

The attached draft guidance entitled “**Wetland Screening and Delineation Procedures.**” outlines a revised process requiring customers applying for certain Department of Natural Resources (Department) permits to submit a verified wetland delineation when wetlands are present on the project site. Additionally, the Department has standardized the wetland review process between watershed programs to ensure a consistent approach to permit applications.

This draft guidance was developed by staff from the Department’s Bureau of Watershed Management and has been reviewed internally. The Department is now soliciting comments from external stakeholders. Once the 21 day notice period is complete, the Department will consider all comments, revise the guidance if needed, and make a copy of the final guidance available to the appropriate internal and external stakeholders.

Comments related to this draft guidance should be provided to Shelley Warwick via e-mail at dnrwywrzguidance@wisconsin.gov; or phone at (608) 264-8554.

DRAFT



BUREAU OF WATERSHED MANAGEMENT PROGRAM GUIDANCE

Waterway/Wetland, Concentrated Animal Feeding Operation (CAFO) and Storm Water Management Program

Wetland Screening and Delineation Procedures

Effective: (insert date)
Guidance #: 3800-XXXX-XX

Notice: This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

APPROVED:

Pam Biersach, Director
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Date

A. Statement of Issue Being Addressed

This guidance outlines a revised process requiring customers applying for certain Department of Natural Resources (Department) permits to submit a verified wetland delineation when wetlands are present on the project site. Additionally, the Department has standardized the wetland review process between watershed programs to ensure a consistent approach to permit applications.

B. Background

In determining ways to improve the permit process, the Department discovered that some customers were unclear about what wetland information is required when submitting water and wetland permit applications. Further, it was found that there were inconsistencies between Department programs about what wetland information is required in a complete permit application and how to evaluate this wetland data. To improve the permitting process and educate customers, the Department formed a Lean Team (Team).

Through its review process, the Team determined that many factors contribute to wetland impacts not being properly accounted for. First, some customers are unclear about what wetland information (delineations, maps, photos, etc.) is required. These customers may rarely complete projects that impact wetlands and therefore have no previous knowledge of wetland laws and the permit process.

Next, it was found that inconsistencies between Department programs were present when evaluating projects for wetland impacts. Staff, especially those whose primary focus is not wetlands, have varying degrees of wetland expertise. 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.

The Team decided to focus on both application requirements of the customer and internal process changes to standardize and improve how applications are evaluated by staff in the waterway and wetland protection program, the storm water program, and the concentrated animal feeding operation (CAFO) program.

C. Discussion

A variety of factors were taken into consideration when creating this guidance. Anytime additional steps are required of an applicant, it must be determined that these steps are justified and beneficial to everyone involved. Currently, if an applicant does not submit information on wetlands in the project area, their project can be delayed while the necessary information is gathered. By submitting a delineation or documentation of no wetlands present with project applications at the beginning of the process, customers will be assured that they are submitting a complete application package, and more quickly receive a decision from the Department on their project.

Because wetland delineations must be concurred with, the Team realized this could require additional effort from applicants, as well as Department staff and the Corps of Engineers. The Team felt that the

additional resources would save time for applicants and staff overall, as well as ensure that applicants are in compliance with state law.

When determining exactly when a wetland delineation would be required, the Team considered many issues. First, the conditions for requiring delineations must be broad enough that they could be standardized across programs and still could be implemented in the field. For example, a process had to be created that would be applicable to many types of impacts, such as CAFOs, stormwater projects, or surface water impacts, all of varying sizes and degrees. Next, on-the-ground realities, such as access to private land, had to be taken into consideration. Wetlands frequently extend past property lines, where applicants may not have access. Also, some sites have no wetland indicators onsite or nearby, making delineations unnecessary.

D. Guidance

If a wetland is present at a project site and permit approvals are sought through the waterway and wetland program, storm water program, or CAFO (Concentrated Animal Feeding Operations) program, the Department requires that a wetland delineation that accurately shows the location of a wetland is submitted with an application. The Department now requires a wetland delineation to be concurred with at the time of application submittal. This means the wetland delineation needs to be verified before the application can be submitted or be considered a complete application package.

For projects that require Chapter 30, Wis. Stats. permit approvals including habitat projects cost-shared by county, state or federal agencies, or projects being completed as part of a wetland conservations activity, or wetland general permit approvals, decisions on wetland delineation requirements will be made by the local Wetland and Waterway staff.

The following guidance summarizes first how to know if a wetland may be present at or near your project site, and if so, what the process is to get a concurred with wetland delineation submitted as part of a complete application to the Department.

Screening Process

The following guidance is to be used for determining when a wetland review is required. Potential applicants must do this screening prior to applying for a Department approval, and provide documentation of the screening results with their application. If an initial screening for wetlands is not conducted by the applicant or their representatives prior to application, the application will not be considered a complete application package.

The guidance first covers review requirements for wetlands located within a proposed project's footprint (referred to as "onsite"), and review requirements for wetlands located outside of the proposed project footprint (referred to as "offsite") that may be impacted by that project. A post-construction site performance standard under NR 151, Wis. Adm. Code requires a protective area between wetlands and impervious surfaces that drain directly to that wetland. Consequently, review staff in the storm water program might need to consider the proximity of off-site wetlands to the project area. The offsite

review will be limited to areas within 100 feet of a proposed project's footprint. The guidance then goes on to cover the wetland information submittal process.

Step 1

Review the Surface Water Data Viewer for *Wetland* and *Wetland Indicators* layers. These layers show Wisconsin Wetland Inventory (WWI) mapped wetlands and potential wetland soils. (These map layers are found at this link: <http://dnrm.wisconsin.gov/SW/Viewer.html?Viewer=SWDV>)

- Click on the *Show Layers* tab in the upper left and then select the *Wetland & Wetland Indicators* from the pull-down menu of the *Layer Theme*.
- Onsite: If either of these two layers is present within a project area, a wetland review should be conducted on the site.
- Offsite: If either of these two layers is located within 100 feet of a project area, an offsite wetland review should be completed. For potential wetlands located offsite see OPTIONS FOR OFFSITE WETLAND REVIEWS.

Step 2

If neither the *Wisconsin Wetland Inventory* layer nor the *Wetland Indicators* layer is present in a project area, review the best available topography. Topographic maps can be found on the Department's Surface Water Data Viewer and are also often available on county GIS sites. This link provides information about interactive county GIS websites: <http://coastal.lrc.wisc.edu/wisconsin-ims/wisconsin-ims.htm>

- Onsite: Are waterways, drainage ways, or depressions located within a project area? If so, there is a high likelihood that wetlands are present. A wetland review should be conducted on the site.
- Offsite: If waterways, drainage ways, or depressions are located within 100 feet of a project area, an offsite wetland review should be completed. For potential wetlands located offsite see OPTIONS FOR OFFSITE WETLAND REVIEWS.

Step 3

Look at a series of air photos. The Surface Water Data Viewer, County websites or online mapping tools provide multiple air photos that can be reviewed from multiple years.

- Onsite: Look for signs of wet areas such as standing water or areas that were too wet to crop. If these features appear in the same general location on multiple air photos a wetland review should be conducted.
- Offsite: If the signs of wet areas described above are located within 100 feet of a project area, an Offsite wetland review should be conducted. For potential wetlands located offsite please see OPTIONS FOR OFFSITE WETLAND REVIEWS.

Step 4

If no potential wetlands are identified in Steps 1-3 above, document your results on Section 5 of the Water Resources Application for Project Permits and include documentation.

Considerations

This screening process does not apply to transportation and energy projects. Also there are projects for which requiring a wetland delineation is not practicable, regardless of the results identified during the screening process. One example includes, but is not limited to:

- Projects occurring entirely in paved/graveled/concrete areas.
- For transportation and energy projects correspondence with a DNR Transportation Liaison or Office of Energy WMS is required when applying for permit coverage through other programs, such as storm water.

OPTIONS FOR ONSITE WETLAND REVIEWS

When the initial screening for wetlands results in a potential for wetlands to be located on a proposed site, a wetland review is necessary. A **wetland review** involves an onsite investigation by trained agency personnel or private consultants. One of the following can be used:

- 1) Department's Wetland Identification Service (WIS)
 - a. The WIS does not provide survey grade wetland boundaries, but does provide information about the approximate location of wetlands found on a site. It is best utilized for providing a definitive answer regarding the presence or absence of wetlands at a site, but not for locating wetland boundaries that can be used for design or setback purposes. More information regarding this service is available at: <http://dnr.wi.gov/topic/Wetlands/identification.html>
- 2) Private Wetland Delineator
 - a. A list of private wetland delineators is maintained by the USACE and may be found at: <http://dnr.wi.gov/topic/Wetlands/pro.html>
- 3) US Army Corps of Engineers (USACE)-St. Paul staff
 - a. May do field visits to determine the presence or absence of wetlands on a project site and in some circumstances may locate the boundaries of the wetland. Contact information for the for the local project manager for the USACE may be found at: <http://www.mvp.usace.army.mil/Missions/Regulatory.aspx>

Onsite investigations may result in either a wetland determination and/or a wetland delineation. A **wetland determination** is completed to determine if wetlands are located in a project area, but do not identify wetland boundaries. If a wetland determination by a private delineator results in the finding of no wetlands, a determination summary, including data sheets and appropriate mapping, should be submitted to the WIS for Department approval. If wetlands are present, a wetland delineation is necessary. Note that a wetland determination or delineation can only be completed/confirmed during the growing season (approximately April 15-October 15).

A **wetland delineation** is a more comprehensive site review that focuses on the accurate identification of wetland boundaries. Wetland delineation reports must follow the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual, Regional Supplements and the joint Department/U.S. Army Corps of Engineers Guidance for Submittal of Delineation Reports. Detailed information can be found at <http://dnr.wi.gov/topic/wetlands/delineation.html>.

OPTIONS FOR OFF-SITE WETLAND REVIEWS

A post-construction site performance standard under NR 151, Wis. Adm. Code requires a protective area between wetlands and impervious surfaces that drain directly to that wetland. Consequently, review staff must consider the proximity of offsite wetlands to the project area. When the initial screening results in a

potential for wetlands outside of the project limits or property boundaries, a wetland review may be difficult, particularly if the potential wetlands are located on a property that is not owned or controlled by the applicant. In view of these difficulties, the following guidance is suggested for offsite wetland determinations.

1. Use the Surface Water Data Viewer or other online mapping tools to determine if any of the proposed grading, filling or proposed building construction will be within 100 feet of the potential wetland boundaries.
2. Use measuring tools on the available websites to approximate the location of the potential wetlands in relation to the proposed grading and filling.
3. Use these estimated distances to determine if NR 151 protective area standards are being met for proposed impervious surfaces draining directly to the wetlands. This may require consultation with a local wetland expert who is knowledgeable about the region and storm water specialist/engineer to determine which protective area should be applied.
4. Onsite techniques described above can be used to supplement the Offsite determinations (e.g. information on plant community composition, wetland boundary delineations, etc.).

Wetland Delineation and Application Submittals

Wetland delineations may be completed by a governmental agency or private consultant. The following identifies the Department's procedures for verifying the accuracy of wetland delineations:

- 1) A concurrence/confirmation letter from USACE or WDNR. For consultants that have not achieved Assured Delineator status, delineations need to be reviewed before the state approves/validates the accuracy of their work. This approval can be in the form of either:
 - I. DNR Confirmation letter issued through the Wetland Confirmation Service
 - II. Concurrence letter issued by the USACE
- 2) Assured Delineator. Concurrence/confirmation from DNR is not needed if an Assured Delineator completes a wetland delineation. (USACE still reviews the work for their regulatory purposes) To identify if the wetland delineation was submitted by an assured delineator please see <http://dnr.wi.gov/topic/Wetlands/assurance.html>
- 3) Governmental Agency Submittals: Concurrence/confirmation from the DNR is not needed if the delineation was completed by the USACE. If the delineation was completed by any other governmental agency, review of the delineation is needed to validate the accuracy of the work.
- 4) DNR Transportation Liaison/Office of Energy WMS Wetland Review Correspondence. Applicants seeking a construction stormwater permit for a transportation or energy project must provide correspondence with an Office of Energy WMS or DNR Transportation Liaison regarding their project and wetland impacts. This correspondence must be included in the stormwater permit application whether there are wetland impacts or not.

Permit applications submitted to the Department's wetland, storm water, or CAFO programs, that have potential wetland areas identified during the screening process described on Pages 4 and 5, must include an approved wetland determination/delineation or the application will be considered incomplete. The Department will notify the applicant that an approved wetland review will be required before the permit application can be approved. When the applicant supplies an approved wetland determination/delineation, the Department will start its application review.

For projects that require Chapter 30, Wis. Stats. permit approvals including habitat projects cost-shared by county, state or federal agencies, or projects being completed as part of a wetland conservations activity, or wetland general permit approvals, decisions on wetland delineation requirements will be made by the local Wetland and Waterway staff.

For energy and transportation projects requiring a storm water permit, applicants must provide correspondence with a DNR Transportation Liaison or Office of Energy WMS regarding their project and wetland impacts. Applicants should submit a map with the project footprint superimposed over the WWI and Wetland Indicators layer, found in the SWDV, to Transportation or Energy staff. This information will help staff provide timely and accurate correspondence to the applicant about whether a wetland permit is required. This correspondence from Department staff can be brief and provided via email. This correspondence on wetland impacts would then be included in the construction storm water application.

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