

Thursday, September 10, 2020

History of Delineator Certification in Virginia and recommendations for discussion points for input through the public comment forum.

History of the Professional Wetland Delineator Certification

In mid 1990s, The U.S. Army Corps of Engineers attempted to implement a wetland delineator certification program. The program was rolled out in a pilot testing program in Seattle, Wa, Baltimore, Md, and Jacksonville, Fl. The pilot program involved a two-part testing protocol involving a written exam and a field practicum. Participants in the pilot program who passed both tests were issued provisional certifications from the Corps. The pilot program was discontinued due to difficulties with implementation of a nationwide delineator certification program, and it was dropped. Technically the provisional certifications expired with the discontinuance of the program.

About the same time, the Society of Wetland Scientists (SWS) was developing a 3-category wetland certification program that included a category for Professional Wetland Scientist (PWS), Wetland Professional In Training (WPIT), and Wetland Delineator. The national wetland delineator category was soon dropped for the same reasons that the Corps dropped their pilot delineator certification program. The SWS only carried through the Wetland Professional and Wetland Professional in Training certifications. The PWS and WPIT certifications can be obtained without ever having performed a single wetland delineation. One could study wetland use by birds or carbon sequestration (etc.) for five years having never been trained in defining the upland/wetland boundary (delineation) and still qualify for the SWS certifications. The SWS certifications do not require proficiency, competency, or experience in ALL four categories (botany, soil science, hydrology, and regulation) required for wetland delineation.

As there were still many cases of incorrectly performed wetland delineations in Virginia which were affecting permitting for projects; and resulting in a number of lawsuits, The Virginia Association of Wetland Professionals decided to seek a state Professional Wetland Delineator certification program to reduce the risk of harm to the public and the Commonwealth from incorrectly performed delineations. In 2004, legislation was signed into law establishing the certification and in 2006 Virginia Regulations were established and examinations were developed to formally implement the program. The certification has now been in place for 14 years and has been operating successfully since its inception. There are currently 152 Virginia certified wetland delineators, although probably less than 120 are currently maintained. Since the implementation of the certification program there has been more consistency in the practice of wetland delineation in Virginia, and the regulated public has been provided the opportunity to select persons to perform wetland delineations who have demonstrated training, experience, and competency in the practice of wetland delineation.

Snapshot of the threat to the Professional Wetland Delineator Certification

In 2018, the General Assembly (GA) tasked the Joint Legislative Audit and Review Commission (JLARC) to conduct a review of the operations and performance of the Department of Occupational and Professional Regulation (DPOR), and evaluate the various registrations, certifications, and licenses overseen by DPOR for their continued need. The JLARC Report concluded with 36 recommendations to improve the operations and performance of DPOR, and several of the recommendations suggested eliminating a number of regulated occupations for a variety of reasons. Recommendation #2

Thursday, September 10, 2020

recommended evaluation of the need for continued regulation of Soils Scientists, Waste Management Facility Operators, and Landscape Architects. Recommendation #3 recommended evaluation of the continued need for the regulation of Common Interest Community Manager Employees, Interior Designers, Backflow Prevention Device Workers, and Wetland Delineators. BPOR was tasked to begin reporting its evaluation findings to the GA by December 2019; and complete the evaluations by December 2020. BPOR conducted evaluations of these regulated occupations in 2019 and prepared a report for the GA in December of 2019 that provided an interim evaluation of the need for continuation of the regulation of those 7 occupations. The criteria that are required to be met for an occupation to be regulated in Virginia are:

- The unregulated practice of the occupation can harm public health, safety or welfare.
- The occupation's work has inherent qualities that distinguish it from other occupations.
- The public needs and will benefit from state assurances of competency.
- The public is not protected by other means.

The Interim Report concluded that continued regulation of wetland delineators was unnecessary because the certification was duplicative of an equivalent national certification. Specifically, they concluded that the certification was unnecessary because the national certification provided those assurances. The national certification that the report concluded to be duplicative is the Society of Wetland Scientists Professional Wetland Scientist certification. The study authors did not consult with VAWP or SWS when they were performing the evaluations and drawing this conclusion. The entire premise for elimination of the Virginia PWD certification is based on the false equivalency assumption by the study authors that the PWD certification and the PWS certification are duplicative and equivalent.

Following the publication of the Interim Report, the certification Chair of the Virginia Association of Wetland Professionals, Robin Bedenbaugh, provided the study evaluators with an article written in 2007 by the [Association of State Wetland Managers](#) that discussed the need for wetland delineator certification, the states that had implemented such certifications, and included discussion on the equivalency of several national certifications, one of which was the SWS PWS certification program. The article specifically states that the PWS certification does not specifically require any experience in the practice of wetland delineation.

Next Steps – by You!

We need PWDs and those who value the certification to firmly reiterate to BPOR that the two certifications are not equivalent or duplicative. If we cannot convince BPOR that they are not duplicative, we will not be successful in maintaining the state certification.

To provide opportunity for the public to provide input before the final report is prepared at the end of the year, BPOR had scheduled 5 public hearings around the state. Those were cancelled due to Covid 19 concerns, and now BPOR has opened a public comment forum for affected parties to file comments. They have provided a very short window, as the public comment forum will close September 30.

We need for all of our members, and especially our PWDs who also have the PWS certification to file comments in support of the continuation of the PWD certification. The PWDs who also have PWS certifications need to speak out loud and clear that the certifications are not equivalent or duplicative. We need to enlist our members to reach out to anyone they know with both certifications. Justin Brown requested the list of currently certified delineators in July; and was provided with the list by DPOR.

Thursday, September 10, 2020

There are not email contacts for all of the PWDs, and some of the emails will be old, but there should be enough on there that are current to get a message out that we need their support in defending the certification program.

Talking points that don't support conclusions from BPOR

For general membership comments in support of the certification, we need for people to focus their comments confirming the four criteria for an occupation to be regulated.

- The unregulated practice of the occupation can harm public health, safety or welfare.
- The occupation's work has inherent qualities that distinguish it from other occupations.
- The public needs and will benefit from state assurances of competency.
- The public is not protected by other means.

The first criterion was actually the basis for the development of the certification program. Delineations were being performed by unqualified individuals that were resulting in permitting issues and resulting in lawsuits against both the regulatory authorities and the consultants who performed the bad work.

Recommend that individuals who have had experience with bad work of un-certified delineators provide comments in this regard. This would be a good opportunity for industry partners to provide comment on the need for certified delineators to ensure the smoothest permitting process. If you work with industry groups who would support the continued certification of delineators, please contact them and solicit their support in submitting comments to the public forum.

The second criterion is met due to the fact that a professional wetland delineator must possess skills and technical competencies in four separate wetland areas of technical expertise – botany, soil science, hydrology, and regulation. No national certification exists that requires competencies in all of those areas. **Recommend that commenters discuss the multiple competencies that are necessary for our occupation, which clearly differentiates it from other certifications.**

The third criterion was not met according to the BPOR study because of their opinion that the “national” PWS certification was equivalent and provides those assurances, thus rendering the state certification as unnecessary. **Recommend that everyone discuss the false equivalency assumption; especially our PWDs who also have the PWS certification (or vice versa). If the PWD truly is an equivalent certification, why would someone obtain and pay for both certifications? In my opinion, this is going to be the issue that will decide whether the certification is allowed to continue or whether the GA does away with it, as this is the primary reason that it was deemed to be unnecessary.**

The fourth criterion is met because there is no other protection for the public from the improper practice of wetland delineation. **Recommend that members discuss how the work performed by a certified delineator ensures that the work is performed by a person with the proper qualifications, AND those certified delineators are bound to perform the work under stringent ethical and professional standards. If examples can be provided where clients support the use of PWDs to protect them from issues with permitting, this would be a good opportunity to mention those.**