

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: NR 350 WT-02-19

Relating to: Wetland mitigation

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

This is a permanent rule.

2. Detailed description of the objective of the proposed rule:

The waterway and wetland program plans to revise NR 350, the wetland compensatory mitigation code. The current purpose of the code is to establish standards for the development, monitoring and long term maintenance of wetland compensatory mitigation projects that are approved by the department, and to establish procedures and standards for the establishment and maintenance of mitigation banks. The original code was drafted in 2002, and many legislative and programmatic changes require that the code be updated. Additions to the rule will include provisions governing the department's In-Lieu Fee mitigation program and the purchase of in-lieu fee credits (Wis. Stat. s. 281.36(3r)(e), 2011 Wis. Act 118; Wis. Stat. s. 281.37, 2017 Wis. Act 183) and required mitigation for non-federal wetland exemptions (Wis. Stat. s. 281.36(4n); 2017 Wis. Act 183). The discharge of fill material to federal wetlands is also regulated by the U.S. Army Corps of Engineers under federal law. Wisconsin's wetland law is designed to to achieve a level of consistency with the federal requirements in order to achieve permitting efficiency for the regulated community. Revisions to the rule will address consistency with federal mitigation requirements. Finally, general revisions to the mitigation program as directed by the legislature will be considered (Wis. Stat. s. 281.36(3t); 2011 Wis. Act 118).

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The revised rule will incorporate the department's existing mitigation planning and decision framework according to the 2013 [Guidelines for Wetland Compensatory Mitigation in Wisconsin](#), which outlines mitigation requirements necessary to comply with state and federal law.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stat. 281.36(3t). The legislature has directed the department to develop rules for the mitigation program which are to include requirements for the analysis of practicable alternatives as part of the wetland permitting process, the purchase of credits from mitigation banks, enforcement requirements, baseline study requirements, plan and design requirements for mitigation projects, standards for comparing mitigation projects to proposed discharges, standards for measuring the success and requirements for monitoring of mitigation projects and banks, and remedial actions for unsuccessful mitigation projects.

5. Estimate of a amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The Department anticipates that the lead drafter of the rule will spend 600 hours on the rule development process, other waterway and wetland program staff will spend another 600 hours on the rule, and the following groups will spend a combined 140 hours on the rule development: rule coordinators, Bureau Director, Division Administrator, economist, Board Liaison, program attorneys.

6. List with description of all entities that may be affected by the proposed rule:

Wetland individual permit recipients, wetland non-federal exemption recipients, mitigation bankers, consultants, department staff, US Army Corps of Engineers, and EPA staff, local units of government, and land trusts and other conservation organizations.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The Army Corps of Engineers regulates compensatory mitigation for federal wetland discharge permits under 33 CFR Part 332. The federal mitigation requirement is similar to the state mitigation requirements. The federal regulations include standards for the amount, type and location of required mitigation, standards for planning and documentation for mitigation projects, ecological performance standards, monitoring standards and management

standards, and requirements for mitigation banks and in-lieu fee programs. The federal regulations are similar in many respects to the department's required rule authority for mitigation. The department and the US Army Corps of Engineers jointly issued [Guidelines for Wetland Compensatory Mitigation in Wisconsin](#) in 2002, with an updated version in 2013, which captures the process for complying with both state and federal law. The Guidelines reflect that while there are language differences between state and federal regulations, there are not significant conflicts between the two. The revised rule will follow the process for consistency identified in these guidelines.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The revised rule is not likely to have a significant economic impact, including for small businesses as the statutory mitigation requirements and methods remain unchanged. The rule may achieve some measure of positive economic impact, as it is expected to provide efficiency for the regulated community, mitigation bankers, and mitigation project developers.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding two public hearings in the month of July 2020. Hearing cities will be: Madison, Green Bay.

The department will hold these hearings in these locations to get statewide input on the revised NR 350.

Contact Person: Josie Lathrop, Waterway and Wetland Policy Coordinator, 608-267-7662.

Preston D. Cole, Secretary

Date Submitted