Overview of recent WETLAND LEGISLATION

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Photo by Steve LaValley

WETLAND LEGISLATION

What I'll cover…

- Background
- General Provisions
- Wetland General Permits
- Wetland Individual Permits
- Wetland Compensatory Mitigation
- Enforcement, Fees, Positions…

WETLAND LEGISLATION

2011 Wisconsin Act 118

- **Enacted February 29, 2012**
- **Effective July 1, 2012**

BACKGROUND

- Why did this legislation happen?
- Perceptions…
  - DNR won’t allow mitigation
  - Process takes too long
  - DNR won’t move past “avoid”
  - Too much back-and-forth
  - No flexibility for common-sense decisions

- Reality?

BACKGROUND

- Legislative Sponsors' Goals
  - General Permits for small wetland activities
  - Individual Permit review for larger projects / sensitive wetlands
  - More certainty in the permit process
  - Consideration of mitigation to offset impacts
  - Greater consistency with federal process
  - Balance environmental protection and economic development – public and private sector working together

GENERAL PROVISIONS

- An independent state law that directly regulates all Wisconsin’s wetlands
- Maintains state wetland water quality standards
- Creates the term "Wetland Permit" = the state’s water quality certification decision for any discharge of fill
- New permit procedures apply to permit applications received after July 1, 2012

GENERAL PROVISIONS

Reminder:

US Army Corps of Engineers still regulates wetlands!

WETLAND GENERAL PERMITS

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Wetland General Permits - GPs

Legislative Intent:

1. Clear criteria, conditions and timelines to ensure more predictable permit review process and decisions
2. Designed for projects that result in *minimal environmental wetland impact*. (limit for most is 10,000 sq. ft.)
3. *Category-specific* and *consistent* with Army Corps regulations and general permits.

GP PROJECT CATEGORIES

<u>10,000 sq. ft. Limit</u>

1. Industrial (includes waste disposal sites)
2. Commercial
3. Residential
4. Agricultural
5. Municipal Development
6. Recreational

<u>2 Acre Limit</u>

7. Hazardous Waste Treatment/Disposal
8. Temporary Access/Dewatering

<u>No Limit Specified</u>

9. Utility Construction/Maintenance
10. Municipal Bridge/Culvert Constr/Reconstr/Maint

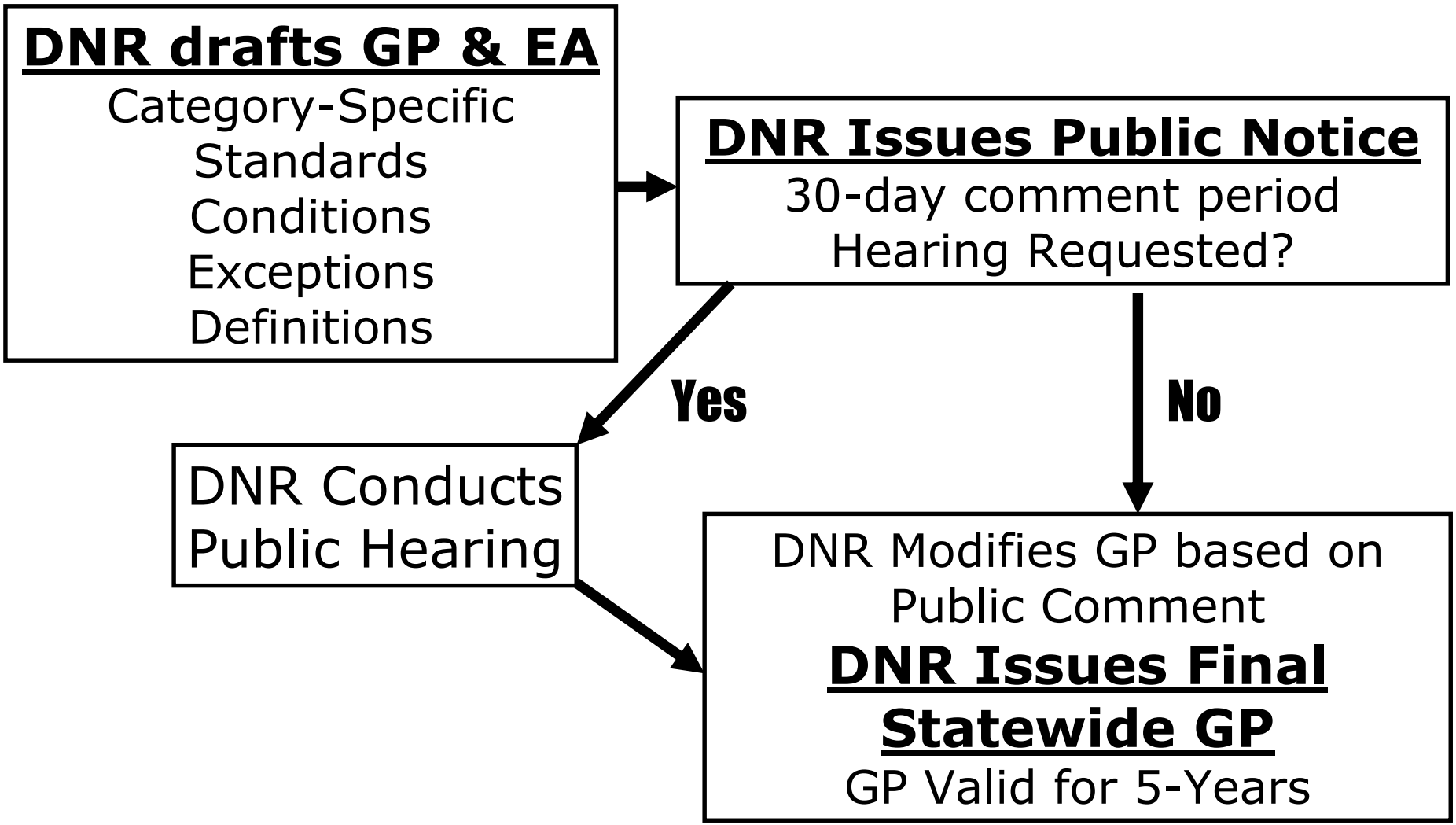
GP STANDARDS

1. DNR establishes requirements, conditions, and exceptions to ensure that the discharges will cause only minimal adverse environmental effects
2. GP may apply only to a single and complete project
3. DNR may require an Individual Permit instead of a GP if site conditions require additional restrictions to ensure no significant adverse impacts

GP STANDARDS

4. DNR may prohibit discharges into certain wetland types:
   - Great Lakes Ridge/Swale Complexes
   - Interdunal Wetlands
   - Coastal Plain Marshes
   - Emergent Marshes with Wild Rice
   - Sphagnum Bogs *(south of STH 16 & STH 21 west of L. Winnebago & USH 151 east of L. Winnebago)*
   - Boreal Rich Fens
   - Calcareous Fens

GP ISSUANCE PROCESS



GP APPLICATION PROCESS

- Same as chapter 30 Waterway General Permit process
- Applicant applies for “coverage” under GP
- DNR reviews, requests additional information if needed within 30 days
- Reviewed as single and complete project
- Modified practicable alternatives analysis required
- DNR issues coverage letter
- Application automatically approved if DNR does not respond within 30 days – all GP conditions must still be met

WETLAND GENERAL PERMITS

DNR To-Do List for GPs:

- Prepare DRAFT category-specific GPs and environmental decision documents
- Develop application materials - standard application form and PAA templates
- Issue Public Notice for first GPs
- Revise GPs based on public comment
- August/September – Issue first Final Wetland GPs

WETLAND INDIVIDUAL PERMITS

WETLAND INDIVIDUAL PERMITS

Wetland Individual Permit - IP

- required for any discharge of fill that doesn't' qualify for a GP, or where DNR requires an IP instead of a GP

- process and timelines now consistent with chapter 30 waterway permits:
  - 30-day public notice required during the wetland individual permit review
  - potential for public informational hearing
  - final decision

IP STANDARDS

1. Project represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts.
2. All practicable measures to minimize the adverse impacts to wetland functional values will be taken.
3. Project will not result in significant adverse impact to wetland functional values, in significant adverse impact to water quality, or in other significant adverse environmental consequences.

WETLAND INDIVIDUAL PERMITS

What's New:

- Pre-application meeting is now required
- Practicable Alternatives Analysis:
  - Change in definition of "Practicable"
  - Scope of alternatives limited in some cases
- Assessing Impacts to Functional Values
  - Additional factors considered
- Compensatory Mitigation is now required

WETLAND INDIVIDUAL PERMITS

Pre-application Meeting:

- Discuss project plans
- Identify resource issues on site
- Identify applicable regulations
- Identify permit application requirements, including mitigation plan
- Recommend US Army Corps of Engineers also attend for optimum coordination

WETLAND INDIVIDUAL PERMITS

Step 1 - Practicable Alternatives Analysis:

Term "Practicable" is defined in statute and is slightly different than prior NR 103:

"means reasonably available and capable of being implemented after taking into consideration cost, site availability, available technology, logistics, and proximity to the proposed project site, in light of the overall purpose and scope of the project."

WETLAND INDIVIDUAL PERMITS

Step 1 - Practicable Alternatives Analysis:

DNR review of practicable alternatives is limited to on-site or located adjacent to the site if one of 3 criteria is met:

- project will result in a "demonstrable economic public benefit"
- project is necessary for expansion of existing industrial, commercial or agricultural facility
- project will occur in an existing industrial park

Note: Army Corps does not have this review limit

WETLAND INDIVIDUAL PERMITS

Step 2 - Functional Values Assessment:

- Maintains consideration of existing factors
  - direct wetland impacts
  - secondary and cumulative impacts

- Adds consideration of two additional factors
  - the impact on functional values resulting from the required mitigation
  - the net positive or negative environmental impact of the proposed project

IP APPLICATION PROCESS

- Same as chapter 30 Waterway Individual Permit process
- Applicant applies, DNR reviews
- Practicable Alternatives Analysis and Mitigation Plans required
- DNR can request additional information if needed within 30 days
- Once application is complete, DNR issues Public Notice - 30-day comment period, opportunity for public informational hearing
- DNR issues permit decision

WETLAND INDIVIDUAL PERMITS

DNR To-Do List for IPs:

- Develop staff guidance and training on new terms and process
- Revise Pre-application Meeting Checklist
- Revise Practicable Alternatives Analysis form to clarify the information needed for different types of projects
- Rapid Assessment Methodology (RAM) is being revised

COMPENSATORY MITIGATION

COMPENSATORY MITIGATION

What's New:

- Mitigation is now required for all IPs
- Preservation allowed as a type of mitigation (under exceptional circumstances)
- Mitigation sequence modified
  - Banks or in-lieu fees preferred
  - Permittee-responsible mitigation (within 0.5 mile or in watershed) still allowed
- Minimum acreage ratio of 1.2 : 1
- Watershed approach/consistent with Corps

COMPENSATORY MITIGATION

- DNR To-Do List for Mitigation:
  - Revise Interagency Guidelines document
  - MOU with Army Corps
  - Staff guidance and training
  - Develop in lieu fee program – this is not an option now, program must be developed and approved by Army Corps

MISCELLANEOUS

MISCELLANEOUS

- Additional enforcement authority
- Increased permit fees for both waterway and wetland permits
- GP Surcharge Fee goes to wetland restoration account
- Two permanent DNR staff positions for Wetland Mitigation, supported by fee increases

NEXT STEPS

- Develop implementation tools
  - Guidance
  - Forms and Application Materials
  - General Permits
- Coordinate with Army Corps
- Hire positions
- Internal and external stakeholder input
- Outreach and Training

QUESTIONS?