



**To: Members of the Joint Legislative Audit Committee:**

**July 26, 2007**

**From: Wisconsin Wetlands Association-- Becky Abel, Executive Director**

**RE: Audit Report 07-6: An Evaluation of DNR's Wetland Regulatory Programs.**

Thank you for the opportunity to speak to you today. My name is Becky Abel and I am the Executive Director of the Wisconsin Wetlands Association.

The Wisconsin Wetlands Association, a statewide member-based nonprofit organization, has as its mission the protection, restoration and enjoyment of wetlands and their associated ecosystems through science-based programs, education and advocacy. Our more than 1500 members include hunters, anglers, wetland professionals, teachers, paddlers, and other outdoor enthusiasts.

The audit of DNR's wetland regulatory program was initially requested to provide:

1. A comparative review of the number of days and decision-making process to approve wetland fill permits across WDNR regions, and
2. A comparison of Wisconsin and Minnesota's wetland mitigation programs for ideas about how to create a more "business-friendly" wetland regulatory program.

The scope of the audit went well beyond the topics requested and provides the first in-depth accounting of Wisconsin's wetland permitting program since the inception of the program in 1991. This review will be extremely useful as we look for ways that DNR is and isn't adequately protecting our state's valuable wetlands.

WWA would like to comment on four main issues related to the audit:

**Issue #1: Permit Compliance, Illegal Filling and Enforcement:**

The DNR has been pressured to churn out wetland permits at a nearly impossible rate and, by their own admission, DNR's efforts to reduce processing times on wetland fill permit applications has hindered their ability to monitor permit compliance or identify and address unauthorized wetland fill. However, even with extremely limited time and money, WDNR identified more than 325 violations (i.e., unauthorized wetland fill or violation of permit conditions) during the 18-month window under review.

Deterrence of unauthorized wetland destruction **must** become a higher priority for WDNR. This means more and better communication about wetland regulatory requirements, increased emphasis on compliance monitoring, and better use of tools and mapping technology to identify and seek remedies for wetland violations.

Suggestions for improvement include:

- DNR produced brochures and other resources to help landowners determine if they have wetlands on their property and to help local governments advise on the likelihood of the presence of wetlands on privately-owned lands.
- Mandatory disclosure about wetland regulatory requirements in local zoning permits and real estate transactions.
- More resources for permit compliance monitoring and wetland regulatory enforcement.
- Uniform citation authority to allow conservation wardens to issue tickets and order work-stoppages for unauthorized wetland fill.
- Better tracking of both permitted and unauthorized wetland fill.
- More staff and money to complete the Wisconsin Wetland Inventory.

## **Issue #2: The push for business friendly permit options**

The report explored numerous permitting options which, if pursued, could result in an increase in state-authorized wetland destruction and a reduction in the extent of review required to receive a permit to permanently fill a wetland. Current state *and federal* laws prohibit the issuance of wetland fill permits if alternatives exist to avoid and minimize wetland impacts. General permits, exemptions, or the promise of wetland mitigation should never be used to circumvent this requirement. The auditors' recommendation for the development of general permits failed to recognize that Wisconsin already has a robust General Permit program for activities that will not have a significant adverse impact on wetland acreage or function. Expansion beyond what's already allowed WILL have an adverse impact on wetlands.

The Wetlands Association will oppose exemptions to fill small wetlands or wetlands that are labeled as "low-quality". Small wetlands provide habitat for migratory waterfowl and songbirds and many of the state's endangered and threatened animals, and even wetlands with degraded plant communities may provide important ecological services such as flood control, water quality improvement, or groundwater/drinking water recharge.

With respect to wetland mitigation, it unfortunately does not usually look as good on land as it does on paper. All too often, wetland mitigation sites do not replace the type, quality or function of the wetlands lost. If someone cut a healthy 100 year old oak tree from your yard and replaced it with 2 spindly saplings that would require a tremendous amount of maintenance just to survive, would you feel as if you were better off because there were two trees instead of one? Many studies have documented poor ecological success rates and a systemic lack of accountability for wetland mitigation projects. WWA will conduct a cautious and skeptical evaluation of any proposed expansions to the state's wetland mitigation program to ensure that program modifications do not lead to a further loss of wetland acres or functions.

## **Issue #3 Permit timelines and wetlands lost:**

The audit reports that in recent years, the DNR substantially reduced the amount of time required to approve permits to fill wetlands, while also reducing the acres of wetlands filled. However, some permits will always require more time to review. WWA supports the audit recommendation for the DNR to improve the clarity of application requirements and staff communication with permit applicants and we would be happy to work with DNR to help them

identify and remedy the common causes of permit review delays. However, we must keep in mind that longer permit review times often accompany projects with more substantial or complex wetland issues. *The primary purpose of the wetland regulatory program should be to protect Wisconsin's wetlands.* The program's effectiveness **must** be measured in terms of successful avoidance of wetland impacts rather than the rate of wetland fill approvals or the speed of permit processing. The public expects WDNR to conduct detailed review of the impacts of wetland development projects and strongly opposes a fast-food approach to the review of large or complicated projects.

DNR is processing permits faster, but the report still documented nearly 160 acres of state-authorized wetland fill by private interests each year. **The audit failed to acknowledge that the state directly destroys more than double the acres of wetlands filled by private interests annually to expand the state road system.** We were disappointed that the report also contained virtually no discussion about the ecological impacts of 350+ acres of annual wetland destruction.

#### **Issue #4 There's a lot more to Wisconsin's Wetland Story:**

The audit doesn't tell the whole story. As mentioned above, the report does not address the almost 200 acres a year that are filled for state transportation projects. The audit also fails to evaluate the many unregulated ways that the ecology of wetlands are destroyed—through removal of trees and vegetation, through dessication from water diversion to stormwater ponds, and through water level manipulation and groundwater withdrawal. And since there's also evidence that wetlands are being filled illegally at an alarming rate, the audit does not provide a snapshot of the most critical issue—just how many wetlands are being destroyed annually and how will the DNR protect our state's valuable and diverse wetlands when its funds and staffing are seriously limited and cookie cutter permit reviews are becoming the expectation.

Wisconsin has a tradition as an “early-adopter” of programs that recognize the need to protect and preserve valuable wetland resources. For example, we were the first state to pass Water Quality standards for wetlands as required under the federal Clean Water Act. We were also the first in the nation to adopt isolated wetland protections after the U.S. Supreme Court ruled these wetlands were not regulated under the Clean Water Act. These innovations received broad, bipartisan support because there was overwhelming public support for these actions by duck-hunters, anglers, bird-watchers, river advocates, clean drinking water advocates, flood managers and others.

Rather than enter the race for the bottom by weakening wetland regulations to match those of our closest competing state, the Wisconsin DNR should be charged with-- *and provided adequate funds for--* taking every measure to conserve wetlands for the use and enjoyment of Wisconsin residents and to support our thriving tourism industry.