

WISCONSIN

Wetland Definition

Wisconsin regulations, Chapter NR 103, provide that: "Wetlands" means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions."

Wetland Water Quality Standards

Wisconsin was the first state to adopt explicit water quality standards for wetlands. These standards set forward goals, wetland definition, designated uses, criteria of designated uses and an antidegradation policy. Regulations were adopted, in part, to facilitate Section 401 review. Regulations provide that: "It is the policy of the department (DNR) to review, consistent with the requirements of section 1341 of the federal water pollution control act, 33 U.S.C. ss 1251, et. seq., all activities which require a federal license or permit which may result in any discharge to waters of the state...."

Designated Uses

Wisconsin law requires that the Department of Natural Resources (DNR) protect water quality related functions and values of wetlands including sediment and pollutant attenuation, storm and flood water retention, hydrologic cycle maintenance, shoreline protection against erosion, biological diversity and production and human uses such as recreation.

Narrative and/or Numeric Criteria

DNR uses narrative standards to protect the designated uses listed above. These include sequencing requirements. DNR must make a finding that the project proponent has shown that no practicable alternative exists which would avoid adverse impacts to wetlands, that all practicable measures to minimize adverse impacts to the functional values of the affected wetlands have been taken and that the activity will not result in significant adverse impacts to wetland functional values, significant adverse impacts to water quality or other significant adverse environmental consequences.

A variety of additional criteria must be used to assure the maintenance or enhancement of functional values: a) Liquids, fill or other solids or gas may not be present in amounts which may cause significant adverse impacts to wetlands; b) Floating or submerged debris, oil or other material may not be present in amounts which may interfere with public rights or interest or which may cause significant adverse impacts to wetlands; c) Materials producing color, odor, taste or unsightliness may not be present in amounts which may cause significant adverse impacts to wetlands; d) Concentrations or combinations of substances which are toxic or harmful to human, animal or plant life may not be present in amounts which individually or cumulatively may cause significant adverse impacts to wetlands; e) Hydrological conditions necessary to support the biological and physical characteristics naturally present in wetlands shall be protected to prevent significant adverse impacts on water currents, erosion or sedimentation

patterns; water temperature variations, the chemical, nutrient and dissolved oxygen regime of the wetland, the movement of aquatic fauna, the pH of the wetland and water levels or elevations; and f) Existing habitats and the populations of wetland animals and vegetation shall be maintained by protecting food supplies for fish and wildlife, protecting reproductive and nursery areas, and preventing conditions conducive to the establishment or proliferation of nuisance organisms.

Antidegradation Policy

Wisconsin has adopted an overall antidegradation policy that applies to all waters including wetlands. The antidegradation rule is set forth in Chapter NR 102.05(1)(a) and implemented in Chapter NR 207 of the Wisconsin Administrative Code. NR 102.05 provides, in part, that:

“No waters of the state shall be lowered in quality unless it has been affirmatively demonstrated to the department that such a change is justified as a result of necessary economic and social development, provided that no new or increased effluent interferes with or become injurious to any assigned uses made of or presently possible in such waters.”

The antidegradation rule addresses new or increased discharges to surface waters (river, lakes, drainageways, wetlands, etc.). The way in which new or increased discharges are addressed depends on “the type, or use designation, of the water body.” In general, the antidegradation rule requires a justification of the reasons for new or increased discharges before such discharges are allowed under Wisconsin’s discharge permit program. In Chapter NR 207, new discharges are defined as point sources which did not have a discharge permit as of March 1, 1989. Increased discharges are more pollutant-specific, referring to changes in concentrations, levels, or loadings (mass) of a particular pollutant that exceeds a limit that is already in a discharge permit. For some higher quality waters:

“New or increased discharges are either prohibited or allowed only in extreme and unique situations. In Outstanding Resource Waters (listed in Chapter NR 102 of the Wis. Adm. Code), new or increased discharges are allowed only if they maintain the existing water quality. New discharges to Exceptional Resource Waters (also listed in ch. NR 102) are treated similar to Outstanding Resource Waters if the discharge is not needed to prevent or correct an existing surface or groundwater contamination problem. If the new discharge is needed to prevent or correct any of those problems, or for any increased discharge, it is addressed similar to a more typical fish and aquatic life protection situation.”