



WISCONSIN DRAINAGE DISTRICT PROGRAM UPDATE FALL 2016

DRAINAGE DISTRICT NEWS

Fall 2016

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ANNUAL REPORTING REMINDER

Reporting drainage activities that took place between September 2015 and August 2016 helps your board document the results of annual and storm-related inspections, track work performed and needed maintenance, support effective participation by district landowners, and manage financial resources in each district.

Beginning September 1st, boards have three months to hold a hearing on their annual reports. Because a hearing on annual reports is required, most drainage boards combine a hearing with an annual meeting of all districts held in the fall. Of course, the annual meeting gives board members the opportunity to discuss district operations with district landowners.

After holding a hearing on your districts' annual reports, please submit them to the county zoning administrator, DATCP, town board or town zoning committee, and city council, plan commission, or plan committee in which the district is located, by December 1, 2016. If you miss the deadline, please submit your annual reports as soon as possible.

You can get a copy of the reporting form from DATCP's drainage district program website, https://datcp.wi.gov/Pages/Programs_Services/DrainageDistricts.aspx. Scanning and emailing electronic copies of annual reports makes it easier to manage your records, saves postage, and avoids filing delays caused by snail mail. You can send your electronic reports to DATCP, in care of Chris Clayton at christopher.clayton@wi.gov.

UPDATE ON DRAINAGE LEGISLATION

The last state budget ushered in new drainage legislation, which did away with district suspensions and created a process that administratively dissolves districts currently in a state of suspension. What we have seen is that this process has not worked as intended.

By statute, DATCP starts the process by petitioning circuit courts in counties with suspended districts. Last year, DATCP filed a petition with the Dane County Circuit Court to dissolve four suspended districts. The Dane County Drainage Board supported in concept the petition to dissolve. The problems arose with the next

Wisconsin Counties Containing Drainage Districts



Questions or comments? Call Chris Clayton at (608) 224-4630 or e-mail christopher.clayton@wisconsin.gov.

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step in the process, requiring notice to all landowners in the suspended districts. The administrative dissolution process hit a roadblock on the question of how to pay for the notice and hearing. We have spoken with other county drainage boards and their attorneys, and all have arrived at the same conclusion: they have no way to pay to continue the dissolution process.

In the meantime, the office of State Representative Joe Sanfelippo remains involved drafting legislation that will amend different parts of the drainage law. Among the changes being proposed are an exemption to obtaining dredging permits from the DNR, municipal representation on county drainage boards, restrictions on drainage district expansions, and requirements for municipal-district agreements in the case of transfers. One major point of focus of the draft legislation is to allow municipalities to have a say in board decisions. The following drainage boards members and their representatives participated in the discussions: Alan Jaspersen, Paul Kent, Leonard Massie, Richard Gumz, Al Kramer, Dennis Beggs, Rosalie Murphy, John Piechowski.

CONSTRUCTION PROJECTS & DRAINAGE APPROVALS

Construction projects in district drains require permission from the county drainage board and approval from DATCP. We have received several requests from boards over the past year to review and approve construction projects, and most of these projects have involved replacement of an existing culvert in a drainage district or requests to connect a private drain to the district drain.

It is clear that few municipalities and developers are even aware of the approval requirements for construction projects in ATCP 48. Municipalities and developers appear to understand that they have a responsibility to apply for various permits, for instance, floodplain zoning permits issued by the DNR. However, it seems that many do not understand that county drainage boards have authority over construction activities in drainage districts. Too often this means that drainage boards do not know about a construction project until it is underway, and sometimes, installed. When municipalities or developers learn about the need for board approval, they are often late in the game and do not want to wait for a drainage board to take the steps necessary to approve projects. In any case, there are questions about whether these construction projects are being engineered to fully address the interests of the drainage district and the performance standards in ATCP 48.

For the county drainage board, this makes for some unique challenges. How does a board ensure effective drainage to district landowners when the board does not review a project? If a project is installed without being reviewed by the drainage board, what authority does the board have to order alterations to or removal of the project when it is found, after-the-fact, not to be in compliance?

We suggest that drainage boards take the time to talk with municipalities inside drainage districts and inform them of the board's responsibilities and authorities related to those districts. DATCP will develop a pamphlet or letter for drainage boards to use when discussing this issue with municipal officials or developers. We will contact you once this is completed and ready for use.

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ASSESSING BENEFITS TO NON-AGRICULTURAL LANDS

By John Mitby, Dane County Drainage Board Attorney

Drainage districts were originally formed to provide an outlet (ditch or tile main) for on-farm drainage systems. Over several years, municipalities (city or village) expanded into drainage districts. Land with assessed drainage benefits was subdivided and houses or businesses built. The original drainage benefits assessed to the agricultural lands still exist. When these changes occur, drainage boards face the challenge of determining how to reassess benefits to account for land that is no longer used for agriculture.

Agricultural drainage benefits are calculated by determining the degree to which drainage will improve growing conditions in fields. The soils in fields retain moisture differently, and as a result have different drainage characteristics. Farms fields may be characterized as somewhat poorly drained, poorly drained, and very poorly drained. These drainage characterizations determine the level of on-farm drainage needed to achieve an aerated root zone for good crop growth. Simply said, the wetter the soil is, the greater the benefit drainage will provide. Naturally well-drained soils do not have a drainage benefit.

The concepts of drainage benefits do not apply to land not used for farming. The options available to a drainage board for assessing drainage benefits to non-agricultural lands are spelled out in an administrative rule (Chapter 48) from the Department of Agriculture, Trade, and Consumer Protection (ATCP), titled Drainage Districts.

The rule says the drainage board may reassess drainage benefits based on land use changes and the subdivision of lands (48.06). The drainage board may use land use categories which can include residential uses and commercial uses (48.08(4)).

When assessing drainage benefits to nonagricultural lands, the drainage board may consider the extent and frequency of additional discharges from the nonagricultural lands to district drains, and the drainage district's additional cost to accommodate those additional discharges. The additional discharges may include storm water, wastewater, and runoff from impermeable surfaces (48.10). A court of appeals decision in 2011 on the Village of Little Chute v. Outagamie County Drainage affirmed that it is reasonable to assess nonagricultural land based on impervious surface. This process is similar to that used in a storm water management district to collect monies for the district's operation.

A second option for assessing drainage benefits to nonagricultural lands is a flat amount per lot, per acre, or per building or residence.

The drainage board makes an assessment for cost to pay for the operation of the drainage district. The cost includes those associated with an annual inspection, creating the annual report, conducting district meetings/hearings and an annual meeting, attorney fees, maintenance and repair of district facilities, and a reserve available for maintenance and catastrophic events.

The Dane County Drainage Board has chosen to assign a flat fee to all nonagricultural lands within a drainage district when making an assessment of cost. The board does not use land use categories to differentiate the impact of a residence versus that of a commercial property.

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NEW BOARD MEMBERS

If a new board member has been appointed to your county drainage board sometime during the past year, we would like to include their contact information on the DATCP website. Please send us the member's mailing address, phone number and email address, and we will post the information in the near future. Note that you can reference contact information for board members statewide on DATCP's drainage district website.

DRAINAGE BOARDS TURN TO WEBSITES

More and more drainage boards are developing websites to manage their business and provide information to landowners about drainage districts.

The following websites focus on providing information about board meetings:

- Green Lake County includes agendas and minutes, http://www.co.green-lake.wi.us/inner.html?mdl=committee_meetings.mdl&Committee=10
- Jefferson County includes agendas and minutes, https://jeffersoncountyapps.jeffersoncountywi.gov/jc/public/jchome.php?page_id=1309&com=44
- Dodge County lists dates, <http://www.co.dodge.wi.us/index.aspx?page=169>

Other Drainage Board websites take a more comprehensive approach. The Outagamie County website, <http://www.outagamie.org/index.aspx?page=1453>, includes policies in addition to minutes and agendas. Besides meeting information, the Racine County website, <http://racinecounty.com/government/public-works-and-development-services/development-services/drainage-board>, includes a list of members, a summary of the districts under its jurisdiction and corridor requirements, a district map and benefit assessments. Of particular interest are engineering reports in support of benefit assessments for these Drainage Districts: Norway Dover, <http://racinecounty.com/home/showdocument?id=1117>, and the Hoosier Creek, <http://racinecounty.com/home/showdocument?id=1147>.

The Dane County Board is working to improve its website, <https://wred-lwrd.countyofdane.com/assistance/drainage-district-information>. A central feature of the website is a set of frequently asked questions that address the following range of topics:

1. What is a Drainage District?
2. How can I determine if I am located in a district?
3. How do Drainage Districts operate and what laws govern their operation?
4. What are the advantages of Drainage Districts?
5. What is a Drainage Board and what laws govern the Board?
6. How are the members of the Drainage Board selected?
7. Where can I find the agendas and minutes for Drainage Board meetings?
8. How can I learn about activities in my district and provide feedback to the Drainage Board?
9. How are assessments calculated and used?
10. What is the role of the Dane County Treasurer in the Drainage District?

Websites provide a more public face for drainage boards, allowing access to agendas and minutes. Also they can do more including helping landowners determine if they are located in a district.