycle as directed by the Legislature and have the WWI available to the public on our website in digital format. Our analysis indicates this can be accomplished with an annual budget increase of approximately \$550,000 and an additional 4.5 full time employees.

Several updated WWI maps are completed, but need to be converted to digital format compatible for web viewing. We can accomplish these map conversions in a two year timeframe with approximately \$784,000 and six two year project positions.

To protect and restore wetlands, Wisconsin needed to develop maps showing the location and types of wetlands in the state. The legislature established the Wisconsin Wetland Inventory (WWI) in 1978 and directed the Department to map Wisconsin's wetlands and update the maps on a 10-year cycle. The primary purpose of this extensive mapping effort was to obtain an approximation of the state's wetland resources by acreage, type and location.

We completed the initial Wisconsin Wetland Inventory in 1984. This initial six year mapping effort cost \$2,500,000 and was staffed by twelve full-time project employees and six half-time limited term employees. In 1986 we began our on-going effort to update the WWI using more accurate and modern mapping techniques with significantly less staff. We currently have two full time employees dedicated to the WWI and have spent an average of \$125,776 annually on map updates. By mid-2008 we will have completed WWI updates for all Wisconsin counties. Under current staffing and budget for the WWI, we update three counties each fiscal year which puts the WWI update on a 24-year cycle. We have been unable to achieve a 10-year map update cycle as the necessary funding and staff was not provided.

The legislative audit report recommends obtaining current aerial photography and regularly updating wetland maps using the most efficient mapping techniques available. To update the WWI on a 10-year cycle as directed by the Legislature, seven counties need to be updated per year. We assessed what staffing and funding is needed to accomplish a 10-year cycle for WWI updates. Two cost estimates were prepared, one through the use of contractors and one for the Department to update the maps within the agency.

Our assessment shows that the estimated cost to the state doubles if we contract for these services rather than conduct the updates within DNR. Specifically, the 10-year cost estimate for map updates within the agency is \$5,067,491 with an annual cost of approximately a half million dollars per year. It is important to note that contracting for map updates still requires Department staff to conduct quality assessment and control to ensure the map product meets state and federal mapping standards, as well as digitizing the updated maps.

The legislative audit report recommends that we increase the availability of the WWI to the public and local units of government by making maps readily available on the Internet and provide high quality cartographic products. We agree and have been working hard to accomplish this. Paper maps have always been available to the public for purchase and in the early 90's digital data also became available for purchase. With the increasing use of the Internet we have worked over the past several years to make the WWI available on our web site. In August, the Department added digital map data for 57 counties to our website on the *Surface Water Data Viewer*, allowing the public to view and print available map resources at no cost. You can view WWI maps at <http://dnrmaps.wisconsin.gov/imf/imf.jsp?site=SurfaceWaterViewer>. We are currently working on a wetland indicator map resource using mapped soils data to further assist the public in determining if their property may contain wetlands. We have prepared a cost estimate necessary to maintain the wetland layers on our website and conduct updates as new digital information is created. There is also a need to purchase a plotter to provide high quality paper maps for those who do not have internet access or require printed maps. Our cost estimate for the first year is \$51,051 and after the first year \$25,262 annually. The first year includes the plotter purchase.

The legislative audit report recommends completing digital wetland maps for the entire state. We currently have 34 counties that have updated wetland maps that need conversion to digital format. With our existing staff of one fully trained full time employee for digitizing, we are able to accomplish conversion of three counties to digital format per year. With additional funding and staff we have the ability to make all WWI counties available on the internet through the Surface Water Data Viewer by digitizing 40 counties (34 plus 6 additional) within two years. The estimated cost estimate is \$783,972 and requires the hiring, training and support for six 2-year project positions working full time. We are also currently working with the U.S. Fish and Wildlife Service to make the WWI available on the National Wetland Inventory website.

We look forward to working with the legislature on budget initiatives associated with the Wisconsin Wetland Inventory map updates and efforts to make the WWI more available to the public. Maps are a great tool and first place to check, but should be complimented with a visit to the property for verification that the map matches up with what is actually on the ground.

II. Compensatory Wetland Mitigation Banks

Report Item:

Report on the advantages and disadvantages of increasing the use of wetland mitigation banks for those projects in which wetland losses are likely to be approved.

Response Overview:

Wetland Mitigation banks are used by 70% of permit applicants for state approved wetland mitigation. Mitigation is not a state requirement, but rather an optional tool the applicant can offer in the permit process. More than 98% of permits are approved without mitigation as a component.

The majority of wetland mitigation occurs in Wisconsin because the federal government requires mitigation through their wetland permit process. Most of the federal permit applicants compensate by carrying out their own "project-specific" wetland mitigation rather than purchasing bank credits.

Some applicants prefer to write a check to purchase credits at a pre-approved wetland mitigation bank rather than design and manage their own mitigation site. In many cases the use of mitigation banks is an acceptable means to mitigate, however, wetlands mitigated through the purchase of bank credits do not address local flooding, decreased water quality, habitat loss and other local impacts resulting from the loss of wetlands.

Compensatory wetland mitigation is the restoration, enhancement, or creation of wetlands to replace or "compensate" for permitted wetland loss. Wetlands can be mitigated through projects completed by the permit applicant or through the purchase of credits from pre-approved mitigation banks. Both the federal and state process requires applicants to follow the same sequenced approach of first avoiding and minimizing wetland impacts prior to consideration of mitigation.

Mitigation banking was developed at the federal level to provide a service to applicants who were unable to find local wetland mitigation sites to meet permit requirements. The federal law requires compensatory wetland mitigation for all fills 10,000 square feet or greater and in some cases, can require mitigation for smaller fills. The state law allows mitigation as an optional tool applicants can include with their permit application for wetland fill. *

Most wetland mitigation that occurs in Wisconsin is required by the U.S. Army Corps of Engineers (Corps) and involves the applicant constructing their own mitigation project, known as "project-specific mitigation", rather than purchasing credits at a pre-approved mitigation bank. These mitigation projects typically are located near the wetland impact,

** Under an interagency cooperative agreement with WDNR, the Wisconsin Department of Transportation has committed to compensate for all unavoidable wetland loss.*

commonly referred to as "on-site" compensation. Federal rules require the applicant to investigate on-site mitigation opportunities before the purchase of bank credits.

When the department considers wetland mitigation in the state permit process, Wisconsin rules also specify on-site mitigation be evaluated first, but most applicants purchase bank credits. The Legislative Audit Bureau found during their review period that 67% of projects compensated for wetland loss through bank credit purchase. More recent data, outlined in our June 11, 2007 *Biennial Report on the Status of Wisconsin's Wetland Compensatory Mitigation Program 2002-2006*, shows that 70% of projects approved with mitigation purchased credits at a wetland mitigation bank. The Biennial Report can be viewed at:
http://dnr.wi.gov/org/water/fhp/wetlands/mitigation/documents/2007_Biennial_Report.pdf

The audit report requested we investigate the advantages and disadvantages of increasing the use of wetland mitigation banks for those projects in which wetland losses are likely to be approved. Currently, more than 98% of state wetland permits are approved without mitigation because applicants have successfully demonstrated they meet the following standards set by law:

1. the project can not avoid impacts to wetlands;
2. the project minimizes wetland impact to the extent practicable; and
3. the project will not result in a significant adverse impact to wetlands

Requiring the use of wetland mitigation banks for all approved state wetland fills would result in a significant expense to both the applicant and the state when applicants are currently able to meet state law without mitigation. The requirement of mitigation could also mislead applicants into thinking they no longer need to "avoid" and "minimize" wetland impacts if they compensate for the wetland loss. It is clear in both federal and Wisconsin law that applicants are required to first "avoid" and "minimize" wetland impacts before considering mitigation.

Our research on disadvantages associated with use of wetland mitigation banks rather than project-specific mitigation includes the following: (please refer to page 6 for reference details)

- Mitigation banks are less likely than project-specific mitigation projects to replace lost wetland functional values and wetland types. Project-specific mitigation projects are usually located near where the wetland impacts occur and are specifically designed to compensate for the wetland functions lost by the development project. For this reason, both federal and state mitigation process establishes a preference for on-site and in-kind mitigation.
- In Florida, wetland mitigation banking has been shown to relocate wetland services to rural areas, where it is cheaper to purchase land (Ruhl and Salzman

- 2006). Critical wetland functions, such as the flood storage and water quality enhancement, can be lost in urban areas where they are most needed.
- Compensating losses of small wetlands with larger wetlands located elsewhere may result in significant adverse cumulative wetland impacts (Trochlell and Bernthal 1998). For example, small wetlands, such as ephemeral ponds, support important amphibian breeding habitat.
 - Recent research on wetland compensatory mitigation in Ohio indicates that wetland mitigation banks are not more likely to successfully compensate for wetland losses compared to site-specific mitigation projects (Mack and Micacchion 2006). Spieles' (2005) study of mitigation banks across 21 different states found that larger mitigation sites did not have more diverse plant communities or greater abundances of native species compared to smaller mitigation sites.
 - Mitigation banking is more risky than project-specific mitigation. There is a greater loss of wetland functions and services when a bank fails compared to the failure of an individual mitigation site. Mack and Micacchion (2006) determined a failure rate of 33% of Ohio banks studied, and Spieles (2005) found that using simple vegetation success criteria, 52% of the banks studied could be considered a failure.

Our findings on the advantages of using mitigation banks rather than project-specific mitigation include:

- There is a greater likelihood of wetland gains being achieved in advance of wetland losses with mitigation banks compared to individual sites.
- Purchasing bank credits can be less expensive for developers compared to pursuing project-specific mitigation due to the consolidation of monitoring and management costs and lower costs of purchasing land in areas with minimal development pressure.
- It is less costly for agency staff to monitor and track a few mitigation banks with large wetland acreage compared to many, smaller project-specific mitigation sites.

We verified that our mitigation rule is consistent with state statutes and have worked with the federal agencies to create a standard set of guidelines the applicant must follow for both the Corps and DNR when mitigation is included as part of a permit. These joint standards are outlined in "Guidelines for Wetland Compensatory Mitigation in Wisconsin" found at http://dnr.wi.gov/org/es/science/publications/wetland_mitig.pdf. Currently, the Corps and USEPA are drafting new federal compensatory wetland mitigation rules. Once the new federal rules are completed, we will revisit our state laws to determine if changes are necessary in Wisconsin's joint mitigation guidelines to maintain consistency with federal laws.

References:

- Mack, J. J. and M. Micacchion. 2006. An ecological assessment of Ohio mitigation banks: vegetation, amphibians, hydrology, and soils. Ohio EPA Technical Report WET/2006-1. Ohio Environmental Protection Agency, Division of Surface Water, Wetland Ecology Group, Columbus, Ohio. Available online < <http://www.epa.state.oh.us/dsw/wetlands/WetlandBankReport.html> > .
- Ruhl, J. B. and J. Salzman. 2006. The effects of wetland mitigation banking on people. National Wetlands Newsletter 28: 8-14.
- Speiles, D. J. 2005. Vegetation development in created, restored, and enhanced mitigation wetland banks of the United States. Wetlands 25: 51-63.
- Trochlell, P. and T. Bernthal. 1998. Small wetlands and the cumulative impacts of small wetland losses: a synopsis of the literature. Wisconsin Department of Natural Resources, Madison. Available online < <http://dnr.wi.gov/org/water/fhp/wetlands/function.shtml> > .

III. Wetland Permitting

Report Item:

Efforts to better ensure that regional staff document consistency in reaching their permit decisions and to provide additional guidance to applicants, including identifying the number and types of project alternatives that permit applicants must provide; evaluating the cost and feasibility of proposed project alternatives; and determining whether a project will have significant adverse effects on wetland functions and values.

Response Overview:

Consistency in issuing state wetland permits is of great importance to us, as well as flexibility to allow for the diversity of projects we see, each project bringing their own unique set of circumstances and facts. To ensure consistency statewide among the five DNR regions we have several mechanisms in place.

To improve applicant understanding of the permit process, we will make additional guidance available to applicants by placing existing guidance on our website, improving applications, creating a wetland toolkit and providing training to those interested.

We strive to proactively work with permit applicants to help them get their permits and to move projects forward with the least amount of impact to the environment. We believe our wetland permit program works well because current laws are flexible enough to allow staff to consider the diversity of projects and the unique facts unique to each project. This flexibility allows us to approve more than 95% of permit applications we reach decisions on. Consistency in making wetland permit decisions is also very important to us, as we want to treat all applicants fairly by applying the same basic set of standards to all projects. We have the following mechanisms in place to ensure consistent wetland permit decisions:

- Staff that issue wetland permits (water quality certifications) are required to take intensive training on state wetland law, established case law and program guidance prior to issuing wetland permits on their own.
- Refresher training is held at statewide and regional meetings. This year "Practicable Alternative Analysis" training was held at a Water Management Specialist Quarterly meeting and in each of the five DNR regions. These sessions involved staff from several other programs that may encounter projects with wetland impacts.
- Each region has an Aquatic Habitat Expert (AHE) who ensures permit consistency by serving as the point of contact for regional staff that have wetland permit related questions.

- Biweekly statewide conference calls are held between program staff in Madison and the regional Aquatic Habitat Experts to discuss questions. These conference calls help to ensure regional decisions are consistent statewide.
- We also use our permit tracking database to monitor timeliness and consistency on an ongoing basis. Any observed differences are reviewed using file materials and staff consultation and addressed through training or guidance.

While we annually conduct program reviews to verify consistency, we were able to find some additional areas for improvement through the audit process. Midway through the audit period, we updated our permit data collection requirements to capture more detail on wetland decisions in our database system. Capturing the facts, (e.g., wetland type, acreage proposed and authorized) and rationale for decisions (e.g., cost, logistics, etc.) electronically also saves staff time of producing written file summaries. We also updated our database guidance to reflect the changes, as well as clarify database entry errors noted during our data review for the audit.

The audit report also requested we explore ways to improve applicant understanding of the wetland permit process. While we have ideas for improvement, we also sought the perspective of folks who often represent applicants in the permit process. A focus group was created consisting of several professional consultants from around the state, a developer, an attorney and representatives from the Wisconsin Builders Association and the Wisconsin Wetlands Association.

The focus group met in September to discuss ideas on how the agency can improve applicant understanding of the permit process. The group generated a priority list of ideas for improvement and there are several actions we will take based on these priorities. We will also make direct contacts to previous landowner-only applicants for their feedback and recommendations. Additionally, we have consulted with our permit review staff for their recommendations based on their daily experience with applicants.

The following are actions we intend to take to improve applicant understanding of the permit process:

- Promote and encourage applicants to request a pre-application meeting with their local DNR Water Management Specialist. At this meeting applicants can (1) share the purpose of their project; (2) obtain an explanation of the permit process; (3) determine what other alternatives they should explore; and (4) will receive a preliminary determination if their selected project alternative is approvable based on the information they provide at the pre-application meeting.
- Create a standard list of alternatives applicants must provide for common project types and make good alternative analysis examples available.
- Create a wetland toolkit to assist landowners in determining if they have a potential wetland and in understanding applicable state wetland protection laws.

- Provide training using the tools above to interested parties, such as consultants.

We will make every effort necessary to ensure staff document consistency in reaching their permit decisions and ensure the public has a better understanding of the permit process. Even with these efforts, there may still be a perception that inconsistency exists. When taking a closer look at projects that may appear to be handled inconsistently, it is often the case that the fact set of each project being compared differs, as most projects rarely have the exact same set of circumstances. If these situations arise we offer the opportunity to explain the facts of each case to anyone interested.

IV. State Assumption of the Federal 404 Permit Program

Report Item:

Evaluate the feasibility and advantages of assuming the federal wetland permit program, as allowed under Section 404 of the Clean Water Act with an estimate of the required staffing levels, anticipated program costs, and effects on wetland resources.

Response Overview:

We have investigated the feasibility of the state assuming the federal 404 permit program in the past and again in response to the audit request. We continue to find the feasibility of assuming the federal program low due significant barriers that involve state law changes and the lack of federal funding available to states for implementation. Our fiscal estimate and staffing needs for federal program implementation include an annual budget increase of \$1,047,300 and an additional 16.6 full time employees. We have also found state assumption would not result in additional protection of Wisconsin's wetland resource, since all wetlands in Wisconsin are already protected under either current federal or state laws.

We prepared a comprehensive report "An Assessment of Wisconsin's Wetland Protection Programs – Should the State Assume the Federal Wetland Fill Permit Program?" in 1991, which was revised in 1993. While we found potential benefits of assumption, we continue to find the feasibility of assuming the federal 404 program low due to inadequate state jurisdiction and limited funding and staffing. Furthermore, state assumption would not result in additional protection of Wisconsin's wetland resource, since all wetlands in Wisconsin are already protected under either current federal or state laws.

States may assume responsibility for issuing federal permits for wetlands and waterways meeting the federal definition, under s. 404 of the federal Clean Water Act. If a state assumes the federal 404 permit program, applicants no longer need to obtain separate federal permits for their projects for most waterways and wetlands. It is important to note that the federal government through the U.S. Army Corps of Engineers retains permit authority over waters traditionally used for commercial navigation, defined as Section 10 waters. A few examples include the Great Lakes, Mississippi River, St. Croix River and the Wisconsin River. The state assumption approval process is coordinated by the Environmental Protection Agency and states applying must have state law that is as protective as the federal law.

When a state assumes the federal 404 permit program, permit streamlining should occur. Applicants for most waterway and wetland permits are no longer required to obtain a separate federal permit; only the state permit and standards apply. State "assumption" combines the federal and state permit processes creating one set of permit standards. This combination should eliminate applicant confusion between federal and state requirements that may appear to be different. While assumption should streamline the permit process, applicant confusion may remain because

applicants are still required to obtain federal permits for projects associated with Section 10 waters.

In order to assume the federal 404 permit program, state law must be at least as protective as the existing federal law and if the state chooses, can be more protective. Although Wisconsin currently has protective wetland and waterway laws, several law changes would be required to ensure consistency with the existing federal 404 permit program. Four major examples of required law changes include: (this list is not inclusive)

- **Create protection of federal wetlands under state law.** Currently, Wisconsin law provides direct jurisdiction only over non-federal (isolated) wetlands and wetlands on the beds of navigable waterways. The state obtains authority over federal wetlands through the federal 404 permit the Corps issues.
- **Require compensatory wetland mitigation.** Wisconsin law does not require applicants to compensate for permitted wetland loss, but allows applicants the option of offering wetland mitigation in the permit process. Federal law requires mandatory wetland mitigation for wetland losses of 10,000 square feet or more and provides for discretionary wetland mitigation for wetland losses smaller than 10,000 square feet.
- **Eliminate Wisconsin Department of Transportation (WDOT) exemption in Chapter 30, Wisconsin Statutes.** Currently, WDOT is exempt from Chapter 30, state waterway permitting requirements, which means no direct state jurisdiction exists over DOT activities in wetlands and waterways. Federal law would not allow for this exemption, as WDOT is required to obtain federal 404 permits.
- **Eliminate cranberry operations and solid waste facilities limited scope of alternatives.** Wisconsin law currently allows cranberry operations and solid waste facilities to provide a limited scope of alternatives for the state wetland permit process. The federal law does not allow for a limited scope of alternatives.

To assume the federal permit program, DNR must assume the additional duties associated with the federal permit program implementation. To determine what additional work the Department would take on, we obtained 2006 data from the Corps St. Paul District, the office currently responsible for implementing the 404 permit program in Wisconsin. We compared Corps data and state data, and estimated hours to perform additional tasks, to determine an approximate cost associated with assumption. To implement the federal program in Wisconsin we have estimated an annual increase of approximately \$1,047,300 with an additional 16.6 full-time employees. Additional workload includes the following:

- Enforcement of federal wetland violations.
- Review of additional mitigation project proposals required for 10,000 square feet or more of approved wetland fill.

- Landowner assistance with wetland and jurisdictional determinations.
- Providing EPA notice for individual permits and annual reporting.

Given the necessary state law changes and additional costs associated with assuming the federal program, feasibility of assumption is low. Federal funding is not available and the agency could not absorb the additional work with existing staff and budget. Importantly, assumption of the federal program would not result in any additional protection to Wisconsin's wetland resource.

We have taken many steps to eliminate agency duplication of effort and confusion for the applicants. The major benefit resulting from state assumption is the potential for permit streamlining for permit applicants. Recognizing this benefit we have worked with the Corps to make the permit process as seamless as possible for the applicant. The following are steps taken with the Corps to streamline the permit application process:

- **Joint Federal and State Permit Applications.** Applicants use the same application form for both the federal and state permit application and submit it to the Department.
- **State Programmatic Permits.** The state has given blanket water quality certification to federal general permits. Our 2006 data indicates that more than 83% of approved wetland permits were authorized with the federal general permit and received state confirmation.
- **Memorandum of Agreement (MOA).** Agreements between the Corps and the Department govern how staff of the two agencies coordinate with one another. MOA's include a process for resolving agency differences.
- **Joint Guidelines for Wetland Compensatory Mitigation in Wisconsin.** A standard set of guidelines for applicants to respond to both federal and state mitigation projects.

These steps allow for permit streamlining that the Department implements utilizing our current budget and staffing levels. In January of 2008 we will be noticing a general permit for non-federal (isolated) wetlands that mirrors the existing federal general permits. This effort will increase permit streamlining by utilizing the same standards for both federal and state permits. We will continue to look for opportunities to make the permit process easier for the applicant while maintaining a high level of protection to Wisconsin's wetland resources.

V. Permit Fees

Report Item:

Provide options for establishing wetland permit fees that better reflect the level of effort necessary to review permit applications.

Response Overview:

We would like to obtain more equitable permit fees for applicants that better reflect the level of staff effort needed to review permit applications. In researching other states permit fee structures we have found several options for accomplishing this in Wisconsin.

Fees paid by permit applicants cover part of the cost of reviewing proposals to ensure protection of wetlands and waterways. Wisconsin statutes set a three-tier fee structure with classification of regulated activities based on low, medium or high number of hours for review (see ss. 281.22, 30.28 and 31.39, Wis. Stats., NR300, Wis. Adm. Code, and DNR form 3500-053A).

Fees for all types of wetland and waterway alterations generated \$935,073 in revenue in FY2006. Applicants pay just over 10% of the total permit program cost. Fees help pay for travel to sites, supplies and equipment including computers, limited term staff for logistical support, permit tracking and documentation and a web site for permit applicants. Staff salary sources are general purpose revenue, motorboat gas tax and Coastal Zone Management grants.

The Legislative Audit report recognized actual and potential inequities in the fee structure. A closer look for this report identifies the following inequities:

- Projects involving multiple regulated activities are subject only to the single highest fee. As a result, a large development with site grading, wetland fill, bridges or culverts, and so on, requiring an individual permit, pays a \$500 fee. An individual whose driveway culvert can't be designed to meet the general permit standards pays the same \$500 fee.
- Projects that appear similar and are in the same fee classification may actually differ substantially in the amount of review time due to differences in factors that can't be effectively predicted – local environmental conditions, applicant capability, adjacent landowner concerns.
- Taxpayers must cover the cost of reviewing private activity in order to avoid harm to public water resources because program funding is largely through general purpose revenue. (Public projects using state or federal funds and public transportation projects are not subject to fees.)

Options to remedy these inequities were developed from Wisconsin's fee system experience and fee structures in other states and localities. They include:

- Structure fees to charge based on project size.
- Base fees on actual review time.
- Eliminate the single highest fee exemption.
- Increase proportion of costs covered by application fees.

The Department has begun discussions with affected parties on specific proposals to improve the fee structure. We look forward to working with those folks and with the legislature to establish permit fees that are equitable and more accurately reflect the level of effort necessary to review permit applications.



Sen. Kedzie: Wetlands program should not be 'bogged' down

5/22/2007

Contact: Sen. Neal Kedzie,(608) 266-2635

Madison – “Wisconsin’s wetland mitigation program can and should be an environmental and economic success story, but since its inception more than six years ago, it has yet to reach that goal,” said State Senator Neal Kedzie (R-Elkhorn), who co-authored Wisconsin Act 147 in 2000, creating a program to provide more options for developers working through the permit process with the Department of Natural Resources (DNR), while at the same time, restoring and enhancing low quality wetlands.

A recently released report by the non-partisan Legislative Audit Bureau details how the wetland mitigation program has been under-utilized, as only 52 projects have been approved, representing less than 2% of all permits issued by the DNR since 2002. Kedzie believes more should be done by the agency to encourage the use of the program, as it has the potential to provide ecological benefits and improve efficiencies in the application and permitting process.

“Wetland mitigation is a true win-win situation for both developers and the environment,” said Kedzie. “My concern, though, is developers may not be engaging due to the complexity of the DNR regulations, which may serve as a disincentive. I commend the agency for improving permit timelines, but more needs to be done to promote the value and efficacy of the wetland mitigation program.”

Wisconsin’s wetlands mitigation program maintains a net gain policy and is intended to provide economic incentives for builders and developers to restore, create, and enhance lesser quality or marginal wetlands. Kedzie is concerned those incentives may not be enough to draw more participants into the program.

“We created a policy to require more wetlands created than lost in exchange for faster turn-around times on such permits; but perhaps the Legislature needs to consider additional regulatory incentives in order to make a good program even better,” Kedzie concluded.

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DNR wetland permit turnaround times speed up

By TODD RICHMOND/The Associated Press

MADISON, Wis. — Turnaround times for state wetland permits have dropped dramatically since 2001, with environmental officials approving eight of every 10 applications, according to a state audit released Tuesday.

The report from the Legislative Audit Bureau found the median time for a decision on an application shrank from just under four months in 2001 to 48 days by 2005. The audit also found the DNR granted 82.6 percent of applications between January 2001 and June 2006 — a total of 3,582 permits.

"The DNR is actually handing out permits to an awful lot of people seeking them," Wisconsin Wetlands Association director Becky Able said. "That does represent a lot of acres of wetlands that are being filled."

Despite the 80 percent-plus approval rate, the agency was able to reduce the amount of wetlands filled each year by about 70 percent, from 171 acres in 2001 to 55 acres in 2005, by working with applicants to revise their construction plans, DNR Waterway Protection Chief Mary Ellen Vollbrecht said.

Improved technology and a 2003 state law that tightened deadlines have helped the agency process permits more quickly, she said.

"We have greatly improved. Folks don't have to wait as long," Vollbrecht said. "(But) they're always going to have to wait a little bit."

Approval rates varied across regions, from 74 percent in northern Wisconsin to 88 percent in the south-central part of the state, and 282 decisions took more than a year.

That's not good enough, especially not for businesses eager to expand, said Rep. Sue Jeskewitz, R-Menomonee Falls, co-chair of the Joint Legislative Audit Committee, which requested the review.

"We're not being business-friendly. Are we better? Yes. But we need to get even better," she said.

Wetlands are marshes, bogs or swamps that provide habitat for plants and animals, water purification, flood abatement and recreation resources. According to the Audit Bureau, 15.5 percent of the state is considered wetland.

The DNR estimates that Wisconsin had more than 10 million acres of wetlands at the time of early European settlement, and the total has decreased by about half over the past 150 years.

Generally, anyone who wants to "fill" a wetland, defined as dumping dirt or building a structure such as a bridge, a culvert or a pond, must get permits from both the U.S. Army Corps of Engineers and the DNR.

The process, aimed at protecting remaining wetlands, is a sore spot with businesses that don't want to delay expansion and with landowners who don't want to negotiate with the government

for the right to make changes to their property, Republican lawmakers say.

The audit focused on the state permit process. It found:

- DNR staff identified 325 violations between January 2005 and June 2006, including disturbances without a permit or not following a permit requirement. Between January 2001 and June 2006, the agency issued 229 after-the-fact permits and 69 violation notices.
- Indiana, Michigan and Minnesota exempt activities that result in small wetland disturbances. Wisconsin requires a permit for anything.
- Few people use the compensatory mitigation program, which allows someone who disturbs a wetland to restore one elsewhere or purchase a credit from a mitigation bank set up by private parties that have restored wetlands. The program isn't mandatory, however, and the DNR has approved 52 of 67 applications between February 2002, when the program began, and June 2006.

The audit recommended the DNR use more general permits for common activities that have minimal effect on wetlands. General permits are all-purpose permits that are typically easier to obtain than individual permits, where the DNR scrutinizes projects.

It also suggested the agency set up more consistent guidelines for determining whether applications are complete; perform more inspections; establish a database to track violations; and develop consistent policies to deal with violations.

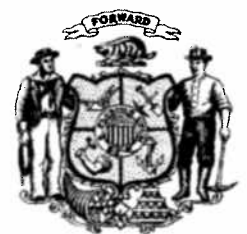
The Audit Bureau asked the agency to report back by the end of the year on changes.

Vollbrecht said the agency would respond to the request. No applications in 2006 took more than a year, she added, and the DNR already has plans for more general permits and new enforcement guidelines.

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What wildness means

Taking another look at region's wetlands

By LAURIE LAWLOR

Posted: June 20, 2007

As daylight peaks with the arrival of summer solstice, I watch for a glimpse of my shy, silent neighbor.

Every June for the past six years, the same Blanding's turtle has scuttled with remarkable determination up the same sandy hill. The turtle - perhaps 20 years old - sports a domed shell no bigger than a dinner plate.

It is on a dangerous mission, having left its home in a nearby stream bordered by a small, pristine wetland in the Mukwonago River watershed in southeastern Wisconsin. On its half-mile journey, the yellow-throated turtle must dodge dogs, cars, raccoons and hawks. When it arrives at the hilltop, it digs a hole in which to lay a dozen leathery eggs. It covers the nest with dirt and then heads back to the wetland.

I have never seen the hatchlings emerge. When wetland sedges turn yellow in the fall, the surviving young may struggle out of their shells. No bigger than plastic caps on gallon milk jugs, these creatures must find their way to the wetland. How they manage no one is entirely certain.

I cannot help but admire the tenacious Blanding's turtles, listed as a Wisconsin threatened species. Their worst danger, however, comes not from their roving lifestyle but the real possibility that one day soon they will have no home to return to.

In southeastern Wisconsin (Sheboygan, Ozaukee, Milwaukee, Racine, Kenosha, Walworth, Waukesha and Washington counties), wetlands are few and far between. During the past five years, economic pressure has intensified to ditch, bulldoze, fill or destroy the region's remaining 200,000 acres of wetlands for residential or commercial development.

A recent legislative audit of the wetland-permitting process of the state Department of Natural Resources reveals an alarming story. While southeastern Wisconsin counties contain only an estimated 4% of the state's remaining wetlands, during the past five years the region accounted for 22% of all permit applications to fill or destroy wetlands.

Getting a permit to fill a wetland appeared to be a safe bet. Of the nearly 1,000 applications made in southeastern Wisconsin between 2001 and 2006, 82% were approved by the DNR.

What does this mean for the Blanding's turtle and its hatchlings? Their home in the small wetland could easily vanish beneath roaring backhoes and bulldozers. Once filled and destroyed, a biodiverse wetland can never fully be reclaimed or reintroduced. As naturalist John Madson writes, "No spacecraft can take us where it has gone."

Why should we care?

Wetlands that we depend on in southeastern Wisconsin to buffer flooding, to filter heavy rains and snowmelt and to recharge scarce underground water supplies are also among the few open, wild places we may have left to experience a sense of wonder and gratitude.

Where else but in a wetland - perhaps close to our home - can we spy not only secretive turtles but noisy sandhill cranes, redwing blackbirds, frogs and Canada geese?

The few wetlands remaining in southeastern Wisconsin need to be protected from, not obliterated by, fast-tracking permit regulations that benefit a select, rich few: the CEOs of Big Business, Big Box and Fast Food.

As author Terry Tempest Williams writes, "The extinction of the places we love may not come as a result of global warming or a meteor heading in our direction but as a result of our lack of imagination. We have forgotten what wildness means, that it exists, here, now."

If we continue to wager away our local wetlands acre by acre, we will have turned our backs not only on the Blanding's turtle but all the other creatures with whom we share this region. And we will need to think of an answer to tell our children, grandchildren and great-grandchildren when one day they ask us - as they certainly will - why we let the last wetlands vanish.

Laurie Lawlor is a board member of the Wisconsin Wetland Association. She has written more than 35 award-winning works of fiction and non-fiction, including the natural history/memoir "This Tender Place: The Story of a Wetland Year."

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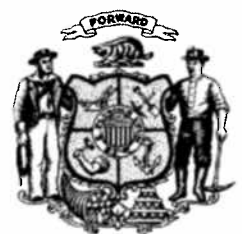
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"Clearer guidelines"
- predictability

Unfamiliar situation
- permits is disconcerting

Education

- working more closely
with the landowners

- There in govt

"communication"

- we act like everyone
else s/know



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