

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
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June 8, 2012

Perry Lindquist, Land Resources Manager
Waukesha Co. Dept. of Parks & Land Use
515 W. Moreland Blvd.
Room 260 – Administration Center
Waukesha, WI 53188

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Land Resources
Division

Dear Mr. Lindquist:

The purpose of this letter is to address some issues regarding the applicability of Waukesha County's Authorized Local Program (ALP) to County projects. This matter was recently raised by the Bugline Trail project that crosses multiple jurisdictions within the county.

The November 19, 2010 DNR approval letter states that the ALP is only applicable in areas where the County has jurisdiction to regulate construction site erosion control and storm water management. Additionally, the approval states that the ALP shall apply to all county-owned lands, including county road rights-of-way within incorporated areas, and that administration of permits on county projects shall be in accordance with an interdepartmental agreement executed between the County's Parks and Land Use and Public Works Departments. The DNR has a copy of the interdepartmental agreement that was signed January 30, 2012.

Section NR 216.415 (5) (a), Wis. Adm. Code, requires a municipality under the ALP program to have the legal authority and resources to implement and enforce the requirements of the construction site storm water discharge permit program. However, it's not the responsibility of the DNR to determine what legal authority a municipality has under state or local law, nor does the ALP establish any additional legal authority other than what is already provided under state or local law.

It's the DNR's understanding from item C., Applicability, of the interdepartmental agreement that the agreement applies to all county-owned construction or reconstruction projects that require a county storm water permit under Chapter 14, Article VIII of the Waukesha County Code of Ordinances, and that such projects are subject to the enforcement powers provided in the County's storm water ordinance (item E.6.e. of the interdepartmental agreement). The DNR maintains that the county's Corporation Counsel, and not the DNR, is the appropriate advisor to the county on the accuracy of the county authority as represented to the DNR in the interdepartmental agreement. Consequently, the DNR regards the interdepartmental agreement as a representation by the County that it has the legal authority to regulate its own projects and that they are subject to the County's storm water ordinance.

If you have any questions regarding this letter, please contact Jim Bertolacini at 608/264-8971.

Sincerely,

Mary Anne Lowndes

Mary Anne Lowndes, Chief
Runoff Management Section

cc: Jim Bertolacini, DNR WT/3
Maureen McBroom, DNR Waukesha