

**State of Wisconsin
Department of Natural Resources
Responses to Comments
Self-Permitting Process for a Department Led Project
Manual Code
March 2015**

On January 1st, 2015 the Wisconsin Department of Natural Resources (Department) proposed the *Self-Permitting Process for a Department Lead Project* manual code. The Department received several comments on the manual code. This document represents the Department's response to the written comments on the guidance. To facilitate the responses, the Department may have paraphrased, rephrased, condensed, or consolidated comments. Thank you to all for taking the time to review and comment on the manual code.

Comments Received

Comment 1: Matthew Wykle, Natural Heritage Conservation Bureau

I'd like to provide some input on this manual code with regard to endangered and threatened species permits (29.604(6)). These permits are currently issued to individuals, not for projects. The current policy for DNR staff is that they do not need a permit if the work they are conducting is specified as part of their official duties in their job description or contract, because the DNR has effectively given them a permit by authorizing the work in the PD or contract. If they want to work with listed species outside of their official duties, they would need an E/T permit. I'm not aware of this in statute or administrative code though; I do have documentation (attached) in the form of an email exchange between the then E/T permit coordinator and DNR legal.

In reading the current manual code draft, it seems like any staff working with listed species will be required to apply for and receive an E/T permit, because there isn't anything in statute or administrative code that says otherwise; there could be a broader statute that speaks on working within the scope of one's position that I'm not aware of. The result would be hundreds of DNR staff requiring permits to conduct work defined in their position descriptions, an increased workload on Natural Heritage Conservation staff to review and process applications and annual reporting that will likely be duplicative of other reports already being generated.

My interpretation of the intent of E/T permits is to ensure that any work done with E/T species is not detrimental to the survival of the species as a whole and is done by a qualified individual. An additional outcome of the permits is that we receive valuable information on listed species through annual reports. I believe both of these outcomes are currently happening when DNR employees are working with E/T species.

Our conversation clarified the intent of the manual code for me, but again, I'm not aware of the documentation that exempts staff working within the scope of their position from needing an E/T permit.

Action- Met with DNR attorney Quinn Williams and decided that the intent of the MC did not include having NHC staff to receive an Incidental Take as a part of their regular job duties handling ER species.

Comment 2: Sue Beyler, Fisheries Supervisor

I reviewed the draft manual code on approval requirements for department led projects. For a number of years, some of us in fisheries have been hoping for a MOU between fisheries and watershed for our trout habitat projects that would remove the requirement for obtaining WRZ permits for these projects. This manual code appears to eliminate that possibility. A MOU would have relieved fisheries staff of the time required to create and submit materials for the permit process which, at times, can be substantial. Given that we are, again, going to lose staff positions, anything that would have reduced staff time needed to apply for permits would have been welcome. Most of our trout habitat projects use techniques and methods that have a long history of success, and all of our trout projects are overseen by fisheries professionals with years of experience doing this work. I feel this clearly defines us from a landowner who may be interested in doing a similar project in waters within their property, but does not possess the knowledge and experience of trout habitat improvement that our professional staff have. In fact, our professional staff often work with landowners who wish to undertake habitat improvement projects, advising them on the various methods and structures and giving them the benefit our experience. I feel the manual code should provide for a MOU involving projects that use proven trout habitat techniques, such as those presented in Robert L. Hunt's Trout Stream Therapy (Bob was a WDNR fish manager). A MOU for these relatively "routine" projects will free up time for both fisheries and watershed staff to focus on the more complex projects proposed by WDNR fisheries, and to provide timely service to the many outside customers they have. Please consider a revision that would provide for a MOU in these cases.

Recommended Action-

Any alterations to waterways and wetlands by Department staff should receive a permit prior to work being completed. No action recommended.

Comment 3: David Kafura, Forestry Specialist

– I've read the draft manual code on self-permitting process for DNR led projects. It is strangely familiar to our existing MC 3565.1 (activities near navigable waters) in scope and the encompassing statutes include Ch. 30, 31, and 281. Yet, the draft out for review states that it is not replacing nor rescinding any existing MC's.

Can you tell me if the intention is to use this new draft MC once finalized for addressing ALL permits. If so, then isn't it the case that MC 3565.1 will become obsolete and no

longer needed? I'd appreciate knowing the direction that the Waters Division envisions handling future internal applications for DNR led projects and if 3565.1 will be used in conjunction with this new draft MC, or will it disappear altogether. If 3565.1 is intended to remain (and Water Division has been modifying/updating a revised draft), how do you see the two co-existing?

Recommended Action-

This MC is for overall Department actions. Bureaus/programs may create a subset complementary code that further details their process specifics for self-permitting like the revisions to 3565.1 for Waterways and Wetlands self-permitting. This MC is the overarching policy; other specific MC that a Bureau/program would decide to enact would be a more detailed subset of information.

Comment 4: Melissa Tumbleson, Natural Heritage Conservation Bureau

The Endangered Resources Review Program is submitting the following comments on the Self-Permitting for Department Led Projects Manual Code:

Section IV. Procedure, Step 3

Replace "Consults Natural Heritage Inventory" with "Completes an Endangered Resources (ER) Review through the NHI Portal as described by Manual Code 1753.1, unless the project is covered by the No/Low Broad Incidental Take Permit/Authorization and is therefore exempt from needing an ER Review."

Action- MC updated with suggested language change.

Comment 5: Jim Pardee and Dave Siebert, Office of Business Sustainability Support

I have four comments on this proposed manual code.

First, I think it's a great idea. The Department needs to demonstrate to the public that statutory and administrative standards are consistently applied, whether the applicant is an individual, an industry or the agency.

Secondly, Step 1 in the process for Department Led Project Manager should be revised as follows:

Step 1- Consults with the Policy/Permit Lead(s) and regional Environmental Analysis staff or WEPA Coordinator, as appropriate, to determine what Permits may be needed and what measures in ch. NR 150 will be required to comply with WEPA.

Thirdly, Step 2 in the process for Department Led Project Manager should be similarly revised:

Step 2- If an environmental impact statement (EIS) will be prepared pursuant to s. NR 150.20(4) coordinates with regional Environmental Analysis staff or the WEPA Coordinator to complete EIS measures required by ch. NR 150 before continuing to step 3. If an EIS will not be prepared, continue to step 3.

Finally, Step 3 in the process for Program Permit Lead(s) is incorrect for the following reasons:

- Manual Code 1606.1 is out of date,
- The Department no longer prepares environmental assessments under the revised NR 150, and
- The October 9, 2009 guidance memo is no longer in effect.

Step 3 should be revised as follows:

Step 3- Processes Environmental Assessment, if required, in accord with M.C. 1606.1 and subsequent ch. NR 150, Wis. Adm. Code, guidance dated October 9, 2009 ensures compliance with ch. NR 150 in consultation with regional Environmental Analysis staff or WEPA Coordinator as appropriate.

Dave/Jim later recommended removing Step 2 in the procedure section for the Department Led project manager which removed redundant WEAP language and He also recommended removing the reference to Env Assessments and 1606.01.

Action- MC updated with suggested language changes.

Comment 6: Tanya Lourigan, Water Management Engineer

I have just one comment/question for this draft manual code. I'm not clear if the Program Permit Lead signs the approval/denial or if it needs to be signed higher up (e.g., Water Leader). I usually sign the Ch 31 permits but I've been told the Water Leader needs to sign approvals/denials for Department led projects. My understanding is that the approval/denial signature has been handled differently in different regions.

Action- Added language referring signature authority to delegation manual code.

Comments 7: from Waterways and Wetlands Program via Martye Griffin:

A. The Title block indicates that this is a new MC and does not rescind or replace any other MC? I think we would have to rescind our waterway and wetland project MC 3565.1 correct? I am not sure if other programs have similar. I know that Fisheries Bureau may have MC on what is considered for their program a department led project.

Action- This MC is for overall Department actions. Bureaus/programs may create a subset complementary code that further details their process specifics for self-permitting like the revisions to 3565.1 for Waterways and Wetlands self-permitting. This

MC is the overarching policy, other specific MCs that a Bureau/program would decide to enact would be a more detailed subset of information.

B. The second paragraph of the Scope lists several administrative rules. NR 323 is listed, but none of the other NR 300 series rules promulgated under Ch. 30. Just want to make sure we are to assume that since the MC applies to Ch. 30, it also applies to all the rules promulgated under Ch. 30, and not just some rules?

Action- Added additional NR 300 series to applicability section.

C. The definition of Department led project is a little confusing. If the activity is initiated and primarily managed by a cooperator- the way cooperator is defined and the way department led project is defined – corporations and individuals could qualify for a department led project as long as they initiate and primarily manage the activity?

Action- Removed “cooperator” reference from Department Led Project definition section. Only an Agent of the Department or Department employee may be a Department Led Project Manager.

D. I think there will be some confusion on what initiate means and what primarily managed means in the definition of department led project. For example does this mean projects where the funding for the project comes completely from outside entities (or perhaps I guess they would be cooperators), the DNR helps plan and provide on-site support for the project, and the actual labor, back hoe work is done by the cooperator, and totally on private or cooperator owned property. That would be a department led project? I know Fisheries bureau has made a policy that the scenario I described would NOT be considered a department led project and be subject to a MC under the 3565.1 MC. Their cut off for department led project was private vs public property. I tend to agree. A cooperator could do a project and get permit fees waived because it is a department project where a competitor may not? Plus they didn't want the liability to basically be signing off on a department project on private property where we have little control over the project once it is completed. What about the flip side. Project where we are the funding source, but a cooperator actually does the project – that is considered a department led project?

Action- Removed “cooperator” reference from Department Led Project definition section. Only an Agent of the Department or Department employee may be a Department Led Project Manager with a Department Led project.

E. Procedure section – memo was not attached to the draft MC document posted online. Procedure section – “submits application to the program permit leads”- I know for the water division we should be submitting using the e-permit system to central intake that routes to permit leads. This is because we already have a tracking system in place so we can report out on department led projects, and the public can easily see all

the notices that we are now required to do under the new MC. Just want to make sure there is flexibility for the programs in how to do these process steps.

Action, yes flexibility with how permit is routed is implied. Some programs have centralized permit intake and then the first step would be the submittal to intake instead of the Program Permit Specialist. This can be detailed in the revisions of 3565.1 MC.

F. Procedure section – “process environmental assessment if required...” – I think that they are all now called EIS and NR 150 is under emergency rule. Might be good to have the EA program get the references correct for the process of an EIS. I am pretty the guidance dated 2009 is no longer good.

Action- MC updated with suggested language changes from Jim Pardee.

G. Issue resolution section:

I have a question on when this issue resolution process can be started. Is this for after the first meeting. Or is this for after the final decision. Or can this be initiated at any time for either party?

Action- MC updated with suggested language changes indicating that issue resolution can happen at any time in the process.

Comment 8: Operations Management Team

Are all fees intended on being waived with this manual code? What if there is a statutory requirement for the Department to collect fees for permits/approvals? Can these fees continue to be collected?

Action:

Manual Code adjusted to reflect that in situations where there is a state statute, administrative code or federal regulation that requires the department to pay the department a permit application fee, those fees will continue to be collected. Other permit fees will be waived.

Comment 9: from citizen Keith Pamperin

What are self permitted Department led projects and how does that impact citizens and the environment?

Action: Email response sent to Keith with project examples and also explained that the goal of the manual code is to ensure that the department is following the same permit approval processes (where required) that we would expect the public to follow.