



404 Assumption Feasibility Report Update

Wetland Study Council
December 3, 2020

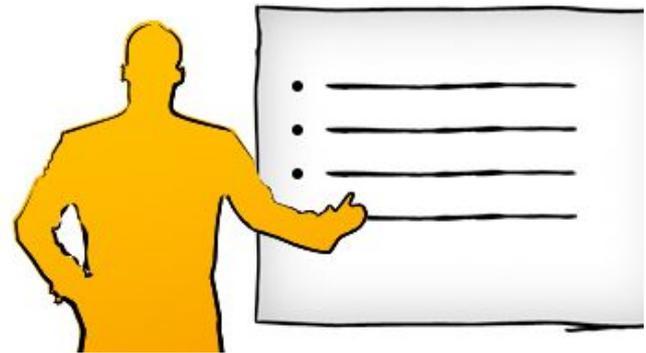
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DNR 404 Assumption Feasibility Report Team



Content

- **Brief review** (Helsel)
- **Memo Report Status** (Helsel)
- **Comparing COE and DNR Permit Processing** (Haller)
- **Timeline & Next Steps** (Haller)





Brief Review

- **404 Assumption Feasibility Report Drivers**

- s. 281.12(2) March 2018 legislation
- Fully Evaluate Advantages and Disadvantages
- Reference Report into Future

- **WSC Input**

- s. 15.347(22)(b)2. March 2018 legislation
- WSC Recommendation: DNR not pursue authority to issue federal wetland and waterway permits at this time
- WSC Statement Helping Guide Report Focus on Alternatives





404 Assumption Feasibility Memo Report

Draft Outline

1. Executive Summary
2. Feasibility Study Background
3. What is Assumption
4. Stakeholder Involvement
5. Policy and Legal Uncertainties
6. Comparison of WI and Federal Laws
7. 404 Jurisdictional Determinations
8. Comparison of COE and WI Permit Processing
9. Alternatives to 404 Assumption
10. Summary



Comparing USACE & WDNR Permit Processing

Data Analysis Topics

- Received FFYs 2018-2019 permitting data from USACE in January 2020
- Includes approx. 1500 USACE and 4300 WDNR general and individual permit actions
- Met with USACE in September and November 2020, resulted in updating data analysis processes
- Different permitting databases between agencies
 - Different permit types between agencies
 - LPs/SPs, NWP/RGPs/PGPs
 - Different permitting processes between agencies
 - self-certifying GPs (USACE)
 - acreage impact thresholds for GPs (0.5 acres vs 0.23 acres)
 - mitigation requirements (required by USACE, only required for IPs by WDNR)
 - compliance with federal laws (not required by state regulation)

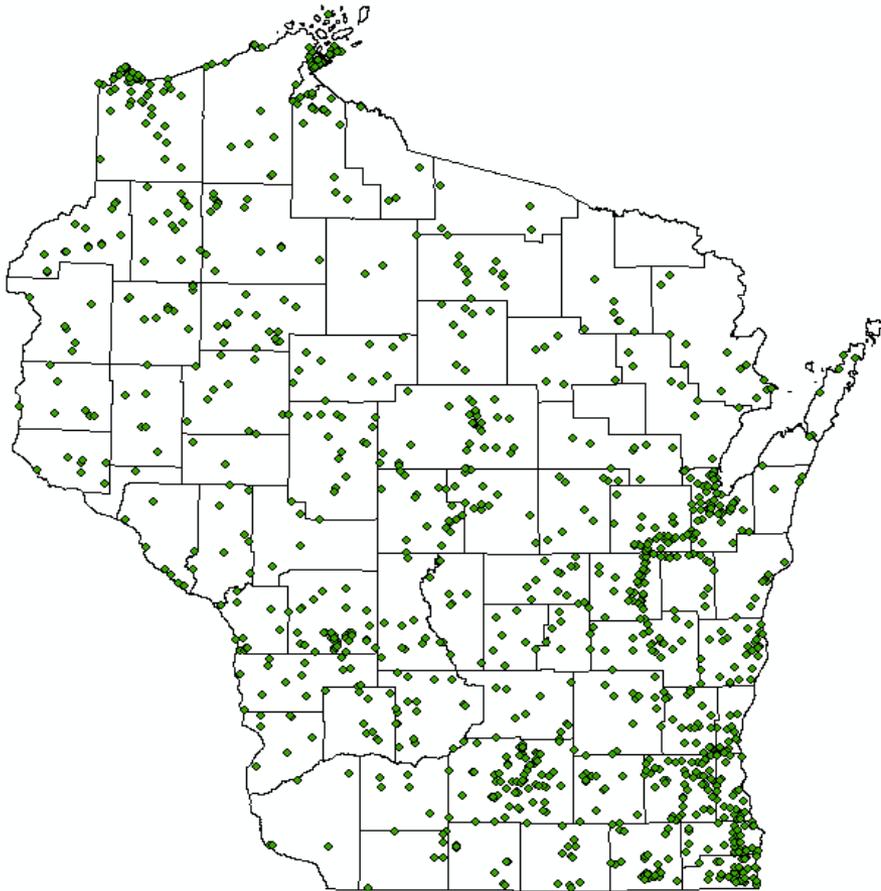


Initial Observations from Data Analysis*

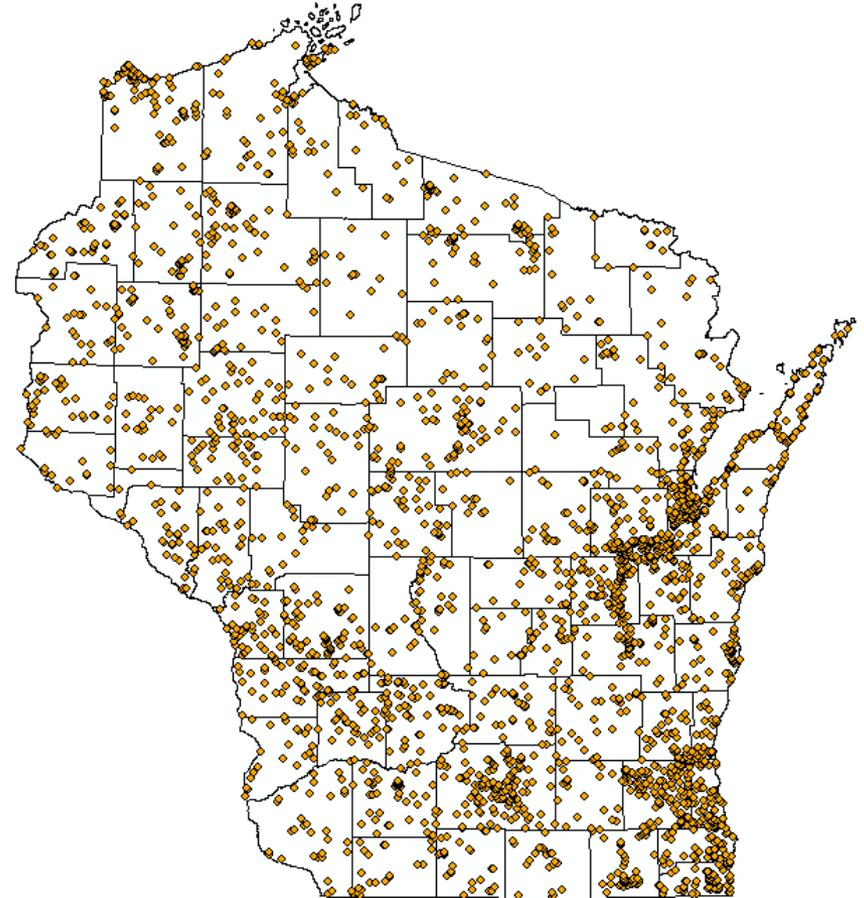
- ✓ WDNR reviewed significantly more general permits and individual permits compared to USACE
- ✓ On average, WDNR reviewed general permits approximately 54 days faster than USACE
- ✓ On average, WDNR reviewed individual permits approximately 75 days faster than USACE
- ✓ WDNR's most-reviewed general permit work types were development, transportation, and structural projects.
- ✓ USACE most-reviewed general permit work types were transportation, development, and bank stabilization projects.
- ✓ WDNR's most-reviewed individual permit work types were bank stabilization and structural projects.
- ✓ USACE most-reviewed individual permit work types were development and transportation projects.

* Has not been concurred with USACE, data subject to change

Agency Permitting Actions



1528 USACE
Permits



3310 WDNR
Permits*

*not all permits had coordinates

WDNR reviewed significantly more general permits and individual permits compared to USACE

Table 1. Comparing GPs and IPs

	GP	IP	Total
USACE	1485	43	1528
WDNR	3222	1087	4309

Table 2. Comparing Types of GPs

	GP (excluding self-certifying GPs)	GP (including self-certifying GPs)
USACE	1485	3801
WDNR	3222	NA

Considerations:

- USACE has more NWP options, 97% of activities are now authorized by GPs
 - Only the most complex proposals are covered by individual permits
- USACE has self-certifying permits that do not require agency review
- WDNR acreage threshold for GPs is ≤ 0.23 acres, USACE acreage threshold is ≤ 0.5 acres

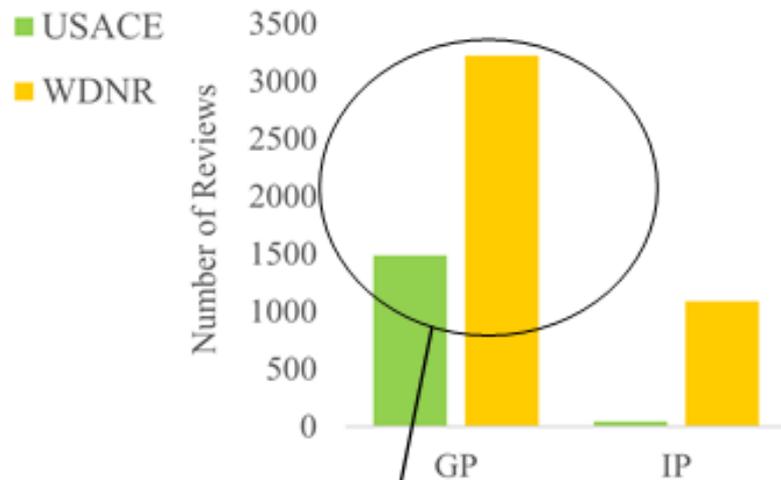


Figure 1

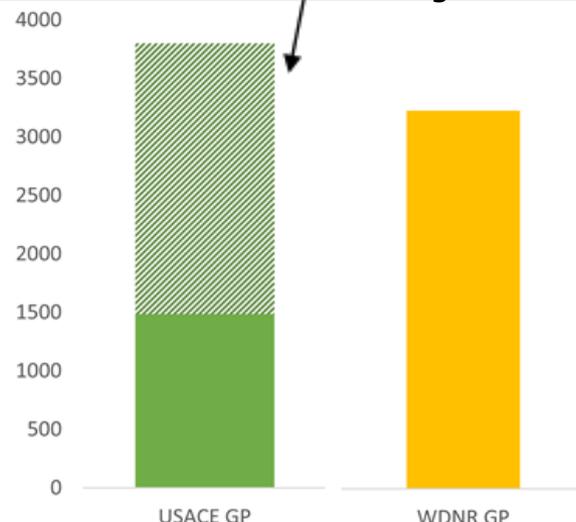


Figure 2

Permit Review Duration by Agency

Comparing Duration of Review (Days)*				
	Count	Average	Minimum	Maximum
USACE GP	1485	80	1	575
USACE IP	43	158	18	350
WDNR GP	3222	26	1	362
WDNR IP	1087	83	1	548

*excluding self-certifying GPs

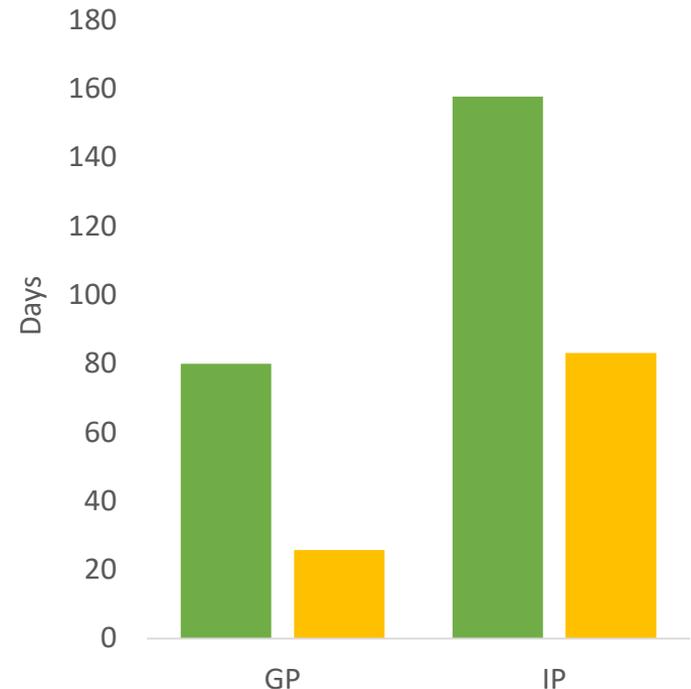
Observations:

- On average, WDNR reviewed general permits approximately 54 days faster than USACE
 - WDNR averages 124 GP reviews per day
 - USACE averages 18.5 GP reviews per day
- On average, WDNR reviewed individual permits approximately 75 days faster than USACE
 - WDNR averages 13 IP reviews per day
 - USACE averages 1 IP review per every 4 days

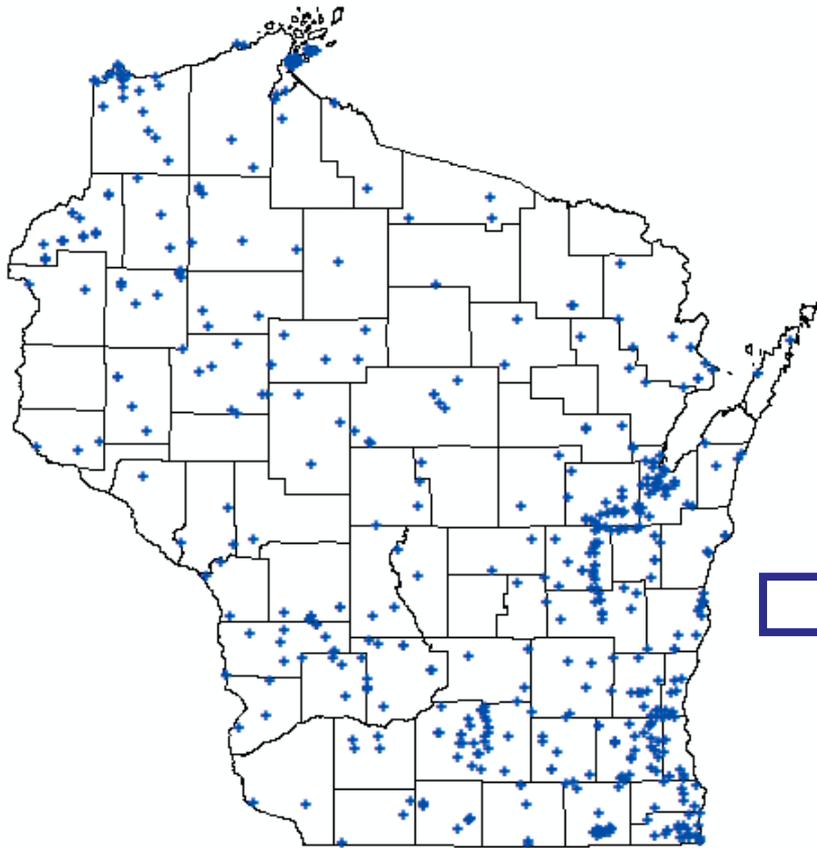
Considerations:

- USACE requires mitigation for GP projects
- USACE requires compliance with the ESA and NHPA, state regulation does not require compliance with these acts
- Differences in staffing numbers and vacancies

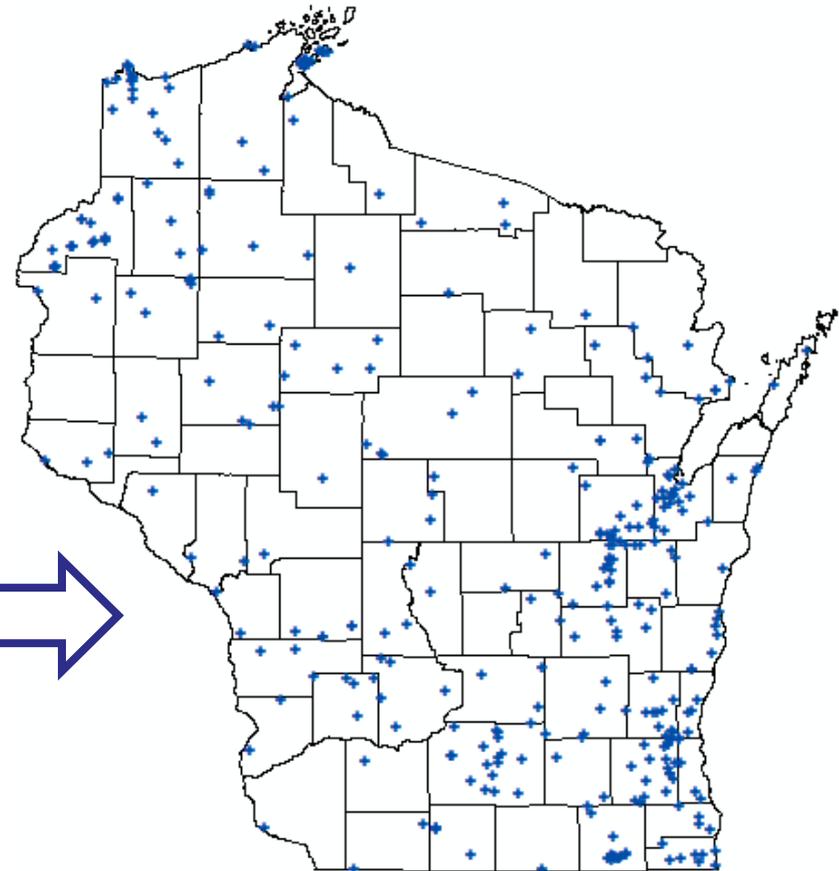
Average Duration of Review



Permits Side-by-Side



544 permits aligned
within 0.1 mile buffer
overlap in ArcMap



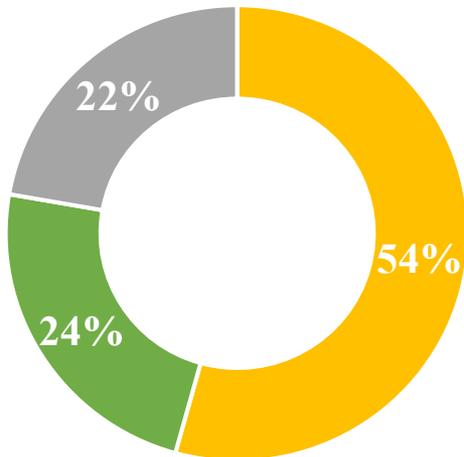
337 permits aligned
manually

Permits Side-by-Side

Side-by-Side Permit Review Duration by Agency	
	Count
WDNR Faster Review Time	183
USACE Faster Review Time	79
Relatively Equal Review Time (within 14 days)	75
Total Side-by-Side Permits	337

NHPA, ESA, JD Observations:

- 54% of side-by-side permits were processed faster by WDNR
 - 65% at least one consult by USACE
 - 82% of the consults were NHPA
- 24% of side-by-side permits were processed faster by USACE
 - 42% required at least one consult by USACE
 - 34% of the consults were NHPA
- 22% of side-by-side permits were processed within a relatively equal review time,
 - 20% required at least one consult by USACE
 - 47% of the consults were NHPA



Considerations:

When National Historic Preservation Act (NHPA) or Endangered Species Act consultation is required, a minimum of 30 days is allowed for the external partner to respond



Side-by-Side Permit Evaluation

Compliance with federal ESA, NHPA, or JD consults impact USACE review time, to some extent

A WDNR permit review staff member will be evaluating reviews that had significant review time differences between the agencies

Hopefully, these evaluations may provide more in-depth comparisons and background to explain the causes of the significant differences in permitting processing time between agencies

Results of these evaluations will be considered in light of the department assuming the Federal 404 program



Timeline and Next Steps

- EPA Wetland Program Development Grant extended 1 year
- LTE support through March 2021
- Draft Memo Report Completed February 2021
- Submit Final Report to EPA May 2021



Discussion & Input

