

ISSUE PAPER: Clarifying Wetland Permitting for Conservation Practices

Background:

Recent interpretations by permitting staff have complicated the permitting process for conservation practices, especially when wetland indicator soils are present on active agricultural fields. We believe that interpretation of wetland rules is contrary to Wisconsin law, and particularly those documents incorporated by reference into Wisconsin administrative code, that treat conservation practices as a normal farming activity exempt from wetland permitting requirements. Even where the exemption may not apply in particular cases, the Conservation GP does not seem to be providing a practical path forward. This has resulted in numerous delays and increased project costs for critical conservation projects that benefit water quality, biodiversity, and ecosystem services. As permitting roadblocks increase, at a time when funding for conservation projects is at an all-time high, conservation partners across the Fox-Wolf Basin are concerned that opportunities to get practices on the landscape that will reduce nutrient and sediment loading to downstream waters, increase water storage capacity on the land to reduce flooding and/or provide habitat will be missed.

Key Issues:

1. Conservation Practices as Normal Farming Activities:
 - Wisconsin Statutes (§ 281.36(4)) recognize normal farming activity as generally exempt from wetland permitting requirements. Conservation agricultural practices are included in the applicable definitions of normal farming activity.
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2. Conservation General Permit Eligibility:
 - Even where projects do not qualify for exemption and require permits, some WMS staff are interpreting the presence of wetland indicator soils in agricultural areas as a barrier to utilizing the Conservation General Permit for conservation practices and requiring expensive wetland determinations as well as scrutinizing permit applications.
 - This overly restrictive interpretation of the law is creating poor policy outcomes by slowing down projects, adding additional costs to voluntary conservation projects for property owners and deterring conservation partners from advancing projects needed to improve water quality and ecosystem health.
3. Treatment of Spoil Placement:
 - Spoil placement, an integral part of many conservation practices, has been inconsistently treated by staff. In some cases, spoil placement is viewed as separate from the conservation project, creating further permitting complications.

Recommendation:

To avoid missed opportunities for conservation and restoration, the Wetland Study Council should work with the department to ensure adoption of a clear, consistent interpretation of Wisconsin's wetland rules in regards to conservation work that is being installed to protect or restore wetlands, restore hydrology or reduce sediment and nutrient loading to downstream water bodies. The Council should:

- Recognize conservation practices as exempt farming activities, including spoil placement.
- Avoid requiring unnecessary and costly delineations for conservation projects.
- Balance conservation goals with practical permitting processes, ensuring that conservation practices proceed where they can enhance environmental outcomes.

Conclusion:

A consistent, practical approach to wetland permitting for conservation practices is essential for promoting water quality, biodiversity, and long-term sustainability in Wisconsin's agricultural landscapes. Aligning staff interpretations with state and federal law will ensure conservation work can proceed efficiently and effectively.

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