

Wisconsin Wetland Study Council (WSC)

ANNUAL REPORT

June 2019 – June 2020

Summary of meetings, events, and actions

Background. The Wetland Study Council (WSC) was created in 2017 Act 183. The WSC convened for the first time in June 2019 and meets monthly. Wisconsin statute 15.347(22) details WSC membership, terms, and charge. That statute is provided at the end of this summary. For more detailed information about the WSC, formal actions, and meeting dates, agendas, minutes, and actions, visit the WSC webpage at <https://dnr.wi.gov/topic/wetlands/studyCouncil.html>.

Clean Water Act Section 404 Assumption. The WSC's first study topic was a detailed review of the factors that would need to be addressed if Wisconsin chooses to begin the process of seeking assumption of Section 404 of the Clean Water Act from the U.S. Corps of Engineers (COE). This topic is also referenced as an area the council shall research and develop recommendations in Wisconsin Statute 15.347(22)(b)2. Over the months of June 2019 through January 2020, DNR staff gave a series of presentations and WSC members discussed in detail the duties and responsibilities the state would be taking on with 404 Assumption. Much of the discussion involved identifying the issues with current implementation of wetland permitting through Section 404 and weighing the pros and cons of assumption considering these concerns. Ultimately, WSC members agreed that assuming enforcement of Section 404 would entail responsibilities far beyond wetland oversight and the concerns that compelled its consideration. Therefore, WSC members unanimously passed a recommendation that Wisconsin not pursue authority to enforce Section 404 at this time.

The 404 assumption discussion was prompted in large part by concerns over duplicate permitting and the delays associated with the COE process particularly jurisdictional determinations. A federal COE jurisdictional determination is necessary to verify that no federally regulated waters exist on the site of a project. (If federally regulated waters do exist, then a Section 404 permit, in addition to applicable state permits, may need to be obtained.) After 2017 Act 183, the COE experienced an initial influx of jurisdictional determination requests. The WSC hosted COE staff in January and July to discuss this issue and the COE reported that there currently is no backlog, and COE staff is able to get jurisdictional determination requests done in the growing season. The WSC will track data related to this issue and work with the DNR and COE to improve outreach on preparedness in jurisdictional determination requests, which enables the COE to work through requests efficiently.

Recommendation of 404 Assumption

The council researched and made the following formal recommendation at the May 21, 2020 meeting regarding whether it is in the best interest of the state to pursue authority to administer Section 404 of the Clean Water Act.

The Wetlands Study Council recommends the DNR not pursue authority to issue federal wetland and waterway permits, as allowed under 404 of the federal Clean Water Act, at this time. The 404 program regulates much more than wetlands such as dams and levees, infrastructure development (highways and airports), mining projects, etc. and would require the state to assume many responsibilities outside of wetland oversight. Under federal law, full assumption of the responsibilities to administer 404 would be necessary and would require extensive financial and human resources and potential state law changes. The Wetland Study Council recommends continuing to work on other alternatives to address the concerns of wetland permit timing and consistency that prompted consideration of 404 assumption.

Other Topics Under Review

Other items that the WSC continues to discuss currently include the Wisconsin In-Lieu Fee Mitigation Program, the Wetland Banking Program, and Wetland General Permits.

Wetland Study Council Background

The Wetland Study Council was created in 2017 Act 183. Wisconsin Statute 15.347(22) explains the Wetland Study Council membership, terms, and charge. Per state law, the council shall research and develop recommendations on the following topics:

- The implementation and effectiveness of statewide wetland mitigation programs.
- Program elements that would be necessary for the department of natural resources to implement if the department assumes from the federal government the authority to administer the state's own individual and general permit program for the discharge of dredged or fill material into the navigable waters of the state under s. 281.12 (2). Issues related to the analysis of practicable alternatives that avoid and minimize the adverse impacts of a discharge into a wetland on wetland functional values and that will not result in any other significant adverse environmental consequences.
- Storm water management ponds and their potential to serve a role in wetland mitigation.
- Statewide incentive programs for creating, restoring, and enhancing wetlands.
- Statewide wetland trainings for department of natural resources staff, wetland consultants, and wetland delineators.
- The simplification of regulations associated with creating wetlands on farm drainage ditches for the purpose of phosphorus pollution retention.

- Ways to improve the In-Lieu Fee subprogram of the wetland mitigation program, under s. 281.36 (3r) (e), including subcontracting the management of a program to a nonprofit organization.
- The possibility of a professional, whose wetland delineation work is assured under the department of natural resources' wetland delineation professional assurance initiative, performing a wetland delineation confirmation under s. 23.321 on behalf of the department.
- Methods of financing wetland mitigation requirements for local units of government.
- Any other item related to wetlands at the discretion of the council.

Wetland Study Council Members

Seth Hudson, (Chair) *Cedar Corporation, Senior Management of Economic and Community Development Services* (Resigned from WSC July 2020)

Tracy Hames, (Vice-Chair) *Wisconsin Wetlands Association, Executive Director*

Tim Andryk, *Ducks Unlimited, Policy Staff*

Stacy Jepson, *Cedar Corporation, Environmental Projects Manager*

Paul Kent, *Stafford Rosenbaum LLP, Attorney*

Thomas Larson, *Wisconsin Realtors Association, Senior Vice President of Legal and Public Affairs*

Matt Howard, *The Water Council, Vice President*

Robert Rosenberger, *DNR, Deputy Watershed Management Bureau Director*

Karen Gefvert, *Wisconsin Farm Bureau Federation, Executive Director of Governmental Relations*