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States' Wetlands Permitting Statutes:

Wisconsin



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Wis. Stat. § 281.36

Wis. Stat. § 281.37

Current through ch. 254 of the 152nd General Assembly (2023-2024).

Wis. Stat. § 281.36. Permits for discharges into wetlands; mitigation.

(1) Definitions. In this section:

(a) "Additional federal law or interpretation" means any of the following:

1. An amendment to 33 USC 1344 (f) that becomes effective after January 9, 2001.
2. Any other federal statutory provision that affects the exemptions under 33 USC 1344 (f) and that becomes effective after January 9, 2001.
3. A regulation, rule, memorandum of agreement, guidance letter, interpretive document, or other provision established by a federal agency that is promulgated or adopted pursuant to 33 USC 1344 (f) or that is used to interpret or implement 33 USC 1344 (f), that applies to wetlands located in this state, and that becomes effective after January 9, 2001.
4. A decision issued by a federal district or federal appellate court that affects the application of a federal amendment or provision described in subs. 1. to 3., that applies to wetlands located in this state, and that is issued after January 9, 2001.

(ad) "Bank service area" means the geographic area corresponding to the HUC 6 within which impacts to a wetland from a discharge can be mitigated at a specific mitigation bank as determined in an agreement between the department and the U.S. army corps of engineers and referenced in a mitigation banking instrument under sub. (3w).



(ae) "Basin" means the Lake Michigan, Lake Superior, or Mississippi River basin.

(am) "Demonstrable economic public benefit" means an economic benefit to the community or region that is measurable, such as increased access to natural resources, local spending by the proposed project, employment, or community investment.

(b) "Existing federal law or interpretation" means any of the following:

1. 33 USC 1344 (f), as amended to January 8, 2001.

2. A regulation, rule, memorandum of agreement, guidance letter, interpretive document, or other provision established by a federal agency that is promulgated or adopted pursuant to 33 USC 1344 (f) or that is used to interpret or implement 33 USC 1344 (f), that applies to wetlands located in this state, and that is in effect on January 8, 2001.

3. A decision issued by a federal district or federal appellate court that affects the application of a federal statute or provision described in subd. 1. or 2., that applies to wetlands located in this state, and that is issued on or before January 8, 2001.

(bd) "Fill material" has the meaning given in 33 CFR 323.2 (e), as the meaning exists on July 1, 2012.

(bf) "HUC 6" means a watershed delineated by the U.S. geological survey using a nationwide system based on surface hydrologic features at the 6-digit basin scale (the hydrologic unit code 6).

(bg) "HUC 8" means a watershed delineated by the U.S. geological survey using a nationwide system based on surface hydrologic features at the 8-digit subbasin scale (the hydrologic unit code 8).

(bj) "Mitigation" means the restoration, enhancement, creation, or preservation of wetlands to compensate for adverse impacts to other wetlands.

(bL) "Mitigation bank" means a system of accounting for wetland loss and compensation that includes one or more sites where wetlands are restored, enhanced, created, or preserved to provide credits to be subsequently applied or purchased in order to compensate for adverse impacts to other wetlands.



(bn) "Mitigation project" means mitigation of the type specified in sub. (3r) (a) 3.

(br) "Nonfederal wetland" means a wetland that is not subject to federal jurisdiction under 33 USC 1344.

(cp) "Practicable" means reasonably available and capable of being implemented after taking into consideration cost, site availability, available technology, logistics, and proximity to the proposed project site, in light of the overall purpose and scope of the project.

(ct) "Small business" has the meaning given in s. 227.114 (1).

(d) "Water quality standards" means water quality standards set under rules promulgated by the department under s. 281.15.

(2m) Delineation procedures. For purposes of delineating the boundary of a wetland under this section, the procedures contained in the wetlands delineation manual published by the U.S. army corps of engineers shall be used. The edition of the manual that shall be used shall be the 1987 edition of the manual and any document that the U.S. army corps of engineers issues interpreting that manual, unless the U.S. army corps of engineers publishes an edition of the manual after January 9, 2001, and the department designates that edition as the one to be used under this subsection.

(3b) Permit required.

(a) For purposes of this section, a wetland general or individual permit issued by the department constitutes water quality certification as required by 33 USC 1341 (a).

(b) No person may discharge dredged material or fill material into a wetland unless the discharge is authorized by a wetland general permit or individual permit issued by the department under this section or the discharge is exempt under sub. (4), (4m) (a), (4n), or (4r). No person may violate any condition contained in a wetland general or individual permit issued by the department under this section. The department may not issue a wetland general or individual permit under this section unless it determines that the discharge authorized pursuant to the wetland general or individual permit will comply with all applicable water quality standards.

(3g) Wetland general permits.



(a) Required permits. The department shall issue a wetland general permit for each of the following types of discharges:

1. A discharge that is necessary for the treatment or disposal of hazardous waste or toxic pollutants, if the discharge does not contain hazardous waste or toxic pollutants and does not affect more than 2 acres of wetland.
2. A discharge that is necessary for temporary access and dewatering, if the discharge does not affect more than 2 acres of wetland.
3. A temporary or permanent discharge for routine utility construction and maintenance projects and activities.
4. A discharge that is part of a development for industrial purposes, if the discharge does not affect more than 10,000 square feet of wetland. For purposes of this subdivision, the development of a waste disposal site is considered to be a development for industrial purposes.
5. A discharge that is part of a development for commercial purposes, if the discharge does not affect more than 10,000 square feet of wetland.
6. A discharge that is part of a development for residential purposes, if the discharge does not affect more than 10,000 square feet of wetland.
7. A discharge that is part of a development for agricultural or aquacultural purposes, if the discharge does not affect more than 10,000 square feet of wetland.
8. A discharge that is part of a development for municipal purposes, if the discharge does not affect more than 10,000 square feet of wetland.
9. A discharge that is part of a development for recreational purposes, if the discharge does not affect more than 10,000 square feet of wetland.
10. A discharge that is necessary for the construction, reconstruction, or maintenance of a bridge or culvert that is part of a transportation project that is being carried out



under the direction and supervision of a city, village, town, or county.

(b) Additional required permits. In addition to the wetland general permits required under par. (a), the department shall issue wetland general permits that are consistent with, and correspond to, any general permits that are issued under 33 USC 1344 (e) and that regulate discharges other than those regulated under the required wetland general permits issued under par. (a).

(c) Additional permits. The department may issue wetland general permits, in addition to those required under pars. (a) and (b), to regulate other discharges that affect wetlands located in this state.

(d) Requirements; conditions; restrictions. In issuing wetland general permits under this subsection, the department shall establish requirements, conditions, and exceptions to ensure that the discharges will cause only minimal adverse environmental effects, and a general permit may apply only to a single and complete project. As part of a general permit, the department may prohibit discharges into wetlands that are identified by the department as being one of the following:

1. Great Lakes ridge and swale complexes.

2. Interdunal wetlands.

3. Coastal plain marshes.

4. Emergent marshes containing wild rice.

- 5m. Sphagnum bogs that are located in the area located south of a horizontal line drawn across the state based on the routes of STH 16 and STH 21 west of Lake Winnebago and on USH 151 east of Lake Winnebago.

6. Boreal rich fens.

7. Calcareous fens.

(e) Period of validity; subsequent actions. A wetland general permit issued under this subsection is valid for a period of 5 years. Upon compliance with the requirements under pars. (f) to (g), the department may renew, modify, or revoke a wetland general permit issued under this subsection.



(f) Public notice. The department shall provide to interested members of the public notices of its intention to issue, renew, modify, or revoke a wetland general permit under this subsection. Procedures for providing public notices shall include all of the following:

1. Publication of a class 1 notice under ch. 985.
2. Providing a copy of the notice to any person or group upon request of the person or group.
3. Publication of the notice on the department's Internet website.

(fg) Date of notice. For the purpose of determining the date on which public notice is provided under this subsection, the date on which the department first publishes the notice on its Internet website shall be considered the date of public notice.

(fm) Written comments. The department shall provide a period of not less than 30 days after the date of the public notice during which time interested persons may submit their written comments on the department's intention to issue, renew, modify, or revoke a wetland general permit under this subsection. All written comments submitted during the period for comment shall be retained by the department and considered by the department in acting on the general permit.

(fr) Description in notice. Every public notice provided by the department under par. (f) shall include a description of the discharges to be authorized under the wetland general permit.

(g) Public informational hearing.

1. The department shall provide an opportunity for any interested state agency or federal agency or person or group of persons to request a public informational hearing with respect to the department's intention to issue, renew, modify, or revoke a wetland general permit under this subsection. The request for the hearing shall be filed with the department within 30 days after the provision of the public notice under par. (f) and shall indicate the interest of the party filing the request and the reasons why the hearing is warranted.
2. The department shall hold a public informational hearing upon a request under subd. 1. if the department determines that there is a significant public interest in holding such a



hearing. Hearings held under this subsection are not contested cases under s. 227.01 (3).

3. Public notice of any hearing held under this subsection shall be circulated in accordance with the requirements under par. (f). The public notice shall include the time, date, and location of the hearing, a summary of the subject matter of the wetland general permit, and information indicating where additional information about the general permit may be viewed on the department's Internet website. The summary shall contain a brief, precise, easily understandable, plain language description of the subject matter of the general permit.

(h) Authorizations for discharges under wetland general permits.

1. A person wishing to proceed with a discharge that may be authorized under a wetland general permit shall apply to the department, with written notification of the person's wish to proceed, not less than 30 days before commencing the discharge authorized by the general permit unless subd. 4. applies. The application shall provide information describing the discharge in order to allow the department to determine whether the discharge is authorized by the wetland general permit and shall give the department consent to enter and inspect the site, subject to sub. (9). The application shall identify all activities affecting wetlands that will be conducted as part of the single and complete project. The application shall include a detailed explanation of why the impact to the wetland cannot be avoided and how the impact to the wetland will be minimized to the greatest extent practicable. The application shall be accompanied by the fee specified in sub. (12) (a). If the application is for authorization to proceed under a wetland general permit that is issued under sub. (3g) (a) 4., 5., or 6., the application shall be accompanied by a surcharge fee, as calculated under sub. (11). The department may make a request for additional information one time during this 30-day period.

2. If, within 30 days after an application under subd. 1. is received by the department, the department does not either request additional information or inform the applicant that a wetland individual permit will be required as provided in par. (i), the discharge shall be considered to be authorized under the wetland general permit and the applicant may proceed without further notice, hearing, permit, or approval if the discharge is carried out in compliance with all of the conditions of the general permit, except as provided in s. 295.60 (3) (b).



2m. If adverse weather conditions prevent the department from conducting an accurate on-site inspection during this 30-day period specified in subd. 1., the department shall give notice to the person wishing to proceed with the discharge that adverse weather conditions will prevent the department from complying with the 30-day deadline and shall complete the inspection as soon as weather conditions permit.

3. If the department requests additional information under subd. 1., the 30-day period is tolled from the date the person applying for authorization to proceed receives the request until the date on which the department receives all of the additional information.

4. As part of a wetland general permit issued under par. (b) or (c), the department may waive the requirement that a person wishing to proceed under the general permit apply to the department as required under this paragraph so that the person may proceed with the discharge without specific authorization from the department.

5. Authorization to proceed under a wetland general permit is valid for 5 years after the date on which the discharge is considered to be authorized or until the discharge is completed, whichever occurs first.

(i) Wetland individual permit in lieu of wetland general permit. For a proposed discharge for which an application has been received by the department under par. (h), the department may decide to require that a person who submitted the application apply for a wetland individual permit if the department has inspected the site as provided in par. (h) and has determined that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur.

(3m) Wetland individual permits.

(a) When permit required. Any person wishing to proceed with a discharge into any wetland shall submit an application for a wetland individual permit under this subsection unless the discharge has been authorized under a wetland general permit as provided in sub. (3g) or is exempt under sub. (4), (4m) (a), (4n), or (4r). Before submitting the application, the department shall hold a meeting with the applicant to discuss the details of the proposed discharge and the requirements for submitting the application and for delineating



the wetland. An applicant may include in the application a request for a public informational hearing. The application shall be accompanied by the applicable fee specified in sub. (11) or (12) (a).

(b) Analysis of practicable alternatives. An applicant shall include in an application submitted under par. (a) an analysis of the practicable alternatives that will avoid and minimize the adverse impacts of the discharge on wetland functional values and that will not result in any other significant adverse environmental consequences, subject to the limitations in sub. (3n) (a).

(c) Review; no additional information required. In issuing wetland individual permits under this section, the department shall review an application, and within 30 days after the application is submitted, the department shall determine that either the application is complete or that additional information is needed. If the department determines that the application is complete, the department shall notify the applicant in writing of that fact within the 30-day period, and the date on which the notice under this paragraph is sent shall be considered the date of closure for purposes of par. (g) 1.

(d) Additional information requested. If the department determines that the application is incomplete, the department shall notify the applicant in writing and may make only one request for additional information during the 30-day period specified in par. (c). Within 10 days after receiving all of the requested information from the applicant, the department shall notify the applicant in writing as to whether the application is complete. The date on which the 2nd notice under this paragraph is sent shall be set as the date of closure for purposes of par. (g) 1. The department may request additional information from the applicant to supplement the application, but the department may not request items of information that are outside the scope of the original request unless the applicant and the department both agree. A request for any such additional information may not affect the date of closure.

(e) Specificity of notice; limits on information. Any notice stating that an application has been determined to be incomplete or any other request for information that is sent under par. (d) shall state the reason for the determination or request and the specific items of information that are still needed.

(f) Failure to meet time limits. If the department fails to meet the 30-day time limit under par. (c) or 10-day time limit under par. (d), the application shall be considered to have a date of closure that is the



last day of that 30-day or 10-day time period for purposes of par. (g) 1.

(g) Notice of application.

1. Within 15 days after the date of closure, as determined under par. (c) or (d), the department shall provide notice of pending application to interested members of the public. If the applicant has requested a public informational hearing as part of the submitted application, a notice of the public hearing shall be part of the notice of pending application.

2. If the notice of pending application does not contain a notice of public informational hearing, any person may request a public informational hearing in writing or the department may decide to hold a public informational hearing with or without a request being submitted if the department determines that there is a significant public interest in holding a hearing.

(h) Request for hearing. A request for a public informational hearing under par. (g) 2. must be submitted to the department or the department's decision to hold a public informational hearing must occur within 20 days after the department provides the notice of pending application. The department shall provide notice of public informational hearing within 15 days after the request for the public hearing is submitted or the department makes its decision to hold a public informational hearing.

(i) Decision. Within 20 days after the period for public comment under par. (j) has ended or if no public informational hearing is held, within 30 days after the 30-day comment period under par. (j) has ended, the department shall render a decision issuing or denying the wetland individual permit that is the subject of the application submitted under par. (a). If the decision issued by the department under this paragraph is a denial, the department shall include in the decision the specific grounds and reasons as to how the applicable provisions of this section were not met. If the denial is based on an incomplete application, the department shall inform the applicant of the areas of the application that were incomplete.

(j) Public comment.

1. The department shall provide a period for public comment after the department has provided a notice of pending application under par. (g) during which time any person may submit written comments with respect to the application for a



wetland individual permit. The department shall retain all of the written comments submitted during this period and shall consider all of the comments in rendering a decision on the application. The period for public comment shall end on the 30th day following the date on which the department provides the notice of pending application except as provided in subd. 2.

2. If a public informational hearing is held, the period for public comment shall end on the 10th day following the date on which the hearing is completed.

(3n) Review by department.

(a) Review limits. For the purpose of issuing a wetland individual permit, during the period between the date on which the application under sub. (3m) (a) is submitted and the date on which a decision under sub. (3m) (i) is rendered, the department shall conduct its review under this subsection. The department shall review the analysis of practicable alternatives presented in the application under sub. (3m) (b). The department shall limit its review of practicable alternatives as follows:

1. The department shall limit its review to those practicable alternatives that are located at the site of the discharge and that are located adjacent to that site if the applicant has demonstrated any of the following:

a. That the proposed project causing the discharge will result in a demonstrable economic public benefit.

b. That the proposed project is necessary for the expansion of an existing industrial, commercial, agricultural, or aquacultural facility that is in existence at the time the application is submitted.

c. That the proposed project will occur in an industrial park that is in existence at the time the application is submitted.

2. Except as provided in par. (am), the department shall limit its review to those practicable alternatives that are located on the property owned by the applicant for a project involving fewer than 2 acres of wetland if the project is limited to one of the following:

a. The construction or expansion of a single-family home and attendant features.



b. The construction or expansion of a barn or farm buildings.

c. The expansion of a small business project.

3. The department shall limit its review to those practicable alternatives that are consistent with the overall purpose and scope of the project. The department shall impose a level of scrutiny and require an applicant to provide an amount of information that is commensurate with the severity of the environmental impact of the project, as determined by the department.

(am) Exception to review limit. A lot created as part of a subdivision, land division, or other development that is initiated after July 1, 2012, is not eligible for the limited review under par. (a) 2.

(b) Factors used in review. In its review under par. (a), the department shall consider all of the following factors when it assesses the impacts to wetland functional values:

1. The direct impacts of the proposed project to wetland functional values.

2. The cumulative impacts attributable to the proposed project that may occur to wetland functional values based on past impacts or reasonably anticipated impacts caused by similar projects in the area affected by the project.

3. Potential secondary impacts of the proposed project to wetland functional values.

4. The impact on functional values resulting from the mitigation that is required under sub. (3r).

5. The net positive or negative environmental impact of the proposed project.

(c) Standards for issuing permits. The department shall make a finding that a proposed project causing a discharge is in compliance with water quality standards and that a wetland individual permit may be issued if the department determines that all of the following apply:

1. The proposed project represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts.



2. All practicable measures to minimize the adverse impacts to wetland functional values will be taken.
3. The proposed project will not result in significant adverse impact to wetland functional values, in significant adverse impact to water quality, or in other significant adverse environmental consequences.

(d) Mitigation required.

1. Except as provided in subd. 2., the department shall require mitigation under the program established under sub. (3r) for wetland individual permits it issues under this subsection and for a discharge that is exempt from permitting requirements under sub. (4n) (b) that affects more than 10,000 square feet of wetland or under sub. (4n) (c) that affects more than 1.5 acres of wetland. This subsection does not entitle an applicant to a wetland individual permit or any other approval in exchange for conducting mitigation.
2. If the department issues a wetland individual permit under sub. (3m) to a public utility, as defined in s. 196.01 (5), or a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, water, or power to its members only, the department may not require mitigation under the program established under sub. (3r) unless the discharge authorized by the wetland individual permit will result in a permanent fill of more than 10,000 square feet of wetland.

(3p) Notice requirements; wetland individual permits.

(a) The department shall establish procedures for providing notices of pending applications and notices of public informational hearings to be provided under sub. (3m) and notices of administrative hearings under sub. (3q). The procedures shall require all of the following:

1. That the notice be published as a class 1 notice under ch. 985.
2. That the notice be provided to any person or group upon request of the person or group.
3. That the notice be published on the department's Internet website.



(b) The department shall prescribe the form and content of notices of pending applications and notices of public informational hearings to be provided under sub. (3m) and notices of administrative hearings under sub. (3q). Each notice shall include all of the following information:

1. The name and address of the applicant.
2. A brief description of the discharge that requires the permit and the project that includes the discharge.
3. For a notice of a public informational hearing, the time, date, and location of the hearing.
4. For a notice of pending application and a notice of a public informational hearing, a brief, precise, easily understandable, plain-language description of the discharge and information indicating where the pending application may be viewed on the department's Internet website.
5. For a notice of complete application and a notice of a public informational hearing, a statement of the tentative determination of the department on the permit.
6. For a notice of complete application and a notice of public informational hearing, a brief description of the procedures for the formulation of final determinations, including a description of the comment period required under sub. (3m) (j).

(c) For the purpose of determining the date on which notice is provided under this subsection, the date of the notice shall be the date on which the department first publishes the notice on its Internet website.

(d)

1m. The department may delegate the department's requirement to provide notice under sub. (3m) in the manner specified in par. (a) 1. and 2. by doing any of the following:

a. Requiring that the applicant for the permit provide by publication, mailing, or other distribution one or more of the notices.

b. Requiring that the applicant for the permit pay for the publication, mailing, or any other distribution costs of providing one or more of the notices.



2m. If, under subd. 1m., the department delegates to an applicant the requirement to provide notice under sub. (3m) by publishing a class 1 notice under ch. 985, the applicant may in lieu of publishing the class 1 notice request that the department publish the class 1 notice. The department shall charge the applicant a fee for publishing the class 1 notice in an amount that equals the average cost to the department for publishing under this chapter class 1 notices under ch. 985.

(3q) Administrative and judicial review.

(a) Definition. In this subsection, "applicant" means any person applying for a wetland individual permit under this section or any person who has been issued such a permit under this section.

(b) Request for administrative review. Any interested person may file a petition with the department for administrative review within 30 days after any of the following decisions given by the department:

1. The issuance, denial, or modification of any wetland individual permit issued under this section.
2. The imposition of, or failure to impose, a condition on any wetland individual permit issued under this section.

(c) Content of the petition. If the petitioner is not the applicant, the petition shall describe the petitioner's objection to the wetland individual permit and shall contain all of the following:

1. A description of the objection that is sufficiently specific to allow the department to determine which provisions of this section may be violated if the proposed discharge under the wetland individual permit is allowed to proceed.
2. A description of the facts supporting the petition that is sufficiently specific to determine how the petitioner believes the discharge, as proposed, may result in a violation of the provisions of this section.
3. A commitment by the petitioner to appear at the administrative hearing and present information supporting the petitioner's objection.

(d) Stays.



1. The discharge shall be stayed pending an administrative hearing under this subsection if the petition contains a request for the stay showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

2. If a stay is requested under subd. 1., the stay shall be in effect until either the department denies the request for an administrative hearing or the hearing examiner determines that the stay is not necessary.

(e) Filings. The petitioner shall file a copy of the petition with the department. If the petitioner is not the applicant, the petitioner shall simultaneously provide a copy of the petition to the applicant. The applicant may file a response to the petition with the department. If the applicant files a response under this paragraph, it shall be filed within 15 days after the petition is filed.

(f) Action on petition.

1m. The department shall grant or deny the petition within 30 days after the petition is filed. The failure of the department to dispose of the petition within this 30-day period is a denial. The department shall deny the petition if any of the following applies:

a. The petitioner is not the applicant, and the petition does not comply with the requirements of par. (c).

b. The objection contained in the petition is not substantive. The department shall determine that an objection is substantive if the supporting facts contained in the objection appear to be substantially true and raise reasonable grounds to believe that the provisions of this section may be violated if the activity or project is undertaken.

3. If the department denies the petition, the department shall send the petitioner the denial in writing, stating the reasons for the denial.

4. If the department grants a petition under this subsection, the department shall refer the matter to the division of hearings and appeals in the department of administration within 15 days after granting the petition unless the petitioner and the applicant agree to an extension.



(g) Administrative hearing.

1. An administrative hearing under this subsection shall be treated as a contested case under ch. 227.

2. If a stay under par. (d) 1. is in effect, the hearing examiner shall, within 30 days after receipt of the referral under par. (f) 4., determine whether continuation of the stay is necessary to prevent significant adverse impacts or irreversible harm to the environment pending completion of the administrative hearing. The hearing examiner shall make the determination based on the request under par. (d) 1., any response from the applicant under par. (e), and any testimony at a public hearing or any public comments. The determination shall be made without a hearing.

3. An administrative hearing under this subsection shall be completed within 90 days after receipt of the referral of the petition under par. (f) 4., unless all parties agree to an extension of that period. In addition, a hearing examiner may grant a one-time extension for the completion of the hearing of up to 60 days on the motion of any party and a showing of good cause demonstrating extraordinary circumstances justifying an extension.

4. Notwithstanding s. 227.44 (1), the department shall provide a notice of the administrative hearing at least 30 days before the date of the hearing to all of the following:

- a. The applicant.
- b. Each petitioner, if other than the applicant.
- c. Any other persons required to receive notice as provided under sub. (3p).

5. In an administrative hearing under this subsection, the petitioner shall proceed first with the presentation of evidence and shall have the burden of proof.

(h) Judicial review.

1. Any person whose substantial interest is affected by a decision of the department under par. (b) 1. or 2. may commence an action in circuit court to review that decision.



2. Any party aggrieved by a decision of the hearing examiner under par. (g) may commence an action in circuit court to review that decision.

(3r) Mitigation; in lieu fee subprogram.

(a) The department shall establish a mitigation program that applies only to the issuance of wetland individual permits and, with respect to a discharge that is exempt from permitting requirements under sub. (4n) (b) that affects more than 10,000 square feet of wetland or under sub. (4n) (c) that affects more than 1.5 acres of wetland, the portion of the affected wetland that exceeds 10,000 square feet or 1.5 acres, respectively. Under the mitigation program, subject to par. (am), the department shall allow mitigation to be accomplished by any of the following methods:

1.

a. Except as provided in subd. 1. b. and par. (ag), purchasing credits from a mitigation bank located in the same HUC 8 as the wetland impacted by the discharge.

b. Except as provided in subd. 1. c. and par. (ag), if credits are not available to be purchased as provided under subd. 1. a., credits may be purchased from a mitigation bank within the same bank service area as the wetland impacted by the discharge.

c. Except as provided in par. (ag), if credits are not available to be purchased as provided under subd. 1. b., credits may be purchased from a mitigation bank in the same basin as the wetland impacted by the discharge.

2. Participating in the in lieu fee subprogram under par. (e).

3. Completing mitigation within the same watershed or within one-half mile of the site of the discharge.

(ag) The department may, in consultation with the U.S. army corps of engineers, allow credits to be purchased from a different mitigation bank than the one prescribed under par. (a) 1. or allow mitigation to be done through the in lieu fee subprogram rather than by purchasing credits from a mitigation bank if the department determines it would better serve natural resource goals, such as retaining flood water, improving or restoring wildlife habitat, or more closely matching



the impacted wetland type. The department may also consider economic factors when making this determination only if the HUC 8 has one approved mitigation bank and that bank is charging a price for credits in that watershed that is in excess of 150 percent of the price of a credit in that watershed under the in lieu fee subprogram.

(am) For a discharge that is exempt from permitting requirements under sub. (4n) (b) or (c), any off-site mitigation, including any mitigation conducted by a mitigation bank or under the in lieu fee subprogram, shall be completed within the same compensation search area, as defined by the department by rule, as the discharge.

(b) Under the mitigation program, mitigation as specified in par. (a) 1. and participation in the in lieu fee subprogram shall be the preferred types of mitigation.

(c) The department shall establish a system of service areas for the mitigation banks under the mitigation program that is geographically based on the locations of the major watersheds in the state. The system shall be consistent with federal regulations.

(cm) Before entering into an agreement with a sponsor of a mitigation bank to establish such a bank or before otherwise approving a mitigation bank, the department shall provide written notice that a mitigation bank may be established. The notice shall be given to each city, village, town, and county in which each proposed mitigation bank site will be located. Each city, village, town, and county receiving the notice shall be given an opportunity to submit comments regarding the establishment of the mitigation bank. The notice shall contain all of the following information:

1. The name of the sponsor of the proposed mitigation bank.
2. A brief description of the mitigation bank and all of its bank sites.
3. A date after which the department will not accept comments from the affected cities, villages, towns, or counties.
4. An address to which any comments shall be submitted.

(d)

1. The department shall establish under the mitigation program mitigation ratios that are consistent, to the



greatest extent possible, with the federal regulations that apply to mitigation and mitigation banks but, unless subd. 2. applies, the minimum ratio shall be at least 1.2 acres for each acre affected by the discharge.

2. For mitigation that occurs within the same watershed in which the discharge is located or within one-half mile of the site of the discharge, the ratio established by the department shall equal 90 percent of the ratio that would apply if the mitigation were to occur outside the watershed or were to occur one-half mile or more from the site of the discharge, but the ratio established under this subdivision may be no less than 1.2 acres for each acre affected by the discharge.

(e) As part of the mitigation program established under par. (a), the department shall establish an in lieu fee subprogram, under which payments are made to the department or another entity for the purposes of restoring, enhancing, creating, or preserving wetlands or other water resource features. The subprogram must be approved by the U.S. army corps of engineers. The department shall establish requirements for calculating the in lieu fee payments. Under the in lieu fee subprogram, the wetlands that benefit from the subprogram shall be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any combination thereof, but the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community. The subprogram shall be consistent with federal regulations.

(3t) Rules for mitigation. The department shall promulgate rules to establish a process for the mitigation program under sub. (3r). The rules shall address all of the following:

(a) Requirements for the analysis of practicable alternatives that is included in an application for a wetland individual permit under sub.

(3m) (b).

(b) The conditions under which credits may be purchased from a mitigation bank to comply with the mitigation program under sub. (3r).

(c) Enforcement of requirements under the mitigation program under sub. (3r) that apply to mitigation projects and mitigation banks.

(d) Baseline studies of wetlands that will be affected by the discharges and of sites for mitigation projects.



(e) Plan and design requirements for mitigation projects and mitigation bank sites, which shall include requirements for relating the design of a mitigation project or a mitigation bank site to the hydrology of the watershed in which a mitigation project or mitigation bank site is located.

(f) Standards for comparing wetlands that will be restored, enhanced, created, or preserved as a mitigation project or at a mitigation bank site to the wetlands that will be adversely affected by discharges, including all of the following:

1. Consideration of the size, location, type and quality of the wetlands.
2. Consideration of the functional values performed by the wetlands.

(g) Financial assurance requirements for the construction of mitigation projects by mitigation banks.

(h) Standards for measuring the short-term and long-term success of mitigation projects and mitigation bank sites and requirements for the short-term and long-term monitoring of mitigation projects and mitigation bank sites.

(i) Remedial actions to be taken by holders of wetland individual permits for mitigation projects that are not successful and actions to be taken by mitigation banks for mitigation projects performed by the mitigation banks that are not successful.

(3w) Release of credits.

(a) In this subsection:

1. "Applicant" means the applicant for a wetland individual permit for which wetland mitigation is required under sub. (3n) (d) or the proponent of a wetland mitigation project required under sub. (3n) (d).
2. "Bank sponsor" means any public or private entity financially responsible for establishing or operating a mitigation bank.
3. "Compensation site plan" means a comprehensive document prepared by an applicant or bank sponsor that



provides a thorough description of a proposed wetland mitigation project.

4. “Developing mitigation bank” means a mitigation bank that has not completed its mitigation project and that has not yet been established under an agreement between the bank sponsor and the department or otherwise approved by the department.

5. “Estimated credits” means the total number of credits that a developing mitigation bank estimates it will have once its mitigation project is constructed.

6. “Mitigation banking instrument” means the legal document that governs the establishment, operation, and use of a mitigation bank.

(b) A developing mitigation bank may sell its estimated credits under the mitigation program under sub. (3r) only if the mitigation bank has met the financial assurance requirements established by the department under sub. (3t) (g) and, except as provided under par. (c), only in accordance with the following schedule:

1. No more than 20 percent of the estimated credits after the department approves and executes the mitigation banking instrument.

2. No more than 65 percent of the estimated credits after the department issues a letter of compliance stating that construction and all corrective actions are complete.

3. No more than 85 percent of the estimated credits after the department approves a monitoring report for the mitigation bank or after 2 years have passed after construction of the mitigation project is completed, whichever is later.

4. One hundred percent of the estimated credits after the department approves the final monitoring report for the mitigation bank and determines that all performance standards identified in the compensation site plan are met.

(c) The department may authorize a developing mitigation bank to sell its estimated credits at a faster rate than the schedule under par. (b) allows if the bank provides an additional level of financial assurance or if the mitigation is of a type that is less prone to failure, such as wetland preservation or enhancement.



(d) After the department approves and executes a mitigation banking instrument establishing the specifications for a developing mitigation bank, the sponsor of the bank may not change the mitigation banking instrument without the approval of the department. After the sponsor of a developing mitigation bank submits to the department a proposed change to the mitigation banking instrument for review, the mitigation bank may not sell any estimated credits under par. (b) until one of the following occurs:

1. The department approves the change to the mitigation banking instrument, and the mitigation bank sponsor and the department adjust the estimated credits and make any necessary adjustments to the credit release schedule under par. (b), if the department believes these adjustments are necessary based on the change to the mitigation banking instrument.
2. The department rejects the changes submitted by the mitigation bank sponsor, in which case the existing mitigation banking instrument remains effective.

(4) Exemptions; certain activities. Except as provided in sub. (5), the permitting requirement under sub. (3b) does not apply to any discharge that is the result of any of the following activities:

(a) Normal farming, silviculture, or ranching activities.

(am) Normal aquaculture activities, if the discharge is to a wetland created for aquacultural purposes in an area without any prior wetland history. In this paragraph, “normal aquaculture activities” includes all of the following:

1. Construction, maintenance, or repair of ponds, raceways, or other similar retention structures used in fish farms.
2. The filling in or drawing down of ponds, raceways, or other similar retention structures used in fish farms.
3. Maintenance or improvement of swales or other drainage areas into or out of ponds used in fish farms.
4. Maintenance, repair, or replacement of drains, pipes, or other flowage controls used in fish farms.

(b) Maintenance, emergency repair, or reconstruction of damaged parts of structures that are in use in a wetland.



(c) Construction or maintenance of farm ponds, stock ponds, or irrigation ditches.

(d) Maintenance of drainage ditches.

(e) Construction or maintenance of farm roads, roads used in fish farms, forest roads, or temporary mining roads that is performed in accordance with best management practices, as determined by the department, to ensure all of the following:

1. That the flow and circulation patterns and chemical and biological characteristics of the affected wetland are not impaired.
2. That the reach of the affected wetland is not reduced.
3. That any adverse effect on the aquatic environment of the affected wetland is minimized to the degree required by the department.

(f) Maintenance, operation, or abandonment of a sedimentation or stormwater detention basin and associated conveyance features that were not originally constructed in a wetland.

(4m) Exemption and waiver; electronics and information technology manufacturing zone.

(a) The permitting requirement under sub. (3b) does not apply to any discharge into a wetland located in an electronics and information technology manufacturing zone designated under s. 238.396 (1m) if the discharge is related to the construction, access, or operation of a new manufacturing facility in the zone and all adverse impacts to functional values of wetlands are compensated at a ratio of 2 acres per each acre impacted through any of the following methods, consistent with the rules promulgated under this section:

1. Purchasing credits from a mitigation bank located in this state.
2. Participating in the in lieu fee subprogram under sub. (3r), under which the department shall identify and consider mitigation that could be conducted within the same watershed and may locate mitigation outside the watershed only upon agreement of the department and the person exempt from permitting under this subsection.
3. Completing mitigation within this state.



(b) The department shall waive water quality certification under 33 USC 1341 (a) (1) for a discharge under par. (a).

(4n) Exemptions; certain nonfederal wetlands and artificial wetlands.

(a) In this subsection:

1. "Artificial wetland" means a landscape feature where hydrophitic vegetation may be present as a result of human modification to the landscape or hydrology and for which the department has no definitive evidence showing a prior wetland or stream history that existed before August 1, 1991, but does not include any of the following:

a. A wetland that serves as a fish spawning area or a passage to a fish spawning area.

b. A wetland created as a result of a mitigation requirement under sub. (3r).

2. "Definitive evidence" means documentary evidence such as any of the following:

a. Maps.

b. Aerial photographs.

c. Surveys that use a scale of not more than 100 feet per inch.

d. Wetland delineations.

3. "Rare and high quality wetland" means a wetland that is directly adjacent or contiguous to a class I or class II trout stream or that consists of 75 percent or more of any of the following wetland types:

a. Alder thicket.

b. Calcareous fen.

c. Coniferous swamp.

d. Coniferous bog.



- e. Floodplain forest.
- f. Hardwood swamp.
- g. Interdunal wetland.
- h. Open bog.
- i. Ridge and swail complex.
- j. Deep marsh.
- k. Sedge meadow.

4. “Sewerage system” has the meaning given in s. 281.01 (14).

5. “Urban area” means any of the following:

- a. An incorporated area.
- b. An area within one-half mile of an incorporated area.
- c. An area in a town that is served by a sewerage system.

(b) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into a nonfederal wetland that occurs in an urban area and to which all of the following apply:

1. The discharge does not affect more than one acre of wetland per parcel.
2. The discharge does not affect a rare and high quality wetland.
3. The development related to the discharge is carried out in compliance with any applicable storm water management zoning ordinance enacted under s. 59.693, 60.627, 61.354, or 62.234 or storm water discharge permit issued under s. 283.33.

(c) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into a nonfederal wetland that occurs outside an urban area and to which all of the following apply:

1. The discharge does not affect more than 3 acres of wetland per parcel.



2. The discharge does not affect a rare and high quality wetland.
3. The development related to the discharge is a structure, such as a building, driveway, or road, with an agricultural purpose.

(d) Subject to par. (e), the permitting requirement under sub. (3b) does not apply to any discharge into an artificial wetland.

(e)

1. A person who proposes a project that may affect a wetland or landscape feature under par. (b), (c), or (d) shall notify the department no fewer than 15 working days before initiating the project. The notice shall include one of the following to show that the wetland or landscape feature is eligible for the relevant exemption:

- a. A statement issued by a professional who has investigated the wetland and who is qualified to give such an opinion.
- b. A wetland delineation prepared by a qualified professional showing the exact location and boundaries of the wetland.

2. Except as provided in subd. 3., if the department receives the notice and information required under subd. 1., the department shall presume that the wetland or landscape feature is eligible for the exemption unless the department, within 15 working days after receiving notification of the proposed project under subd. 1., notifies the person that one of the following conditions applies:

- a. The eligibility requirements are not met.
- b. The location and boundaries of the wetland identified in a wetland delineation included with the notification under subd. 1. are not accurate.
- c. With respect to an exemption under par. (d) only, the department determines that the landscape feature is providing significant functions that either protect adjacent or downstream property or infrastructure from flooding or significantly improve the water quality of an adjacent or downstream water body.



3. If the department receives the notice and information required under subd. 1. but is unable to determine based on that information whether the eligibility requirements are met, the department may, within 15 working days after the notification under subd. 1., notify the person one time to request additional information about the parcel of land. The person shall cooperate with the department's efforts to obtain information about the relevant parcel of land and may proceed with the project only upon notification that the department has determined the landscape feature to be eligible for the exemption based on the definitive evidence.

4. If, within 15 working days after the notification is delivered to the department, the department notifies the person that subd. 2. a., b., or c. applies, the person may not proceed with the project unless authorized by, or otherwise exempted from, a wetland general or individual permit under this section.

(4r) Drainage district activity exemption.

(a) The permitting requirement under sub. (3b) does not apply to any discharge that is the result of activity undertaken by a drainage district to maintain drainage district drains in accordance with plans and specifications approved by the department of agriculture, trade and consumer protection.

(b) The department shall waive any water quality certification requested under 33 USC 1341 (a) for a discharge described under par. (a).

(5) Inapplicability of exemptions. Notwithstanding sub. (4), a discharge that would be exempt under sub. (4) is subject to the permitting requirement under sub. (3b) if the discharge is incidental to an activity that has as its purpose bringing a wetland, or part of a wetland, into a use for which it was not previously subject and if the activity may do any of the following:

(a) Impair the flow or circulation of any wetland.

(b) Reduce the reach of any wetland.

(6) Rules for exemptions.

(a) The department shall promulgate rules to interpret and implement the provisions under subs. (4), (4n), (4r), and (5). In promulgating these rules, the department shall do all of the following:



1. Make the rules consistent with existing federal law or interpretation.

2. Incorporate any applicable additional federal law or interpretation into the rules.

(b) Whenever an additional federal law or interpretation is initially incorporated into the rules, the department may modify the additional federal law or interpretation as it determines is necessary, but the department may not otherwise amend or modify any of the rules promulgated under this subsection.

(8m) Subsequent protection for wetlands.

(a)

1. A person who is the holder of a wetland individual permit that authorizes a mitigation project shall grant a conservation easement under s. 700.40 to the department or shall execute a comparable legal instrument to ensure that a wetland that is being restored, enhanced, created, or preserved will not be destroyed or substantially degraded by any subsequent proprietor of or holder of interest in the property on which the wetland is located. The department shall revoke the wetland individual permit if the holder of the individual permit fails to take these measures.

2. A person who is restoring, enhancing, creating, or preserving a wetland to provide transferable credits as part of a wetlands mitigation bank shall grant a conservation easement under s. 700.40 to the department or shall execute a comparable legal instrument to ensure that the wetland will not be destroyed or substantially degraded by any subsequent proprietor of or holder of interest in the property on which the wetland is located.

(b) Notwithstanding par. (a), the department shall modify or release a conservation easement granted under par. (a) or shall void a comparable legal instrument executed under par. (a) if all of the following apply:

1. The department determines that part or all of the restored, enhanced or created wetland ceases to be a wetland.

2. The person who is required to grant the conservation easement or execute the legal instrument did not contribute to the loss of the wetland specified in subd. 1.



3. Any subsequent proprietor of or holder of interest in the property on which the wetland specified in subd. 1. is located did not contribute to the loss of the wetland.

(9) Inspection authority.

(a) For purposes of determining whether to issue a wetland individual permit, whether authorization to proceed as authorized under a wetland general permit is appropriate, or whether an exemption under sub. (4), (4n), or (4r) is appropriate, and for purposes of enforcing this section, any employee or other representative of the department, upon presenting his or her credentials, may do any of the following:

1. Enter and inspect any property on which is located a wetland or part of a wetland, for which an application has been submitted under sub. (3g) or (3m).

2. Enter and inspect any property on which is located a wetland to investigate a discharge that the department has reason to believe is in violation of this section.

3. Gain access to and inspect any records that a holder of a wetland individual permit or a person acting under the authority of a wetland general permit is required by the department to keep.

(d) The department shall provide reasonable advance notice to the property owner before entering and inspecting property as authorized under par. (a).

(e) If the owner of the property refuses to give consent for the entry and inspection, the department may do any of the following:

1. Apply for, obtain, and execute a special inspection warrant under s. 66.0119.

2. Deny an application for a wetland individual permit or deny authorization to proceed under a wetland general permit.

(10) Additional requirements. The requirement of being issued a wetland individual permit or proceeding under the authority of a wetland general permit under this section is in addition to any permit or other approval required by the department for a project or activity that involves a discharge into a wetland. This section governs the determination of whether a discharge is in compliance with water quality standards but does not affect the authority of the department to otherwise regulate the



discharge of dredged or fill material in a wetland under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30, 281.11 to 281.35, 281.41 to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

(11) Restoration; surcharge fee.

(a) The department shall set a surcharge fee to be charged for each application to proceed under a wetland general permit that is issued under sub. (3g) (a) 4., 5., or 6. The surcharge fee shall be set on an annual basis by the department and may not exceed more than 50 percent of the market price, as determined by the department, for the equivalent purchase of credits from a mitigation bank. These fees shall be credited to the appropriation account under s. 20.370 (9) (bm) for the restoration and creation of wetlands. The department may enter into agreements with other entities for the restoration and creation of such wetlands.

(b) Any wetland that is restored or created using funding from the appropriation under s. 20.370 (9) (bm) shall be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any combination thereof, but the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community.

(12) Application fees and time limits.

(a) Fees required. The department shall charge a fee for reviewing, investigating, and making decisions on applications to proceed under wetland general permits under sub. (3g) and on applications for wetland individual permits under sub. (3m). For an authorization to proceed under a wetland general permit, the application fee shall be \$500. For a wetland individual permit, the application fee shall be \$800.

(b) Additional fee. The department may set and charge a fee in the amount necessary to meet the costs incurred by the department in reviewing mitigation that is conducted by mitigation banks.

(c) Adjustments in fees.

1. The department shall refund an application fee charged for a wetland individual permit under par. (a) if the applicant requests a refund before the department determines that the application is complete. The department may not refund a fee after the department determines that the application is complete unless required to do so under a rule promulgated under s. 299.05.



2. If the applicant submits an application for authorization to proceed under a wetland general or a wetland individual permit after the discharge is begun or after it is completed, the department shall charge an amount equal to twice the amount of the fee that it would have charged under this section.

3. The department may increase the fee specified in par. (a) only if the increase is necessary to meet the costs of the department in performing the activities for which the fee is charged.

(d) Fee for expedited service.

1. The department, by rule, may charge a supplemental fee that is in addition to a fee charged under this subsection if all of the following apply:

a. The applicant requests in writing that the decision on the application be issued within a time period that is shorter than the time limit promulgated under subd. 2. for the decision.

b. The department verifies that it will be able to comply with the request.

2. If the department promulgates a rule under subd. 1., the rule shall contain a time limit for making decisions on the application.

(e) Exemptions from fees. Paragraphs (a), (b), (c), and (d) do not apply to any federal agency or state agency.

(12m) Local regulation of nonfederal or artificial wetlands. A local government may not enact an ordinance or adopt a resolution regulating a matter regulated under sub. (3n) (d) 1. or (3r) (a) (intro.) or (am), with respect to a discharge exempt from permitting requirements under sub. (4n) (b) or (c), or a matter regulated under sub. (4n). If a local government has in effect on March 30, 2018, an ordinance or resolution regulating nonfederal wetlands or artificial wetlands, the ordinance or resolution does not apply and may not be enforced.

(13) Parties to a violation.

(a) Whoever is concerned in the commission of a violation of this section for which a forfeiture is imposed is a principal and may be charged and found in violation although he or she did not directly commit the violation and although the person who directly committed it has not been found in violation.



(b) A person is concerned in the commission of the violation if the person does any of the following:

1. Directly commits the violation.
2. Aids and abets the commission of the violation.
3. Is a party to a conspiracy with another to commit the violation or advises, hires, counsels, or otherwise procures any person to commit it.

(13m) Report to legislature. No later than January 31, 2003, and no later than January 31 of each subsequent odd-numbered year, the department shall submit to the legislature under s. 13.172 (2) a report that provides an analysis of the impact of the implementation of mitigation on wetland resources and on the issuance of permits or other approvals under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30, 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299. The department shall include in its report a discussion of proposals and projects under the property development grant program under s. 23.099.

(14) Penalties.

(a) Except as provided in par. (b), any person who violates any provision of this section shall forfeit not less than \$100 nor more than \$10,000 for the first offense and shall forfeit not less than \$500 nor more than \$10,000 upon being found in violation of the same offense a 2nd or subsequent time.

(b) Any person who violates a wetland general permit issued under sub. (3g) shall forfeit not less than \$10 nor more than \$500 for the first offense and shall forfeit not less than \$50 nor more than \$500 upon being found in violation of the same offense a 2nd or subsequent time.

(c) A violation of any condition contained in a wetland general permit issued under sub. (3g) is a violation of the statute under which the general permit was issued.

(d) In addition to the forfeitures specified under pars. (a) and (b), a court may order a defendant to abate any nuisance, restore a natural resource, or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the defendant.

(e) Each day of a continuing violation is a separate offense.



(f) The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of this section.

History: 2001 a. 6; 2005 a. 253; 2011 a. 118, ss. 43, 45 to 47, 49 to 55, 57 to 118, 122, 123, 127 to 137, 141; 2013 a. 1, 20, 69, 80; 2013 a. 151 s. 27; 2013 a. 166 s. 77; 2013 a. 168, 173; 2015 a. 387; 2017 a. 21, 58, 59, 115, 118, 183; 2017 a. 365 s. 112; 2019 a. 59.

Once a violation of sub. (2) (a) [now sub. (3b) (b)] is proven, *Goode*, 219 Wis. 2d 654 (1998), sets forth a rebuttable presumption that the court should grant an injunction. The state is not required to prove particular instances of environmental harm to obtain an injunction. Once a violation is proven, it is the defendant who must establish compelling equitable reasons not to grant injunctive relief. *State v. CGIP Lake Partners, LLP*, 2013 WI App 122, 351 Wis. 2d 100, 839 N.W.2d 136, 12-2346.

Sub. (3n) (b) 5. requires that the Department of Natural Resources (DNR) consider the net positive or negative environmental impact of a proposed project before deciding to issue a wetland-fill permit. This consideration is necessary for DNR to meet the mandate in sub. (3n) (c) 3. that it may issue a wetland-fill permit only if it determines that the proposed project will not result in significant adverse environmental impacts. In this case, the permit stated that DNR lacked sufficient information to enable it to assess the proposed project's net positive or negative environmental impact. Accordingly, DNR improperly issued the permit without being able to consider the proposed project's net positive or negative environmental impact, contrary to sub. (3n) (b) 5. *Meteor Timber, LLC v. Division of Hearings & Appeals*, 2022 WI App 5, 400 Wis. 2d 451, 969 N.W.2d 746, 20-1869.

The legislature has set a tight timeline for the Department of Natural Resources (DNR) to process a wetland-fill permit application, and the legislature has mandated that at the end of that timeline DNR must decide to issue or deny the permit and explain in the case of a denial why the permit does not meet statutory standards or is incomplete. The applicant in this case pointed to no statutory language authorizing DNR to issue a permit if it had not received sufficient information within that timeline. In that situation, the legislature has provided that DNR must deny the permit as incomplete, and the applicant may seek administrative and judicial review of that denial or submit a new application with all necessary information. *Meteor Timber, LLC v. Division of Hearings & Appeals*, 2022 WI App 5, 400 Wis. 2d 451, 969 N.W.2d 746, 20-1869.

Wis. Stat. § 281.37. Wetland mitigation grant program.

(1) In this subsection:



(a) “Department land” means land owned by or under easement to the state that is under the jurisdiction of the department and used for one of the purposes specified in s. 23.09 (2) (d).

(b) “Mitigation program” means the wetland mitigation grant program established under sub. (2).

(c) “Nonprofit organization” means an organization that is described in section 501 (c) (3) of the Internal Revenue Code and that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(2) The department shall establish a wetland mitigation grant program under which it awards grants to nonprofit organizations to conduct projects to create, restore, or enhance wetlands under the in lieu fee subprogram in s. 281.36 (3r) (e) on department land as provided in this subsection.

(3) No later than 6 months after March 30, 2018, the department shall identify department land that is appropriate to include in the mitigation program. The department shall identify no less than 25 percent of department land for this purpose. The land identified shall include land in every watershed in the state.

(4)

(a) No later than 3 months after completion of the land identification stage under sub. (3) or at the beginning of the following fiscal year, whichever is earlier, and no later than July 1 of each subsequent year, the department shall issue a request for proposals from nonprofit organizations for grants to conduct wetland mitigation projects on department land identified under sub. (3). The issuance of each new request for proposal begins a new grant cycle.

(b) The department shall require applications for grants under this section to include all of the following:

1. The scope of the proposed project.
2. A project timeline.
3. If possible, a specification of the functional values or uses listed in s. NR 103.03 (1), Wis. Adm. Code, that the project area does not provide or only sparsely provides.
4. A specification of the functional values or uses listed in s. NR 103.03 (1), Wis. Adm. Code, that the proposed project would create, restore, or enhance.



5. All information required to be submitted for approval to the U.S. army corps of engineers under 33 CFR part 332 and the Wisconsin Wetland Conservation Trust program instrument.

(c) After issuing the request for proposals under par. (a), the department shall accept grant applications on a rolling basis over the course of a fiscal year. The department shall select and announce grant recipients under this subsection at the end of each quarter as funds are available.

(5)

(a) If an application under sub. (4) is approved, the grantee and the department, in consultation, shall identify all department permits required for the grantee to conduct the project. The department shall waive all permit fees for the grantee in relation to department permits required to conduct the project.

(b) Notwithstanding timelines otherwise established for individual permits, within 60 days of receiving the grantee's application for an individual permit that is required to conduct the project, the department shall render a decision issuing, denying, or modifying the permit, and the department shall adjust all other deadlines relating to the review of the application accordingly.

(7)

(a) The department shall pay out a grant under the mitigation program quarterly unless the department determines that more frequent payments are necessary to fulfill the objectives of the grant program. The department shall withhold the final payment until the grantee certifies that the project is complete.

(b) If the grantee fails to certify that the project is complete by the date indicated for completion in its application, the department shall use the remaining unpaid grant amount to either complete the project or contract with or issue a grant to another nonprofit organization to complete the project. An organization that fails to certify completion of a project by the date indicated in its application for completion is not eligible for a new grant under the mitigation program for 2 grant cycles.

(c) The department may agree to a modified deadline for the project if unusual or unforeseen circumstances cause a delay. If the department agrees to a modified deadline, the consequences under par. (b) apply only if the grantee fails to certify that a project is complete by the date indicated in that agreement.



(8) Before 6 months have elapsed after the 5th anniversary of the department's first issuance of a request for proposals under sub. (4), the department shall submit to the legislature under s. 13.172 (2) a report analyzing the effectiveness of the first 5 years of the mitigation program and making recommendations for changes to the program.

