

Publication – Guidance for Submittal of Delineation Reports to the St. Paul District Army Corps of Engineer and the Wisconsin Department of Natural Resources

Two sets of comments were received. A summary of the comments, along with DNR’s response, is included in the following table. Complete comments can be found after the summary.

Summary of Changes Based on Public Comments

Number	Comment Provider	Public Comment	DNR Response	Edits
1	Inga Foster, Enbridge Energy Company, Inc.	<p>To begin, Enbridge is interested in more information about why the Guidance is being updated at this time. Although the existing guidance was developed in 1996, the age of the document alone does not make the case for why the agencies believe an update is necessary. Enbridge recommends that the regulated community be provided with substantive reasons why the Guidance update is warranted, particularly at this time when:</p> <ul style="list-style-type: none"> A) The EPA/Corps federal rulemaking for defining Waters of the US (WOUS) is open for public comment; B) the Corps Midwest and Northcentral/Northeast Regional Supplements are in use and demonstrate the required information for delineations in Wisconsin; and, C) the revision of the 1987 Corps wetland delineation manual is underway. 	<p>Techniques and approaches to wetland delineation have been refined and improved over the past 16 years. For example, since the 1996 guidance was published, the regional supplements have been published, better field indicators for hydric soil identification have been developed, and the <i>National Wetland Plant List</i> (NWPL) has been updated. The 1996 guidance does not take any of these new guidance/reference documents into account. The proposed document provides guidance on the updated techniques, and standards for submitting wetland delineation reports common to wetland regulatory agencies in Wisconsin. Using the guidance will help regulatory review agencies more efficiently review delineation reports for essential components.</p> <p>The regional supplements, although more specific than the 1987 Wetland Delineation Manual, describe indicators and landscapes that are not found in Wisconsin. The proposed document was developed specifically for Wisconsin.</p> <p>See response to Comment 2 regarding other federal guidance that is currently being developed.</p>	No

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2	Inga Foster, Enbridge Energy Company, Inc.	<p>Enbridge encourages the DNR and Corps to provide details about why the agencies propose to publish the Guidance in advance of the federal WOUS rulemaking and in advance of Version 2.0 of the 1987 Manual. In Guidance "Section 1.1 Update to Corps Manual (Version 2.0)," the agencies acknowledge that the Guidance <i>"will need to be updated as necessary once the public review process for Version 2.0 has been completed and adopted for regulatory implementation."</i> At issue is whether the document will need to be revised in the near future based on both the results of the WOUS rulemaking and the update to the 1987 Manual.</p> <p>Effectively, the agencies are expecting stakeholders to review three versions of the Guidance (the current proposed edition, and two potential updates after federal WOUS rulemaking and the 1987 Manual Version 2.0). The level of review required to provide substantive comments on three updates to the Guidance is burdensome to the regulated community. Enbridge recommends that the 1996 version of the Guidance is used in concert with the Regional Supplements and the requirements for delineations therein until the WOUS Rule is finalized and Version 2.0 of the 1987 Manual is published.</p>	<p>The WOUS guidance document is for federal purposes only, and has no impact on what the state regulates as a "Water of the State". In addition, the WOUS does not provide guidance on delineating wetlands or preparing wetland delineation reports. Furthermore, to determine if a water feature is a WOUS, it will need to be reviewed by either the Corps or EPA, and as such will still need to be delineated as described in this guidance before a decision on its federal jurisdiction is made.</p> <p>The update to the 1987 Wetland Delineation Manual has been under development for a number of years, and it is unclear when/if it will become adopted as official guidance. If needed, the proposed guidance will be updated to reflect any discrepancies between it and any officially adopted, updated wetland delineation manual.</p> <p>Because this document stands alone from the WOUS guidance, and because it is unclear if/when an updated wetland delineation manual will be available, the proposed guidance will be used for submitting wetland delineation reports in Wisconsin.</p>	No

Number	Comment Provider	Public Comment	DNR Response	Edits
3	Inga Foster, Enbridge Energy Company, Inc.	<p>...there appears to be some discrepancy in the way that off-site methods either will or ...will not be accepted by the agencies as a valid method of review. For example, in "Section 3.1 Off-Site Methods" the off-site review of aerial photos and soils maps can be used "to identify potential wetland and aquatic resources. This review can provide the basis for a wetland determination <i>when a site- visit is not possible or deemed necessary</i> (emphasis added)." This contradicts a statement in "Introduction - Purpose and Background of Guidance" that "determinations cannot be used for making permit related decisions in areas located in or directly adjacent to wetlands." If the agencies determine that a permit is not necessary for the proposed work, then that determination is itself a "permit-related decision" that the agencies should be able to make based on a wetland determination.</p> <p>Determinations, including those generated through off-site methods, could also be used for permit-related decisions when the entirety of the proposed project is within a wetland, e.g. a sizeable bog. That is, if the wetland boundary completely encompasses the proposed work, a determination could be sufficient for the agencies to make a permit decision if the project has followed wetland sequencing, is the least environmentally damaging practicable alternative, etc. It seems overly narrow for this guidance to entirely remove the wetland determination approach from possible permit decision making by the DNR and the Corps.</p>	<p>The intent of the introductory language is to make it clear that a wetland determination is not a substitute for a wetland delineation. For example, if an applicant wants to develop a project in non-wetland areas to avoid the wetland permitting process, and wetlands or wetland indicators are mapped within the project area, the wetland boundaries would need to be delineated – a wetland determination would not suffice.</p> <p>If a project is going to be constructed entirely within a single wetland, and there is no other alternative than to complete the project in a wetland, then a wetland determination <u>might</u> suffice. This decision would have to be on a case by case basis, based upon considerations such as construction methods, timing, scale of project, etc. For example, a wetland determination may be sufficient for a single utility pole replacement that occurs in a marsh, if installation is conducted entirely from an adjacent roadway. Approval from the appropriate agencies is required before deciding if a wetland determination will provide sufficient information for a project.</p> <p>The language in the introduction has been changed to <i>"Because wetland determinations are completed without regard to the accurate identification of wetland boundaries, determinations may not be appropriate for making permit related decisions in areas located in or directly adjacent to wetlands."</i></p>	Yes – top of page 2.

Number	Comment Provider	Public Comment	DNR Response	Edits
4	Jim McCarthy, Strand Associates, Inc.	Per Page 1, Paragraph 1 - I would think it would be ideal if this guidance were to be issued after the revised 1987 manual is issued. The revised manual may substantially reduce the amount of material that you would need in the "Guidance". <u>I understand that the date of a re-issuance would be hard to determine and you may need this "Guidance" now.</u>	The update to the 1987 Wetland Delineation Manual has been under development for a number of years, and it is unclear when/if it will become adopted as official guidance. If needed, the proposed guidance will be updated to reflect any discrepancies between it and any officially adopted, updated wetland delineation manual.	No
5	Jim McCarthy, Strand Associates, Inc.	<p>Per Page 12, Paragraph 2 - You may want to clarify if the last sentence means that delineations submitted outside of the growing season are <u>subject to special coordination and "may not be approved for concurrence until initiation of the growing season"</u>? The way the sentence is written implies that it cannot be approved until initiation of the growing season.</p> <p>(2a) Is that to mean that wetland delineations in Oct and November, completed before the end of the growing season, will always? OR may be approved prior to initiation of the next growing season?</p> <p>(2b) My main comment is that we are taking about 42% of the year away from governments in their design or decisions making process. Thus, my comments about a potential "subject to special coordination" insert.</p>	<p>This comment is related to wetland delineations completed outside of the growing season. Concurrence/confirmation of wetland delineations conducted outside of the growing season will not be granted until the following spring. This practice will protect the public, project proponents, and agencies from inadvertent wetland filling or the allowance of inadvertent wetland filling caused by inaccurate wetland delineations.</p> <p>Concurrence/confirmation for wetland delineations completed just prior to the end of the growing season may be granted if an agency field review is conducted before site conditions prevent a proper field evaluation.</p> <p>The language has been changed to <i>"For this reason, wetland delineations should not be conducted outside the growing season, and cannot be approved for concurrence until initiation of the next growing season. Concurrence for wetland delineations completed just prior to the end of the growing season may be granted if an agency field review is conducted before site conditions prevent a proper field evaluation."</i></p>	Yes – top of page 12

Number	Comment Provider	Public Comment	DNR Response	Edits
6	Jim McCarthy, Strand Associates, Inc.	Per Page 22, paragraph 5 (Item 3.7.4) - I believe that additional publically available aerial photography should be allowed for assessing Wetland Hydrology. <u>Data from the onset of on-line aerials from various governmental sources should be more readily accepted if date and seasonal conditions such as relative WETS data is known.</u> For example, Google Earth may have 5-10 years of photography available immediately online, whereas some USDA service centers may be overwhelmed with aerial photo imaging requests.	The first paragraph of 3.7.4 states that other acceptable photography can be used for off-site evaluation of wetland hydrology.	No

Inga Foster
Senior Environmental Analyst
Projects (US)



WDNR
Thomas Nedland
101 S. Webster St.
PO Box 7921
Madison, Wisconsin 53707-7921

June 23, 2014

Dear Mr. Nedland:

RE: Public Comment on *"Guidance for Submittal of Delineation Reports to the St. Paul District Army Corps of Engineers and the Wisconsin Department of Natural Resources"*

Enbridge Energy Company, Inc., Enbridge (U.S.) Inc. and its subsidiaries (collectively referred to herein as "Enbridge") appreciate the opportunity to review and comment on the proposed revisions to the "Guidance for Submittal of Delineation Reports to the St. Paul District Army Corps of Engineers and the Wisconsin Department of Natural Resources." Since 1949, the foundation of Enbridge's business has been the safe and reliable operation of company energy transportation facilities. Enbridge maintains the highest safety standards and best practices to protect employees, residents and natural resources along its pipelines.

As a member of the regulated community in Wisconsin, Enbridge frequently has cause to conduct wetland and aquatic resource delineations in the state to ensure that construction, maintenance, and mitigation activities associated with its petroleum pipelines and related infrastructure comply with or exceed all appropriate local, state, and federal requirements and national standards. In addition to governmental policy, rules, and law, Enbridge's operation of this critical energy infrastructure is also subject to rigorous internal environmental controls which have been in a continual process of improvement for more than 20 years.

In the review of the proposed Guidance for Submittal of Delineation Reports to the St. Paul District Army Corps of Engineers and the Wisconsin Department of Natural Resources (Guidance), Enbridge found it helpful that the agencies clearly identified and listed the documents that the Guidance is intended to supplement or replace. As part of the review, Enbridge identified several matters that it would like the DNR and the St. Paul District to clarify and/or address prior to the publication of the Guidance.

To begin, Enbridge is interested in more information about why the Guidance is being updated at this time. Although the existing guidance was developed in 1996, the age of the document alone does not make the case for why the agencies believe an update is necessary. Enbridge recommends that the regulated community be provided with

substantive reasons why the Guidance update is warranted, particularly at this time when:

- A) the EPA/Corps federal rulemaking for defining Waters of the US (WOUS) is open for public comment;
- B) the Corps Midwest and Northcentral/Northeast Regional Supplements are in use and demonstrate the required information for delineations in Wisconsin; and,
- C) the revision of the 1987 Corps wetland delineation manual is underway.

Enbridge encourages the DNR and Corps to provide details about why the agencies propose to publish the Guidance in advance of the federal WOUS rulemaking and in advance of Version 2.0 of the 1987 Manual. In Guidance "Section 1.1 Update to Corps Manual (Version 2.0)," the agencies acknowledge that the Guidance "*will need to be updated as necessary once the public review process for Version 2.0 has been completed and adopted for regulatory implementation.*" At issue is whether the document will need to be revised in the near future based on both the results of the WOUS rulemaking and the update to the 1987 Manual.

Effectively, the agencies are expecting stakeholders to review three versions of the Guidance (the current proposed edition, and two potential updates after federal WOUS rulemaking and the 1987 Manual Version 2.0). The level of review required to provide substantive comments on three updates to the Guidance is burdensome to the regulated community. Enbridge recommends that the 1996 version of the Guidance is used in concert with the Regional Supplements and the requirements for delineations therein until the WOUS Rule is finalized and Version 2.0 of the 1987 Manual is published.

In regard to the content of the Guidance, there appears to be some discrepancy in the way that off-site methods either will or will not be accepted by the agencies as a valid method of review. For example, in "Section 3.1 Off-Site Methods" the off-site review of aerial photos and soils maps can be used "to identify potential wetland and aquatic resources. This review can provide the basis for a wetland determination *when a site-visit is not possible or deemed necessary* (emphasis added)." This contradicts a statement in "Introduction – Purpose and Background of Guidance" that "determinations cannot be used for making permit related decisions in areas located in or directly adjacent to wetlands." If the agencies determine that a permit is not necessary for the proposed work, then that determination is itself a "permit-related decision" that the agencies should be able to make based on a wetland determination.

Determinations, including those generated through off-site methods, could also be used for permit-related decisions when the entirety of the proposed project is within a wetland, e.g. a sizeable bog. That is, if the wetland boundary completely encompasses the proposed work, a determination could be sufficient for the agencies to make a permit decision if the project has followed wetland sequencing, is the least environmentally damaging practicable alternative, etc. It seems overly narrow for this guidance to entirely remove the wetland determination approach from possible permit decision making by the DNR and the Corps.

Enbridge appreciates that the DNR and the Corps St. Paul District have requested comments on this proposed Guidance and encourages both agencies to either establish a compelling purpose and need for the document to be updated at this time, or to wait for the federal WOUS Rulemaking and Version 2.0 of the 1987 Manual to be published before updating this Guidance.

Thank you for your consideration of these comments. If you have questions, please contact me at inga.foster@enbridge.com or (715) 398-4545.

Sincerely,



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Nedland, Thomas S - DNR

From: Mccarthy, James <James.Mccarthy@strand.com>
Sent: Monday, June 23, 2014 5:14 PM
To: Nedland, Thomas S - DNR
Cc: Lindert, Jon
Subject: WDNR Public Notice: Submittal of Delineation Reports to the St. Paul District Army Corps of Engineers

Hi Tom -

I just wanted to submit a few comments related to the following public notice:

Submittal of Delineation Reports to the St. Paul Wetlands District Army Corps of Engineers and the Wisconsin Department of Natural Resources	Comment period open until June 23, 2014	Proposed guidance document [PDF]	Tom Nedland	Send comments to Tom Nedland
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(1) Per Page 1, Paragraph 1 - I would think it would be ideal if this guidance were to be issued after the revised 1987 manual is issued. The revised manual may substantially reduce the amount of material that you would need in the "Guidance". I understand that the date of a re-issuance would be hard to determine and you may need this "Guidance" now.

(2) Per Page 12, Paragraph 2 - You may want to clarify if the last sentence means that delineations submitted outside of the growing season are subject to special coordination and "may not be approved for concurrence until initiation of the growing season"? The way the sentence is written implies that it cannot be approved until initiation of the growing season.

(2a)
Is that to mean that wetland delineations in Oct and November, completed before the end of the growing season, will always? OR may be approved prior to initiation of the next growing season?
(2b) My main comment is that we are taking about 42% of the year away from governments in their design or decisions making process. Thus, my comments about a potential "subject to special coordination" insert.

(3) Per Page 22, paragraph 5 (Item 3.7.4) - I believe that additional publically available aerial photography should be allowed for assessing Wetland Hydrology. Data from the onset of on-line aerials from various governmental sources should be more readily accepted if date and seasonal conditions such as relative WETS data is known. For example, Google Earth may have 5-10 years of photography available immediately online, whereas some USDA service centers may be overwhelmed with aerial photo imaging requests.

Just some initial comments that I had. You may want to clarify if your special "wetland confirmation" will be complete prior to the implementation of this with USACE.

Thanks for your help.

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