

Wisconsin DNR Wetland Regulations and the Sackett Decision

Tom Pearce
Wetland Program Coordinator
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WOTUS & Wetlands

Wetland federal jurisdiction since the 2006 Rapanos v. U.S. decision:

For a wetland to be a WOTUS, it must have a “**significant nexus**” to adjacent navigable waters, and “**significantly affect the chemical, physical, and biological integrity of those waters**”.



Sackett v. EPA Decision

- A wetland is a Water of the US if:

“the wetland has a **continuous surface connection** with [a traditional interstate navigable water], making it difficult to determine where the ‘water’ ends and the ‘wetland’ begins”



Federal Status

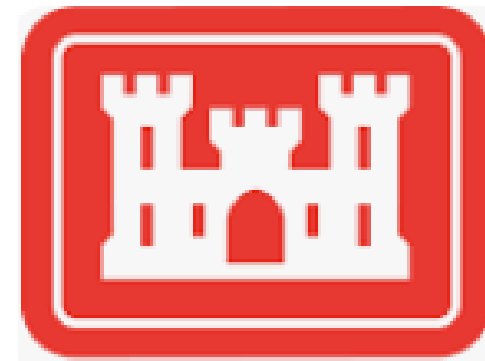
EPA WOTUS conforming rule

- Wetlands adjacent to relatively permanent, standing, or continuously flowing bodies of water and with a continuous surface connection to those waters
- “Adjacent” means having a continuous surface connection



USACE - St. Paul District

1. USACE has limited ability to issue Approved Jurisdictional Determinations right now
2. St. Paul District to receive national guidance on new process
3. DNR waiting for more specifics about how federal wetland jurisdiction will change.



Wisconsin DNR Wetland Statutes

- Wetland types included in “Waters of the state,” as defined in ch. 281, Wis. Stats.
- Wetland water quality standards since 1991
- Comprehensive statutory protections for “isolated” wetlands in 2001



Wisconsin DNR Wetland Permitting

Discharge of dredge or fill material into a wetland requires a general or individual permit and to meet water quality standards.
(filling, excavating, grading, mechanized land clearing)

Permit Process: Avoid → Minimize → Mitigate

Wetland Exemptions (2018 enacted)

- Artificial Exemption
- ***Nonfederal Exemption** (expect more)
 - Urban (incorporated or sewer service)
 - up to 1 acre, mitigation after 0.23 acres.
 - Rural
 - up to 3 acres, purpose is an ag structure, mitigation after 1.5 acres



Summary Points

1. USACE to implement a nationwide change to JD process, will take more time after EPA rule is published.
2. DNR not planning to estimate the acres of federal wetlands affected by Sackett decision → do not know how USACE will make determinations
3. DNR jurisdiction currently applies to all wetlands in the state, no change.
4. Expecting to see increase in nonfederal exemption requests



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