

An Evaluation:

## Wetland Regulatory Programs

Department of Natural Resources

May 2007

# Report Highlights ■

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***DNR spent an estimated \$1.75 million on wetland regulatory activities in FY 2005-06.***

***Other midwestern states exempt activities that result in only small wetland disturbances.***

***Efforts to verify compliance with wetland permit requirements could be improved.***

***Compensatory mitigation is voluntary and has not been widely used in DNR permits.***

***Existing wetland maps are outdated and not readily accessible to the public.***

Wetlands—commonly referred to as marshes, bogs, or swamps—provide public benefits such as habitat for plants and animals, flood abatement, water quality protection, and recreational and educational opportunities. Activities that alter wetlands are regulated under various federal, state, and local laws, but the Department of Natural Resources (DNR) is the primary state agency responsible for their protection and management.

Because many wetlands are located on private lands, concerns have been raised about the extent to which Wisconsin's regulatory program balances the public's interest in protecting wetlands with the rights of property owners. In addition, some legislators have questioned the consistency, predictability, and timeliness of DNR's wetland permitting decisions and have asked how wetland regulations in Wisconsin compare to those in other states. To address these concerns, and at the direction of the Joint Legislative Audit Committee, we:

- reviewed DNR revenues, expenditures, and staffing levels from fiscal year (FY) 2001-02 through FY 2005-06;
- analyzed permit approval rates and the timeliness of permitting decisions from January 2001 through June 2006;
- analyzed compliance monitoring and enforcement differences among DNR regions;
- evaluated Wisconsin's wetland compensatory mitigation program, which was created by 1999 Wisconsin Act 147; and
- reviewed wetland regulatory programs in surrounding states, including Minnesota.

## Key Facts and Findings

*From January 2001 through June 2006, DNR approved 3,582 wetland permits, or 82.6 percent of the permit requests it received.*

*DNR identified at least 325 wetland violations from January 2005 through June 2006.*

*DNR approved compensatory mitigation for only 52 projects that disturbed 41.1 wetland acres.*

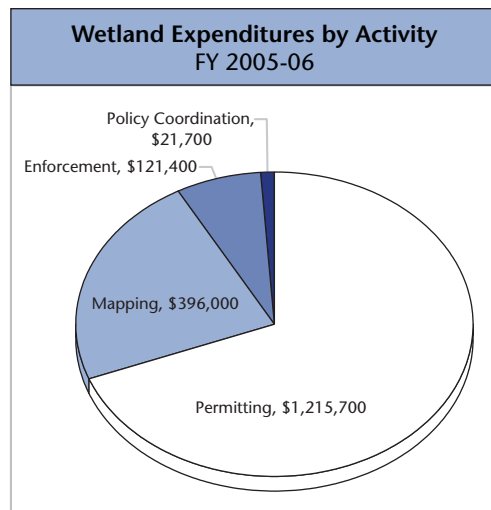
*Unlike Wisconsin, other states require compensatory mitigation to offset permitted wetland losses.*

*Digital wetland maps are available for only 57 of Wisconsin's 72 counties.*

## Staffing and Finances

Under the federal Clean Water Act, most activities that involve grading, filling, removing, or disturbing the soil in a wetland—such as residential construction, road building, and pond creation—require approval from both DNR and the Army Corps of Engineers. DNR is also authorized under 2001 Wisconsin Act 6 to regulate activities in small, isolated wetlands that are not subject to federal permitting requirements.

DNR regulates Wisconsin wetlands as part of a larger waterway permitting program. In FY 2005-06, an estimated 19.3 full-time equivalent (FTE) staff performed wetland permitting, enforcement, mapping, policy coordination, and other regulatory activities. Expenditures for these activities were estimated at \$1.75 million.



DNR charges \$500 for most state wetland permits, regardless of project size, the nature of the disturbance, or the extent of its effects on wetlands. However, wetland permit fees do not cover all program costs. In FY 2005-06, general purpose revenue (GPR) funded 45.5 percent of program expenditures.

## Wetland Permits

States differ in the manner and extent to which they regulate wetlands. For example, local governments are responsible for wetland permitting in Minnesota, and the State of Michigan has assumed federal wetland permitting authority. Generally, both DNR and the Corps approve permits in Wisconsin, but only if wetlands cannot be avoided and if projects will not have significant adverse environmental effects.

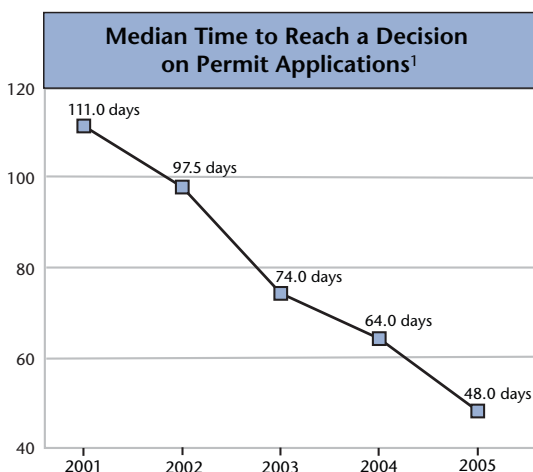
Wisconsin and several other midwestern states regulate at least some activities in wetlands that are not subject to federal jurisdiction. Indiana, Michigan, and Minnesota exempt activities that result in only small wetland disturbances, but Wisconsin does not.

From January 2001 through June 2006, DNR approved 3,582 wetland permits, or 82.6 percent of the permit requests it received.

The three most frequently approved activities were pond creation (659 permits), utility projects (555 permits), and residential construction (501 permits). Approval rates ranged from 74.0 percent in DNR's Northern Region to 88.0 percent in the South Central Region. Approved permits disturbed an estimated 867.7 wetland acres.

The Natural Resources Board has directed that wetland permits be issued in a simple, straightforward, and predictable manner. However, the process is complicated and requires frequent communication with applicants. Existing laws give DNR flexibility, but this flexibility can be confusing and frustrating for applicants.

Permit requests were generally approved or rejected within statutorily prescribed time frames and, overall, median processing time declined significantly from 2001 to 2005. However, 282 permit decisions took longer than one year.



<sup>1</sup> From the date the application was received.

## Compliance and Enforcement

Verifying compliance with permit requirements is an important component of a regulatory program. From January 2005 through September 2006, regional staff reported conducting only 27 inspections of completed projects for which permits had been issued. Violations were found at six of these project sites.

DNR also identified 325 violations—including disturbing wetlands without a permit or not following wetland permit requirements—in response to complaints from the public or other government officials. More than half of these violations occurred in the Northern Region, where in 10 of 18 counties, more than 20 percent of the land area is classified as wetland.

According to DNR, most violations are resolved voluntarily. During our audit period, DNR issued 229 after-the-fact permits and 69 notices of violation for non-permitted activities. However, regional staff lack clear guidelines for resolving violations, and our report includes recommendations to ensure consistent enforcement practices.

## Compensating for Wetland Losses

Compensatory mitigation is the process of restoring, enhancing, or creating wetlands to replace those lost through permitted projects. Wisconsin implemented a voluntary program in 2002. Applicants are typically required

to restore 1.5 wetland acres for each acre lost, but the manner in which that is done varies.

Some applicants create or restore wetlands on site, while others purchase credits from wetland mitigation banks that provide a market-based system for restoring or creating wetlands in advance of permitted losses. As of June 30, 2006, six wetland mitigation banks in Wisconsin had been approved.

Compensatory mitigation was included in only 1.8 percent of permits approved by DNR during our audit period. They provided compensation for a total of 41.1 wetland acres disturbed by 52 projects. Most projects were located in the Southeast Region.

The use of compensatory mitigation in DNR permits is limited by:

- geographic restrictions;
- additional costs to applicants for long-term monitoring and maintenance; and
- state policies that discourage the use of wetland mitigation banks.

In contrast, compensatory mitigation is mandatory, and therefore more widely used, in Department of Transportation projects, as well as under federal wetland permits and those issued by other states. Wetland mitigation banks offer administrative, economic, and ecological advantages, although some believe that increasing their use would reduce wetland quality and protection.

## Wetland Mapping

Consistent, accurate, and up-to-date wetland maps are important for measuring program effectiveness, making informed program decisions, and prioritizing limited resources. As required by law, DNR has mapped wetlands larger than five acres. However, existing maps are outdated and not readily available to the public, and they lack sufficient detail to help landowners locate wetlands on their property.

## Recommendations

Our report includes recommendations for DNR to:

- ☑ improve its tracking of wetland losses and the timeliness of permit processing, (pp. 31 and 42);
  - ☑ develop general permits for activities that have minimal effects on wetlands (p. 38);
  - ☑ increase efforts to monitor compliance and ensure consistent enforcement practices (pp. 50 and 51);
  - ☑ improve its coordination with federal agencies (pp. 53 and 62); and
- ☑ report to the Joint Legislative Audit Committee by December 31, 2007, on:
    - its efforts to ensure that regional staff document consistency in reaching decisions, and to provide permit applicants with additional guidance (p. 37);
    - the advantages and disadvantages of increasing the use of wetland mitigation banks (p. 69);
    - options for establishing permit fees that better reflect staff and resource costs (p. 84);
    - the feasibility of assuming responsibility for administering the federal wetland permit program, as allowed by the Clean Water Act (p. 86); and
    - a strategy for updating wetland maps and increasing their availability to the public (p. 91).

*The Legislative Audit Bureau is a nonpartisan legislative service agency that assists the Wisconsin Legislature in maintaining effective oversight of state operations. We audit the accounts and records of state agencies to ensure that financial transactions and management decisions are made effectively, efficiently, and in compliance with state law, and we review and evaluate the performance of state and local agencies and programs. The results of our audits, evaluations, and reviews are submitted to the Joint Legislative Audit Committee.*

## Additional Information

For a copy of report 07-6, which includes a response from the Department of Natural Resources, call (608) 266-2818 or visit our Web site:



[www.legis.wisconsin.gov/lab](http://www.legis.wisconsin.gov/lab)

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