

## Wetland Regulatory Program Summaries – Great Lakes States

### **Minnesota:** *State Wetlands Laws*

Wetlands in Minnesota are regulated under two distinct state authorities. These state regulations are implemented separately from the federal Clean Water Act (CWA) or River and Harbors Act regulations administered by the United States Army Corps of Engineers (USACE).

The Minnesota Department of Natural Resources (MN-DNR) is responsible for the Public Waters Work Permit Program. In waters that are defined as “public waters wetlands,” a permit is required for work involving the draining, filling, excavating, and placing structures in public waters wetlands.

The Wetland Conservation Act (WCA) protects all wetlands not protected under the Public Waters Permit Program. This program is administered by the Minnesota Board of Water and Soil Resources. This law regulates draining and filling of wetlands, and excavation of some types of wetlands, and establishes mitigation requirements. Some provisions of the WCA may be administered through local units of government.

Each program is enforced by the MN-DNR through conservation officers.

### **Wisconsin:** *Section 401 Water Quality Certification Program combined with USACE State General Permit; State Isolated Wetlands Law; State Waterways Laws*

Wisconsin relies on a combination of state and federal authorities to regulate wetlands. The Wisconsin Department of Natural Resources (WDNR) bears the primary responsibility for wetland protection in the state.

The state’s Section 401 Water Quality Certification Program provides for detailed review of applications submitted to the USACE by WDNR staff to ensure consistency with applicable state water quality standards for wetlands. WDNR water quality standards for wetlands are similar to wetland criteria under the CWA. All of the USACE Nationwide Permits have been suspended in Wisconsin, and replaced with a State General Permit that authorizes the state 401 Certification Process.

Wisconsin also became the first state to pass legislation in response to the U. S. Supreme Court decision in *SWANCC v. Corps of Engineers* (SWANCC). This law requires an applicant wishing to alter a non-federal wetland to receive an individual water quality certification (i.e. state review of the permit application).

Other state provisions include:

- Physical Alteration of Waterways. Alteration of navigable waters (defined to include many wetlands) requires an individual activity specific state permit.
- Shoreland Zoning, Shoreland Wetland Zoning and Floodplain Zoning. Counties, cities, and villages must adopt zoning regulations consistent with state standards. Otherwise, the Department of Natural Resources directly regulates areas. Wetlands must be placed in “conservation” districts.

**Illinois:** *Interagency Wetland Policy Act*

In Illinois, the Interagency Wetland Policy Act of 1989 regulates state and state-pass through construction activities in wetland for activities over \$10,000. There is no regulation of wetlands on private lands except through the floodplain regulation program, local regulations, and the Section 401 Water Quality Certification Program.

**Indiana:** *401 Certification Program combined with USACE Regional General Permit; State Isolated Wetlands Law*

The Department of Environmental Management (IDEM) regulates wetlands through a Water Quality Certification - Section 401 Program. This program effectively regulates the placement of dredged or fill materials into wetlands and other waters, as well as mechanical clearing of wetlands and some dredging activities.

A Regional General Permit that replaces many of the USACE Nationwide Permits with review by IDEM is in place. An Interagency Coordinated Agreement on Mitigation Banking is in place.

In addition, isolated wetlands, or those waters no longer subject to regulation under the CWA, are regulated under state law. This statute creates a category of waters of the state known as State Regulated Wetlands, which are defined as wetlands as delineated under the 1987 USACE Wetlands Delineation Manual that are considered isolated and not subject to federal law. This law establishes a classification system for wetlands and a set of general permits, exemptions, and individual permitting authority.

Wetlands are also regulated under the Flood Control Act, administered by the Department of Natural Resources.

**Ohio:** *401 Certification Program; State Isolated Wetland Law*

The Ohio Environmental Protection Agency (Ohio EPA) reviews impacts to wetlands through a Section 401 Water Quality Certification Program. The state has developed a nationally recognized wetland functional assessment method to assist in the review of potential impacts. The state's administrative rules provide details for impact analysis and for wetland mitigation.

In July of 2001, a law was passed to regulate filling of isolated wetlands not protected by the federal agencies as a result of the SWANCC decision.

Ohio EPA Section 401 permitting staff work with the USACE and U.S. Environmental Protection Agency (EPA) on enforcement issues. Ohio EPA may choose to initiate independent enforcement seeking civil and/or criminal penalties. For violations resulting in impacts to isolated wetlands, Ohio EPA proceeds independently from the USACE and EPA. Enforcement action by Ohio EPA may be issuance of Administrative Orders or pursuit of a judicial consent decree and may include monetary penalties (up to \$10,000 per day), restoration, Supplemental Environmental Projects (SEPs), and mitigation.

**Pennsylvania:** *State Wetland Law; State Programmatic General Permit*

The state comprehensively regulates activities in coastal and freshwater wetlands. Permits are required from the Pennsylvania Department of Environmental Protection (DEP) for dams, fills, excavation, and other encroachments into Waters of the Commonwealth. Waters of the Commonwealth includes watercourses, floodways, wetlands, and bodies of water.

Pennsylvania coordinates with the USACE through a State Programmatic General Permit Process, assuming primary responsibility for review of certain categories of wetland permits in the state.

**New York:** *State Wetland Law, with special provisions for the Adirondack Park Agency*

New York has a comprehensive statewide program for all tidal wetlands regardless of size, and freshwater wetlands over 12.4 acres or any smaller wetlands determined to be of unusual local importance. A permit is required from the Department of Environmental Conservation for regulated activities in freshwater wetlands 12.4 acres or larger in size or in smaller wetlands of unusual local importance. A buffer area of 100 feet is also regulated. Local governments may assume state permitting authority if they meet standards set forth in regulations; only three have done so. Inside the Adirondack Park, the Adirondack Park Agency regulates freshwater wetlands down to one acre in size, or regardless of size if contiguous with open water.

Where a Section 401 water quality certification is required, the state permit/authorization typically serves that function. Where no other state authorization is required, a separate Section 401 is then reviewed and issued/denied/conditioned.

Source:

Association of State Wetland Managers web site  
<http://aswm.org/swp/statemainpage9.htm>

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