

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, AMENDING, REPEALING AND RECREATING RULES

The Natural Resources Board proposes an order to repeal NR 1.95(5) and (6); to amend NR 1.95(title), (1), (2)(intro.), (3)(b)2.(intro.), 2.c., 4. and 6.; and to repeal and recreate NR 1.95(4) relating to the Natural Resources Board policy on wetlands preservation, protection, restoration and management

FH-44-00

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 1.11, 23.09, 23.32, 23.321, 29.011, 281.11 and 227.11(2)(a), Stats.
Statutes interpreted: ss. 23.09, 23.321, 29.011 and 281.11, Stats.

The Department's wetland policy, s. NR 1.95, was enacted in 1978. While the policy has aged well, there have been numerous changes to federal laws and programs that have impacted heavily on how we regulate and manage Wisconsin's wetlands. In addition to "housekeeping" changes to reflect these changes, the proposed revision includes the strategic direction and goals to:

Strengthen relationships with property owners, not-for-profit conservation organizations and local governments. Develop the outreach and incentives needed to encourage private wetland stewardship. Provide the technical assistance needed for private wetland stewardship.

Manage wetlands for biodiversity, wildlife health and ecological integrity. Identify important wetlands within watersheds and develop coherent ecologically based protection and management plan for each watershed. Encourage wetland restoration and enhancement projects for both specific functions and for the full range of functions.

Simplify our regulatory approach by identifying ways to improve our current regulatory program, by developing an effective wetland enforcement program and a compensatory mitigation program. Also look at developing a comprehensive state administered wetland protection program.

Develop and use modern technology. Increase the use and accessibility of the Wisconsin Wetland Inventory, develop a comprehensive, integrated and current wetland monitoring/resource inventory and increase the availability of wetland information.

SECTION 1. NR 1.95(title), (1), (2)(intro.), (3)(b)2.(intro.), 2.c., 4., and 6. are amended to read:

NR 1.95(title) **Wetlands preservation, protection, restoration and management.** (1) PURPOSE. It is the intent of the natural resources board to establish ~~rules~~ policy for the preservation, protection, restoration and management of wetlands in the state of Wisconsin. The administrative rules regarding wetlands shall be applied in such a manner as to avoid or minimize the adverse effects on wetlands due to actions over which the department has regulatory or management authority and to maintain, enhance and restore wetland functions and values. Proposals for administrative rules and for legislation shall include appropriate provisions, consistent with this section, except as otherwise provided by law.

(2) AUTHORITY. The department, under existing law, has the responsibility of making and enforcing regulatory and management decisions which, directly or indirectly, affect the quantity and quality of many Wisconsin wetlands.

(3)(b)2.(intro.) Watershed functions. In addition to their biological functions, wetlands may serve important physical and chemical functions with respect to other wetlands and waters of the state. A specific wetland, (or set of wetlands) may play a critical role in maintaining the stability of the ~~entire~~

~~system~~ ecosystem to which it is physically and functionally related. This functional role may include the maintenance of both the hydrologic patterns and the physical and chemical processes of related wetlands and other related waters of the state.

2.c. Some wetlands may be important for storing water and retarding flow during periods of flood or storm discharge. Even wetlands without surface water connections to other water bodies may serve this function. Such wetlands can reduce or at least modify the potentially damaging effects of floods by intercepting and retaining water which might otherwise be ~~channelled~~ channeled through open flow systems. The importance of a given wetland for storm and flood water storage may be modified by the cumulative effects of the proposed activities and previous activities within the watershed.

4. Scarcity of wetland type. Certain wetland types, (e.g., calcareous fens, wild rice lakes), which are statewide or regionally scarce possess special resource significance. Scarcity or rareness depends on the frequency of occurrence of the type, the area of the type in existence prior to settlement, the historical conversion of the type and its resultant degree of destruction, and the amount of similar habitat in the present landscape of the region.

6. The ecosystem concept in a regional context. Wetlands that are sustainable, diverse and interspersed with healthy aquatic and terrestrial communities contribute to the overall ecosystem health. The previous sections suggest that wetlands may not only have important functions within their boundaries, but may also interact with ecosystems of the surrounding region. The potential impact of wetland modification may influence distant wetlands if they are structurally and functionally related in the region. Similarly, the functions and values of any wetland may be affected by other existing and potential water resource activities in the region. Therefore, consideration should be given to those impacts which are shown to be of regional concern.

SECTION 2. NR 1.95(4) is repealed and recreated to read:

NR 1.95(4) STATEMENT OF POLICY. (a) The natural resources board is concerned with the continuing reduction in the quantity and quality of natural wetlands in this state and is committed to reversing the loss of our state's wetlands. A large percentage of Wisconsin's wetlands have been altered or destroyed in the years since settlement. It is the policy of the natural resources board that wetlands shall be preserved, protected, restored and managed to maintain, enhance or restore their values. The natural resources board promotes, protects, restores, enhances and preserves the quantity, quality and diversity of Wisconsin's wetlands as a critical component of ecosystems essential to the health and quality of life of our state's diverse citizenry, plants, animals and landscapes. It is in the public interest that department decisions which lead to alteration of or effects on wetlands under its jurisdiction or control are based on the intent to preserve, protect, restore and manage them for the maintenance or enhancement of their values.

(b) "Wetland", as defined in s. 23.32 (1), Stats., means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions. It is the intention of the natural resources board that where the term "wetland" appears in a rule promulgated by the department and the rule does not contain a specific definition, the definition of "wetland" in this paragraph shall apply.

(c) The department shall strengthen relationships with stakeholders through outreach and technical assistance and stewardship incentive programs.

1. 'Outreach and technical assistance'. The department shall encourage public and private owners of wetlands to make sound decisions to use their land in a way that sustains both wetland and socio-economic benefits.

2. 'Partnerships'. The department shall cooperate with appropriate governmental units, private groups and the public to further the protection and enhancement of wetlands to provide opportunities for

education on wetland values and ecology. The department shall work directly with local officials and developers to encourage them to avoid wetland destruction or incorporate the wetland into their project planning and reduce the need for a permit.

3. 'Stewardship incentives'. The department shall, in cooperation with other state and federal agencies, provide incentives and conservation programs for wetland owners that encourage ecological restoration of altered and degraded wetlands and reward the perpetual preservation of wetlands and associated upland areas.

(d) The department shall preserve, protect, restore and manage the state's wetland communities to be sustainable, diverse and interspersed with healthy aquatic and terrestrial communities.

1. 'Ecosystem health and integrity'. The department shall protect, restore and manage the state's wetlands to contribute to ecosystem health. The department shall work with stakeholders to identify high quality wetlands taking into consideration ecosystem needs, physical and biological watershed processes, as well as social values, uses and perceptions.

2. 'Department management actions'. The department shall select resource management techniques which maintain or improve wetland functions and values with no significant or irreversible adverse effects. Actions shall be limited to those specifically required to meet the objectives enumerated in sub. (2)(d).

3. 'Land acquisition and easements'. The department's land acquisition and community financial assistance land acquisition programs shall place special emphasis on obtaining wetlands that provide quality fish and wildlife habitat, particularly for threatened or endangered species; that significantly affect the maintenance or improvement of water quality; that have special value as scientific or natural areas; or that are imminently threatened with extensive alteration or destruction. Unique, exceptionally high quality or scarce wetland community types and associated aquatic and terrestrial communities will be held in perpetuity through acquisition of land or easements by federal, state, tribal and local government or not-for-profit conservation organizations for future generations.

4. 'Restoration'. The department shall consider the full range of ecological concerns and meet multiple purposes in wetland restoration and enhancement projects. These projects shall help recapture previously drained or filled wetlands and result in an increase in wetland acreage and function. The department, with assistance from stakeholders, shall identify restoration sites in each watershed based on the potential to successfully restore important wetland functions and values, and the opportunity to restore a watershed's ecological integrity.

5. 'Enhancement for specific functions'. The department shall develop statewide plans and programs that allow wetlands to be managed and enhanced for specific functions.

(e) The department shall administer a comprehensive regulatory and enforcement program for protecting wetlands.

1. 'Regulation'. The department shall seek to administer a comprehensive state wetland regulatory program that is simple, straightforward and reasonable, and make decisions in a predictable, timely and fair manner. The department's wetland regulatory decisions shall be made in accordance with standards in ch. NR 103.

2. 'Enforcement'. The department shall have an effective wetland enforcement program that discourages permit violations and illegal wetland fill activities. The department's enforcement activities shall include steps to assure, to the fullest extent practicable, the restoration of wetlands which were unlawfully altered.

3. 'Compensatory mitigation'. The department shall administer an easy-to-understand compensatory mitigation program available to permit applicants. The full range of wetland impacts shall be

considered when planning development projects. This program shall recognize the need to avoid and minimize adverse wetland effects, to replace wetland functions, and to enable fair, protective and common sense regulatory decisions. The department's wetland compensatory mitigation decisions shall be made in accordance with the procedures in ch. NR 103 and the standards in ch. NR 350.

4. 'Liaison activities'. In its liaison activities with federal, tribal, local and other state agencies and in the absence of regulatory authority, the department shall strongly recommend avoidance of wetland areas and concur with their use or alteration only when necessary to minimize the overall environmental impacts of a proposal. In those cases, the recommended amount of wetland use or alteration shall be held to the minimum. The department shall encourage applicants to consider the full range of wetland impacts when planning development projects.

(f) The department shall develop and maintain an up-to-date inventory of the state's wetland resources and track management actions.

1. 'Technology'. The department shall make use of technological advances to ensure that staff and the public have the most current wetland information that can be easily integrated with other environmental and geographical databases.

2. 'Inventory and tracking'. The department shall maintain an inventory of the state's wetland resources and make it readily available to the public and staff for a full range of planning, policy, management and regulatory applications. The department shall develop and maintain a unified system to track and monitor restoration, preservation, management and regulatory actions

SECTION 3. NR 1.95(5) and (6) are repealed.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on April 25, 2001.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)