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## Civil Solutions

Dear John,

Many of my clients have recently asked about how the new rules regarding wetland permits may affect their land or project. So I thought I would share what I know so far. Its still too soon to fully answer what we can expect. We will need to wait until June to get better guidance. The article below summaries some of the expected changes that we know so far.

If you have a suggestion on subjects you'd like to know more about, contact us, and we'd be glad to cover it here.

John R. Davel, P.E.  
President

### Wetland Bill Has Passed

An important piece of Wetlands legislation has been signed by Governor Walker. The new rules are expected to take effect on June 1. I have discussed the new rules with several DNR Water Management Specialists that I frequently encounter. The summary below is one I recieved from DNR, which is an overview of the legislation, and how DNR will move forward to implement the new law. Here's a summary of the key provisions:

1. Creates an independent state law that directly regulates all Wisconsin wetlands.
  - Maintains the existing wetland water quality standards in NR 103, Adm. Code.
  - Creates the term "Wetland permits" as the state's water quality certification decision.
  - Eliminates the concept of "non-federal" wetlands.
  - Revises the definition of "practicable".
  - Removes the statutory list of wetland "Areas of Special Natural Resource Interest" .
  - New General Permit and Individual Permit procedures will apply to permit applications received after the bill becomes effective (expected to be June 1, 2012).



## 2. Wetland General Permits

- Requires DNR to develop category-specific wetland General Permits (GPs).
- Requires that GPs contain requirements, conditions, exceptions and prohibitions for projects that will cause only minimal adverse environmental effects.
- Allows Statewide GPs to be created using an administrative process, that will be valid for 5 years.
- Permit applicants will apply for coverage under a GP. GPs are automatically approved after 30 days, similar to chapter 30 GPs.
- Requires Statewide GP's to be consistent with federal GP's.
- For most GP's limits the discharge impact to 10,000 square feet.
- Allows the Department to prohibit wetland discharges under a GP in 7 listed wetland types.
- No compensatory mitigation for GPs.
- Requires a surcharge fee for some project categories that are authorized under a GP, and requires that fee to be used for wetland restoration.

## 3. Wetland Individual Permits

- Maintains the existing decision sequence of Avoid, Minimize, No Significant Adverse Impacts.
- Establishes permit process and timelines consistent with Chapter 30, with a 30-day public notice required during the wetland permit review process, a potential for public informational hearing, and a final decision.
- Requires a pre-application meeting for wetland IPs.
- Requires a limiting of the scope of alternatives analysis to on-site or adjacent parcels for certain circumstances (projects with economic public benefit, expansion of existing industrial or commercial facilities, development in an existing industrial park).
- Maintains functional values impacts assessment, including consideration of direct wetland impacts, secondary and cumulative impacts.
- Compensatory Mitigation is required for all IP's.

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## 4. Wetland Compensatory Mitigation

- Allows DNR to consider and develop an In Lieu Fee program consistent with federal regulations.
- Requires the mitigation ratio to be consistent with federal guidelines, but establishes a minimum 1.2 acres restored or created for every 1 acre filled. A ration of 1.3 is required if the mitigation is off site.
- Establish mitigation bank credits and in-lieu fees as preferred mitigation option, but continues to allow on-site wetland restoration and/or creation.
- Establishes a wetland restoration fund made up of GP surcharge fees and in-lieu fees. The fund will be administered by DNR, allowing DNR to conduct wetland restoration/creation work or enter into agreements with third-party organizations to perform wetland restoration/creation work. Any project that utilizes these funds must be open to the public with some exceptions.

## 5. Enforcement, Fees, Staff, etc.

- Establishes wetland enforcement authority for inspections, uniform citations and contested case hearings, consistent with chapter 30.
- Increases permit fees for both waterway and wetland permits, eliminates single-highest fee provisions, and allows DNR to establish fees for other determinations.
- Creates two permanent DNR staff positions for Wetland Mitigation, and converts 3 Wetland ID project positions to permanent.
- Removes the Wetland Map Review (Tier 1) service and associated fees from the Wetland Identification Program.
- Increases DNR's response time for Wetland Identification services from 30 days to 60 days.

The Bill's author, senator Kedzie intended that the bill would result in overall more wetland and higher quality wetland. We will strive to make that vision happen. I am confident that we can meet the challenge of implementing these changes to our state's wetland laws, and maintain strong wetland protections.

Courtesy of:

P Kenneth G Johnson

Water Division Administrator

Wisconsin Department of Natural Resources

## DNR Still Working to Implement Storm Water Rules

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The Wisconsin Department of Natural Resources (DNR) has revised Chapter NR 151 of the Wisconsin Administrative Code, an administrative rule that establishes runoff pollution performance standards for both agricultural and non-agricultural sources.

Changes to the non-agricultural performance standards in Chapter NR 151 became effective on January 1, 2011. Since that time, the DNR has been working to implement these



changes. However, the DNR has not previously had an opportunity to provide outreach on the changes. Later this month, DNR is offering a seminar to update all consultants on the rule changes. I plan to attend and will provide an important update for how these new rules may affect site development projects

I hope this important news update is relevant to your business. If you'd like to learn more information about our firm or services, please give me a call at 920-560-6563, or visit our website at [www.davel.pro](http://www.davel.pro).