

DATE: August 21, 2019

TO: Wetland Study Council

FROM: James Brodzeller & Amanda Minks

SUBJECT: Regulatory options for minor discharges

During the first few Wetland Study Council (WSC) meetings on June 27, 2019 and July 25, 2019, WSC members expressed interest in considering options for flexibility for minor discharges. This memo is in response to this interest and seeks to provide some options that DNR is currently considering. We look forward to reviewing this information with you and continuing to work with the council to evaluate options to improve Wisconsin's wetland regulatory program.

Overview

Wetland disturbance and wetland fill is authorized through wetland general and individual permits as well as wetland exemptions. Because this memo is focusing on additional flexibility for minor discharges, wetland impacts through exempt activities will not be discussed in this memo, but DNR encourages the WSC to refer to the wetland exemption presentation that was offered to the WSC on the inaugural meeting dated June 27, 2019.

There is no statutory or administrative definition for minor discharges to wetlands. A working definition that we would recommend for the WSC is 400 ft² of total wetland impact or less (permanent and temporary) which aligns with U.S. Army Corps of Engineers (COE) policies. The utility of general and individual permits ranges widely from year-to-year as does the amount of fill authorized in each permit. Table 1, below, seeks to provide some overall data from 2018 to outline the amount of fill and disturbance that is occurring over time.

Total GPs issued	270
<i>Number of GPs issued for minor discharges</i>	<i>30</i>
Total IPs issued	25
<i>Number of IPs issued for minor discharges</i>	<i>2</i>

There are several regulatory options that DNR has been considering for these types of minor discharges:

1) Updating practical alternative expectations

Section 281.36(3n)(a)3., Wis. Stat., states *“the department shall limit its review to those practicable alternatives that are consistent with the overall purpose and scope of the project. The department shall impose a level of scrutiny and require an applicant to provide an amount of information that is commensurate with the severity of the environmental impact of the project, as determined by the department”*.

To date, DNR has applied this statutory requirement on a case-by-case basis to projects but has not established formal guidance relating to the type of information that would be appropriate for minor discharges. Providing this additional clarification may help streamline and add transparency to the process for minor discharges.

2) Constructing a minor discharge general permit

Currently DNR does not have nonreporting general permits for non-utility projects like that found in the COE permitting structure (e.g. Nationwide Permit 18 – Minor Discharges). There is limited statutory authority that could allow DNR to consider constructing a new general permit and waiving the application requirement to seek authorization for this general permit. It is also possible that the statute be updated to expand this authority and provide DNR to implement nonreporting regulatory options for consistent and low risk projects.

281.36(3g)(h)4.- As part of a wetland general permit issued under par. (b) or (c), the department may waive the requirement that a person wishing to proceed under the general permit apply to the department as required under this paragraph so that the person may proceed with the discharge without specific authorization from the department.

3) Expanding statutory exemptions

Currently DNR is not planning to advocate for additional statutory exemptions for minor discharges and feels that other options for flexibility are more feasible. It is worth noting that additional flexibility could be added to Wisconsin's statute to operate a new exemption similarly to the artificial and nonfederal wetland exemptions.