

Summary of Provisions in 2011 Wisconsin Act 118 – Wetlands Legislation

1. Creates an independent state law that directly regulates all Wisconsin wetlands.
 - Maintains the existing wetland water quality standards in NR 103, Adm. Code.
 - Creates the term "Wetland permits" as the state's water quality certification decision
 - Eliminates the concept of "non-federal" wetlands
 - Revises the definition of "practicable"
 - Removes the statutory list of wetland "Areas of Special Natural Resource Interest"
 - New General Permit and Individual Permit procedures will apply to permit applications received after the bill becomes effective (expected to be June 1, 2012)

2. Wetland General Permits
 - Requires DNR to develop category-specific wetland General Permits (GPs).
 - Requires that GPs contain requirements, conditions, exceptions and prohibitions for projects that will cause only minimal adverse environmental effects.
 - Allows Statewide GPs to be created using an administrative process, that will be valid for 5 years.
 - Permit applicants will apply for coverage under a GP. GPs are automatically approved after 30 days, similar to chapter 30 GPs.
 - Requires Statewide GP's to be consistent with federal GP's.
 - For most GP's limits the discharge impact to 10,000 square feet.
 - Department may prohibit wetland discharges under a GP in 7 listed wetland types.
 - No compensatory mitigation for GPs
 - Surcharge fee required for some project categories that are authorized under a GP, and requires that fee to be used for wetland restoration.

3. Wetland Individual Permits
 - Maintains the existing decision sequence of Avoid, Minimize, No Significant Adverse Impacts
 - Establishes permit process and timelines consistent with Chapter 30, with a 30-day public notice required during the wetland permit review process, a potential for public informational hearing, and a final decision.
 - Requires a pre-application meeting for wetland IPs.
 - Requires a limiting of the scope of alternatives analysis to on-site or adjacent parcels for certain circumstances (projects with economic public benefit, expansion of existing industrial or commercial facilities, development in an existing industrial park)
 - Maintains functional values impacts assessment, including consideration of direct wetland impacts, secondary and cumulative impacts.
 - Compensatory Mitigation is required for all IP's

4. Wetland Compensatory Mitigation

- Allows DNR to consider and develop an In Lieu Fee program consistent with federal regulations.
- Requires the mitigation ratio to be consistent with federal guidelines, but establishes a minimum 1.2 acres restored or created for every 1 acre filled. A ratio of 1.3 is required if the mitigation is off site.
- Establish mitigation bank credits and in-lieu fees as preferred mitigation option, but continues to allow on-site wetland restoration and/or creation.
- Establishes a wetland restoration fund made up of GP surcharge fees and in-lieu fees. The fund will be administered by DNR, allowing DNR to conduct wetland restoration/creation work or enter into agreements with third-party organizations to perform wetland restoration/creation work. Any project that utilizes these funds must be open to the public with some exceptions.

5. Enforcement, Fees, Staff, etc.

- Establishes wetland enforcement authority for inspections and contested case hearings
- Increases permit fees for both waterway and wetland permits, eliminates single-highest fee provisions, and allows DNR to establish fees for other determinations
- Creates two permanent DNR staff positions for Wetland Mitigation, and converts 3 Wetland ID project positions to permanent
- Removes the Wetland Map Review (Tier 1) service and associated fees from the Wetland Identification Program.
- Increases DNR's response time for Wetland Identification services from 30 to 60 days.