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☞ Details: Public Hearing: Audit 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)

Record of Committee Proceedings

Joint Legislative Audit Committee

Audit Report 07-6,

An Evaluation: Wetland Regulatory Programs, Department of Natural Resources.

July 26, 2007

PUBLIC HEARING HELD

Present: (8) Senators Sullivan, Lassa, Decker and A. Lasee;
Representatives Jeskewitz, Rhoades, Kerkman
and Parisi.

Absent: (2) Senator Cowles; Representative Cullen.

Appearances For

- None.

Appearances Against

- None.

Appearances for Information Only

- Janice Mueller, Madison — State Auditor, Legislative Audit Bureau
- Scott Hassett, Madison — Secretary, Department of Natural Resources
- Todd Ambs, Madison — Administrator, Division of Water, Department of Natural Resources
- Becky Abel, Madison — Executive Director, Wisconsin Wetlands Association
- Jeffrey Gonyo, Slinger — Highway J Citizens Group, U.A.

Registrations For

- None.

Registrations Against

- None.

Registrations for Information Only

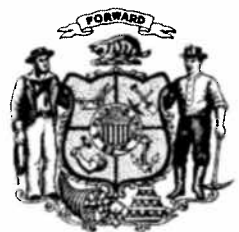
- None.



Pam Matthews
Committee Clerk



WISCONSIN STATE LEGISLATURE





WISCONSIN STATE LEGISLATURE

Joint Legislative Audit Committee

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

July 16, 2007

Mr. Scott Hassett, Secretary
Department of Natural Resources
101 South Webster Street, 5th Floor
Madison, Wisconsin 53703

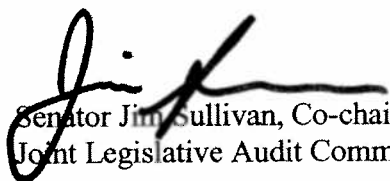
Dear Mr. Hassett:

As indicated on the enclosed hearing notice, the Joint Legislative Audit Committee will hold a public hearing on the Legislative Audit Bureau's evaluation of *Wetland Regulatory Programs* (report 07-6), on Thursday, July 26, 2007, at 10:00 a.m. in Room 411 South of the State Capitol.

As this report relates to the activities of the Department of Natural Resources, we ask you, and the appropriate members of your staff, to be present at the hearing to offer testimony in response to the audit findings and to respond to questions from committee members. Please plan to provide each committee member with a written copy of your testimony at the hearing.

Please contact Ms. Pam Matthews in the office of Representative Suzanne Jeskewitz at 266-3796 to confirm your participation in the hearing. Thank you for your cooperation and we look forward to seeing you on July 26th.

Sincerely,


Senator Jim Sullivan, Co-chair
Joint Legislative Audit Committee


Representative Suzanne Jeskewitz, Co-chair
Joint Legislative Audit Committee

Enclosure

cc: Ms. Janice Mueller
State Auditor



Joint Legislative Audit Committee
July 26, 2007

✓ I. **Opening Remarks:**

✓ • Welcomes

- Rep. Cullen is excused
- Sen. Cowles is excused

✓ • How the committee works

- If you want to testify, fill out a slip and hand it to the page.
- **Prior** to testifying, if you have written testimony, please provide the page with copies for each committee member. If you don't have enough copies the page can make copies for you.

✓ II. Attendance – clerk will call the roll

III. **Audit Report 07-6, An Evaluation of: Wetland Regulatory Programs, Department of Natural Resources.**

✓ A. Audit Bureau Staff – Jan Mueller

B. DNR – Sec. Scott Hassett and Todd Ambs, Administrator,
Division of Water

C. Public Testimony

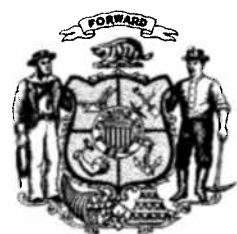
V. **Adjourn**

- Jeske W ✓
- Sullivan ✓
- Lasse ✓
- Parist ✓
- Kerkman ✓
- Rhoades ✓
- Decker ✓
- Lassa ✓

Cullen
Cowley



WISCONSIN STATE LEGISLATURE



Wetland Regulatory Programs

Department of Natural Resources

Legislative Audit Bureau

July 2007

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Overview

- ◆ Wetlands are regulated under federal, state, and local laws.
- ◆ DNR is the primary agency responsible for wetlands management.
- ◆ Activities affecting many wetlands require approval from both DNR and the U.S. Army Corps of Engineers.
- ◆ Wisconsin also regulates small, isolated wetlands not subject to federal requirements.

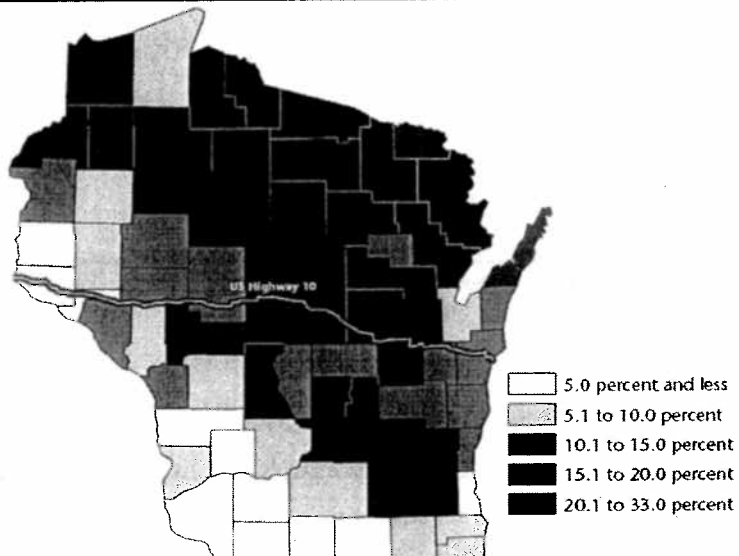
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Staffing and Finances

- ◆ In FY 2005-06:
 - 19.3 FTE staff performed wetland activities.
 - Expenditures for these activities were an estimated \$1.75 million.
- ◆ DNR charges \$500 for most state wetland permits, regardless of project size.

3

Wisconsin Wetlands



4

Permitting in Midwestern States

- ◆ Among midwestern states:
 - All except Iowa regulate activities in non-federal wetlands.
 - Indiana, Michigan, and Minnesota exempt activities that result in only small wetland disturbances.
 - Illinois, Indiana, and Minnesota have enacted policies that support a no-net-loss wetland goal.
 - Local governments issue permits in Minnesota.
 - Michigan has assumed federal wetland permitting authority.

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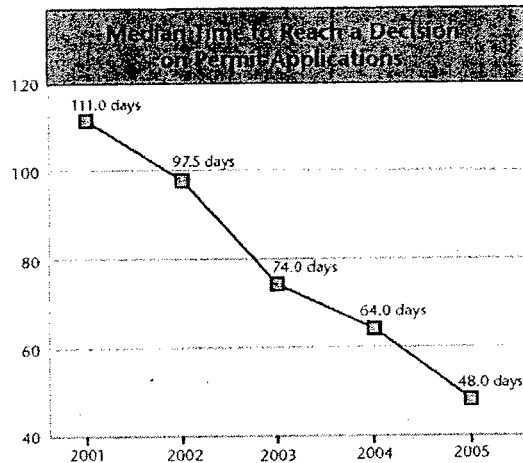
Wetland Permitting Outcomes

DNR Region	Permit Requests Approved	Permit Requests Denied	Permit Requests Withdrawn	Total	Percentage of Permit Requests Approved
Northeast	912	55	99	1,066	85.6 %
Northern	601	37	174	812	74.0
South Central	580	27	52	659	88.0
Southeast	808	26	145	979	82.5
West Central	681	19	121	821	82.9
Total	3,582	164	591	4,337	82.6

January 2001 through June 2006

6

Permit Processing Time



7

Compliance Efforts

- ◆ DNR is responsible for enforcement of all projects.
- ◆ Violations occur when wetlands are illegally disturbed without a permit or when those with a permit do not follow its conditions.

8

Inspections and Violations

- ◆ From January 2005 through September 2006:
 - DNR conducted only 27 inspections of completed projects.
 - Violations were found at 6 project sites.
 - DNR identified 325 violations in response to complaints.
 - DNR issued 229 after-the-fact permits and 69 notices of violation for non-permitted activities.

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Compensating for Wetland Losses

- ◆ Compensatory mitigation is restoring, enhancing, or creating wetlands to replace those lost through permitted projects.
- ◆ Wisconsin implemented a voluntary program in 2002.
- ◆ In general, compensatory mitigation:
 - cannot be considered for areas of special natural resource interest; and
 - applicants must demonstrate they cannot avoid or minimize adverse effects on wetlands.

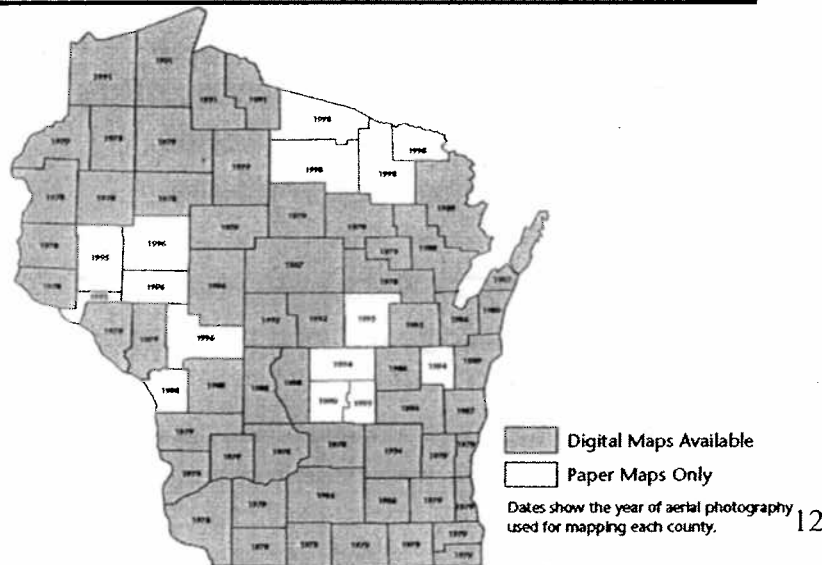
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Use of Compensatory Mitigation

- ◆ Applicants are typically required to restore 1.5 wetland acres for each acre lost.
- ◆ Mitigation can be performed on site, or applicants can purchase credits through wetland mitigation banks.
- ◆ Compensatory mitigation was included in only 1.8 percent of approved permits.
- ◆ Use of compensatory mitigation is mandatory on DOT projects.

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Wetland Mapping



Report Recommendations

- ◆ Our report includes recommendations for DNR to:
 - improve the tracking of wetland losses;
 - develop general permits;
 - increase efforts to monitor compliance and ensure consistent enforcement;
 - improve coordination with federal agencies; and
 - report to the Joint Legislative Audit Committee on its efforts by December 2007.

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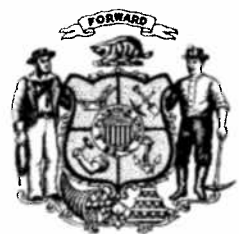
Wetland Regulatory Programs Department of Natural Resources

Legislative Audit Bureau
July 2007

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WISCONSIN STATE LEGISLATURE



Legislative Audit Committee Hearing – July 26th, 2007
Wetland Permit Program Audit Report Testimony – Secretary Scott Hassett

Acknowledgements

First of all, thank you to Senator Sullivan and Representative Jeskewitz for being here.

I'd also like to thank the Legislative Audit Bureau for its thorough and comprehensive look at the DNR's wetland permit program, specifically Janice Mueller and Paul Stuiber, as well as the rest of their staff:

- Jeff Ripp
- David Bajkiewicz
- Cara Coburn
- Jennifer Klippel
- and Allison La Tarte

Introduction

Wetlands' are critical to our ecosystem, quality of life and our state's economy. At the DNR, we take protection of these valuable natural resources seriously; but we also continually work hard to ensure that environmental protection and economic development can go hand-in-hand. We are proud of our performance to-date in successfully striking this balance.

We welcomed the Legislative Audit Bureau's analysis of our wetland permit program and appreciated the opportunity to take an in-depth review of this program with them.

Testimony

Specifically, we were very interested to learn what an independent review would show about how we are administering state and federal wetlands laws.

Overall, we believe our wetland protection program works – projects are allowed to move forward with minimal impact to the wetland resources of Wisconsin. The audit has affirmed that overall, these laws and our department's implementation of them are working well. It is especially gratifying to us, and should be to members of the Legislature as well, to see that two of the key goals of these laws are being met:

- We now issue wetland permits faster – report findings indicate we cut the permit process time in half and verified almost all applications are processed within the statutory timeframe;
- And we have decreased annual wetland loss by two-thirds.

With that said, we do agree that improvements can be made to make the Wetland Permit Program even better and we have already begun implementing many of the report's recommendations. Specifically,

Tracking wetland losses and permit timeliness

- For all wetland permits issued, we track not only wetland fill, but also wetland acres disturbed and restored.
- We analyze wetland permit data annually to determine where improvements are needed, make necessary changes, and track progress.
- As a result of the audit we have made additional database changes, updated database guidance and trained field staff.
- We will continue to assess permit data tracking needs and make the appropriate changes, specifically related to compliance monitoring and enforcement actions.

Developing a strategy for updating wetland maps and increasing their availability to the public

- We have remapped nearly all wetlands in the State since the original Wetland Inventory was created in 1984 and continue to update the wetland maps using the best available technology.
- 82% of the state's wetland maps (59 counties) are available on the DNR internal Surface Water Data Viewer for testing by staff prior to the release to the public. We hope to make the wetland maps available to the public as an internet mapping tool in late August.
- We work with the U.S. Fish and Wildlife Service, Southeastern Wisconsin Regional Planning Commission, Saint Mary's University and UW-Madison to update our wetland maps and determine the best available mapping technology. We are also working with Natural Resource Conservation Service to develop a "wet soils indicator" map to help the public determine if their property contains potential wetlands.
- Lastly, map resources are only good if folks use them. We have been working with Senator Miller and Representative Bies on the creation of a "wetland notification" bill for real estate transactions and local building permits, which will tell folks where to look to determine if a property contains a potential wetland and that state permits are required if a wetland will be impacted.

Increasing efforts to monitor compliance and ensure consistent enforcement practices.

- We have already begun to increase our compliance efforts over the past several years and will continue to do so.
- As mentioned above, modifications will be made to our database for compliance and enforcement tracking, which will accurately

reflect work being done by staff. This tracking has been made mandatory.

Creating more options for establishing permit fees that better reflect staff and resource costs.

- We are currently looking into ways to create a more equitable fee structure.

Increasing efforts to ensure regional staff are consistent in reaching decisions and providing permit applicants with additional guidance

- Our Wetland and Waterways Issues Team has discussed recommendation and guidance, and a checklist will be created and distributed to all field staff identifying specific data that must be documented in the file.
- In August, we plan to meet with folks that have experienced the wetland permit process to ask them what information DNR could provide applicants with that would make the permit process more understandable.

*Withdrawn
this 2/1*

We are also researching the advantages and disadvantages of increasing the use of mitigation banks and look forward to reporting our findings to you in December.

- 67 percent of the mitigation projects we have approved went to a mitigation bank.
- The success of compensatory mitigation is questionable as found by the General Accounting Office and the National Academy of Sciences, which identified the pitfalls of the federal and other state programs. We have received our own EPA grant that will allow us to evaluate our mitigation approval sites to determine mitigation success in Wisconsin to date.
- However, it is important to remember that replacing wetlands in location other than in the area lost does not always remedy the very real impacts of the original wetland loss, such as flood retention and habitat loss.

We are working on your request regarding the feasibility of assuming responsibility for administering the federal wetland program.

- We have looked into assumption in the past and are in contact with EPA and Michigan to determine what is needed for State Assumption.
- We plan to assess the advantages and disadvantages of assumption, but one of the major considerations will be the lack of federal funding associated with the added State responsibility of assuming the Federal wetland permit program.

I will now turn this over to Todd Ambs, who most of you know is the Water Division Administrator for our agency. He will touch on a couple of our final comments.

Todd:

Thank you, Secretary Hassett, Senator Sullivan, and Representative Jeskewitz for giving me a chance to talk about a few of these items.

On the issue of illegal wetland fills and compliance concerns – it appears that Wetland violations are increasing, especially up north.

The good news is that our internal review of this problem is quite consistent with the Audit findings. In an effort to determine how to address rising wetland violations, I created a statewide Compliance Improvement Team last year (CIT) to provide recommendations. Many of the recommended actions from the Team's report to me are already underway. I thought that it was worth mentioning that this internal report identified many of the same solutions that the Audit found.

Those recommendations include:

- Increase Citation Forfeiture Amounts for Ch. 30 Violations;
- Improve Waterways and Wetlands Database;
- Increase Resources for Field Staff;
- Implement Wetland Communication Strategy, through partnerships, updated internet and broadcast communication, outreach to realtors, and streamlined regional approaches to public information on violations and protection;
- Make it easy for property owners to find out where wetlands are located;
- Require real estate disclosure for wetlands; and
- Update waterway and wetland web pages.

I also wanted to briefly address a few areas of the audit report and recommendations where we thought clarification may help:

Developing general permits for activities that have minimal impacts on wetlands

- 83 percent of our wetland permits are issued as general permits, which we call "confirmation letters".
- We intend to meet our statutory requirement to create non-federal (isolated) wetland general permits by March of 2008.

Improving coordination with federal agencies

- While we don't disagree with the recommendation and continue to improve coordination, this is an area where the audit report does not reflect how we operate.

- We already have several MOA's in place with the Corps and meet regularly to coordinate our efforts.

Todd conclude, take questions:

Again, I'd like to thank the LAB for its analysis and for the opportunity to take a thorough look at this very important program, and at this time, I'd be happy to open things up for questions, either for me or Secretary Hassett.



PRESENTATION FOR JOINT LEGISLATIVE AUDIT COMMITTEE

Report 07-6 Wetland Regulatory Programs

July 26, 2007

SLIDE 1

I. Background and Scope

SLIDE 2

Wetlands are regulated under various federal, state, and local laws, but the Department of Natural Resources is the primary state agency responsible for the protection and management of wetlands. Wetlands are dynamic ecosystems that serve important ecological functions and provide economic and recreational value to humans. For example, they provide habitat for plants and animals, flood abatement, water quality protection, and recreational and education opportunities.

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.

Because many wetlands are located on private lands, concerns were 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 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

SLIDE 3

II. Staffing and Finances

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 *yo.*

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 funded 45.5 percent of all program expenditures. *1/2*

SLIDE 4

III. Wetland Permitting

DNR estimates that Wisconsin currently has approximately 5.4 million acres of wetlands. These wetlands are distributed unevenly across the state, with the majority located in the north. The percentage of land area classified as wetland ranges from 0.8 percent in Lafayette County to 33.0 percent in Oneida County. As shown on the map, 15 of the 18 counties in which wetlands make up more than 20.0 percent of the total land area are intersected by or located north of United States Highway 10, which runs from Manitowoc County in the east to Pierce County in the west.

SLIDE 5

As the primary tool for regulating activities that disturb wetlands nationally, the federal Clean Water Act provides states with considerable authority by allowing them to certify that federally issued permits comply with state water quality standards. Further, states may choose to regulate activities that disturb non-federal wetlands, or to enact alternative regulatory programs. This flexibility has resulted in fundamental program differences in each of the six midwestern states we reviewed. For example:

- all of the states except Iowa regulate activities in non-federal wetlands to some extent;
- Indiana, Michigan, and Minnesota exempt activities that result in only small wetland disturbances, but Wisconsin does not;
- Illinois, Indiana, and Minnesota *have* enacted state policies that support a no-net-loss goal, which means that each acre of wetland lost must be replaced with one or more wetland acres;
- local governments are responsible for wetland permitting in Minnesota; and
- 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.

IV. Permit Issuance

SLIDE 6

From January 2001 through June 2006, DNR approved 3,582 wetland permits, or 82.6 percent of the permit requests it received. Approximately 60 percent of the approved activities were for pond creation, utility projects, residential construction, and local road construction. As shown in the table, 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.

SLIDE 7

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. Overall, median processing time declined significantly from 111 days in 2001 to 48 days in 2005, as shown in the figure. However, 282 permit decisions took longer than one year.

SLIDE 8

V. Compliance and Enforcement

DNR is responsible for ensuring that projects located in Wisconsin—regardless of whether they occur in a federal or non-federal wetland—comply with permit requirements. Although DNR can issue citations for violations that occur in navigable waters under ch. 30, Wis. Stats., this authority does not extend to non-navigable wetlands. As a result, most wetland violations are resolved informally through voluntary agreements and administrative actions. In cases where voluntary compliance cannot resolve the violation, DNR seeks more formal remedies through the Wisconsin Department of Justice or through federal agencies.

Violations occur when wetlands are illegally disturbed without a permit or when those who have properly obtained a permit do not follow its conditions. The number of wetland permit violations and illegal wetland disturbances that occurred during our review period is unknown because DNR did not consistently track this information. Therefore, we estimated the number of complaints investigated and violations discovered using information provided by staff in each region.

why?

SLIDE 9

From January 2005 through September 2006, DNR's 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.

SLIDE 10

VI. 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 that is neither designed to offset all wetland losses resulting from state permits nor intended to supplant federal compensatory mitigation requirements.

Instead, it allows applicants to voluntarily propose compensatory mitigation for certain projects that would not otherwise meet state wetland water quality standards. According to DNR, this approach addresses concerns that mandatory compensation would circumvent Wisconsin's wetland protection laws by allowing applicants to replace natural wetlands with potentially poorly designed and managed wetland mitigation projects.

DNR has established a complex process for incorporating compensatory mitigation into its review of wetland permit applications. In general, compensatory mitigation:

- must disturb no more than 1.0 acre of wetland;
- cannot be considered for projects that affect wetlands designated as areas of special natural resource interest; and
- applicants must demonstrate that they cannot avoid or minimize adverse effects on wetlands before compensatory mitigation can be considered.

6 Banks

SLIDE 11

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. It provided compensation for a total of 41.1 wetland acres disturbed by 52 projects. Most projects were located in the Southeast Region.

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.

SLIDE 12

IV. 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.~~

As shown in the figure, wetland maps for 33 counties are derived from photographs taken before 1986, and no wetland maps use photography more recent than 1999. Because the location and extent of wetlands changes over time as a result of human activities and environmental factors, it is likely that many wetlands are not accurately depicted on the maps. Better maps could also reduce conflicts by allowing landowners to identify wetlands before designing projects on their properties.

SLIDE 13

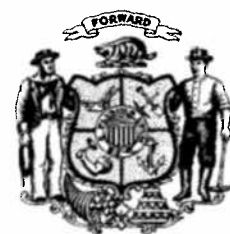
Our report contains several recommendations for improving program management and enhancing coordination, such as:

- improving the tracking of wetland losses;
- increasing efforts to monitor compliance and ensure consistent enforcement;
- improving coordination with federal agencies; and
- reporting to the Joint Legislative Audit Committee by December 2007 on its efforts to improve program management, options for establishing permit fees that better reflect staff and resource costs, and a strategy for updating wetland maps.

*Argue - Frustrated****-*



WISCONSIN STATE LEGISLATURE



To: Members of the Joint Legislative Audit Committee:

July 26, 2007

From: Wisconsin Wetlands Association-- Becky Abel, Executive Director

RE: Audit Report 07-6: An Evaluation of DNR's Wetland Regulatory Programs.

Thank you for the opportunity to speak to you today. My name is Becky Abel and I am the Executive Director of the Wisconsin Wetlands Association.

The Wisconsin Wetlands Association, a statewide member-based nonprofit organization, has as its mission the protection, restoration and enjoyment of wetlands and their associated ecosystems through science-based programs, education and advocacy. Our more than 1500 members include hunters, anglers, wetland professionals, teachers, paddlers, and other outdoor enthusiasts.

The audit of DNR's wetland regulatory program was initially requested to provide:

1. A comparative review of the number of days and decision-making process to approve wetland fill permits across WDNR regions, and
2. A comparison of Wisconsin and Minnesota's wetland mitigation programs for ideas about how to create a more "business-friendly" wetland regulatory program.

The scope of the audit went well beyond the topics requested and provides the first in-depth accounting of Wisconsin's wetland permitting program since the inception of the program in 1991. This review will be extremely useful as we look for ways that DNR is and isn't adequately protecting our state's valuable wetlands.

WWA would like to comment on four main issues related to the audit:

Issue #1: Permit Compliance, Illegal Filling and Enforcement:

The DNR has been pressured to churn out wetland permits at a nearly impossible rate and, by their own admission, DNR's efforts to reduce processing times on wetland fill permit applications has hindered their ability to monitor permit compliance or identify and address unauthorized wetland fill. However, even with extremely limited time and money, WDNR identified more than 325 violations (i.e., unauthorized wetland fill or violation of permit conditions) during the 18-month window under review.

Deterrence of unauthorized wetland destruction **must** become a higher priority for WDNR. This means more and better communication about wetland regulatory requirements; increased emphasis on compliance monitoring, and better use of tools and mapping technology to identify and seek remedies for wetland violations.

Suggestions for improvement include:

- DNR produced brochures and other resources to help landowners determine if they have wetlands on their property and to help local governments advise on the likelihood of the presence of wetlands on privately-owned lands.
- Mandatory disclosure about wetland regulatory requirements in local zoning permits and real estate transactions.
- More resources for permit compliance monitoring and wetland regulatory enforcement.
- Uniform citation authority to allow conservation wardens to issue tickets and order work-stoppages for unauthorized wetland fill.
- Better tracking of both permitted and unauthorized wetland fill.
- More staff and money to complete the Wisconsin Wetland Inventory.

Issue #2: The push for business friendly permit options

The report explored numerous permitting options which, if pursued, could result in an increase in state-authorized wetland destruction and a reduction in the extent of review required to receive a permit to permanently fill a wetland. Current state *and federal* laws prohibit the issuance of wetland fill permits if alternatives exist to avoid and minimize wetland impacts. General permits, exemptions, or the promise of wetland mitigation should never be used to circumvent this requirement. The auditors' recommendation for the development of general permits failed to recognize that Wisconsin already has a robust General Permit program for activities that will not have a significant adverse impact on wetland acreage or function. Expansion beyond what's already allowed WILL have an adverse impact on wetlands.

The Wetlands Association will oppose exemptions to fill small wetlands or wetlands that are labeled as "low-quality". Small wetlands provide habitat for migratory waterfowl and songbirds and many of the state's endangered and threatened animals, and even wetlands with degraded plant communities may provide important ecological services such as flood control, water quality improvement, or groundwater/drinking water recharge.

With respect to wetland mitigation, it unfortunately does not usually look as good on land as it does on paper. All too often, wetland mitigation sites do not replace the type, quality or function of the wetlands lost. If someone cut a healthy 100 year old oak tree from your yard and replaced it with 2 spindly saplings that would require a tremendous amount of maintenance just to survive, would you feel as if you were better off because there were two trees instead of one? Many studies have documented poor ecological success rates and a systemic lack of accountability for wetland mitigation projects. WWA will conduct a cautious and skeptical evaluation of any proposed expansions to the state's wetland mitigation program to ensure that program modifications do not lead to a further loss of wetland acres or functions.

Issue #3 Permit timelines and wetlands lost:

The audit reports that in recent years, the DNR substantially reduced the amount of time required to approve permits to fill wetlands, while also reducing the acres of wetlands filled. However, some permits will always require more time to review. WWA supports the audit recommendation for the DNR to improve the clarity of application requirements and staff

communication with permit applicants and we would be happy to work with DNR to help them identify and remedy the common causes of permit review delays. However, we must keep in mind that longer permit review times often accompany projects with more substantial or complex wetland issues. *The primary purpose of the wetland regulatory program should be to protect Wisconsin's wetlands.* The program's effectiveness **must** be measured in terms of successful avoidance of wetland impacts rather than the rate of wetland fill approvals or the speed of permit processing. The public expects WDNR to conduct detailed review of the impacts of wetland development projects and strongly opposes a fast-food approach to the review of large or complicated projects.

DNR is processing permits faster, but the report still documented nearly 160 acres of state-authorized wetland fill by private interests each year. **The audit failed to acknowledge that the state directly destroys more than double the acres of wetlands filled by private interests annually to expand the state road system.** We were disappointed that the report also contained virtually no discussion about the ecological impacts of 350+ acres of annual wetland destruction.

Issue #4 There's a lot more to Wisconsin's Wetland Story:

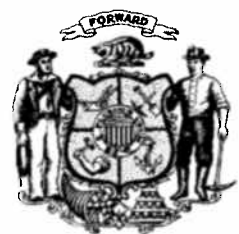
The audit doesn't tell the whole story. As mentioned above, the report does not address the almost 200 acres a year that are filled for state transportation projects. The audit also fails to evaluate the many unregulated ways that the ecology of wetlands are destroyed—through removal of trees and vegetation, through dessication from water diversion to stormwater ponds, and through water level manipulation and groundwater withdrawal. And since there's also evidence that wetlands are being filled illegally at an alarming rate, the audit does not provide a snapshot of the most critical issue—just how many wetlands are being destroyed annually and how will the DNR protect our state's valuable and diverse wetlands when its funds and staffing are seriously limited and cookie cutter permit reviews are becoming the expectation.

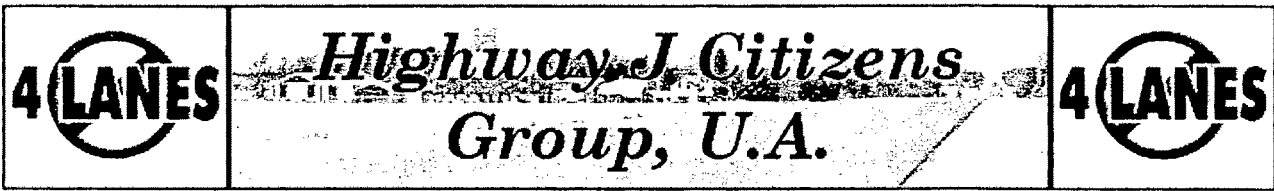
Wisconsin has a tradition as an "early-adopter" of programs that recognize the need to protect and preserve valuable wetland resources. For example, we were the first state to pass Water Quality standards for wetlands as required under the federal Clean Water Act. We were also the first in the nation to adopt isolated wetland protections after the U.S. Supreme Court ruled these wetlands were not regulated under the Clean Water Act. These innovations received broad, bipartisan support because there was overwhelming public support for these actions by duck-hunters, anglers, bird-watchers, river advocates, clean drinking water advocates, flood managers and others.

Rather than enter the race for the bottom by weakening wetland regulations to match those of our closest competing state, the Wisconsin DNR should be charged with-- *and provided adequate funds for--* taking every measure to conserve wetlands for the use and enjoyment of Wisconsin residents and to support our thriving tourism industry.



WISCONSIN STATE LEGISLATURE





P.O. Box 152, Hubertus, WI 53033

Website: www.hwyjcitizensgroup.org

DATE: July 26, 2007

FROM: Jeffrey M. Gonyo, **HIGHWAY J CITIZENS GROUP, U.A.**, P.O. Box 152, Hubertus, WI 53033, Phone: (262)-644-8334, E-Mail: jmgonyo@execpc.com.

TO: Wisconsin Joint Legislative Audit Committee – State Senators Jim Sullivan (Co-Chairperson), Julie Lassa, Russ Decker, Alan Lasee, and Robert Cowles and State Representatives Suzanne Jeskewitz (Co-Chairperson), Samantha Kerkman, Kitty Rhoades, David Cullen, and Joe Parisi, 22 East Mifflin Street, Suite 500, Madison, WI 53703, Phone: (608)-266-2818.

RE: Official Public Hearing Testimony Presented to the Wisconsin Joint Legislative Audit Committee Concerning the Wisconsin Department of Natural Resources (WisDNR) Wetland Regulatory Programs and This State Agency's Continued Failure to Properly Investigate and Prosecute Both the Wisconsin Department of Transportation (WisDOT) and Its Hired Roadbuilding Contractor (Hoffman Construction Company) for 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.

Dear Wisconsin Joint Legislative Audit Committee Members:

On behalf of the **HIGHWAY J CITIZENS GROUP, U.A. (HJCG)**, I am appearing today before the Wisconsin Joint Legislative Audit Committee to offer my public hearing testimony 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 2006.¹ After listening to my public hearing testimony and reviewing the written materials provided to you today, we are hoping that the Joint Legislative Audit Committee will **expand its investigation** of the WisDNR's Wetland Regulatory Programs and then **require** this state agency to hold both the WisDOT and Hoffman Construction Company **fully-responsible** for their reckless disregard of the environment (especially the wetlands and water quality in the Sussex Creek tributary).

Since 1999, the **HJCG** has been organized and engaged in a grassroots mission to: **1) Stop** unnecessary, fiscally-irresponsible and environmentally-damaging road expansion projects in our neighborhoods, **2) Protect** our groundwater quality, **3) Promote** proper land use decisions, and **4) Preserve** our overall "quality of life" in this beautiful Kettle Moraine area of Southeastern Wisconsin. Our group's estimated **15,000 members** live primarily in Washington and Waukesha Counties and are very concerned about the **ongoing, uncontrolled spending of our hard-earned**

¹ To support our claims, I am providing the Joint Legislative Audit Committee with a detailed packet of materials which meticulously documents these violations of both state and federal law.

tax dollars within the WisDOT. We are also very upset and disheartened to see that other state agencies like the WisDNR have consistently "turned a blind eye" when it comes to examining the environmental consequences and enforcing the laws associated with major state highway projects.

In 2005, the WisDOT and its then-hired, roadbuilding contractor (Payne & Dolan) expanded a four-mile section of Highway 164 in Waukesha County from Swan Road in Pewaukee to Prospect Court in Sussex. During that phase of the Highway 164 expansion, the HJCG retained the services of Cedarburg Science (an ecological consulting firm) to monitor this construction area and fully-document any violations of both state and federal environmental laws. After observing some very serious violations of the federal Clean Water Act, the WisDNR's Best Management Practices (BMP) and other state erosion control laws, the HJCG filed a detailed complaint on December 2, 2005 (complete with an expert affidavit, BMP report, and photographs) with both the U.S. Army Corps of Engineers (USACE) and the WisDNR, asking that these two agencies take immediate investigative, corrective and prosecutorial action against the WisDOT and Payne & Dolan for these egregious violations.

It took these two agencies nearly four months to respond to this complaint, and the end result was that no action was taken. Essentially, the USACE and WisDNR "took the word of the WisDOT officials" without doing any independent investigation themselves. After receiving the USACE's response on April 3, 2006, I filed a Freedom of Information Act (FOIA) request, asking for all of the underlying documents concerning their decision not to take any action here, and was absolutely shocked to learn that the file on this matter consisted of just six pages of material (mostly, "self-serving statements" between agency officials with no real investigation being done).

In April, 2006, the WisDOT and its hired roadbuilding contractor (**Hoffman Construction Company**) began the four-lane expansion of Highway 164 in the Sussex/Lisbon area of Waukesha County (between Prospect Court and Howard Lane). The HJCG again retained Cedarburg Science and Ginny Plumeau (their president and principal ecologist) and, with the assistance of a local resident and HJCG member (Charles Petrie), they began an investigation of the construction activities in that area which would last several months (May, June, July and August of 2006). During that time period, both Ms. Plumeau and Mr. Petrie personally witnessed, documented and photographed a pattern of very serious, ongoing, and uncorrected violations of the federal Clean Water Act, the WisDNR's Best Management Practices (BMP) and other state erosion control laws along Highway 164 in the construction zone. (For more details, please refer to the October 20, 2006 complaint as attached here).

On July 6, 2006, Hoffman Construction Company caused a major gas line rupture, explosion and fire which burned for over seven hours. According to the enclosed articles from the Waukesha Freeman, Sussex Sun and WTMJ Channel 4 website, the fire raging from this ruptured gas pipe was so strong that it pushed back water from the fire crews. Over 320,000 gallons of water and chemical foam had to be used to keep this fire from spreading. This water and foam then ran into the nearby wetland areas and Sussex Creek tributary, taking with it a substantial amount of soil and other debris from the Highway 164 road construction zone.²

To gauge the magnitude of this environmental disaster, the HJCG's attorney (Dennis Grzezinski) filed open records and FOIA requests with the WisDNR, WisDOT, USACE, and Public Service Commission (PSC) requesting all documents related to their investigation of this gas line rupture, explosion and fire. Despite the seriousness of this matter, the WisDNR and WisDOT responded with only a few pages of material, the USACE responded by saying they had

² This unfortunate incident could have been easily avoided had the WisDOT's construction crews heeded the repeated warnings from WE Energies and Diggers Hotline to avoid this area where the gas line was located (according to news reports, this gas line was properly marked prior to construction in this area along Highway 164 making the WisDOT's actions even more egregious here).

no documents in their files (even though this construction and wetland filling were governed by a previously-granted Section 404 Clean Water Act permit), and the PSC never responded at all.³

Perhaps most disturbing here is the fact that the WisDOT and WisDNR failed to conduct even a minimal investigation into the environmental damage caused by the raging fire and runoff of water, foam, soil and other construction zone debris into the nearby wetlands and Sussex Creek tributary. In a July 11, 2006 e-mail to the WisDNR's Maureen Millmann, the WisDOT's Robert Schmidt referred to this major event as just "a little incident" while, in that same e-mail, Dale Oldenburg (the WisDOT's on-site project manager) made "a big joke" about the water runoff into the wetlands. When the fire department was pouring water onto the fire, Mr. Oldenburg laughingly asked the fire chief "if he had a permit for pumping water into the wetland." Mr. Schmidt then said in his e-mail to Ms. Millmann, "Ha-ha, such a funny guy" and "you just never know what's going to happen next!" This e-mail (obtained via an open records request) demonstrates the WisDOT's and WisDNR's total lack of concern about this matter.

On October 20, 2006, Cedarburg Science (the HJCG's ecological experts) filed a formal complaint with both the WisDNR (Maureen Millmann) and USACE (Rebecca Gruber) which informed them of ongoing and continuous environmental violations in the Year 2006 Construction Section of Highway 164 (Sussex/Lisbon area of Waukesha County) being committed by the WisDOT and its contractor, Hoffman Construction Company. This complaint is supported by both a detailed Best Management Practices Inspections Report and an affidavit from Charles Petrie who personally witnessed and photographed these violations in this environmentally-sensitive area. The photographs attached to our complaint were taken over a four-month period from May thru August, 2006 and show the WisDOT's and Hoffman Construction Company's failure to correct these serious violations of both state and federal law. The bottom line here is that "they just didn't care" about correcting these obvious violations and, as a result, the wetlands and Sussex Creek tributary were seriously damaged because of the pollution runoff.

On October 23, 2006, I forwarded a copy of this Cedarburg Science complaint to the Wisconsin Department of Justice (WisDOJ) and requested that Assistant Attorney General Thomas Dawson (the Director of the WisDOJ's Environmental Protection Unit) immediately investigate and prosecute both the WisDOT and Hoffman Construction Company for committing these environmental violations along Highway 164. Mr. Dawson reviewed my materials and then contacted Marty Ringquist (a WisDNR Environmental Enforcement Specialist) to apprise them of this complaint.⁴

In a November 7, 2006 e-mail response to this WisDOJ notification, Ms. Ringquist minimized the seriousness of these violations and instead, sarcastically referred to the HJCG 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 appalling public statement without even making the smallest effort to investigate our well-supported complaint speaks volumes about the WisDNR's narrow-

³ In the WisDNR's August 3, 2006 response letter, Susan K. Cook, the WisDNR Customer Service Supervisor, stated that the only two documents she could find on this major environmental incident was "a single page document" from their Spills Coordinator, Scott Ferguson and a short e-mail message from the WisDNR Environmental Analysis Specialist Maureen Millmann.

⁴ In his November 27, 2006 response to my complaint letter, the Assistant Attorney General Thomas Dawson complimented the HJCG for the documentation provided in the Cedarburg Science report. Mr. Dawson then explained that the WisDOJ does not have investigators for the collection of evidence in environmental cases and depends on the WisDNR to investigate these reported violations before they can be referred to the WisDOJ for prosecution. Thus, until the WisDNR "does its job" here (i.e. investigating and collecting evidence), the WisDOJ cannot do their job (i.e. prosecuting these environmental violations).

minded attitude when it comes to enforcing environmental violations committed by WisDOT-hired roadbuilding companies in the State of Wisconsin. As **concerned, taxpaying citizens** who also care about protecting our state's precious, natural resources, we **deserve better** from the WisDNR!

For several months now, our ecological experts (Cedarburg Science) have been attempting to get the WisDNR to "do its job" and take aggressive enforcement action against Hoffman Construction Company and the WisDOT for these well-documented, environmental violations. However, as of this date, the **WisDNR refuses to do anything about this matter**. First, in a November 16, 2006 letter to Ginny Plumeau, Principal Ecologist for Cedarburg Science, the WisDNR's Environmental Coordinator, Maureen Millmann stated that she "did not witness large scale erosion control failures or impacts to wetlands or the waterways" during her " **cursory erosion control inspections**" at the Highway 164 construction site in the Summer of 2006.⁵ From the many photographs accompanying our October 20, 2006 complaint that were taken during the time of Ms. Millmann's so-called "cursory visits" to the site, these violations (which Ms. Millmann says she "did not witness") should be **quite blatant and obvious to anyone** with reasonably good eyesight.

Second, on January 16, 2007, both Ginny Plumeau and Chris Heston of Cedarburg Science met with Ms. Millmann and her immediate supervisor, **Michael Thompson** to discuss what action the WisDNR intended to take against the WisDOT and Hoffman Construction Company based upon our previously-filed complaint showing these **egregious, ongoing and uncorrected violations** which occurred in the Year 2006 construction zone of Highway 164 (Sussex/Lisbon area of Waukesha County). Ms. Plumeau and Mr. Heston made a list of the key points discussed at this meeting in a February 1, 2007 memorandum, a copy of which then was sent to both Ms. Millmann and Mr. Thompson. In a February 13, 2007 letter following this meeting, Ms. Millmann again stated that the **WisDNR would not be taking any further action** in this matter.

Third, on April 3, 2007, the Wisconsin Department of Justice (WisDOJ) announced that it was fining Hoffman Construction Company \$100,000 for violations of Wisconsin's environmental laws which they committed while being the prime roadbuilding contractor for the WisDOT on the four-lane expansion of U.S. Highway 141 in southern Marinette County. In that case, Hoffman violated state laws governing wastewater permit requirements, erosion control, and depositing materials into a wetland area and navigable body of water. **This case is strikingly similar to the violations that Hoffman committed along Highway 164 in the Sussex/Lisbon area** (as fully-documented in our October 20, 2006 complaint). However, in our case here, the WisDNR has **refused** to either investigate or recommend prosecution to the WisDOJ. **Why the disparity in treatment?**

To answer that question, I contacted the **WisDNR's Jim D'Antuono**, the Southeast Fox Basin Team Leader for the WisDNR in Waukesha County on April 17, 2007, and he too seemed perplexed as to why the WisDNR had **vigorously prosecuted** Hoffman Construction Company for environmental violations committed on its U.S. Highway 141 road expansion project in Marinette County, but was **refusing** to take prosecutorial action on the **very similar** Highway 164 violations. Mr. D'Antuono agreed to talk with some other WisDNR officials on this matter (including Michael Thompson) and provide me with a written summary of those conversations (which he did with his April 25, 2007 e-mail as attached). As reported in that e-mail, Mr. Thompson informed Mr. D'Antuono that "**there did appear to be some violations**" in the Year 2006 Highway 164 construction zone (as indicated in our October 20, 2006 complaint). However, he could not determine who committed those violations because of utility work that was allegedly being done during the Summer of 2006 in the Highway 164 construction zone.

On April 26, 2007, I immediately responded to Mr. D'Antuono's e-mail (also attached) with scheduling documents from the WisDOT showing that **all of the utility work along Highway 164 in the Sussex/Lisbon area had been completed as of March, 2006, several months before the**

⁵ The dictionary definition of the word "**cursory**" is "**hastily and superficially done**" (which is **exactly** how Ms. Millmann has described her inspections of the Highway 164 construction site during the Summer of 2006).

violations depicted in our complaint were committed. However, according to the WisDOT's own records, Hoffman Construction Company was working in this area during the months of May, June, July and August of 2006 when all of these well-documented, environmental violations were committed. Therefore, **the evidence here is very strong** that Hoffman (and **nobody else**) committed these violations which, Mr. Thompson, by his own admission in Mr. D'Antuono's April 25, 2007 e-mail, acknowledges occurred in this area of Highway 164 (as supported by our complaint).

On May 23, 2007, the WisDNR's Michael Thompson called me for the sole purpose of stating that Jim D'Antuono's April 25, 2007 e-mail summary was "not an accurate representation of either his position or the Department's position and findings" concerning our October 20, 2006 complaint on the Highway 164 project from Prospect Court to Howard Lane in Waukesha County (which was expanded to four-lanes in 2006). During this telephone call, Mr. Thompson tried to convince me that there were no environmental violations committed by anyone in the Year 2006 Highway 164 construction zone. I asked Mr. Thompson how he could make such a ridiculous statement given the fact that **the photographs in our complaint clearly showed that the erosion control barriers were either "down or completely missing" and that construction debris was deposited into the wetlands and Sussex Creek tributary "well-beyond the downed or missing barrier lines."** Mr. Thompson became frustrated with me repeatedly pressing this matter and then concluded the conversation by saying that the WisDNR intends to take **"no further action"** on this matter.⁶

Fourth, on June 8, 2007, I contacted **Gloria McCutcheon, the WisDNR's Southeast Regional Director**, and requested a personal meeting with her to discuss my many concerns about this matter. This meeting took place in her Milwaukee office on **Friday, June 22, 2007** and included **Ms. McCutcheon, James McNelly** (WisDNR Water Leader for Southeast Region), **Michael Thompson** (WisDNR Supervisor for the Southeast Region's Environmental Analysis and Review Team), **Bill Savage** (99th District State Representative Don Pridemore's Chief of Staff), HJCG member **Charles Petrie** (who had witnessed and took photographs of the Year 2006 construction zone violations) and me.

At this meeting, Ms. McCutcheon stated that: **1)** The WisDNR has an "excellent working relationship" with the WisDOT (which they want to preserve), **2)** The WisDOT always has been "very diligent" about protecting the environment (i.e. you can "trust" the WisDOT), and therefore, **3)** The WisDNR would **not** be taking any further investigative or enforcement action against the WisDOT on the well-documented, environmental violations that occurred in the Highway 164 construction zone during the Summer of 2006. When I showed Ms. McCutcheon several color photographs from our October 20, 2006 complaint and asked her if they depicted any violations of state erosion control laws, she responded by saying that these were **"technical violations of the law"** but the WisDNR has "great discretion on which violations get investigated and prosecuted and which ones do not." In this case, the WisDNR has chosen **not** to properly investigate and prosecute these very obvious, ongoing and uncorrected environmental violations. In my opinion, that is **absolutely outrageous!**

Even more disturbing here were the following statements made by Mr. Thompson (Maureen Millmann's direct supervisor) at this June 22nd meeting: **1)** The WisDNR has only **one half-time employee** (Ms. Millmann) who is responsible for inspecting **all** WisDOT road projects located in the Southeast Region and ensuring their compliance with state environmental laws, **2)** During the months of May, June, July and August of 2006 (the months during which these very serious, environmental violations took place), **the WisDNR did not keep written records** of these supposedly-occurring, "cursory" erosion control inspection of the Highway 164 construction site (as a result, there is no way to know either when or how many times Ms. Millmann visited the Highway 164 construction site, what she observed during those purported visits, and what actions, if any, she had

⁶ This May 23, 2007 conversation with the WisDNR's Michael Thompson was followed-up with his June 4, 2007 letter to me as attached here.

recommended as a result of those visits),⁷ and 3) During this four-month period when these violations occurred, Mr. Thompson had **NEVER** personally visited the Highway 164 construction site.⁸

Finally, on June 27, 2007, I testified before the **Wisconsin Natural Resources Board** at their monthly meeting which was held in Oconomowoc. During that meeting, I gave each board member a copy these detailed materials and requested that they **promptly investigate** and then **direct** the appropriate WisDNR officials to hold both the WisDOT and its roadbuilding contractor (Hoffman Construction Company) **fully-accountable** for these very serious environmental violations committed along Highway 164 in Waukesha County last year. As of this date, I have heard nothing from the Natural Resources Board as to what action, if any, they intend to take on this matter.

The **Wisconsin Legislative Audit Bureau** just recently released a new report which states that, during the fiscal year 2005-2006, **compliance monitoring of wetlands has been poor** and the **enforcement of state environmental laws has been uneven and inconsistent** throughout the state. This audit also questioned why staff members in some of the five WisDNR regions appear to check more aggressively for wetland violations than in others.⁹ This is **exactly** what is happening here in the case at hand! In the Northeast Region, the WisDNR staff aggressively investigated and recommended prosecution of Hoffman Construction Company for environmental violations affecting wetlands and waterways committed during the four-lane expansion of U.S. Highway 141 in Marinette County, while in the Southeast Region, the WisDNR staff has effectively "turned a blind eye" and refused to conduct any meaningful investigation or recommend any prosecution of very similar environmental violations committed by Hoffman during the four-lane expansion of Highway 164 in the Sussex/Lisbon area of Waukesha County. **Why is there an extreme disparity of enforcement here?**

Another blatant example of this inconsistent WisDNR enforcement of environmental laws involves the **disparity of treatment that exists between projects which are constructed by private developers and landowners versus those constructed by the WisDOT** (i.e. state road projects). To highlight this key point, I have attached several news articles from the **Milwaukee Journal Sentinel** showing how the WisDNR has aggressively prosecuted private developers for

⁷ On July 23, 2007, I conducted an "open records" review of the WisDNR's files for the Year 2006 construction section of Highway 164 (Sussex/Lisbon area). During that review, there were **no written records** in the WisDNR's files to show that Ms. Millmann had even visited this construction site between May 1, 2006 and August 31, 2006 (when these serious environmental violations had occurred). Thus, the **absence of proper documentation** of these "cursory inspections" Ms. Millmann alleges occurred in her November 16, 2006 letter to our ecological experts (Cedarburg Science) calls into question whether these inspections were even done in the first place.

⁸ At this same June 22, 2007 meeting, I questioned the WisDNR's James McNelly about how he investigates and prosecutes violations of state environmental laws that occur on private development sites (which is governed by Chapter 30 of the Wisconsin Statutes). Mr. McNelly responded by saying that each time he visits a development site, he makes a written record of that visit which includes the date, time and purpose of that visit along with any violations observed and recommended actions to be taken. This again highlights the **extreme disparity of recordkeeping procedures and enforcement action** that occur when comparing the handling of environmental violations on private development projects (governed by Chapter 30) versus those on WisDOT road construction projects (governed by a separate WisDNR-WisDOT cooperative agreement).

⁹ As reported in the attached May 23, 2007 **Milwaukee Journal Sentinel** article entitled, "Audit Finds Fault with DNR," this legislative audit report states that without effective compliance monitoring, property owners [including the WisDOT on state road projects] may be more willing to violate their permit conditions when constructing their projects, and that **lack of compliance monitoring may lead to inconsistent enforcement** because violations may be more likely to be detected in some regions than in others.

similar environmental violations on other projects in Waukesha County.¹⁰ **Why does the WisDNR tend to “throw the book at private developers” while, at the same time, “look the other way” when the same violations occur on WisDOT-constructed, road projects?**

Over the past eight years, many other well-respected local, state and national organizations have expressed similar concerns about the WisDNR's inconsistent (and, in some cases, nonexistent) enforcement practices that are associated with state road construction projects. They include: **1) Big Cedar Lake Property Owners Association, 2) Citizens for Responsible Government, 3) Waukesha County Environmental Action League, 4) Sierra Club, 5) Wilderness Society, 6) Lake Michigan Federation, 7) Scenic America, 8) Wisconsin Farmers Union, 9) Endangered Species Coalition, 10) Defenders of Wildlife, 11) Ducks Unlimited, 12) Friends of Milwaukee's Rivers, 13) Taxpayers for Common Sense, 14) Wisconsin Society for Ornithology, 15) Wisconsin Wetlands Association, 16) Friends of the Earth, 17) Wisconsin League of Conservation Voters, 18) 1000 Friends of Wisconsin, 19) Congress for the New Urbanism and 20) Citizens Allied for Sane Highways (CASH).**

It's time to “**change the way the WisDNR does business**” when it comes to investigating environmental violations and enforcing the law on major road projects in the State of Wisconsin. The **WisDNR's** apparent pattern of “**looking the other way**” and **not** vigorously enforcing federal and state environmental laws when it comes to **WisDOT** road expansion projects is **absolutely unconscionable** and has **severely tarnished** Wisconsin's longstanding reputation (as established under the great environmental governorships of **Gaylord Nelson** and **Warren Knowles**) of being a national leader in the protection of our state's natural resources.

Therefore, I hope that, after listening to my public hearing testimony and reviewing the related documents provided by me today, the Wisconsin Joint Legislative Audit Committee will **expand and intensify** its investigation of the WisDNR's Wetland Regulatory Programs, which then will lead to **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 for your sincere interest and thoughtful consideration of this very important matter.

Sincerely,



Jeffrey M. Gonyo,
Steering Committee Member for the
HIGHWAY J CITIZENS GROUP, U.A.
P.O. Box 152, Hubertus, WI 53033
Phone: (262)-644-8334
E-Mail: jmgonyo@execpc.com

Enclosures

¹⁰ In my December 20, 2006 e-mail to Ginny Plumeau of Cedarburg Science (copy of which is attached here), I raised this very issue and strongly urged Ms. Plumeau to tell the WisDNR's Maureen Millmann to aggressively prosecute the WisDOT and its hired roadbuilding contractor, Hoffman Construction Company just like they have done to private developers who have committed similar environmental violations. (For additional related information on this issue, please also refer to Footnote #8 above.)

October 20, 2006

Ms. Maureen Millman
Wisconsin Department of Natural Resources
P.O. Box 12438
Milwaukee, WI 53212

and

Ms. Rebecca Gruber
U.S. Army Corps of Engineers
St. Paul District
1617 East Racine Ave. Room 101
Waukesha, WI 53186

Subject: Complaint Regarding BMPs, Highway J / Highway 164 Phase III
Lisbon Township, Waukesha County, Wisconsin
Cedarburg Science, LLC # HYJ-0524-2005-01

Dear Ms. Millman and Ms. Gruber:

On behalf of Highway J Citizens Group, U.A., Cedarburg Science, LLC, is submitting this Complaint regarding potential non-compliance in the use and management of BMPs along the Highway J/164 Phase III road expansion. The site is located in Sections 16, 21 and 22, Township 8 North, Range 19 East in the Town of Lisbon and Village of Sussex, Waukesha County, Wisconsin. The Phase III road expansion was observed along Highway 164 for noncompliance on an approximately 0.8 mile stretch between Prospect Court (just south of the Highway 164 & VV intersection in the Village of Sussex) up to Howard Lane (just north of the new Good Hope Road intersection in the Town of Lisbon). Inspection dates occurred between the months of May through August. The BMP non-compliance was observed to be ongoing and continuous during the entire four month inspection period and many remained uncorrected during that time period. We feel that certain conditions of the permit have not been complied with, in particular, Conditions 7 and 22.

Cedarburg Science and Chuck Petrie, a local concerned citizen (reference attached affidavit), conducted inspections of the Highway 164 Year 2006 Construction Zone to evaluate whether the specific conditions of Permit No. 2004-161651-DJP (which authorized certain work impacting wetlands in the corridor) were being complied with. We observed a number of locations where permit requirements and Best Management Practices were not satisfactory. These deficiencies were related to inadequacies of erosion control Best Management Practices or other control measures needed to keep sediments, pollutants, and other material out of wetlands and waterways. The inspections were documented and photographs were



**HIGHWAY J / HIGHWAY 164 PHASE III
COMPLAINT REGARDING BMPS**

taken of our observations. The enclosed attachment specifically describes and depicts the observed potential noncompliant practices.

Our observations raise the serious question about whether the erosion and sediment control measures for this construction project have been, and continue to be, properly installed and implemented, as well as routinely inspected and maintained. In addition, we are concerned about the direct, indirect and cumulative impacts of the resultant discharges of sediment and sediment-laden water into the wetlands and waterways.

We would appreciate your review and inquiry of the issues we noted. It seems incongruous for a state DOT project to be held to a lower standard than any other construction projects when it comes to meeting WDNR and federal requirements for erosion and sediment control.

If you have any questions or comments concerning this report, please call Ginny Plumeau or Chris Heston at (262) 376-0735.

Sincerely,

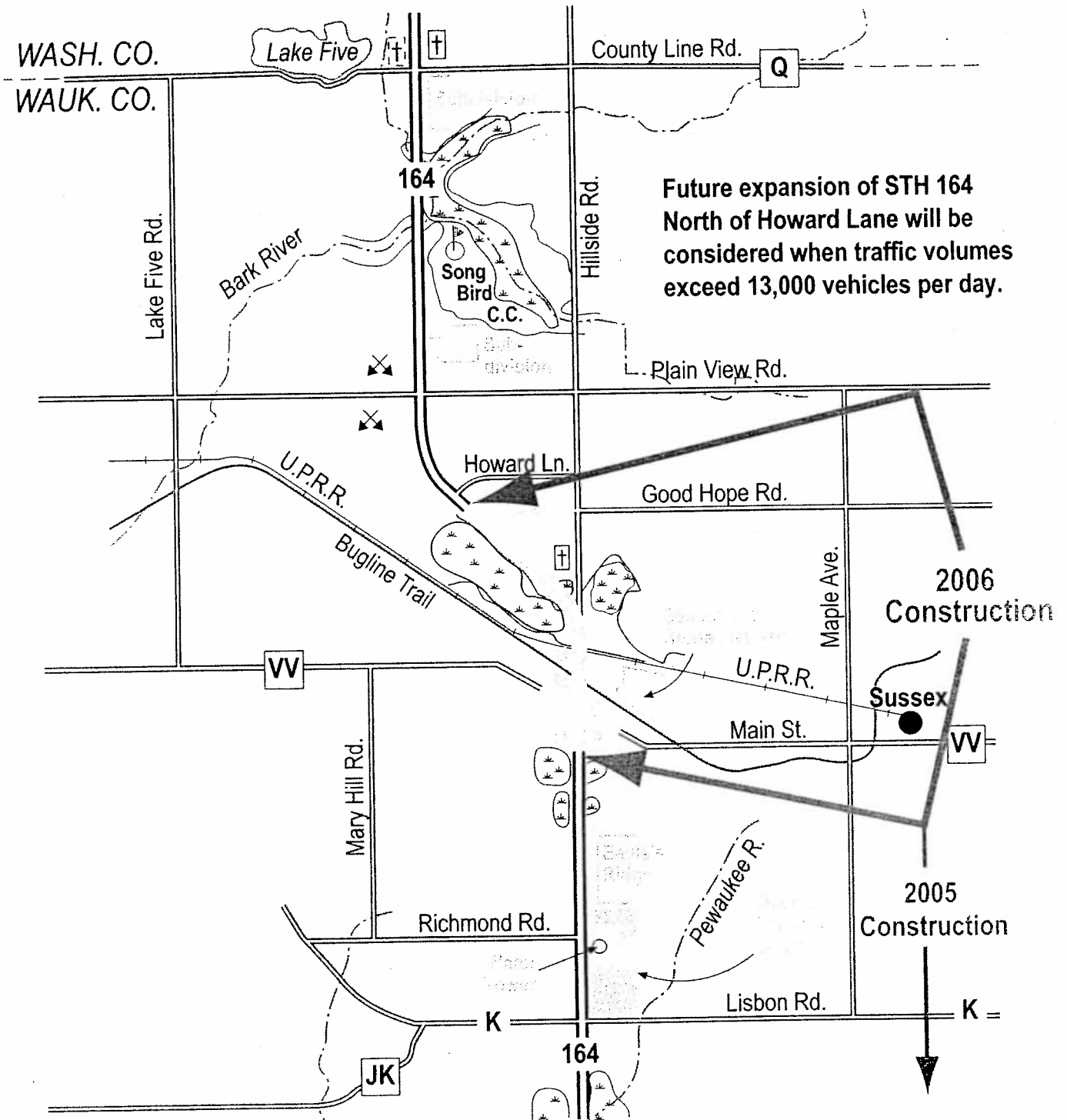
CEDARBURG SCIENCE, LLC

Ginny Plumeau, REM
Principal Ecologist

Chris Heston
Staff Ecologist

**Attachments: BMP Inspections
 Affidavit of Charles N. Petrie**

WIS 164 Construction Phase 3 (2006) Prospect Court to Howard Lane



WIS

County J Reconstruction Study

1/2 Mi. North of I-94 (Waukesha County) to 1/2 Mi. South of WIS 175 (Washington County)

WIS 164 (County J) Study Area I-94 to WIS 175

