



US Army Corps
of Engineers
St Paul District

Public Notice

ISSUED: 17 April, 2006

SECTION: 404–Clean Water Act

REFER TO: LOP-06-WI (2005-7189-MTV)

ISSUANCE OF LETTER OF PERMISSION PROCEDURES, LOP-06-WI, IN THE STATE OF WISCONSIN EXCEPT WITHIN THE EXTERIOR BOUNDARIES OF INDIAN RESERVATIONS .

1. PURPOSE OF THIS PUBLIC NOTICE.

The purpose of this public notice is to announce the issuance of letter of permission procedures, LOP-06-WI, for the state of Wisconsin (attached).

2. BACKGROUND.

- On December 30, 2005, the St. Paul District issued a public notice that described and requested public comment on its proposal to replace the letter of permission procedure portion of GP/LOP-98-WI with LOP-06-WI throughout the state of Wisconsin, except within the exterior boundaries of Indian Reservations.

In the year 2000, the St. Paul District replaced all of the Corps Section 404 nationwide permits (NWP) in the states of Minnesota and Wisconsin with a combination of regional general permits (GPs) and letter-of-permission evaluation procedures (LOPs): GP/LOP-98-MN and GP/LOP-98-WI, respectively. In addition, a similar GP/LOP-98-R was issued for all Indian reservations in both states. GP/LOP-98-WI, originally scheduled to expire on April 16, 2005, was re-authorized for one year and has now expired on April 16, 2006.

The St. Paul District will continue to use Section 404 GPs and LOPs in place of the nationwide general permits. However, instead of combining the GPs and LOP procedures into an integrated package, we are issuing GPs and LOP procedures as separate and distinct documents. The reason for doing so is that general permits are actual issued permits that must be reviewed every five years. In contrast, letters of permission are abbreviated individual permits. Once a process for their evaluation is established and published, they do not need to be changed unless conditions warrant. Activities authorized by the provisional LOP require application to and response from the Corps of Engineers and the Wisconsin Department of Natural Resources.

Authorization categories, terms and conditions in LOP-06-WI are similar to those found in GP/LOP-98-WI. After the public notice was issued, one change was made in response to comments received:

- Area of waters impacted by highway projects not subject to DNR/DOT liaison process was reduced to 2 acres.

3. ADDITIONAL INFORMATION

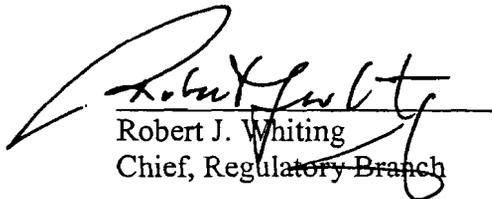
LOP-06-WI is issued according to the provisions of Section 404 of the Clean Water Act and includes consideration of the guidelines set forth under Section 404(b) of the Clean Water Act (40 CFR 230). Each LOP issued is supported by an abbreviated environmental assessment, public interest review and Section 404(b)(1) guidelines concurrence determination.

LOP-06-WI does not affect any existing or future Department of the Army Section 10 of the Rivers and Harbors Act NWPs, or any regional GPs in Wisconsin.

Mitigation sequencing (avoidance, minimization and compensation) is required for projects authorized by letter of permission under Section 404. Under present St. Paul District and U.S. Environmental Protection Agency, Region 5, policy for Wisconsin compensatory mitigation is generally required at a 1.5:1 ratio (mitigation area to impacted area) on an acreage basis. The usual threshold for requiring compensation is 10,000 square feet of wetland loss. The District may deviate from these general guidelines on a case-by-case basis when it determines that it is appropriate to do so.

LOP-006-WI was designed in cooperation with the WDNR to maximize the combined effectiveness of the state and Federal programs.

LOP-06-WI may be viewed on the District Internet web site at: <http://www.mvp.usace.army.mil> under the "Permits" section. Questions may be directed to Ms. Marita Valencia in our St. Paul office at 651-290-5364. Inquiries may also be submitted through the web site or mailed to: Regulatory Branch, St. Paul District, Corps of Engineers, 190 Fifth Street East, St. Paul, Minnesota, 55101-1638.



Robert J. Whiting
Chief, Regulatory Branch

**Clean Water Act Section 404 Letter of Permission (LOP)
Procedures for the State of Wisconsin**

REPLACEMENT OF GP/LOP-98-WI

These policies and procedures replace the LOP portion of GP/LOP-98-WI that was issued by the St. Paul District on April 17, 2000, and expired on April 16, 2006. The majority of activities currently approved under the GP portion of GP/LOP-98-WI are covered by GP-001-WI (issued on January 1, 2004) and GP-002-WI (issued on April 17, 2006). Activities not authorized under either of the Wisconsin general permits may be eligible for authorization under LOP-06-WI provided they meet the eligibility requirements and are not specifically excluded.

SECTION 404 LETTER OF PERMISSION:

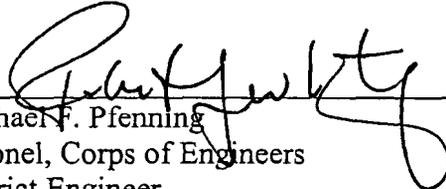
The General Public in the State of Wisconsin may request Section 404 authorization from the St. Paul District under the Section 404 Letter of Permission (LOP) procedures specified in this document.

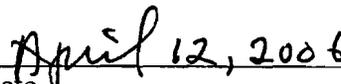
CONDITIONS: All LOP authorizations are subject to the provisions and conditions specified in LOP-06-WI. In addition, some authorizations may be subject to project-specific special conditions identified in the St. Paul District's authorization letter for the project. Refer to the information below for a description of LOP procedures, eligible activities, conditions, exclusions and application instructions.

PROJECT DESCRIPTION AND LOCATION: These LOP procedures apply to discharges of dredged and/or fill material into waters of the United States in the state of Wisconsin as described herein, except for discharges within the exterior boundaries of Federally-recognized Indian Reservations.

DETERMINATION OF IMPACTS: All impacts to Waters of the United States associated with activities regulated by Section 404 of the Clean Water Act, including filling and discharges associated with mechanical land clearing and any related draining, excavating or inundating, are included in determining a project's total impact. Projects in waters and/or wetlands that are subject to the Corps' Section 404 jurisdiction that involve no discharge do not require a Section 404 permit.

EFFECTIVE DATE: The attached LOP terms and procedures become effective when the Federal official, designated to act for the Secretary of the Army, has signed below.


Michael F. Pfenning
Colonel, Corps of Engineers
District Engineer


Date

LOP TERMS AND PROCEDURES

Persons proposing to do work should note that, in ALL cases, LOP-06-WI requires that adverse impacts to water and wetland resources be avoided and minimized TO THE MAXIMUM EXTENT PRACTICABLE. Also, activities that would adversely affect Federal or State endangered plant or animal species or certain cultural or archaeological resources, or that would impair reserved Native American tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights, are not eligible for authorization under LOP-06-WI.

Project proponents should carefully read all of the information below, with special attention to the General Conditions section. These provisions and conditions apply to all LOP authorizations. The St. Paul District web page: www.mvp.usace.army.mil/regulatory also contains helpful information for applicants.

1. EXCLUSIONS FROM LOP AUTHORIZATIONS:

The following activities shall not be authorized by a LOP; they require evaluation under standard individual permit procedures.

A. Diversions of Water. A LOP may not be used to authorize all or any portion of a project that would divert more than 10,000 gallons/day of surface water or groundwater into or out of the Great Lakes Basin.

B. Activities in the City of Superior, Wisconsin area subject to the "Superior SAMP" (Corps permits 199606788 through 199606792) are not eligible for authorization under LOP-06-WI.

C. Activities in calcareous fens as identified by the WDNR, and wetlands within 300 feet of such fens are not

eligible for authorization under LOP-06-WI.

2. ACTIVITIES ELIGIBLE FOR LOP AUTHORIZATION:

A. Activities where the discharge does not cause the loss of greater than 2 acres of waters of the United States, including wetlands.

B. Discharges for highway projects administered by the Wisconsin Department of Transportation (WDOT) that do not cause the loss of greater than 5 acres of waters of the U.S. Compensatory mitigation is required for all WDOT-administered highway projects in accordance with the WDNR/WDOT cooperative agreement and The Wetland Mitigation Banking Technical Guideline.

C. Discharges conducted by any government agency to maintain/upgrade existing public roads within established transportation corridors that do not cause the loss of greater than 2 acres of waters of the U.S. Compensatory mitigation is required for all impacts greater than 10,000 square feet, in accordance with "[Guidelines for Wetland Compensatory Mitigation in Wisconsin](#)".

3. APPLICATION AND EVALUATION PROCEDURES UNDER LOP-06-WI:

Applicants must submit a complete application to both the St. Paul District of the Corps of Engineers and the WDNR using the joint state-Federal application form that is available from District and WDNR offices and on their respective websites:

www.mvp.usace.army.mil/regulatory and <http://www.dnr.state.wi.us/org/water/fhp/waterway/index.shtml>.

Upon receipt of a permit application, the St. Paul District will review the information to determine the

completeness of the application and eligibility for LOP-06-WI. A complete application consists of the following information:

1. Name and address of the applicant and authorized agent.
2. Description of the proposed activity. The description should be of sufficient detail to provide a thorough understanding of the project so that it can be explained to other agencies and the general public.
3. All related activities requiring Department of the Army authorization. The application should identify all activities that affect waters of the U.S. and that are reasonably related to the same project for which an application has been submitted (see definition of Single and Complete Project under Definitions, below).
4. Name and address of adjacent landowners.
5. Project location. The application should identify the name of the watercourse or wetland impacted and identification of the specific location of the impact(s).
6. A description of any work already completed as part of the project in waters of the U.S.
7. Signature of Applicant or authorized agent.
8. Drawings, plans, or sketches of sufficient detail to understand the existing and proposed conditions at the site. Detailed engineering plans and specifications may be required.

In some cases, the District may require a wetland delineation prepared in accordance with the 1987 Corps of Engineers Wetland Delineation Manual before the application will be considered complete.

Applicants are encouraged to obtain the services of professional consultants in planning projects and preparing applications, wetland determinations/delineations, and compensatory mitigation plans. The

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District does not endorse any consultants; however, the District maintains a list that is available on its website, of consultants that have asked to be listed as being available for hire to perform such services.

The District may request additional information from the applicant in order to complete the public interest review. This information is not required for a complete application, but may be necessary in order for the District to make a decision on the permit application. The additional information could include an alternatives analysis, dredged material testing plan, and/or a compensatory mitigation plan, for example.

Once an application has been determined to be complete, the District will conduct its evaluation of the permit application as described in the following paragraphs.

PUBLIC NOTICE

The District LOP review will include a 30-day public/interagency review process for projects that would impact more than 10,000 square feet (smaller impact projects at the discretion of the District) of waters of the U.S. For such projects, the District will, upon receipt of a complete application, publish a 30-day notice of the application on an Internet World Wide Web page that is available to the coordinating agencies and the general public. Notification of posting will also be emailed to coordinating agencies that request to receive such notice. At a minimum, the Internet notice will identify the applicant, project location and nature, approximate impacts, and any proposed/required compensatory mitigation. The notice will include a brief project description and describe how to respond to the appropriate District regulatory project manager.

Coordinating agencies in Wisconsin are Indian Tribes that may be affected by the proposal, the Department of Natural Resources, the Wisconsin Coastal Zone Management Program, the State/Tribal Historical Preservation Officer, the U.S. Environmental Protection Agency, and the U.S. Fish and Wildlife Service. The

District will coordinate with Indian Tribes by use of facsimile machine or the Internet at the request of the Tribe.

The District will consider all comments and information received during the public/interagency review in completing its evaluation of the proposed activity.

ENDANGERED SPECIES AND CULTURAL RESOURCES REVIEW.

The St. Paul District review will include a determination concerning compliance of the project with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act. Projects found not to comply with either or both of these Acts will not be authorized under the LOP until actions are taken so that compliance with both Acts is assured. The District Federal endangered species review will consist of District staff consulting appropriate reference materials including endangered species information published by the U.S. Fish and Wildlife Service (USFWS) in informational brochures and on Internet World Wide Web pages and any other available data, information or specific guidance provided by USFWS. District staff will be aware of locations where endangered species are known or likely to be present and of the types of activities that may affect those species. District staff will directly consult with USFWS staff concerning proposals that appear to have potential to affect listed species. Where necessary, the review will include District and/or USFWS site inspections of specific project sites, and/or formal Section 7 interagency consultation. In addition, during the Federal review of LOP applications, District staff will consult state endangered species information made available by the WDNR. District staff will consult with WDNR staff concerning proposals that appear to have potential to affect state listed species.

The District Federal cultural resources review will be conducted in a manner similar to the endangered species review. The National Register of Historic Places will be consulted to determine the

presence or absence of known cultural resources. District regulatory staff will be aware of areas that have a high probability to contain important cultural resources and will consult District cultural resource staff concerning questionable projects. District regulatory or cultural resource staff will consult with the State Historic Preservation Officer on appropriate projects. Cultural resource surveys and/or formal consultation with the President's Advisory Council on Historic Preservation will be conducted where necessary.

COMPENSATORY MITIGATION

Projects that impact more than 10,000 square feet of Waters of the U.S. require compensatory mitigation. The St. Paul District may require mitigation for impacts under 10,000 square feet if a determination is made that the functions lost or impaired by the proposed project are of high value and warrant replacement. These determinations are made on a case-by-case basis. Applicants whose project requires compensatory mitigation should include a mitigation plan prepared in accordance with the *Guidelines for Wetland Compensatory Mitigation in Wisconsin* (February 2002) that describes the measures proposed to offset the adverse impacts of the project. Compensatory mitigation that is proposed to satisfy state or local requirements may, but will not necessarily, satisfy the Federal requirement.

AUTHORIZATION CRITERIA

The District will review each application for compliance with the LOP-06-WI terms and conditions, conduct a public hearing if one is warranted, and complete a 404(b)(1) analysis and environmental assessment. The District will generally issue a provisional letter of permission authorizing those projects found to be in compliance with all terms and conditions of LOP-06-WI and the Section 404(b)(1) guidelines, provided the District determines that the proposed work is not contrary to the public interest.

Applicants are encouraged to help speed the District evaluation and increase the

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chance of receiving a favorable interagency review and authorization by including information with their application that clearly shows that the proposed work is the least environmentally damaging way that is practicable to accomplish the basic purpose of the project. The District will generally deny any request for authorization under the LOP unless the applicant demonstrates that the work proposed is the least environmentally damaging practicable alternative to accomplish the basic project purpose, and that impacts to waters of the U.S. cannot reasonably be avoided or further minimized. The District must also deny authorization for any regulated activity that it determines is contrary to the public interest.

The District will do the level of analysis required to determine whether or not the proposal meets all authorization criteria. Projects that fail to meet any authorization criteria will be denied authorization. The LOP will identify any compensatory mitigation requirements and any project-specific conditions deemed necessary by the District to insure that the proposed work meets the authorization criteria.

Work is authorized under the provisional LOP when the project proponent receives both a provisional LOP from the St. Paul District AND confirmation from the WDNR that State water quality certification has been granted or waived for the project.

DEFINITIONS.

Calculation of Aquatic Impact

Thresholds: For those activities with threshold limits, impacts shall be determined by calculating area of waters of the U.S. filled plus the impacts to waters of the US that are excavated, inundated, or drained as a result of the regulated discharge.

Discharge of Fill Material: the term fill material means material placed in waters of the United States where the material has the effect of:

(i) Replacing any portion of a water of the United States with dry land; or

(ii) Changing the bottom elevation of any portion of a water of the United States.

Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States. The term fill material does not include trash or garbage.

Loss of waters. Waters of the U.S. that are filled or permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change its use. The loss of streambed includes the linear feet of streambed that is filled, excavated, or flooded. Waters of the U.S. temporarily filled, flooded, excavated, or drained but restored to preconstruction contours and elevations after construction are not typically included in the measurement of loss of waters of the U.S. However, temporary fill in waters of the U.S. is regulated by Section 404.

Practicable: available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Single and Complete Project: The total project proposed by the project proponent. For example, if construction of a residential development or linear project such as a road or utility line affects several different areas of waters of the U.S., the cumulative total of all filled areas is the basis for deciding the project's total wetland/water impact. For "phased" developments, each phase may constitute a single and complete project if it has independent utility and would accomplish its intended purpose whether or not other phases were constructed.

OTHER INFORMATION

1. FEDERAL TRUST RESPONSIBILITY TO INDIAN TRIBES. Projects the District finds to have potential to affect tribal interests will be coordinated with the appropriate Indian Tribal governments. The Tribe's views and the Federal trust responsibility will be considered in the District's evaluation. Throughout the state, including the treaty-ceded territories, the District review of all provisional LOP projects which impact more than 10,000 square feet of wetland/water area will include coordination with any potentially affected tribe(s). The District will provide, by facsimile transmission, project notifications to the concerned tribe(s) for a 30-day review period. The views of the tribe(s) will be considered in the District's evaluation of the activity and in the District's determination of whether the activity is in compliance with LOP-06-WI Standard Condition 18 that prohibits activities, or their operation, that may impinge or abrogate treaty rights, including, but not limited to, reserved treaty fishing and hunting rights.

2. PROJECT-SPECIFIC LOP-06-WI CONDITIONS. The District evaluation will identify any need for project-specific special conditions and require such conditions to minimize adverse project impacts and/or protect the public interest.

3. FORM AND CONFIRMATION OF AUTHORIZATION. Every LOP-06-WI authorization will be confirmed in writing by the St. Paul District via a letter of authorization to the project Applicant or authorized agent. The letter will identify any required special conditions.

4. FEDERAL AND STATE ENDANGERED SPECIES AND CULTURAL RESOURCES. LOP-06-WI does not affect the Corps responsibility to insure that all Section 404 authorizations comply with Section 7 of the Federal Endangered Species Act, s. 29.604, Wisconsin Statutes and Section 106 of the National Historic Preservation Act. No Corps permit will be granted for

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projects found not to comply with these Acts.

5. GRANDFATHER PROVISION.

Regulated work for commenced activities that was authorized under the LOP provisions of GP/LOP-98-WI continues to be authorized under the terms of the original authorization

6. MODIFICATION OF

PROCEDURES. The St. Paul District has authority to modify, revoke, or suspend these procedures at any time it determines that circumstances concerning the public interest warrant such action.

GENERAL CONDITIONS

1. The time limit for completing work authorized by an LOP ends three years after the date of the Corps' authorization letter. If you find that you need more time to complete the authorized activity, submit your request for a time extension to the Corps for consideration at least three months before the expiration date is reached.

2. You must maintain the authorized activity in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archaeological remains while accomplishing the authorized activity you must immediately stop work and notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to the LOP-06-WI authorization. A copy of the certification will be attached to the LOP-06-WI authorization if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of LOP-06-WI.

Further Information.

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization.

a. This LOP does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This LOP does not grant any property rights or exclusive privileges.

c. This LOP does not authorize any injury to the property or rights of others.

d. This LOP does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In authorizing work, the Federal Government does not assume any liability, including but not limited to the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on

behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170)

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accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1., above, establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

**STATE SECTION 401
CERTIFICATION. CONDITIONS
AND LIMITATIONS OF SECTION
401 CERTIFICATION OF LOP-06-
WI.**

I. General Conditions

1. The applicant shall allow the WDNR reasonable entry and access to the discharge site to inspect the proposed discharge for compliance with this certification and applicable laws and to inspect permitted discharges for compliance with this certification and applicable laws.

2. If any conditions of this certification are found to be invalid or unenforceable, certification for all activities to which that condition applies is denied.

3. The following activities are not eligible for certification under this water quality certification action for LOP-06-WI.

- A. Activities likely to jeopardize the continued existence of a state designated threatened or endangered species or a species proposed for such designation or which is likely to destroy or adversely modify the habitat of such species.
- B. Activities that result in adverse impacts to fishery spawning habitat or adversely affect avifauna breeding areas or substantially disrupt the movement of those species that

normally migrate from open water to upland or vice versa (i.e. amphibians, reptiles and mammals).

- C. Activities detrimental to waters of the state, including wetlands, that would adversely affect designated areas of special natural resource interest as defined in NR 103.04, Wis. Adm. Code.
- D. Activities, individually or cumulatively, detrimental to waters of the state, including wetlands, that would further the substantial degradation of designated impaired waters of the state.

4. Applicants seeking authorization under the LOP-06-WI (Letter of Permission procedures) shall complete a Joint State/Federal Permit Application and submit two copies to each, the appropriate local COE office and the local WDNR Water Management Specialist. Applications for water quality certification must be complete as determined by the WDNR. Please note an application fee is required for state water quality certification activities identified under Section II below.

II. Water Quality Certification

1. The WDNR grants water quality certification for projects that satisfy all applicable conditions of LOP-06-WI subject to the **General Conditions** above, and:

2. The applicant receives written confirmation from the department that their proposed activity(s) is consistent with the requirements of **NR 299 Water Quality Certification**, Wis. Adm. Code, and the Department confirms that the applicant has adequately demonstrated that no other practicable alternative exists which would not adversely impact wetlands and would not result in other significant adverse environmental consequences and the Department confirms that the activity is consistent with the requirements of NR 103.08, Wis. Adm. Code.

NOTE: If additional information is needed, or if heavy snow or ice cover prevents WDNR from completing their review, the normal processing time for confirming activities eligible for authorization under this certification may be extended (by written notice from WDNR to the applicant.)

**WISCONSIN COASTAL
MANAGEMENT PROGRAM
(WCMP) CONDITIONS.**

The WCMP's Federal consistency determination for LOP-06-WI provides that no LOP-06-WI authorization for an activity taking place in coastal wetlands identified as ridge and swale complexes and/or wetlands adjacent to the Mink River, Door County, and the Kakagon and Bad Rivers, Ashland County will be valid unless and until a Federal consistency determination is granted or waived by the WCMP. This requirement therefore is incorporated as a permit condition of LOP-06-WI. Applicants will be notified of this condition in the District's LOP provisional authorization for projects in these areas.