

**State of Wisconsin
Department of Natural Resources
Responses to Comments**

**Wetland Screening and Delineation Procedures
September 2015**

The Wisconsin Department of Natural Resources (Department) issued a public notice on the proposed for “Wetland Screening and Delineation Procedures” on July 15, 2015 for a 21 day public comment period. The Department received 33 comments on the proposed guidance. Thank you to all reviewers for taking the time to review and comment on the proposed guidance. A summary of the public comments and DNR response is provided below. The original email comments are attached to this summary. The Department has made a number of changes to the guidance in response to the comments to clarify the intent of the Department and terms utilized in the document. However, due to the concerns expressed by trail and forestry groups the Department is continuing to work with those stakeholders to address those concerns and will be updating the guidance before full implementation on June 1st, 2016.

Comment #1 (Washburn County Forest Administrator, Great Lakes Legal Foundation representing WI Manufacturers & Commerce ,WI Builders Association, Aggregate Producers of WI, Associated Builders & Contractors of WI, Associated General Contractors of WI, WI Realtors Association, and NAIOP WI): Should be promulgated as a rule because it is a policy of general application with the effect of law. DNR has no explicit authority to impose these regulatory mandates.

DNR Response: The guidance document is not a rule. Section 227.01(13), Wis. Stats., and Wisconsin case law defines “rule.” A rule: 1) is a regulation, standard, statement of policy, or general order; 2) is of general application; 3) has the effect of law; 4) is issued by an agency; 5) is to implement, interpret, or make specific legislation administered by the agency. *Wis. Elec. Power Co. v. DNR*, 93 Wis. 2d 222, 287 N.W.2d 113 (1980). See also *Cholvin v. Department of Health and Family Services*. The guidance does not have the effect of law, as would be required to constitute a rule. The guidance document establishes the process for deeming an application complete. Any department determination that an application is incomplete does not amount to a denial of that permit. Because the guidance does not change the substance of what is required by applicants, it does not have the effect of law.

Moreover, specifically for the CAFO and Storm water programs, the guidance does not have the effect of law. The requirement to identify wetlands comes from chapters NR 216 and NR 243, and applies regardless of this guidance. Applicants that are meeting the standards set forth in law are submitting information in a certain chronological order per this guidance, but their eligibility for permit coverage is not substantively affected.

The document does not establish any standards that are not set forth in code. Instead, it provides a transparent and consistent process for its interpretation of those rules. Case law

supports that an agency may have a policy manual interpreting rules. “An agency may use policies and guidelines to assist in implementing admin rules as long as consistent with the legislation. As long as the document simply recites policies and guidelines, without attempting to establish rules or regulations, use of the document is permissible.” *Tannler v. DHSS*, 211 Wis. 2d 179, 187, 564 N.W.2d 735 (1997). Materials developed by an agency as a reference aid for its staff that are couched in terms of advice and guidelines rather than setting forth law-like pronouncements are not a rule within the meaning of sub. (13) because they are not intended to have the effect of law. *Chenequa Land Conservancy, Inc. v. Village of Hartland*, 2004 WI App 144, 275 Wis. 2d 533, 685 N.W.2d 573, 03-2486.

Comment #2 (Paul Kent representing the League of WI Municipalities-Local Stormwater Group and WI Realtors Association) The screening criteria is overbroad. Delineations for everything that is a topographic depression is overbroad. Requiring delineations when aerial photos show standing water is unwarranted. Too few DNR staff or assured delineators will result in development gridlock. Wetland delineations should only be required if there is a substantial likelihood that a wetland is present.

DNR Response: The department has clarified that in areas that are currently developed in impervious surfaces no wetland review is necessary. Also the department clarified that the initial screening does not involve onsite investigation of the project area. While one may may not show wetland characteristics, another map may appear to exhibit wetland characteristics. As wetland determination to identify the presence or absence of wetlands will ensure that applications will not be delayed during the permitting process and that the department is fulfilling its regulatory responsibility to protect Wisconsin’s wetlands.

Comment #3 (Midwest Environmental Advocates, Wisconsin Wetlands Association) Off-site wetland should be identified to comply with both NR 151 and NR 103 and describe how off site wetland may be indirectly impacted by a proposed project. The wetland screening process should be used for all projects. Off-site wetland reviews limited to 100 ft. is insufficient.

DNR Response: The department reduced the offsite wetland review to 75 feet from the project area to be consistent with the protective area standards. The purpose of the guidance is to establish procedures for submittal of permit applications, not the regulatory requirements for the review of CAFO, Stormwater, Waterway or Wetland Permits. Under NR 103 the department does have to consider the potential secondary impacts to wetlands onsite and offsite but there are no distinct regulatory requirements such as the protective area standards in NR 103. Staff will continue to use the same internal procedures for review of applications.

Comment #4 (Associated Builders & Contractors, SHE, Stantec, GRAEF) Limited growing season will overwhelm DNR staff and delay projects, creating uncertainty, a backlog in construction projects and increase costs.

DNR Response: The department has clarified the reference regarding the growing season to identify that wetland determinations or delineations should not be conducted outside of the growing season. Determinations or delineation conducted outside of the growing season will require field-verification during the growing season prior to final concurrence as required in the joint “Guidance for Submittal of Delineation Reports to the St. Paul District Army Corps of Engineers and the Wisconsin Department of Natural Resources” found at see <http://dnr.wi.gov/topic/wetlands/documents/FinalWisconsinDelineationGuidance.pdf>

Comment #5 (Associated Builders and Contractors, Forests and Parks Administrator Bayfield Co., Washburn County Forest Administrator, SEH) Expanding the protective area to 100 feet expands the area needed for a compliance review for land they may not have access to, will increase costs and is arbitrary.

DNR Response: The guidance does not require delineation of wetlands offsite, but suggests the use of online mapping tools to measure the anticipated distance between the project area and the potential wetland. These offsite reviews are only necessary to determine if the project is in compliance with the protective area standards in NR 151, Wis. Admin. Code.

Comment #6 (Governor's Snowmobile Recreation Council, Forests and Parks Administrator Bayfield Co., Washburn County Forest Administrator, Sheboygan County Director of the Assoc. of WI Snowmobile Clubs, WDNR Forestry Division) This would create unnecessary hardship on snowmobile clubs that are doing the maintenance work. Trails are primarily located on property privately owned. Snowmobile program is already short of funds. When we are dealing with many miles of linear trail for any given project, it could involve numerous water reg permits. In the end this requirement would not provide any additional level of wetland protection and will create confusion. There should be a difference between the need for a delineation for complex sites and simple sites.

DNR Response: DNR Wetland policy staff met with DNR Parks and Trails staff on 8/26/15 to discuss delineation requirements for trail/ATV/Snowmobile related projects. DNR Wetland policy staff committed to reviewing potential delineation exemption scenarios from DNR trails staff and also to attend the end of Sept WCFA meeting for external partner ideas/feedback.

Comment #7 (Brown County Land & Water Conservation Department) DNR permitting is resulting in project delays or cancellation of projects that are aimed at reducing the phosphorus and sediment loading into waterways. DNR should follow ACOE rules that all 3 wetland criteria must be present to be a wetland. Indicator soils map is too broad and hydrophytic vegetation should be looked at all year, except when there is snow cover.

DNR Response: This guidance does not change or modify what falls within the regulatory definition of a wetland, but merely provides a procedure for applicants to follow in submittal of permit applications. The Department follows the same manuals and procedures for the identification of wetlands.

Comment #8 (American Council of Engineering Companies of WI, Wisconsin Wetlands Association) Consider adding a definition of "project site" and additional guidance or online resources for step 3, clarification of step 2 regarding the potential presences of drainage ways. Suggests the use of the wetland clues checklist and clarify how to review aerial photography.

DNR Response: The Department has included examples for what to look for in maps to identify areas of potential areas of wetland.

Comment #8 (American Council of Engineering Companies of WI, Enbridge Energy, Kunkel Engineering) A variance process should be included. What about local municipal projects that require an NOI but are not going through DOT liaison or Office of Energy projects.

DNR Response: The Department has further clarified that this guidance does not apply to transportation and energy projects that are administered by the Department's Transportation Liaisons or through the Department's Office of Energy.

Comment #9 (SEH, Director of Government Affairs Dairy Business Association, Cardno Engineering & Consulting, Thompson and Association, Miller Engineers, Lynch & Associates, Davel Engineering, Cooper Engineering, GRAEF) Process would add to DNR staff workload and there are not adequate staff or assured delineators. This will result in project delays.

DNR Response: The Department is actively promoting the assured delineator program and is trying to increase the capacity of that program and the Wetland Identification Program.

Comment #10 (Paul Kent representing the League of WI Municipalities-Local Stormwater Group and WI Realtors Association, Kapur & Associates) Many areas of hydric soil are no longer wetland because they are prior converted, lost wetland criteria due to urban development, or are in impervious surfaces.

DNR Response: The Department has clarified that if the project area is already in impervious surfaces such as building, roads, driveways or parking lots, no onsite wetland review is necessary.

Comment #11 (City of Beloit, Director of Public Works/City Engineer City of Muskego) A wetland delineation has no benefit to the applicant and the department should not charge a fee. A wetland delineation should not be necessary if the entire project is in a wetland. Delineations should be reviewed within 14 days or it is automatically concurred with.

DNR Response: The benefit of a wetland delineation is for the applicant to accurately determine where the wetland is located and identify opportunities to avoid and minimize wetland impact.

The purpose of this guidance is to encourage early identification of potential wetlands during the planning stages of development to ensure all options are explored to avoid or minimize wetland impacts and to reduce project delays. The department strives to review all delineations within 60 days of submittal. However, review of wetland delineations can be delayed due to submittal outside of the growing season.

Comment #12 (US ACOE) A concurred delineation is not a requirement for a complete application from the ACOE and should not delay from sending applications to the ACOE. Screening process and inclusion of wetland determination and wetland delineations in the same guidance may be confusing for the public. Guidance is inconsistent in some areas with existing ACOE/DNR guidance on the submittal of delineations, the 87 manual, and supplements. Please include hotline number for ACOE and vet any reference to the ACOE with them before finalization.

DNR Response: This will not result in a delay in permitting, but will allow for applications to be more complete and will reduce permitting delays. The Department has attempted to clarify the guidance to make the screening process more clear and identify the difference between wetland determinations and delineations. The Department also modified the guidance to reflect current ACOE manuals, supplements and guidance and has added a reference to the ACOE hotline number.

Comment #13 (US ACOE, Miller Engineering) There is no definition of project site.

DNR Response: The Department has added a definition of project area and has modified the document to consistently utilize that same term.

The final guidance was issued on **XXXX**, 2015.

If you have any questions, please contact Heidi Kennedy at (608) 261-6430 or heidi.kennedy@wisconsin.gov.

From: Tim Wittmann [mailto:tim@davel.pro]
Sent: Thursday, July 09, 2015 10:10 AM
To: Peterson, Cami L - DNR
Cc: John Davel
Subject: FW: WETLAND DELINEATION PRE-PUBLIC COMMENT MESSAGE

Ms. Peterson,

Will DNR be hiring additional staff to complete the wetland confirmation service reviews? If not, will Mr. Nedland be able to handle the entire State's non-assured wetland delineations in a timely manner and does the confirmation program have a regulated timeline so a delineation doesn't sit in queue indefinitely?

Thanks,

Tim Wittmann



From: Day, Betsey [mailto:Betsey.Day@stantec.com]
Sent: Thursday, July 09, 2015 2:19 PM
To: Peterson, Cami L - DNR; Nedland, Thomas S - DNR
Subject: RE: New Wetland Screening and permit procedures

Interesting. You guys are going to have quite the workload during growing season. Is there truly a requirement under the Corps manual that the growing season is the only viable time for delineations to take place?

Does the Department have a plan for more efficient processing of applications for Assured delineators? I'm not looking for it for myself, but Eric Parker (just one example) is probably one of the most experienced and capable delineators in the state and my understanding is that his application has been held up for years.

Also, what will DNR be doing relative to large linear projects for concurrence? If the work is being done under the guidance of an Assured delineator, will the entire route's delineation be considered Assured?

Betsey Day

Stantec

Cell: (608) 712-2513

From: Don Neitzel [mailto:dneitzel@kunkelengineering.com]
Sent: Wednesday, July 29, 2015 9:40 AM
To: Peterson, Cami L - DNR; Nedland, Thomas S - DNR
Subject: RE: WETLAND DELINEATION PRE-PUBLIC COMMENT MESSAGE

Good Morning-

Wasn't sure who to respond to in regards to comments about the email below regarding wetland delineations. Will the WDNR be putting something on their website that further details what type of projects or situations will require this? I understand if a project is adjacent to a known wetland or even a questionable area, but what if a street reconstruction project, that would require a stormwater permit is not in the area of a known wetland. I'd just like to make sure that both my staff and I are clear on when we need to have this done and on what type of projects.

Any questions or if you'd like to discuss please feel free to contact me at your convenience.

Thanks



Don Neitzel
General Manager
Kunkel Engineering Group

Beaver Dam, Wisconsin

From: fish@greatlakeslegalfoundation.org [mailto:fish@greatlakeslegalfoundation.org]
Sent: Thursday, August 06, 2015 4:19 PM
To: DNR WY WRZ Guidance
Cc: fassbender@greatlakeslegalfoundation.org; Zipperer, Rich - GOV; Ignatowski, Katie E - GOV; Bruhn,

Michael L - DNR; Stevens, Patrick K - DNR

Subject: Comment on Proposed Guidance: Wetland Screening and Delineation Procedures

Ms. Warwick:

We are providing these comments on the subject proposed guidance on behalf of the following organizations.

Wisconsin Manufacturers & Commerce

Wisconsin Builders Association

Aggregate Producers of Wisconsin

Associated Builders and Contractors of Wisconsin

Associated General Contractors of Wisconsin

Wisconsin Realtors Association

NAIOP Wisconsin

Our position is the proposed guidance is a rule and therefore should be promulgated as such following the rulemaking procedures set forth in Wis. Stat. Ch. 227.

The Associations appreciate having the opportunity to comment on the Proposed Guidance. Please let us know if you have any questions.

Corydon Fish

Great Lakes Legal Foundation

fish@greatlakeslegalfoundation.org

608-310-5315

Robert Fassbender

Great Lakes Legal Foundation

fassbender@greatlakeslegalfoundation.org

608-310-5315

August 6, 2015

Via Email: DNRWYWRZGuidance@wisconsin.gov

Shelley Warwick
Section Chief
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, WI 53707-7921

RE: Proposed Guidance: *Wetland Screening and Delineation Procedures*

Ms. Warwick,

Thank you for this opportunity to provide these comments on the subject proposed guidance on behalf of Wisconsin Manufacturers and Commerce, Wisconsin Builders Association, Aggregate Producers of Wisconsin, Associated Builders and Contractors of Wisconsin, Associated General Contractors of Wisconsin, Wisconsin Realtors Association, and NAIOP Wisconsin (Associations). Our position is the proposed guidance is a rule and therefore should be promulgated as such following the rulemaking procedures set forth in Wis. Stat. Ch. 227.

The breadth of the proposed guidance document, entitled *Wetland Screening and Delineation Procedures* (Proposed Guidance), cannot be understated. The Proposed Guidance attempts to mandate conditions of approval for permit applications under the Waterway and Wetland Protection Program, Wis. Stat. § 281.36, the Storm Water Program, Wis. Stat. § 283.33, and the Concentrated Animal Feeding Operation Program, Wis. Stat. § 283.31.

The Associations' members require permits relating to the waterway and wetland protection program, the storm water program, and the concentrated animal feeding operation program, and thus, have a substantial interest in the Proposed Guidance. The Proposed Guidance changes criteria for aspirant permittees, which in turn, will affect permittees' ability to receive permits necessary to undertake projects that would add jobs and help invigorate Wisconsin's economy.

Summary

Associations believe that the Proposed Guidance is invalid because it is inconsistent with the promulgation process set forth in Wis. Stat. Ch. 227. Changing the requirements for deeming a permit application complete by mandating that a wetland delineation or documentation of no wetlands present must be turned in prior to the Department of Natural Resources (DNR) deeming the application complete and reviewing it, and standardizing the application review procedure, is a policy of general application with the effect of law, i.e., a rule. Therefore, the wetland delineation review must go through the proper rule promulgation process under Chapter 227. If

not properly promulgated, the delineation review and other requirements in the Proposed Guidance are invalid under Wis. Stat. § 227.40(4)(a).¹ Associations are further concerned that DNR may be acting without explicit authority to impose these regulatory mandates. If DNR chooses to move forward and promulgate these mandates as a rule, then DNR will have to cite explicit authority.

Background: Guidance is a Poor (and Unlawful) Substitute for Rulemaking

State agencies have momentous power over Wisconsin citizens, landowners, and businesses.² Surveys of businesses consistently cite regulatory burdens as one of the main limitations on job growth.³ Recognizing the sometimes severe impacts of regulatory programs on the business community and individual liberties, Wisconsin's legislature and governors went to great lengths to assure agencies follow a well-defined process to preclude regulation by agency fiat. This process is set forth in Wisconsin statutes in Subchapter II of Chapter 227, Administrative Rules. Many of the procedures, the bulk added by 2003 Wis. Act 118 and 2011 Wis. Act 21, mirror the federal Administrative Procedure Act and related court decisions. These statutory procedures are extensive, and include requirements relating to:

- Preparation and Approval of Scope Statement
- Rule Drafting Protocols
- Preparation of Economic Impact Analysis
- Review by Legislative Council Rules Clearinghouse
- Agency Public Hearing
- Initial Regulatory Flexibility Analysis
- Submission of Final Draft Rule to Governor
- Submittal of Rule to Legislature
- Standing Committee Review
- Joint Committee for Review of Administrative Rules (JCRAR).

¹ Wis. Stat. § 227.40(4)(a) states, "In any proceeding pursuant to this section for judicial review of a rule, the court shall declare the rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was promulgated without compliance with statutory rule-making procedures."

² If an administrative rule is properly adopted and is within the power of the legislature to delegate, there is no material difference between it and a law. 63 Atty. Gen. 159.

³ U.S. Chamber of Commerce, Small Business Survey, <https://www.uschamber.com/press-release/us-chamber-small-business-survey-shows-stalled-hiring-despite-increased-optimism>; The Economist, Red Tape Blues, <http://www.economist.com/news/united-states/21606293-small-businesses-fret-less-about-taxes-over-regulation-red-tape-blues>.

These procedural prerequisites to agency authority were thoroughly debated and enacted by Wisconsin elected officials.⁴ Any agency policies intending to have the “effect of law” which are not duly promulgated in accordance with these procedures are invalid and unenforceable.⁵

Wetland Delineation evaluation meets the definition of a rule and therefore must be properly promulgated

The Proposed Guidance changes the permit application submittal and wetland delineation evaluation processes, which may affect permit applicant’s ability to receive or modify permits. If DNR intends to change the permit application process and standardize the method by which DNR staff evaluate wetland delineation reviews, then they need to go through the proper rule promulgation process, not use a guidance document.

Under Wis. Stat. § 227.10(1), “any statement of general policy or interpretation of a statute adopted to govern enforcement or administration of that statute must be promulgated as a rule.”⁶ Wis. Stat. § 227.01(13) defines a rule as, “a regulation, standard, statement of policy, or general order of general application which has the effect of law and which is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency.” The *Cholvin* Court helpfully broke down Wis. Stat. § 227.01(13) into a five element test:

1. A regulation, standard, statement of policy or general order;
2. Of general application;
3. Having the effect of law;
4. Issued by an agency;
5. To implement, interpret or make specific legislation enforced or administered by such agency.⁷

The wetland delineation review is a statement of policy of general application, satisfying elements one and two of the *Cholvin* test. The wetland delineation review is a statement of policy because it creates a step-by-step process which all permit applicants under the waterway and wetland program, storm water program, and CAFO program *must follow* if a wetland is on or near the applicant’s site prior to the applicant’s permit application submittal being considered complete.⁸ The previous process did not require wetland boundary verification before the permit application submittal was considered complete.⁹ The Proposed Guidance also *requires* the

⁴ For a detail discussion on the rulemaking process, see, Wisconsin Legislator Briefing Book 2013-14; Chapter 5 – Administrative Rulemaking, http://docs.legis.wisconsin.gov/misc/lc/briefing_book/ch05_admrules.pdf.

⁵ See Wis. Stat. § 227.40(4)(a) providing that “the court shall declare the rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was promulgated without compliance with statutory rule-making procedures.” (Emphasis ours)

⁶ *Cholvin v. DHFS*, 2008 WI App 127, ¶ 21, 313 Wis. 2d 749, 758 N.W.2d 118.

⁷ *Cholvin*, 313 Wis. 2d 749, ¶ 22 (quoting *Citizens for Sensible Zoning, Inc. v. DNR*, 90 Wis. 2d 804, 814, 280 N.W.2d 702 (1979)).

⁸ Proposed Guidance, 4-6.

⁹ Proposed Guidance, 3.

evaluation of the review process to be standardized.¹⁰ This was not previously required.¹¹ The wetland delineation review is of general application because it applies to a general class of permit holders that it would uniformly apply to (applicants would have to file a delineation or documentation of no wetlands present).¹²

The wetland delineation review has the effect of law because the standardization of the process may affect the legal rights of permit applicants. Under the current process DNR notes that there are “inconsistencies between Department programs about what wetland information is required in a complete permit application and how to evaluate this wetland data.”¹³ DNR went on to state that “these [inconsistencies] lead to discrepancies in evaluating projects.”¹⁴ How staff evaluate permit applications is being “standardize[d]” and “improve[d].”¹⁵ Similar to *Cholvin*, where modified instructions to department personnel explaining how to enter data into a computer program was held to be a rule, the Proposed Guidance, modifies how DNR staff evaluate wetland delineation site reviews by standardizing the process.¹⁶ Legal rights of permit applicants may be affected because currently their wetland delineation portion of their permit applications are inconsistently evaluated and if this “guidance” is implemented the delineation portion of the application will (1) have to be filled out prior to the application being considered complete and (2) be reviewed in a standardized manner.¹⁷ This standardization could lead to some permits that would otherwise have been granted to be denied and vice versa. In addition, the fact that this Proposed Guidance gives DNR the authority to deem a permit incomplete by not filling out a delineation, which effectively denies the applicant the ability to move forward, has the effect of law because it concludes the permitting process.

Element four is indisputably satisfied because the changes to evaluating wetland delineation reviews in the Proposed Guidance are issued by DNR. Element five is satisfied because the wetland delineation reviews were created to implement the waterway and wetland permit program, storm water permit program, and CAFO permit program which are created in Wis. Stat. Chs. 281 and 283.

As all five elements of the *Cholvin* test are satisfied the wetland delineation in the Proposed Guidance is a rule. The only applicable exception might be Wis. Stat. § 227.01(13)(r), which provides for “a pamphlet or other explanatory material that is not intended or designed as interpretation of legislation enforced or administered by an agency, but which is merely informational in nature.” The Proposed Guidance standardizes the wetland delineation review procedure and method for determining whether a permit application is complete for permits DNR staff are required to administer by statute. Thus the exception does not apply because the Proposed Guidance is not “merely informational,” and (1) the standardization of the wetland delineation review, and (2) requiring review and approval prior to deeming a permit application complete is a rule under Ch. 227.

¹⁰ Proposed Guidance, 3.

¹¹ Proposed Guidance, 3.

¹² Proposed Guidance, 3.

¹³ Proposed Guidance, 3.

¹⁴ Proposed Guidance, 3.

¹⁵ Proposed Guidance, 3.

¹⁶ Proposed Guidance, 3; *Cholvin*, 313 Wis. 2d 749.

¹⁷ Proposed Guidance, 3-4.

Not following these regulatory mandates will result in denial of a permit and otherwise may substantially impact the business opportunities and legal rights of the applicant. For these mandates to be valid they must be properly promulgated in compliance with the statutory rule-making process.¹⁸ The two key components of the Proposed Guidance that have not gone through the process are therefore invalid. The Proposed Guidance should be withdrawn and if DNR determines the content of the Proposed Guidance is worthy of promulgation, then it should go through the correct process.

Lack of Statutory Authority

The Foundation is currently representing Wisconsin Manufacturers and Commerce, Dairy Business Association, Midwest Food Processors Association, and Wisconsin Potato and Vegetable Growers Association, in *New Chester Dairy et al. v. Wisconsin Department of Natural Resources et al.*¹⁹ In that case the intervenor associations argue that DNR overstepped its regulatory authority by conditioning the approval of New Chester Dairy's high capacity well permit on the installation of multiple groundwater monitoring wells despite the lack of explicit statutory or regulatory authority to do so.

Similarly, Associations have concerns as to whether DNR is acting here within their explicitly granted authority as required under 2011 Wis. Act 21. In that regard, DNR fails to cite any authority for the imposition of the requirements set forth in this guidance document. The fact that the Proposed Guidance is actually a rule means that if DNR chooses to move forward and go through the proper promulgation process they will have to cite such authority.²⁰

In conclusion, Associations believe that the key provisions of the Proposed Guidance constitute a rule under Ch. 227 and the guidance is, therefore, invalid and unenforceable.

The Associations appreciate having the opportunity to comment on the Proposed Guidance. Please let us know if you have any questions.

Sincerely,

Robert Fassbender Corydon Fish

Great Lakes Legal Foundation Great Lakes Legal Foundation
fassbender@greatlakeslegalfoundation.org fish@greatlakeslegalfoundation.org
608-310-5315 608-310-5315

CC: Rich Zipperer, Deputy Chief of Staff to Gov. Scott Walker
Katie Ignatowski, Deputy Legal Counsel to Gov. Scott Walker,
Mike Bruhn, DNR Assistant Deputy Secretary
Patrick Stevens, DNR Division Administrator for Air, Waste, and R&R

¹⁸ Wis. Stat. § 227.40(4)(a).

¹⁹ *New Chester Dairy LLC v. DNR*, No. 14-CV-1055 (Outagamie Circuit Ct.).

²⁰ Office of Governor Scott Walker, Executive Order #50: Relating to Guidelines for the Promulgation of Administrative Rules, https://docs.legis.wisconsin.gov/code/executive_orders/2011_scott_walker/2011-50.pdf.

From: Schneider, Brian [mailto:brian.schneider@graef-usa.com]
Sent: Wednesday, August 05, 2015 5:32 PM
To: DNR WY WRZ Guidance
Subject: Wetland Screening and Delineation Procedures Comment

I am concerned that this new procedure will increase the time and cost for new development. Specifically, on Page 6, *Options for Onsite Wetland Reviews*, the draft guidance states that "If a wetland determination results in the finding of no wetlands ... (the finding) should be submitted to the WIS for Department approval." My understanding is that the statutes authorize regulatory jurisdiction over impacts to wetlands. The regulatory authority does not include jurisdiction (regulatory review and approval) where there is no wetland and the potential need for a permit. And from a practical standpoint, proving the negative will add time and cost to the development process. Also, there is no time limit specified in the draft guidance for this department approval.

This requirement, and the new requirements under NR 151 for protective area standards, will create a higher demand for WDNR wetland staff and assured delineators even though the supply of qualified WDNR staff is limited and the supply of assured delineators is limited through the WDNR review process. It would therefore result in an increase the time and cost for new development. Based on this, the guidance should be evaluated to develop a full understanding of the overall time and cost implications with these implications clearly addressed in the document.

Thank you for your consideration,

Brian Schneider, P.E., MBA, LEED AP

GRAEF

One Honey Creek Corporate Center

125 South 84th Street, Suite 401

Milwaukee, Wisconsin 53214-1470

brian.schneider@graef-usa.com

414 / 259 1500

414 / 266 9284 direct

414 / 259 0037 fax

graef-usa.com

From: Paul Kent [mailto:pkent@staffordlaw.com]
Sent: Wednesday, August 05, 2015 4:27 PM
To: DNR WY WRZ Guidance
Cc: 'Larson, Tom'; 'Curt Witynski'
Subject: Comments on Wetland Screening

Attached please find comments on the wetland screening guidance.

**STAFFORD
ROSENBAUM
LLP** | Paul G. Kent
pkent@staffordlaw.com | 608.259.2665 | Fax. 608.259.2600 |
| 608.259.2637 Marjorie Irving – Legal Assistant |
222 West Washington Avenue, Suite 900
P.O. Box 1784 | Madison, Wisconsin 53701-1784
www.staffordlaw.com | [profile](#) | [vCard](#) | [Stafford Blogs](#)

Paul G. Kent
222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784
pkent@staffordlaw.com
608.259.2665

August 5, 2015

Via Email
DNRWYWRZGuidance@Wisconsin.gov

Ms. Shelley D. Warwick
V/I Department of Natural Resources
101 S. Webster Street
Madison, WI 53703

RE: Comments on DNR's Wetland Screening and Delineation Procedures Guidance

Dear Ms Warwick

We are writing today on behalf of the League of Wisconsin Municipalities Local Stormwater Group and the Wisconsin Realtors Association, with respect to the above referenced guidance.

We appreciate the effort to make the wetland delineation procedures more transparent. However, we have several concerns that should be addressed before the guidance becomes final.

1. Screening Criteria

Each of the three primary screening criteria are overbroad. The first step provides that the Department's surface water data viewer be consulted for the wetland and wetland soil indicators. It states, "if either of these two layers is present... a wetland review should be conducted on site." In many cases, that may be prudent, but to create a general obligation for an on-site evaluation merely because there are mapped hydric soils is not warranted. As you know, wetlands require hydrology and hydrophytic vegetation as well as hydric soils. Many areas of hydric soils are no longer wetlands. Some may be prior converted wetlands. Other areas may have lost wetland characteristics as a result of development; particularly in developed urban areas.

Step two in the guidance provides that topography should be reviewed. Again, that is a reasonable requirement in itself, but to require a wetland delineation for every site where there is a topographic depression is simply not warranted. Many topographic depressions are not wetlands.

The third step is to review aerial photographs. That is also a reasonable requirement but to state that any area of standing water or suppressed crops should require an on-site review is again unwarranted.

2. Constraints for On-Site Determinations and Delineations

If staff and resources are not a constraint, every construction site could have an on-site wetland determination or delineation. But, there are real world constraints for municipalities and developers that make this unworkable.

First, there is limited Department staff. That is a situation that is only getting worse with recent budgets. To wait until Department staff can concur on every wetland delineation is a prescription for development gridlock.

Second, while the Department has developed an "assured delineator" program, it is woefully limited. There are only 10 such persons for the entire state. In southeast Wisconsin, there are three. To expect that every site with any of the wetland indicators needs to have either a Department review or an assured delineator review again is a prescription for gridlock. There are also cost considerations. To have a wetland scientist at every site not only adds time for scheduling but significant additional costs.

Third, even if there were more staff or assured delineators, every time a delineation is required, it means that between late fall and early spring, no approvals can be granted. To create this kind of road block to projects is simply not acceptable.

3. A Third Option

As noted above, the basic indicators are not inappropriate as such. They only become inappropriate when they trigger a full scale determination or delineation for which there is neither staff nor time. Many of the sites with a wetland trigger could be evaluated with some kind of documentary review to eliminate sites which are clearly not wetland sites.

An on-site determination or delineation should not be required unless there is &

substantial likelihood of wetland conditions.

For example, a site that is proposed for redevelopment but shows historic hydric soils could be easily eliminated from a full delineation. Topographic depressions in urban upland areas could be eliminated. In short, there should be a middle step to allow for additional review but short of a full on-site determination or delineation so that only sites with true wetland potential are subject to this kind of intensive and costly review.

Very truly yours,
Paul G. Kent

PGK:mai
cc: Mr. Curtis A, \Mitynski
Mr. Thomas D. Larson

-----Original Message-----

From: Cameron, Tamara E MVP [mailto:Tamara.E.Cameron@usace.army.mil]
Sent: Wednesday, August 05, 2015 4:08 PM
To: DNR WY WRZ Guidance
Subject: comments (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Enclosed are our comments on the WDNR's proposed guidance titled "Wetland Screening and Delineation Procedures."

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS 180 FIFTH STREET EAST, SUITE 700 ST. PAUL, MN 55101-1678 REPLY TO
ATTENTION OF REGULATORY BRANCH

Operations – Regulatory 5 August 2015
(2015-02730-RMG)

Ms. Shelly Warwick
Wisconsin Department of Natural Resources
PO Box 7921 Madison, WI 53707-7921

Dear Ms. Warwick:

Enclosed for your consideration are the U.S. Army Corps of Engineers Regulatory Branch (Corps) comments on the Wisconsin Department of Natural Resources (WDNR) notice soliciting public comments on the draft guidance document "Wetland Screening and Delineation Procedures."

Due to the Corps and the WDNR joint application procedures, your proposal to alter the requirements for a complete application to the WDNR will result in additional time between WDNR application receipt and forwarding of the application to the Corps. This will lengthen Corps permit processing time and result in project delay for permit applicants. Further, a large body of wetland identification information that was coordinated between the Corps and WDNR is already available, which could be used to obtain compliance with this proposed guidance.

Please consider additional coordination with us prior to finalizing this guidance, so that we may both serve the public in a coordinated and consistent manner.

If you have questions, or if you would like to coordinate the content of the guidance with our agency, please contact Ms. Rebecca Graser in our Waukesha office at (651) 290-5728, or via email at rebecca.m.graser@usace.army.mil. In any correspondence or inquiries, please refer to the Regulatory file number shown above.

Sincerely,
Tamara E. Cameron
Chief, Regulatory B

MEMORANDUM FOR RECORD
FILE NUMBER: 2015-02730-RMG
DATE: 4 August 2015

SUBJECT: OP-R comments on draft Wisconsin Department of Natural Resources (WDNR) Wetland Delineation Guidance

1. An approved wetland delineation is not a requirement for a complete application to the Corps of Engineers (Corps). Due to the framework we have in place to share applications between the WDNR and the Corps in Wisconsin, making this a requirement for the state would artificially delay application receipt for our agency. To effectively serve the public, we request that we receive applications immediately vs. holding off on forwarding them to the Corps until delineation is received. Alternatively, if the guidance required an approved delineation prior to rendering a state permit decision, it would eliminate this delay in forwarding permit applications to the Corps.
2. Historically, the Corps received copies of state permits issued for activities, such as grading, in areas where wetlands were present but were not identified during the state review process. Ultimately, this guidance would result in more consistent regulatory decisions with regard to identification of wetland resources in Wisconsin.
3. The guidance is meant to clarify when a "wetland review" is needed, but this may be challenging for the general public to understand. For example, the guidance suggests, but does not clarify, that positive potential wetland findings during step 1 would limit the need to continue to step 2. A flow chart may more readily convey the steps in the process. Also, we recommend the term "wetland delineation" be used consistently instead of the term "wetland review."
4. We recommend that the existing body of online information relative to wetland identification be used in the guidance wherever applicable. Creating new methodology for these types of reviews is confusing for the public and may not result in acceptable documentation for the Corps. Specifically, the guidance should reference the joint agency "Guidance for Submittal of

Wetland Delineations to the St. Paul District Army Corps of Engineers and the Wisconsin Department of Natural Resources.” Additional reference to the “Corps of Engineers Wetlands Delineation Manual” (’87 Manual) and the Regional Supplements to the ’87 manual (Midwest and North central/Northeast) are recommended. Here are three examples we noted where extant information could be incorporated into the “Screening Process:”

- a. Soils data: Section 3.5 of our joint agency guidance indicates that online soils data is essential information for identifying the location of potential wetlands. However, this information is not referenced in this guidance.
- b. Air Photos: Our agencies have very thorough guidance for how air photos may be used to identify the potential for wetlands. Please see Appendix E and section 3.7.5 of our joint agency guidance.
- c. Offsite wetland reviews: our joint agency guidance describes “Off-Site Methods” in section 3.1. We recommend use of this information, with additional reference to Part IV of the ’87 manual.

5. The guidance does not define a project site. It would be helpful to clarify if the project site is synonymous with the activity area, the activity area requiring authorization from the WDNR, or the whole of the parcel. This will result in more concise evaluation, and less public expense associated with delineation of larger acreage than may be necessary.

6. We request that our contact information also include our regulatory hotline phone number: 800-290-5847, extension 5525.

7. We recommend that the language used to refer to the Corps be vetted by our agency prior to finalizing the guidance. Minimally, text indicating Corps ability to complete work for the public (in the absence of an application to the Corps) should direct them to contact us in advance of a request to ensure Corps staff are available. In many cases, it is more expedient for the public to comply with this guidance using another method. Further, the Corps does not have a formal process for wetland determination similar to the WDNR Wetland Identification Program.

8. It is confusing for the public to discuss wetland determination services in the same section as wetland identification. It may be more straightforward to keep the determination service of the WDNR either as a screening tool, or as an intermediate option between off-site review and full-blown delineation and re-focus the Onsite Options on wetland delineation.

9. The guidance should specifically address when a determination is sufficient, and when a delineation is required. Finally, it should be clear who has the ultimate responsibility to make that decision on a project-specific basis.

Rebecca Graser
WI Program Manager

Tamara Cameron
Regulatory Branch Chief
St. Paul District
U.S. Army Corps of Engineers
180 E 5th Street, St. Paul, MN 55082
ph: (651) 290-5197
fax: (651) 290-5330
tamara.e.cameron@usace.army.mil

From: Sarah Williams [mailto:swilliams@midwestadvocates.org]
Sent: Wednesday, August 05, 2015 4:05 PM
To: DNR WY WRZ Guidance
Cc: Enviro Enviro
Subject: Wetland Screening and Delineation Procedures comments

Good afternoon,

Attached please find comments regarding the DNR's proposed guidance document entitled Wetland Screening and Delineation Procedures. I submit these comments on behalf of Midwest Environmental Advocates.

Thank you,
Sarah Williams

August 5, 2015

Shelley Warwick
Wisconsin Department of Natural Resources
101 S Webster Street
Madison, WI 53703

Re: DNR Proposed Guidance Regarding Wetland Screening and Delineation Procedures

We appreciate the opportunity to submit comments to the Wisconsin Department of Natural Resources ("DNR") regarding its draft guidance for Wetland Screening and Delineation Procedures. Midwest Environmental Advocates, Inc. ("MEA") is a nonprofit Environmental law center that provides legal and technical assistance to communities and families working for clean air, clean water, and clean government.

We generally support the DNR's proposed guidance document. It provides additional clarity for DNR staff and permit applications to ensure compliance with wetland regulatory requirements. We offer the following comments regarding the section entitled "Options for Off-Site Wetland Reviews."

This section indicates that permit applicants must determine the location of wetlands close to the site that may be affected by construction discharges. The "Options for Off-Site Wetland Review" section indicates that permit applicants must examine the location of off-site wetlands to ensure compliance with Wis. Admin. Code § NR 151, which regulates stormwater discharges from the site. We understand that NR 151 is intended to limit discharges to ensure compliance with water quality standards, including the wetland water

quality standards in NR 103. However, the protection areas around wetlands in ch. NR 151 address only stormwater discharges to wetlands and do not address other wetland water quality standards meant to protect critical wetland functions.

Wisconsin law ensures the vitality of wetland water quality and other waters of the state influenced by wetlands through the protection of wetland functional values. The following wetland functional values are not protected by the NR 151 protection area limitations:

- Hydrologic functions including groundwater discharges to the wetland;
- Habitat for aquatic organisms and other wildlife; and
- Recreational, cultural, educational, scientific and natural scenic beauty values and uses.

Wis. Admin. Code § NR 103.03(1). NR 103 also provides several criteria that the DNR uses to assure that wetland function values are maintained or enhanced. Wis. Admin Code § NR 103.03(2).

We are concerned that the section of the guidance document entitled “Options for Off-Site Wetland Reviews” does not indicate that a permit applicant must also demonstrate that its project will comply with wetland water quality standards in NR 103 in addition to the stormwater discharge limitations in NR 151. This may lead to confusion among DNR staff and permit applicants regarding the purpose of the off-site wetland identification and review. The proposed guidance document should advise permit applicants how and when to screen and delineate wetlands where there is a potential for indirect impacts to wetland functional values. For example, a project may indirectly impact nearby wetland functional values where the project changes area hydrology, discharges pollutants to the wetland, disturbs wildlife, or introduces non-native plant species.

Comment:

We request that the DNR explain that a permit applicant must identify off-site wetlands to comply with *both* NR 151 and the wetland water quality standards in NR 103. We request that the DNR include in this section additional guidance regarding screening and Delineating wetlands that might be indirectly impacted by a proposed project. This will ensure transparency and consistency in the application of the law.

We thank you for the opportunity to comment. Please contact me if you have any questions.

Sincerely,

Evan Gorelick
Law Clerk

Sarah Williams
Staff Attorney

MIDWEST ENVIRONMENTAL ADVOCATES

From: John Schulze [mailto:jschulze@abcwi.org]

Sent: Wednesday, August 05, 2015 4:02 PM

To: DNR WY WRZ Guidance

Cc: John Schulze; Warwick, Shelley D - DNR

Subject: ABC Comments to DNR Guidance for Waterways and Wetlands Screening and Delineation Procedures Submitted August 5, 2015



Wisconsin Chapter

Associated Builders and Contractor of Wisconsin Comments to Department of Natural Resources (DNR) Guidance for Waterways and Wetlands Screening and Delineation Procedures Submitted August 5, 2015

Associated Builders and Contractors of Wisconsin (ABC-WI) is a trade association representing approximately 800 commercial construction employers of varying sizes throughout the state.

ABC-WI appreciated the DNR's hard work and effort to standardize the wetlands screening and delineation process by improving how applications are evaluated by staff. However, two proposals in the draft guidance will adversely affect the Wisconsin commercial construction industry, which is just now finally recovering from the recession.

- 1. Requiring delineation or documentation of no wetlands present with project applications at the beginning of the process.** ABC-WI understands that the intent of a pre-project analysis is to save time for staff and applicants overall, but the effect of this requirement will be "wait and hurry-up" for builders, and increased costs for customers. Wisconsin's relatively limited May – October delineation window will overwhelm DNR staff, and any project that misses that window will be delayed. For example, construction projects proposed this coming winter could be delayed until next summer. These delays create uncertainty and a backlog for both the construction industry and DNR staff workload. The result will be needlessly expensive projects. The additional resources set forth on page 4 of the guidance, although well intentioned, cannot alleviate the construction realities caused by Wisconsin seasons. It would be better for the DNR to keep its current practice of allowing plans to be submitted for review contingent on delineation. The current practice may be less efficient, but it will not affect project timelines, and is much, much more preferable to the significant project delays and increased costs that will result from this proposed change.
- 2. Expanding the protective area to 100 feet of a proposed project's footprint.** This proposal expands that area needed for a compliance review, and could cause a construction company to access land for which it does not own or have an easement. In addition to causing project timeline delays and

increasing project costs, it may require the impossible – access to property that is simply unattainable without risking trespass.

ABC-WI thanks the DNR for soliciting and considering comments to the proposed guidance, and would appreciate the opportunity to discuss more fully at a time convenient for DNR staff.

From: Dave Newman [mailto:dnewman@ceas.coop]
Sent: Wednesday, August 05, 2015 1:57 PM
To: DNR WY WRZ Guidance
Subject: Wetland Screening and Delineation Procedures Comments

I would like to submit these comments in regard to the wetland screening and delineation guidance.

As a member of the Governor's Snowmobile Recreation Council and President of the Association of Wisconsin Snowmobile Clubs I have several concerns how this will effect the snowmobile trail system in Wisconsin.

I feel that existing snowmobile trails should be exempt from this requirement. This would be an unnecessary hardship on the volunteer members of the snowmobile clubs that are the ones doing the maintenance work on the trails which are open to the public. The majority of the trails are located on private property owned by someone other than the club that would be doing the work. There are over 600 with thousands of volunteers involved in trail maintenance and it would be impossible to educate everyone what is require. Fiscally, it would create an unneeded hardship on the snowmobile program, which already short of funds. When we are dealing with many miles of linear trail for any given project, it could involve numerous water reg permits. In the end this requirement would not provide any additional level of wetland protection. Many of our trails cross wetlands during the winter without any impact.

As for the guidance, I feel 100' is too much of a distance from a wetland to have an effect.

Thanks you for this opportunity to comment.

Dave Newman
Governor's Snowmobile Recreation Council

AWSC President
W1646 Kington Rd.
Unity, WI 54488

715-223-4051
715-212-7914 cell
dnewman@ceas.coop

From: Hosper, Jan J. [mailto:Hosper_JJ@co.brown.wi.us]
Sent: Wednesday, August 05, 2015 1:14 PM
To: DNR WY WRZ Guidance
Cc: Mushinski, Michael L.
Subject: Waterways and Wetlands - Wetland Screening and Delineation Procedures Guidance Document Comments

Shelley Warwick,

Brown County has drafted a comment letter in regards to the wetland screening and delineation procedures guidance document.

Please review the attached document and let us know if you require any additional information.

Thank you,

Jan Hosper

Engineering Technician

Brown County Land & Water Conservation Dept.

(920) 391-4630 (direct)

(920) 391-4620 (office)

(920) 391-4617 (fax)

1150 Bellevue St. Green Bay, WI 54302

LAND AND WATER CONSERVATION

Brown County

1150 BELLEVUE ST.
GREEN BAY, WI 54302

MIKE MUSHINSKI

PHONE (920) 391-4820 FAX (920) 391-4817 WEB: www.co.brown.wi.us

COUNTY CONSERVATIONIST

WDNR guidance document comments - Wetland Screening and Delineation Procedures

The Brown County Land and Water Conservation Department is involved in a number of activities directed at water quality improvement, soil erosion control and public awareness of those actions. The department addresses water quality and state-mandated Agricultural Non-Point Performance Standards and Prohibitions through administration of a variety of programs including: Animal Waste Management Ordinance; Agriculture Shoreland Management Ordinance; Land and Water Resource Management Plan; Working Lands Initiative; Great Lakes Demo Farm Network; Upper East 9 Key Element Plan; West Shore Northern Pike Habitat Restoration Project; Fox P Trade; TMDL Plan of the Lower Fox River; Silver Creek Adaptive Management Project; and GLRI and NRCS Contribution Agreements.

The installation of conservation practices on farmsteads and farm fields by County Conservation and NRCS staff is critical in reducing phosphorus runoff and sediment reduction for the Great Lakes Restoration Initiative in the Lower Fox River (LFR) Basin. Agriculture is estimated to provide nearly 50% of the baseline loading in the impaired LFR Basin. The County Conservation staff aim to reduce this loading through broad implementation across the 110,000 acres of cropland through installation of NRCS conservation practices including grassed waterways, water and sediment control basins, stream crossing, buffers and other field and farmstead practices. Projects related to farm drainage features are being delayed and/or cancelled due to the time and expense involved assisting farmers with DNR permitting.

Brown County has an extensive amount of ephemeral streams and concentrated flow channels that are poorly vegetated and eroding. The majority of these channels are being farmed through or damaged by farming operations and partially responsible for the degrading water quality. These drainage features were previously modified, created or removed over the past decades. Many of these areas have no stream history while some do. The vast majority of these drainage features need to be cleaned out to establish capacity, shaped, and vegetated for stability. The current DNR waterway and wetland permitting process has been impeding progress of meeting State mandated water quality goals and the process needs to be modified.

In accordance with U.S. Army Corps of Engineers for the area to be a wetland it must have all of the following three attributes: 1) at least periodically, the land supports predominantly hydrophytes; 2) the substrate is predominantly undrained hydric soil; and 3) the substrate is saturated with water or covered by shallow water at some time during the growing season of each year. DNR staff should follow all 3 conditions of wetlands and not pick and choose which ones apply the most.

Much of Brown County farmland is labelled as indicator soils on the Surface Water Data Viewer due to the heavy clays but, much of these areas are well surface drained and do not support functioning wetlands. These soils have such low infiltration rates that they may show mottling and redox features but are surface drained to the extent that they cannot support high-functioning wetlands. Hydrology is only part of the equation and is not the only determining factor to see if it is a wetland. Hydrophytes can also be looked at during the entire season as long as there is no snow cover although it may be more difficult in the shoulder seasons.



These farm drainage features require periodic maintenance or complete reinstallation to maintain their designed function. This is typically completed using excavators, loaders, scrapers and bulldozers. These areas do not provide value to aquatic organisms, wildlife habitat, recreational, cultural or natural scenic beauty. Their purpose is to assist farmland drainage and reduce phosphorus and sediment runoff. The County Conservation staff in conjunction with the NRCS oversees these projects to ensure the areas are improved upon and vegetation is re-established promptly after construction. The projects remove existing sediment accumulated in the drainage features and return it to the fields from which it came. Eroding areas may be repaired and stabilized as part of the project. We believe exemptions for these types of projects already partially exist in the current codes and statutes. Current farm drainage features should be exempt from DNR waterways and wetlands permitting based on:

- Chapter 30.10(4)(c) – Farm drainage ditches are not navigable and exempt unless they have stream history
- Chapter 281.36(4) – Maintenance of farm drainage ditches is allowed to discharge into wetlands
- NR 103.06(4)(c) - Actively maintained farm drainage should be exempt if wetlands formed in man-made drainage ditches

Brown County would like to propose a framework that allows for permitting exemptions of waterway and wetlands for maintenance and installation of NRCS conservation practices standards on farm drainage features. To meet our State mandates, improve water quality, and to make an impact on TMDL levels in the LFR basin, the process needs to be simplified and trust needs to be built between County Land and Water Conservation, NRCS and DNR staff. We ask for exemptions for conservation practice installation the following situations:

- If a farm drainage feature is located in an active farm field or farmstead and has no stream history and does not support aquatic species habitat that no submission for Chapter 30 waterway permit be required.
- If the same farm drainage feature is not located in a mapped wetland or area deemed as actively functioning wetland by County or NRCS staff that no wetland determination or delineation is required and no wetland permits need to be applied for.
- For other (non-farm drainage) NRCS funded conservation practices, qualified DNR staff should be made available (at no cost to the landowner) to make on-the-spot field determinations related to the 3 conditions of wetlands.

Brown County Land and Water Conservation Departments goal is to improve water quality and the creation of natural habitat. Installation of these projects will improve the water quality conditions and is not intended to destruct functioning wetlands as they already improve water quality. All farm drainage projects are designed to meet federal NRCS standards and will be re-established after completion in an improved condition to what was there previously. We still intend to apply for all necessary permits outside of this proposed exemption scope.

We look forward to working with DNR staff to continue to improve water quality.

Regards,



Mike Mushinski

From: ACEC Wisconsin [<mailto:acecwi@acecwi.org>]

Sent: Wednesday, August 05, 2015 11:57 AM

To: DNR WY WRZ Guidance

Subject: WDNR Wetland Screening & Delineation Procedures Comments

Good morning, please find attached our comments on the WDNR Wetland Screening & Delineation Procedures.

Please contact us back with any questions.

Thank you,

American Council of Engineering Companies of Wisconsin (ACEC WI)

3 S Pinckney St, Ste 800 | Madison, WI 53703

608-257-9223 | www.acecwi.org



American Council of Engineering Companies of Wisconsin

3 South Pinckney Street, Suite 800 | Madison, WI 53703
608-257-8223 | acecwi@acecwi.org | www.acecwi.org

August 5, 2015

Shelley Warwick
Section Chief
Waterways & Wetlands

Thank you for giving ACEC Wisconsin the opportunity to provide comments on the draft DNR wetland screening and delineation procedures. Our organization represents thousands of professional engineers, many of which work directly with these issues every day. We are grateful that we can provide practical expertise during the draft phase to ensure that the final procedures work for all parties. ACEC Wisconsin hopes to continue this partnership in the future. The comments on the draft procedures are provided below – feel free to reach out to our organization with any follow-up information you need:

We suggest adding a definition of the "project site" so that it is clear that the document refers to the disturbed areas of a site, not the parcel as a whole. In addition, the document uses the terms "project site", "project area" and "project footprint" interchangeably.

- We suggest adding additional resources and guidance for step three of the screening process. This is an area where inconsistency between reviewers could be introduced. A check of readily available online resources may not add significant effort or cost to a project. Purchasing historic aerial photos or traveling to a local FSA office to review crop survey slides may be a significant undertaking for projects where steps 1 and 2 clearly do not suggest the presence of wetlands on or near the site.
- Can the Department consider a variance or exception to the delineation requirement where there is a clear provision in place to avoid the potential wetland so that it is outside the disturbed project area or photographic evidence can be presented suggesting the lack of wetlands? For example, a site may be clearly elevated from or physically separated from an adjacent wetland (i.e. a development on a bluff above a river or a site separated or buffered from the wetland by an existing disturbance such as a road, railroad or trail). A delineation or offsite wetland review by a qualified individual may be an unnecessary expense in this case.
- Can the Department consider a variance or exception to the delineation requirement under step 2 of the screening process where photographic or other evidence can be presented suggesting the lack of wetlands? Drainage ways or depressions may be present on upland sites and not be wetlands or intermittent waterways. What constitutes a drainage way can also be open to interpretation. Is it a mapped intermittent waterway or just a path of drainage indicated by the contours on the map? Further consideration or clarification of Step 2 is requested.

- Please clarify the "Considerations" on page 5 stating the screening does not apply to transportation projects. It appears that intent of the policy is to make provisions for transportation projects handled under the DOT/DNR liaison process. However, there are still a number of county, town and municipal roadway and trail projects required to submit NOI's that may be impacted by this requirement. It does not appear to be the intent to exempt these projects from the policy as they would not be under the review of the DOT/DNR liaison. If they are not exempt from the process and the resulting requirement for delineations, a number of these projects may be required to conduct delineations where they hadn't in the past. Again, an exception or variance process may be warranted. An example of a concern would be a non-flowing drainage way that crosses under a culvert perpendicular to a reconstructed roadway. The drainage way will be within the project area but there could be no other indicators of wetlands along the project corridor. Another example would be an expanded transportation facility requiring an NOI where the expansion is away from the wetland area and/or reconstruction near the wetlands can be accomplished within the existing footprint of the roadway sideslopes. In this case, if wetlands are clearly not impacted, requiring delineation because the project is within 100 feet of the resource is an unneeded expense.

From: James Anklam [mailto:James.Anklam@enbridge.com]
Sent: Wednesday, August 05, 2015 11:42 AM
To: DNR WY WRZ Guidance
Cc: Shane Yokom
Subject: FW: Wetland Screening and Delineation Procedures

To the attention of Shelley Warwick:

Enbridge Energy has reviewed the proposed revisions to the Wetland Screening and Delineation Procedures and the have the following comment:

We have reviewed the draft Wetland Screening and Delineation Procedures from the WDNR. The document gives an overview of the recommended wetland screening and review process, which requires a review of wetlands within a project footprint and within a 100 foot buffer of a project footprint. Under the Considerations section of the document, it states that the screening process does not apply to energy projects. Per email correspondence with our primary WDNR contact Ben Callan it is our understanding that it doesn't mean utility projects do not need wetland delineations, but rather the current process through the Office of Energy will remain largely unchanged and they will continue to work with utilities to determine the best way to document site conditions and minimize wetland impacts.

Our main concern is that there is no clear language exempting Office of Energy projects from completing wetland delineations for wetland and waterway permits. The wetland review process as laid out in the guidance document is more detailed than the current process and would be an additional layer of review in the permitting process because a wetland delineation would need to be completed for each site where wetlands are determined to be present and then approved by the WDNR or USACE prior to submitting the permit application. This step in the process can be avoided if an Assured Delineator completes the wetland delineation, currently we are aware of only 10 in the state.

We recommend that the guidance language be clarified with regards to utility projects (wetland and waterway permitting), to clearly state that utility work is exempt from this process. Additionally, the application form should include a check box option in Section 5 for projects that are exempt from the delineation requirements.

Thank you for considering our request.

Jim Anklam

Senior Environmental Analyst

—

ENBRIDGE

TEL: 715-398-4761 | FAX: 715-821-5253 | CELL: 715-817-6304
1320 Grand Avenue, Superior, WI 54880

enbridge.com

Integrity. Safety. Respect.

From: Renee Wilde [mailto:rwilde@sehinc.com]

Sent: Wednesday, August 05, 2015 11:40 AM

To: DNR WY WRZ Guidance

Cc: Allyz Kramer; Bruce Olson; Deric Deuschle; Natalie White; Michael Van Gilder

Subject: Comment Submittal for Wetland Screening and Delineation Procedures Guidance

Ms. Warwick,

Regarding the draft guidance for *Wetland Screening and Delineation Procedures* that is posted for public comment until August 5, 2015, attached please find the a comment letter from SEH to be accepted fro the public record.

Thank you for the opportunity to review and provide comments on this draft guidance.

Renee Wilde, PWS, CFM, Scientist

SEH

10 North Bridge Street, Chippewa Falls, WI 54729

715.720.6263 direct

715.210.5879 cell

sehinc.com

SEH—Building a Better World for All of Us™



Building a Better World
for All of Us®

August 5, 2015

RE: Wisconsin Department of Natural
Resources
Wetland Screening and Delineation
Procedures
Public Notice dated July 16, 2015

Shelley Warwick
Water Division Policy Administrator
Wisconsin Department of Natural Resources
101 South Webster Street
Madison, WI 53703

SENT VIA ELECTRONIC MAIL to [dnrwrzguidance@wisconsin.gov](mailto:dnrwyrzguidance@wisconsin.gov)

Dear Ms. Warwick:

Thank you for this opportunity to review and provide comments on the draft guidance entitled *Wetland Screening and Delineation Procedures*. Together, we have reviewed the draft guidance, and respectfully request this letter from Short Elliott Hendrickson Inc. (SEH®) be accepted for the public record and considered as it relates to the draft guidance. We appreciate the level of effort put forth by the Wisconsin Department of Natural Resources (DNR) in preparing this document. We recognize the complexity of the issues surrounding Wisconsin's wetlands and water policies, as well as the diversity of landscapes and land uses across the state that drives these policies.

As professional services consultants, SEH specializes in delivering a diversity of public and private infrastructure projects and conservation-related projects in the state of Wisconsin. These include, but are not necessarily limited to, roads, railroads, airports, municipal infrastructure, mines, industrial facilities, commercial and residential development, military installations, flood control, ecological restoration & wetland mitigation, and environmental remediation and reclamation. Our breadth of project experiences crosses all of Wisconsin's vast natural resources – of which we strive to deliver projects that meet the professional standards of care necessary, that are practicable, and arguably of most importance, that meet the regulatory framework to be permitted.

Please consider our perspective on achieving the proposed guidelines as written in the draft guidance. The following comments have been prepared by our staff having expertise in delivering wetland delineation, permitting, mitigation, and stormwater management services to our clients in Wisconsin. We have summarized our comments by specific section from the draft guidance document.

B. Background

Paragraphs 2 & 3 (page 3):

- The draft guidance document describe that DNR staff have found there are inconsistencies in how wetland impacts are being accounted for in the state, and even how impacts are evaluated

between DNR staff. This appears to be an issue internal to the agency, not to the regulated public. We fail to understand how the proposed wetland screening steps that applicants will be required to take will resolve these issues internal to the DNR.

- We can empathize that some “customers” (which we interpret to mean those applicants that seek guidance from the DNR) may not be entirely familiar with or are experts on wetland/waterways regulatory processes in Wisconsin. However, the DNR already has excellent and thorough processes for documenting wetland and waterway resources— which are available at agency offices, online, or through direct consultation with agency staff. This is also true for the federal agencies that either promulgate and/or implement regulations – their processes and guidance documents already exist. We understand that the proposed wetland screening steps are designed to resolve a customer’s potential lack of regulatory awareness when it comes to wetlands and waterways. However, we believe that implementation of the highly prescriptive wetland screening process as proposed would add to DNR staff workload in reviewing permit applications, which ultimately adds to delays in project approvals. The goals of the proposed screening process could be met through early coordination between the applicant, storm water/CAFO permit reviewer, and local water management specialist (WMS). Giving the local WMS flexibility to decide when additional on- or off-site review for wetlands is necessary prevents this screening process from becoming burdensome on applicants and/or DNR staff.

C. Discussion

Paragraph 2 (pages 3 & 4):

The sentence that states “The Team felt that the additional resources would save time for applicants and staff overall...” is ambiguous. Please be specific as to what “additional resources” means – is it in the form of financial resources for the agency, staff resources to applicants, or applicants having to complete additional steps for a “screening process” for wetlands/waterways on their property? If it is the latter, we believe the “screening process” should be an optional tool staff can offer potential applicants. We do not believe this should be required documentation for all projects. Qualified agency staff receiving quality wetland delineation and permit applications that follow the existing guidance documents for submitting reports and applications should be adequate. We believe this screening process has the potential unintended consequences of adding more workload to agency staff and more rigid review requirements to an already thorough process for documenting wetlands in Wisconsin.

Paragraph 3 (page 4):

The sentence that states “For example, a process had to be created...” infers that this draft guidance is being driven by a regulatory mandate. However, we understand from the Background section that because there are inconsistencies in how the DNR evaluates wetland/waterways impacts, or how an applicant presents findings as it relates to wetlands/waterways on the landscape, there is a desire to resolve these interpretive inconsistencies. We recommend the DNR clarify this sentence for the record as to why the agency is proposing additional guidance at this time. If there is a regulatory mandate dictating development of this guidance, that regulation should be referenced for the record.

D. Guidance

Paragraph 2 (page 4):

- While submittal of wetland/waterways permit applications often have wetland delineations completed and reviewed by the appropriate agencies, there are exceptions. We believe that the DNR only accepting permit applications after approval of a wetland delineation is inflexible. A quality delineation report prepared following the state and federal guidance documents (e.g., *Basic Guide to Wisconsin’s Wetlands and Their Boundaries*, 1987 *Corps of Engineers Wetlands Delineation Manual*, and applicable *Regional Supplements*) should be allowed to accompany a permit application, even if onsite review and/or agency concurrence has not occurred.

- Could applications for CAFO and stormwater permits be reviewed and permits issued conditional upon wetland delineation review, if onsite wetland review is determined to be necessary? Many aspects of the permit application review are not dependent upon the location of wetland boundaries, and it seems an unnecessary burden on applicants to delay review of CAFO or stormwater project elements that are independent of any potential wetland disturbance. DNR staff should be allowed the flexibility in timing of permit reviews based on the merits of the project and the resources involved, not concentrating all regulatory review activities during the growing season.
- We are concerned about the potential for time lags in agency review by the DNR proposing to accept applications after wetland delineation has been confirmed. This is especially alarming when considering funding cycles for public projects that often have prescriptive deadlines for implementation. Rigidity in the guidance pertaining to confirmed delineations as part of application completeness has the potential for disservice to the citizenry. It also has the potential to infringe on the professional abilities of those DNR staff to provide reasonable and practicable regulatory guidance based on the merits of the project and the resources being evaluated.
- There are times when a delineation may have been completed accurately and the report properly prepared, but seasonality or scheduling conflicts precludes onsite reviews by the DNR or U.S. Army Corps of Engineers. We do not believe that review of wetland delineation reports and subsequent applications should be held in abeyance because they are received by the DNR outside of the "growing season." The gross amount of online resources available to both applicants and the DNR should, and most likely do, provide enough detail to make decisions on the accuracy of a delineation in many circumstances. We believe that agency staff should have the flexibility to work with applicants based on the merits of the project relative to the resources being evaluated to determine the best course of action for approving wetland delineations.

Screening Process

OPTIONS FOR ONSITE WETLAND REVIEWS

Paragraph 2 (page 6):

The last sentence in this paragraph indicates that both wetland determinations and wetland delineations "can only be completed/confirmed during the growing season." We take exception to this statement for the following reasons:

- The "growing season" in Wisconsin can be as long as early April to late October/early November in the south to as short as late May to early September in the north. There are many times on either side of these months that the landscape may be frost and/or snow free where onsite reconnaissance can be completed to determine the potential for wetlands/waterways. In some instances, particularly in heavily forested areas of the state, the inherent lack of vegetation pre- or post-growing season can make evaluation of the landscape easier. This is especially true when considering forested, ephemeral depressions that are sometimes overlooked when using leaf-on aerial imagery or when completing site walks during the growing season.
- We believe that agency personnel and wetland professionals alike, if qualified in wetland/water science, should be able to make adequate wetland determinations throughout the year. Flexibility in this topic should be allowed by applicants and DNR staff to ascertain the best approach for evaluating a site based on the resources being considered and the season. We believe that a "one size fits all" approach to wetland determinations and reviews is not appropriate for the complex and diverse habitat types in the state.
- We believe that qualified wetland professionals can, and do, make accurate wetland determinations and delineations outside the growing season. The 1987 *Corps of Engineers Wetlands Delineation Manual* and applicable *Regional Supplements* allows for flexibility and additional site documentation when out-of-season delineations are needed. Simply put, if a delineation report does not follow these procedures for in-season or out-of-season delineations, and the *Guidance for Submittal of Delineation Reports*, then the DNR should not accept the

delineation. If there are examples of poor delineation reports being prepared by applicants, then we recommend the agency *send the reports back* and refer to deficiencies in the report as it pertains to the delineation methods and reporting requirements. Invoking such rigid wetland determination/delineation guidelines has the potential for "penalizing" all customers because of the "sins" of a few.

- We are concerned that current staffing levels at the DNR is not adequate to manage additional screening processes prior to all permit applications. If this guidance is to be implemented effective August 2015, there is potential for an overwhelming amount of requests for wetland reviews yet this 2015 growing season so future permit applications/design planning for 2016 and beyond can be achieved. This has the potential for pulling agency staff away from their existing workload, i.e., the permit applications they are currently reviewing. How will the DNR respond to an increased volume of field review requests in a manner that is timely with applicant's plans for delivery of projects?
- Referring to "Step 1" of the screening process, is use of a 100-foot distance from the nearest wetland/waterway driven by a regulation or is it an arbitrary distance being proposed as guidance? We caution the DNR in invoking such requirements, particularly if it means that having to document this distance away from the aquatic resource in question could require accessing property owned by others, or issues with trespassing (known or inadvertent).

OPTIONS FOR OFFSITE WETLAND REVIEWS

In general, the steps laid out appear to be a reasonable approach for applicants to follow when determining that available online resources are adequate for identifying potential wetland/waterways. These are basic first steps that we believe a qualified wetland professional, whether at the DNR or in private industry, *would already be taking* when advising an applicant on the potential presence/absence of wetlands/waterways in the landscape.

We recognize that if the problem lies with the permit reviewers in stormwater and CAFO programs approving projects with wetland impacts, and subsequently these projects are going forward without the necessary wetland or waterway permits, the solution may be internal to the DNR, not external to the applicants. Rather than a prescriptive new wetland screening process for all projects, the resolution may be through:

- 1) DNR internal coordination between stormwater and CAFO permit reviewers and the local Water Management Specialist; and/or,
- 2) DNR requesting additional off site review with the stormwater NOI or CAFO application checklists (e.g., applicants could provide an aerial photo and topographic map as well as data from Surface Water Data Viewer indicating no wetlands are present).

Wetland Delineation and Application Submittals

Part 1 (page 7)

What will be the DNR's turn-around time for providing a concurrence/confirmation letter following wetland delineation review? We are concerned that added review times for wetland delineations for all applications has the potential to hinder critical delivery timelines for projects, particularly those projects that may be adhering to stringent public funding allocations and guidelines.

Part 2 (page 7)

The draft guidance describes the new process as streamlined, and identifies use of a DNR Assured Delineator as a way to avoid delays that may occur in scheduling onsite field review. In addition to concerns (outlined above) that the new process may add time and burden for applicants, the use of an Assured Delineator does not guarantee successful review by the U.S. Army Corps of Engineers. A delineation prepared by an Assured Delineator, while perhaps acceptable to the DNR without onsite field

Shelley Warwick
August 5, 2015
Page 5

review, could be deemed inaccurate or unacceptable to the USACE. This has the potential for adding re-work to projects and more time to delineation reviews.

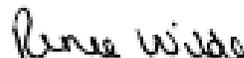
Thank you for this opportunity to provide public comment on the draft guidance for entitled Wetland Screening and Delineation Procedures. We also thank you for your role in coordinating and requesting public comments, and considering our thoughts on practicability across the state. We look forward to receiving information from the DNR if additional guidance is promulgated for the public's review.

Respectfully submitted,

SHORT ELLIOTT HENDRICKSON INC.



Bruce Olson, PE | Principal
Natural Resources Manager – SEH East Region
715.720.6244 | bolson@sehinc.com



Renee Wilde, PWS, CFM
Project Wetland Scientist
715.720.6263 | rwilde@sehinc.com



Deric Deuschle, CWD | Associate | Sr. Biologist
Natural Resource Manager – SEH Central Region
651.490.2144 | ddeuschle@sehinc.com



Allyz Kramer, PWS, CWD | Associate
Sr. Biologist | Project Manager
218.279.3011 | akramer@sehinc.com



Michael J. Van Gilder, PE, CPESC, CPSWQ
Sr. Professional Engineer
715.861.1950 | mvangilder@sehinc.com



Natalie White, PWS, CWD
Project Wetland Scientist
218.279.3003 | nwhite@sehinc.com

ak/rw/rw/dd/bo/mvg

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From: Nichols, Jason [mailto:jnichols@burnettcounty.org]

Sent: Wednesday, August 05, 2015 11:05 AM

To: DNR WY WRZ Guidance

Cc: DNR SECRETARY; Thiede, Kurt A - DNR; DeLong, Paul J - DNR; Jane Severt (wcfa@frontier.com); Hardin, Carmen R - DNR; David Ziolkowski (dzforestco@ez-net.com); Slaminski, Edward M - DNR; jim.zahasky@centurytel.net; Kafura, David J - DNR; randy.harden@nohvis.org; robmccconnell.watva@juno.com; Conklin, Diane L - DNR; Ingalls, Susan; Ehalt, Nathan; Peterson, Mike

Subject: RE: Draft Guidance - Wetland Screening and Delineation Procedures

Please accept the attached letter as comment from Burnett County Forestry regarding the proposed “Wetland Screening and Delineation Procedures” program guidance.

Thank you.

Sincerely,

Jason A. Nichols

Forest & Parks Administrator
Burnett County
7425 County Road K
Siren, WI 54872
(715)349-2157



Burnett County Forest & Parks

7425 County Road K, Siren, WI 54872-9007
(715) 349-2157
FAX #: (715) 349-2130



August 5, 2015

Shelley Warwick
GEF2 DNR Central Office
101 S. Webster Street
Madison, WI 53703

Please accept this letter as comment to the draft guidance for "Wetland Screening and Delineation Procedures".

As a manager of a portion of Wisconsin's state trail systems, I would like to express my disappointment with the DNR's proposed guidance for Wetland Screening and Delineation Procedures as it relates to recreational trail systems. These rules and regulations "Guidance" continue to grow to the point of unacceptable financial burden and time commitment that will ultimately put an end to Wisconsin's trail systems. It's hard not to consider the thought that maybe this is the goal of some within the organization that continue to put forth unrealistic and unattainable procedures such as this. I hope this is not the case.

Over the years there has been many hours spent on adapting to the current storm water permitting system. Draft documents and examples of what is need in applications and on the ground have been put together to assist managers and DNR staff to help minimize and avoid impacts to wetlands. This proposed guidance will be a huge step backwards in the permitting process and will add to the overall confusion of the storm water permitting process.

In reading the draft language, it appears that wetland delineations will be required for all wetlands within 100ft of a proposed trail project. Recreation trails are linear and have the potential to run within 100ft of hundreds of wetlands depending on the trail in question. Requiring delineations for wetlands within a 100ft buffer of a trail project is not acceptable and will result in the wasteful spending of thousands of dollars and personnel hours.

It is astonishing to me that these types of wasteful spending requirements can be passed onto the many organizations and user groups through "Program Guidance" without legislative input and oversight. In my opinion, agencies such as the DNR, should be working to help users and managers understand and work with the rules that the legislature has adopted, rather than create guidance that adds cost and confusion to an already cumbersome process.

The overall financial impact of this "Guidance" will have an overwhelming negative impact to Wisconsin's recreational programs such as the ATV and Snowmobile programs. Added costs of having to hire wetland delineators for wetlands not directly impacted by a trail project will limit funds available for other important and needed trail projects. In the end, projects needing immediate work due to erosion, safety and wetland issues will not be addressed due to lack of available funds. This is already happening due to a shortfall of funds within these programs, and this "Guidance" will only lead to an even greater negative impact. It is apparent that the financial impact of this "Guidance" was not considered or understood when it was drafted, and I feel it is inappropriate to adopt this guidance without a clear understanding of the overall financial impacts.

Sincerely



Jason Nichols
Forest Administrator
Burnett County

From: Peterson, Mike [mailto:MLPETERS@co.washburn.wi.us]

Sent: Wednesday, August 05, 2015 9:20 AM

To: DNR WY WRZ Guidance

Cc: DNR SECRETARY; Thiede, Kurt A - DNR; DeLong, Paul J - DNR; Jane Severt (wcfa@frontier.com); Hardin, Carmen R - DNR; David Ziolkowski (dzforestco@ez-net.com); Slaminski, Edward M - DNR; jnichols@burnettcounty.org; jim.zahasky@centurytel.net; Kafura, David J - DNR; randy.harden@nohvis.org; robmccconnell.watva@juno.com; Conklin, Diane L - DNR

Subject: Draft Guidance - Wetland Screening and Delineation Procedures

Please accept the attached letter as comment from Washburn County Forestry regarding the proposed "Wetland Screening and Delineation Procedures" program guidance. Thank you.

Mike Peterson

Washburn County Forest Administrator

850 W. Beaverbrook Ave.

Spooner, WI 54801

(715) 635-4490



WASHBURN COUNTY FOREST

FOREST ADMINISTRATOR

850 W. Beaver Brook Ave., Suite #4
SPOONER, WISCONSIN 54801
(715) 635-4490 Fax (715) 635-4493

August 5, 2015

Shelley Warwick
GEF2 DNR Central Office
101 S. Webster Street
Madison, WI 53703

Please accept this letter as comment/input relating to the draft program guidance for "Wetland Screening and Delineation Procedures".

As an agency with the responsibility of managing linear trail systems, we have found the Stormwater Discharge Permit to be cumbersome and awkward to implement on recreation trails. Most trail projects are linear in nature and even with the wider footprint of motorized trail systems, the project must extend at least $\frac{1}{4}$ mile before we meet the 1 acre threshold for permit purposes. In many cases, at least here in Washburn County, our trail development and rehabilitation projects can be 5 miles in length or longer.

After years of struggling with the permit system, we formed a team of trail managers and water regulation staff to discuss how to best adapt the Stormwater Discharge Permit process so that it aligned more directly with trail management activities. The result was a template application that outlined techniques, documents needed, and construction standards that compliment linear trail surfaces. This template has assisted numerous entities in securing storm water discharge permits. Of particular note in this process was the acceptance of wetland avoidance procedures, as well as a common understanding that Wisconsin's Forestry Best Management Practices for Water Quality are an ideal fit for managing storm water discharge. This process was undertaken as an effort to minimize the "inconsistencies between Department programs" that is referenced in the draft guidance. Trail managers have worked diligently to understand and comply with Stormwater Discharge Permit requirements. This program guidance appears to "erase" the work that was done creating the template permit application and forces trail managers to start anew with trying to understand the process and comply with law.

The draft document implies that wetland delineations will be required for any wetlands within 100 feet of the project. While this may be a legitimate requirement for construction projects (parking lots, buildings, etc) or concentrated animal feeding operations, it is NOT a feasible or legitimate requirement for linear trail systems. Recreational trails can have dozens of wetlands that are within a 100 foot buffer, even if trail designs provide for the most practical wetland avoidance measures. In many cases, these recreation trails were sited after exhaustive review of

alternatives in order to determine the most appropriate location. A process of alternatives analysis is not presented in this draft guidance.

Wetland delineations may be necessary where a trail projects cross or directly abut wetlands, but to even allude to requiring delineations for wetlands within 100 feet of a project will result in the waste of tens of thousands of dollars on many of these trail projects. Delineation of wetlands that are within this 100 foot buffer is not appropriate nor is it necessary. The action of determining a wetland, versus delineating, is more than sufficient in these cases, and most trail managers are skilled enough to confidently make these determinations without outside assistance. This guidance is ill conceived and not practical, especially when recreational trails are lumped into the same broad category as all construction, mining, and other more concentrated disturbances.

Several years ago, the Wisconsin State Legislature changed the administrative code process to include legislative oversight. This was done to prevent entities, such as the DNR, from creating rules and regulations without legislative oversight. It is disheartening to see the proliferation of program guidance that is now being pushed for adoption. Some of these guidance documents are nothing short of a brazen and transparent attempt to bypass legislative intent. A guidance document that requires hiring a wetland delineator appears to create the force of law in a process that has absolutely no legislative oversight. In my position as the Washburn County Forest Administrator, my role is consistently made glaringly clear by our County Board. My job is to implement policy, not create it. The County Board's job is to create that policy. DNR staff should be no different. They should be implementing policy as adopted by the Legislature, not creating pseudo laws that encumber undue costs and effort on our trail projects.

An analysis of fiscal impacts is required when statutes are changed and the newer requirements for legislative approval of administrative code require the same. The proposed program guidance should also contain an analysis of fiscal impacts. It is unreasonable to adopt such guidance without a clear description of the costs that will be incurred if the guidance is adopted.

The draft guidance contains claims that this document will "standardize" the wetland review process. In my opinion, the program guidance will have quite the opposite impact. It creates opportunity for DNR wetland/waterway staff to have a wider scope of interpretation regarding when wetland delineators are needed. This document not only will result in wasteful spending of project funds, it will also create more inconsistencies in how permits are administered.

Sincerely,



Mike Peterson
Washburn County Forest Administrator

From: Erin O'Brien [mailto:policy@wisconsinwetlands.org]
Sent: Wednesday, August 05, 2015 8:52 AM
To: DNR WY WRZ Guidance
Subject: Wetland Screening Guidance comments

Good morning,

Wisconsin Wetlands Association's comments on the draft wetland screening and delineation guidance are attached.

Thanks,

Erin O'Brien
Policy Director
Wisconsin Wetlands Association
214 North Hamilton Street, Suite 201

Madison, WI 53703
608-250-9971

www.wisconsinwetlands.org



214 N. Hamilton St. #201 Madison, WI 53703

Phone 608-250-9971 Fax 608-287-1179

August 4, 2015

Shelley Warwick
WDNR
101 S Webster Street
Madison, WI 53703

Re: Wetland Screening and Delineation Procedures

Wisconsin Wetlands Association (WWA) is dedicated to the protection, restoration, and enjoyment of wetlands and associated ecosystems through science-based programs, education, and advocacy.

We appreciate the opportunity to provide input on the above referenced guidance.

We support the intent of the guidance and believe it is a positive effort to help WDNR staff and permit applicants comply with wetland regulatory requirements. We offer the following suggestions to further improve consideration of wetlands in permit review and approvals:

1. The guidance gives local wetland and waterway staff authority to determine whether wetland delineations are needed for approvals under Chapter 30, wetland general permits, and wetland conservation activities. It is not clear if the wetland screening process (i.e., map/photo review) is required for these project. We recommend that wetland screening should be part of all of these applications.
2. Step 2 of the wetland screening process should also require the applicant or their agent to walk the site and look for wetland indicators. WDNR's *Wetland Clues Checklist* is a useful tool to help them with this process.
3. In Step 3, we recommend clarifying how many years of photos should be looked at and how many years we areas need to appear to warrant a wetland review. It would also be useful to include a description of how to recognize areas where crops are stressed due to wet conditions. Insertion of images with examples would be particularly helpful.
4. Item 3 in the section on off-site wetland reviews was a little unclear, particularly the meaning of the word directly (i.e., does this include runoff or must there be conveyance through a channel or a pipe?). In addition to determining whether the protective area requirement is triggered, we recommend adding language to ensure that stormwater staff are reviewing the development proposal for compliance with NR 103.03 (i.e., to ensure that the project will not significantly alter the quantity or quality of water the wetland receives).
5. The 100' offsite review area is sufficient to ensure compliance with protective area standards, but may not be sufficient to ensure compliance with NR 103 (i.e., will the proposed activity adversely affect the hydrology or health of wetlands more than 100' down gradient?). We recommend giving staff the discretion to require a larger off-site review area if/when circumstances warrant.
6. We encourage the Department to include language in the guidance to clarify that on- and off-site wetland screening should be required for any project with the potential for direct or indirect wetland impacts (rather than just the types of projects listed on page 4).

Please contact me at 608-250-9971 if you have any questions. We thank you for your consideration of these comments.



Erin O'Brien
Policy Director

From: tvaassen@wppa.org [mailto:tvaassen@wppa.org]

Sent: Tuesday, August 04, 2015 9:39 PM

To: DNR WY WRZ Guidance

Subject: Comments on Proposed Wetland Screening and Delineation Guidance for CAFOs

Attached please find our comments on the Proposed Wetland Screening and Delineation Guidance for CAFOs. Thank you for the opportunity to provide feedback.

Tammy Vaassen

Executive Vice President

Wisconsin Pork Association

608-723-7551

August 3, 2015

TO: Ms. Shelley Warwick, Wisconsin Dept. of Natural Resources

DELIVER TO: DNRWYWRZGuidance@Wisconsin.gov

RE: Comments on Proposed Wetland Screening and Delineation Guidance for CAFOs

FROM: Mike Besibier, President, Wisconsin Pork Association

On behalf of the Wisconsin Pork Association, I would like to express our support for the proposed Bureau of Watershed Management's Program Guidance, "Waterway/Wetland, Concentrated Animal Feeding Operation (CAFO) and Storm Water Management Program, Wetland Screening and Delineation Procedures."

As drafted, we believe that the new guidance will help to provide farms that are working through their CAFO permit with a more streamlined process to determine if wetlands are present. The guidance will help ensure that farmers and engineers recognize the need to review whether wetlands are present in the landscape prior to submitting their CAFO application. In addition, it provides clear steps that should be taken during the review process. In some cases, engineers have had to redo the plans and specifications for structures when wetlands are found after the permit application was submitted. This has led to additional cost to the farmer, and project delay as plans are reconfigured.

We appreciate the opportunity to provide feedback. If you have any questions regarding our comments, please contact the Wisconsin Pork Association at (608) 723-7551.

From: Kafura, David J - DNR

Sent: Tuesday, August 04, 2015 3:02 PM

To: DNR WY WRZ Guidance

Cc: Hardin, Carmen R - DNR; Zastrow, Darrell E - DNR; Warren, James K - DNR

Subject: Wetland Policy Comments

Attached are the forestry division comments regarding the draft guidance on wetland screening/delineation.

We are available to provide additional input as the guidance is finalized, or as the Watershed Bureau drafts future guidance.

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Dave Kafura

Forest Hydrologist – Bureau of Forest Management/Division of Forestry

Wisconsin Department of Natural Resources

810 W. Maple Street, Spooner, WI 54801

Phone: 715-416-4140

David.Kafura@wisconsin.gov

Division of Forestry Comments on Draft Bureau of Watershed Management Program Guidance ‘Wetland Screening and Delineation Procedures’

Thank you for the opportunity to provide comments on the draft policy document pertaining to water permit applications where wetlands are a concern. While the Division of Forestry is well aware of the silvicultural exemption – and the responsibilities that come with the exemption – related to the CWA; there are other recreational activities that occur on our forests that are not exempt and require permits from the Bureau of Watershed Management. Our comments are focused on the potential impact on the process of achieving these recreational goals to provide the citizens with great outdoor opportunities.

General Policy Comments

1). Has there been an analysis of the fiscal implications of requiring wetland delineation as part of any stormwater or waterway permit application? Many of the recreational projects are linear in alignment resulting in a substantial financial commitment to conduct and produce a formal wetland delineation report. Many projects are funded through cooperative agreements with limited state and federal grant dollars involved. In some cases, a formal wetland delineation report would result in a significant portion of the grant dollars used for the report itself, hence less recreational grant dollars or recreational money allocation being used for its' intended purpose of providing such outdoor opportunities and improvements.

2). While we can fully appreciate the complexity of large, comprehensive proposals such as CAFO's, commercial developments, and planned residential unit developments, the draft should articulate and define differences between a requirement for a delineation for complex sites and flexibility to waive delineations on simple sites. It is alluded to under **Section D. Guidance**, paragraph 3, where delineation requirement will be made by the local WMS, but the flexibility should be expanded to other simple sites and clearly stated as to provide both applicants and regulators with clear parameters where delineation reports may be waived (state-wide consistency).

3). In a number of instances the **B. Background** section states that there were inconsistencies between program permit application requirements, applicant confusion over wetland law, along with varying degrees of wetland legal requirement expertise. Exactly how does a delineation report requirement fulfill these identified needs for improvement? Are the application requirements consistent across the water division including providing the applicant with a reasonable understanding of the wetland laws for which a decision is based upon? Does a delineation report answer these questions and also lead regulatory staff to a wetland impact decision? Or in reality, does the NR 103 narrative process of evaluating alternatives for upland options, then evaluating minimization techniques when there is no upland option, drive the decision making process.

It is somewhat disconcerting to state 'This allows some staff to evaluate projects for wetland impacts while others require assistance from wetland staff to determine if impacts could occur. These situations lead to discrepancies in evaluating projects.' Our goals as a department includes One DNR; the concept of working together in an integrated manner to make decisions. We should encourage seeking out assistance from staff more knowledgeable in ensuring unified action and consistent application of the regulations, while at the same time making it a priority to bring staff to a level of competency to address projects. Delineation report, in and of itself, does not accomplish the result of consistent decision-making based on current law.

Specific Policy Comments

1). In section **C. Discussion**, 1st paragraph, there is a sentence that suggests that by submitting a delineation report as part of the application, the customer will be assured that they are submitting a complete application package. A complete application package includes more than just a delineation report. If wetlands are proposed to be impacted, most issues with an application are failure to provide an adequate analysis of alternatives and minimization options. We'd suggest a major revision of such sentence as an application package includes more than just a delineation report.

2). In section **D. Guidance**, first sentence ‘If a wetland is present at a project site....’ should be defined with the specific parameters at this point, so the guidance has more logical progression.

3). In Section **D. Guidance**, last sentence in 1st paragraph. ‘This means the wetland delineation needs to be *verified*...’ should be defined (or use consistent terminology) also. Does *verified* mean wetland confirmation service, wetland identification service, USACOE confirmation? All the above, or none of the above?

4). **Screening Process.** If the project acknowledges the proposal is within a wetland – onsite - (partially or wholly) does a delineation report need to be submitted?

We would recommend that a delineation report not be required under the GP wetland categories as the proposal already acknowledges a wetland impact and should contain the alternative analysis/minimization discussion to be considered a complete application.

5). **Screening Process.** If the project is not within a regulated wetland – deemed offsite – and the project submittal (plans/specs, and photographic evidence) is provided that clearly shows the footprint in relationship to adjacent vegetation dominated by FAC, FACU and/or UPL indicators, is that sufficient to document current conditions?

We suggest that such an alternative to a wetland delineation report that provides a great degree of confidence (and certification that wetland will not be impacted by the proposal) be included in consideration of acceptable options.

On the same vein, if a project proposal footprint is marked out with grade stakes, if a project proponent uses the wetland identification service, is that sufficient to document the relationship of the project to wetland current conditions? We believe this option should be considered as a viable consideration.

6). **Screening Process.** If a proposed project (specifically related to Ch. 30 permits) is primarily for silvicultural purposes, does the permit application require a delineation report in light of the silvicultural exemption?

We would contend that the silvicultural exemption pre-emps any need for a delineation report.

7). **Screening Process.** The guidance identifies offsite reviews limited to areas within 100 feet of the proposed project footprint, and then refers the applicant to use such online resources as the SWDV and county GIS websites.

Both online resources have limitations when it comes to providing an accuracy, or confidence level, of 100 feet. To be at such a detailed review, most aerials pixelate out, not to mention that the USGS topographic maps disappear altogether at that zoom level. Also, the issue of

aerial photo's being a raster layer and the WWI and Soil Indicator being vector layers make such fine scale measuring with the measuring tool questionable at 0-100 feet distances. And since the layers (at least WWI) are poorly geo-referenced by county, they normally are offset from reality.

8). **Screening Process, Step 2, Onsite/Offsite Bullets.** The term 'drainage ways' is used as a key indicator that wetlands may be present. Are drainage ways defined by statute or code to a point of consistent use within the watershed program? Is a drainage way a ravine, a dry wash, a glacial feature, a road ditch or an agricultural drainage ditch? A consistent use of terms that are clearly defined provides clarity and consistency to both the applicant and regulator.

9). **Options For Onsite Wetland Reviews, Last sentence of 2nd paragraph.** Since this is meant as state-wide policy, providing an approximate growing season range of April 15-October 15th is not advisable. You're going to have people focus on that rather than the actual term growing season. The difference between actual growing seasons in Iron vs. Green Co. is an example of extremes.

We'd suggest using – or steering applicants toward - published resources that provide information on growing degree days based on the county the proposal is planned in.

10). **Options for Off-Site Wetland Reviews, first sentence.** Here, along with other notations in the document, refer a person to the post-construction performance standards for protective areas (buffers to wetlands). This is a requirement of NR 151.12 and is applicable to sites subject to the construction performance standards of NR 151.11. Not all permit applications are going to result in land disturbing activity of 1 acre or more.

We would recommend clearly stating where such additional applicable standards apply, and where they don't. Failure to list the applicability of such standards may result in confusion and unnecessary paperwork on the behalf of a subset of permit seekers.

Conclusion

While the goal of the draft guidance is to receive appropriate documents (i.e.; wetland delineation reports) to expedite the review process of regulators, our concern is the broad-brush, one size fits all approach. We fully realize complex sites require competent and accurate submittal documents to reach a sound, scientific-based, consistent decision. Yet, the guidance does not provide a well thought-out, common sense approach to more simple sites with options that provide a degree of confidence to protect water quality associated with wetlands,

other than a screen shot off of an online resource. We believe there are other opportunities to address and document whether wetlands will be impacted.

From: John Holevoet [mailto:jholevoet@WIDBA.COM]
Sent: Tuesday, August 04, 2015 9:56 AM
To: DNR WY WRZ Guidance
Subject: Re: Wetland Screening and Delineation Procedures

Dear Ms. Warwick:

I am writing on behalf of the Dairy Business Association (DBA) to comment on the proposed guidance document entitled "Wetland Screening and Delineation Procedures." DBA members appreciate the department's desire to prevent project delays caused by a lack of conclusive information regarding the location and extent of known wetlands or potentially unidentified wetlands. Dairy farm families attempting to grow their operations share this concern. Nobody wants a farm expansion to be delayed at a critical point in the process or even mid-construction because the project site was not properly screened for wetland indicators.

One of the reasons such issues have occurred in the past is because the screening process was neither systematic nor entirely clear. We have heard from members who traditionally checked for potential wetlands by contacting NRCS staff, but had no idea that a more detailed inquiry was necessary depending on wetland indicators at the site. The step-by-step process found on page five of the proposed guidance is a big improvement when it comes to clarity. It is also written in a way that makes it easy for farmers and consultants assisting them to understand.

Despite clarifications provided by the proposed guidance document, DBA still has some concerns. The screening process outlined on page five may reduce or eliminate the unfortunate instances in which a project is delayed or terminated after it is already underway because of lingering wetlands questions. However, it also triggers the need for a full wetland review simply to confirm that no wetlands are present. These wetlands reviews can be time-consuming and costly

This concern is made worse by the fact that so few assured delineators can be found in Wisconsin. The limited numbers of assured delineators means that farmers can expect a long delay prior to the wetland review even starting, and it will be challenging to complete any determination during the limited growing season. If farmers choose to use a non-assured delineator, the delineation will need external review and confirmation by WDNR or U.S. Army Corp of Engineers staff. To help combat this problem and to reduce the overall cost of delineation, WDNR must diligently work to broaden the pool of assured delineators, offer an alternative means of documenting the absence of wetlands that does not require an assured delineator, and recognize that site-specific characteristics may support a pre-application determination that wetlands are not present despite the screening steps. For example, step two on page five calls on farmers to review topographic maps of the project area. If drainage ways or depressions are found, the guidance states there "is a high likelihood that wetlands are present." This may be true in

certain areas of the state, but is also very dependent on soil type. In areas of the state with highly permeable, well-drained soils, a depression on a topographic map does not mean a wetland is likely to be present. This is the problem with a one-size-fits-all approach. A farmer with well-drained soil should not have his or her project needlessly delayed because a review of topographic maps triggered an unnecessary wetland review.

In conclusion, the proposed guidance is an improvement over current practices in some respects. As is now the case, wetlands screening works best when the department takes a pragmatic approach. DBA is generally very supportive of anything that improves predictability and certainty for farmers looking to grow. This is essential if our dairy economy is to continue to thrive, especially since we have ever fewer dairy farms. Pragmatism is still very much needed, even if the process outlined in the proposed guidance is adopted. However, if implemented too dogmatically, it will cause unnecessary delays and add expense to the already very costly process of getting beneficial projects approved. A pragmatic approach must be used in the evaluation of potential wetlands. Ideally, the guidance document would be more explicit in acknowledging that and in recognizing that wetland screening should only rarely trigger a full-blown wetland determination. Additionally, if this type of review would be necessary before an application could even be submitted or considered, there would have to be a strong emphasis on WDNR staff responding as promptly as possible to requests for wetlands determinations.

Thank you for your time and attention to this matter. I appreciate you taking the time to read our thoughts on this guidance document and sharing it with your colleagues. Please feel free to contact me directly should you have any questions regarding our comments.

Regards,

John Holevoet

Director of Government Affairs

Dairy Business Association

22 N. Carroll Street, Suite 101, Madison, WI 53703

jholevoet@widba.com

608-358-3941

From: Dan Salas [mailto:Dan.Salas@cardno.com]

Sent: Monday, August 03, 2015 4:20 PM

To: DNR WY WRZ Guidance

Subject: comment on wetland guidance

Per the proposed guidance for Wetland Screening and Delineation Procedures, the new guidance recommends private consultant delineation reports be either a) concurred/confirmed by USACE or WDNR, or b) completed by an Assured Delineator. Based on this requirement, I am providing the following comments:

1. This requirement adds additional time and cost for applicants using non-Assured delineators. Specifically,
 - a. Based on my understanding, USACE is currently backlogged in terms of regulatory reviews that concurrence is unlikely to be completed in a timely manner unless supplied with an application package. Guidance for WDNR is requesting concurrence be completed ahead of the application. This inconsistency has potential to add confusion and delays to applications.
 - b. The WDNR Wetland Confirmation Service requires applicants to pay an additional \$300 fee and wait up to 60 days for a concurrence response. This added cost and timeframe (compared to an assured submittal) disadvantages and delays applications completed by professional and technically competent non-Assured wetland delineators, consultants, and their clients.

Based on these comments, I would prefer wetland concurrence occur as part of the permit application submittal and review process (as occurred historically in many regions). This allowed for timely review and efficient use of resources by allowing WDNR staff to review wetland boundaries and proposed impacts concurrently in the field. This also lowered costs and timing considerations for applicants.

Thank you,

Dan

Dan Salas

SENIOR CONSULTANT | SENIOR ECOLOGIST, ESA
ENGINEERING & ENVIRONMENTAL SERVICES DIVISION
CARDNO

From: Alice Thompson [mailto:thompsonandassoc@sbcglobal.net]
Sent: Monday, August 03, 2015 2:01 PM
To: DNR WY WRZ Guidance
Cc: Biersach, Pamela A - DNR; Nedland, Thomas S - DNR; 'Erin O'Brien'; 'Graser, Rebecca M MVP'
Subject: Wetland Screening and Delineation Procedures Comment

As a comment to the proposed "Wetland screening and delineation procedures"- As an Assured Delineator I appreciate the WDNR's on-going commitment to this program. However my concern with this new initiative is that there is not enough capacity to handle the delineation concurrences required for all stormwater and CAFO permits. I am at capacity and not able to even bid on the numbers of delineation requests that come into my office. I know the USACOE is struggling to keep up with concurring on my reports, and your Wetland ID program only has 2 persons to cover the entire state. Unless you either hire more Wetland ID staff, and/or get a lot more wetland professionals into your "Assured" program I think this is going to be a huge bottleneck and potentially backfire.

Thank you, Alice Thompson, PWS, Wetland "Assured" Delineator

Alice Thompson

Thompson & Associates Wetland Services

1514 Menomonee Ave.

South Milwaukee, WI 53172

414-571-8383

414-750-7401 cell

thompsonandassoc@sbcglobal.net

www.thompsonwetlands.com

From: Sarah Majerus [mailto:smajerus@startwithmiller.com]

Sent: Thursday, July 30, 2015 1:18 PM

To: DNR WY WRZ Guidance

Subject: Wetland Screening and Delineation Procedures

Good Afternoon,

After reading through the "Wetland Screening and Delineation Procedures" guidance document, I have a few comments/questions. They are as follows:

- It would be helpful if the guidance provided a more detailed definition of what the "proposed project footprint" is. My understanding of wetland setbacks is that they apply to proposed impervious surfaces, however an NOI applicant must define an area of land disturbance which is typically the extent of grading activities. Would the proposed grading area or proposed impervious area be used as the "proposed project footprint", from which the 100 ft distance would apply?
- If a site design intends to treat all stormwater on site (via treatment ponds, cisterns, etc.) and wetland setbacks would not apply, but hydric soils or wetlands are still mapped within 100 feet of the "proposed project footprint", would a wetland delineation still be necessary?

Thank you for your consideration of my comments/questions.

Best,
Sarah

Sarah Majerus

MILLER ENGINEERS & SCIENTISTS

5308 South 12th Street

Sheboygan, WI 53081

Phone (920) 458-6164

Fax (920) 458-0369

www.startwithmiller.com

From: Kathryn M. McNelly Bell [mailto:kmcnelly@kapur-assoc.com]
Sent: Wednesday, July 29, 2015 3:47 PM
To: DNR WY WRZ Guidance
Cc: Thomas W. Foht; Thomas R. Perez
Subject: Comments/Questions - Draft Guidance "Wetland Screening & Delineation Procedures"

Hi Shelley-

Thank you for putting together the draft guidance for "Wetland Screening and Delineation Procedures". I found it to be well written, succinct and fairly easy to read. I have some questions to ask and just want to be clear that I'm interpreting information presented properly.

- Pertaining to the area of review within 100' of a project's footprint.... On various projects I have been told I may not delineate off-site onto adjacent property. This is a concern I understand to adjacent land owners for various reasons. And if we are making a best educated guess of adjacent lands it could lead to many consequences to those property owners off-site in the future. Will there be legal backing by the State that will require the 100' off-site review via statute or administrative rule? If not, I could see this resulting in a potential liability for those who conduct off-site reviews and submit for concurrence and I would want to have further discussion on this with the Department.
- For projects where a wetland delineation is not practicable (unfeasible) [should that read practical?]. Examples listed include: "*Projects occurring entirely in paved/graveled/concrete areas.*" Is the intent with this for areas that are covered by impervious surface?
- Will we need to delineate areas that had previously received wetland fill permits from DNR and/or ACOE or had been effectively filled prior to the implementation of the Clean Water Act?

Thank you for the opportunity to review this document. I look forward to reviewing additional comments as they come through and seeing the final document.

Take care!

Kathryn McNelly-Bell, CPESC

Environmental Scientist/Compliance Specialist

Kapur & Associates, Inc.

Note My Change of Office Location:

1224 S. Pine Street | Burlington, WI 53105

Main: 262.767.2747 | Direct: **414.751.7282** | Cell: **414.795.4305**

kmcnelly@kapur-assoc.com | www.kapurengineers.com

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From: outlook_1f291c53baacbea5@outlook.com [mailto:outlook_1f291c53baacbea5@outlook.com] **On Behalf Of** Mike Holden
Sent: Wednesday, July 29, 2015 10:21 AM
To: DNR WY WRZ Guidance
Subject: Wet Land Screening & Delineation Precedures

Good morning,

My name is Mike Holden. I am a member of the Governor's Snowmobile Recreation Council, expressing my personal thoughts on this issue. I am also the Sheboygan County director to the Assoc. of Wisconsin Snowmobile Clubs.

I am requesting that snowmobile projects on existing trails that will not involve wetland impacts not be required to complete wetland delineation. The \$1000.00 to \$2000.00 cost per area would at this time be very hard on the snowmobile trail program!!!

Thank you for your consideration on this matter,

Mike Holden

706 Western Ave

Sheboygan Falls, Wi 53085

920-467-2340

holdenmach@outlook.com

From: Tim Lynch [mailto:TLynch@lynch-engineering.com]
Sent: Friday, July 24, 2015 12:20 PM
To: DNR WY WRZ Guidance
Subject: Wetland Guidance Public Comment

Shelley,

As a professional engineer working in municipal engineering and land development, I am strongly concerned with the proposed wetland rules. We are having difficulty obtaining timely delineations for our project sites and the proposed rules will exacerbate this issue. In particular, I'm concerned with the following:

1. There are a limited number of assured delineators (currently 11) in the entire state.
2. There are only 2 DNR personal that review wetlands for concurrence. The rule that does not allow trained DNR officials to review wetlands should be excluded from the guidance.
3. We will be unable to use unassured delineators as we cannot assume that one of the 2 DNR reviewers will concur with the delineation in a timely manner. This is especially concerning late in the season as the guidance does not allow concurrence after the growing season (October 15th).
4. The rule appears to take discretion from DNR officials as a delineation is required whenever hydric soils could be present. This rule will greatly expand the sites that need delineations.

In summary, while the rules sound reasonable, I am very concerned that the unintended consequence will be to slow or stop development in the state. The economic impact of the guidance should be understood and considered.

Thanks you,

Tim Lynch

Timothy C. Lynch, P.E.



From: Amy Kelsey [mailto:akelsey@cooperengineering.net]

Sent: Friday, July 24, 2015 11:23 AM

To: DNR WY WRZ Guidance

Subject: wetland screening and delineation procedures

I'd like to comment on the proposed wetland screening and delineation procedures.

While I agree that having a wetland professional conduct a review does make the permitting process quicker in the long run, it does not short circuit all issues that create extra processing time. As long as a project proponent is paying a processing fee to have the DNR visit their property, it would make sense that all technical issues be resolved that could potentially hold up a project. Navigability determinations (i.e. whether a permit is needed or not on a 'waterway'), OHWM determinations, and other such technical determinations should also be resolved within a reasonable time frame, if not during the initial site visit. I was told that the wetland staff do not make these determinations. Since it is the DNR's intent to be involved early to work out solutions with the least amount of impact, knowing the full environmental realm of issues needs to be resolved early. This is often not the case.

Will information be shared between programs? I have submitted delineation reports only to find out that stormwater or dam review staff do not have access to them. In addition, the WAMS online submittal system is extremely confusing, cumbersome, unfriendly in document size, and does not give a final print out of the application documents you have submitted. You have no final pdf of the permit application to share or save. You may receive a confirmation of the application, but you do not know who is reviewing the permit, the status or the timeline. I have run into many problems. You receive acknowledgement, but are not aware that it is an incomplete application. An expected review date should be submitted as well as confirmation of submittal to the DNR rep. The complete or incomplete status of the application should be addressed immediately. I have attached a recent email as an example of the lack of sharing between programs, lack of confirmation of submittal, and unnecessary project holdups.

Many of the WMS's do not have enough technical background, even with the assistance of professional delineators, to make authoritative decisions. DNR staff are turning into paper-pushers instead of resource managers. And this is a double standard, making concessions to help the DNR staff review wetlands while turning up the heat on consultants and those performing the field work. The WMS's are not delineating wetlands, they are only applying the technical standards set up in order to process an application. Instead of working together, it seems the DNR is untrusting of professional wetland delineators working to uphold the law and minimize impacts. Perhaps the UW, NRCS, or FWS could be available as a resource to both the DNR and consultants when there is a question. Otherwise, it becomes a regulator vs. project proponent issue and there is no neutral party. It seems like there should be a non-biased party or expert to help.

With the assured delineator program, the DNR is making the assured delineator to be the unbiased party, the expert. This seems ridiculous. If you are picking from a pool of consultants who are voluntarily submitting to become assured, do you not think this opens the door for unfair business? Will that person 'certify' other co-workers work, like an engineer stamp, that with their approval or review of the delineation it is assured. Will the assured delineator personally conduct the field work? Do these people never make mistakes?

There are no laws for certification of wetland delineators, lake managers, aquatic plant resource managers. No tests. Just a new program saying the DNR doesn't have to perform site visits on ABC's wetland work.

Lastly, the people conducting the concurrence visits are the ones reviewing the assured delineator applications. Since there are 2.5 staff covering the whole state, how can this occur simultaneously? This is an example of how extremely understaffed the program is, why permits are taking so long, and the double standards the DNR is imposing with both applications and their own DNR staff. This program seems inefficient, unfair, and under-thought.

Amy Kelsey

Environmental Scientist and Community Financing

Cooper Engineering Company, Inc.

2600 College Drive

P.O. Box 230

Rice Lake, WI 54868

715-234-7008

akelsey@cooperengineering.net

From: David Simpson [mailto:DSimpson@cityofmuskego.org]

Sent: Tuesday, July 21, 2015 10:49 AM

To: DNR WY WRZ Guidance

Subject: Proposed Wetland Screening and Delineation

Hello,

I have reviewed the proposed "Wetland Screening and Delineation" and have the following comments:

1. If this change is made there should be a maximum time of 14 calendar days that will be given for the WDNR to complete the concurrence. If they have not responded to the request for concurrence in that time the delineation shall be accepted so the applicant can continue the permit process.
2. No additional fees should be imposed to the applicants for these additional requirements.

Thank you,

David Simpson, P.E.

Director of Public Works/City Engineer

City of Muskego

W182 S8200 Racine Ave., Box 749

Muskego, WI 53150-0749

Direct (262) 679-5686

From: Hill, Andrew [mailto:HillA@beloitwi.gov]

Sent: Thursday, July 16, 2015 12:09 PM

To: DNR WY WRZ Guidance

Subject: Wetland Screening and Delineation Procedures

The proposed procedure does not identify any benefit of a Wetland Delineation.

If the purpose of a Wetland Delineation is to supplement the agency's database of Wetland areas in Wisconsin, then that activity should be pursued exclusively by the WDNR for the benefit of the WDNR, not at the cost of permit applicants.

If the purpose of a Wetland Delineation is to identify areas on the project site where additional wetland preservation / protection / mitigation measures may be appropriate, then there should be a choice for the applicant to claim no contest, and simply apply all additional measures in all locations, and still not perform a Wetland Delineation. This situation may arise when a project is clearly, even to a layperson, entirely within an obvious wetland.

Andy Hill

City of Beloit

Project Engineer

(608) 364-6692

