



**Wetland Conservation Act 101
Virtual Training**



mi BOARD OF WATER AND SOIL RESOURCES

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MN Wetland Professional Certification Program

Program goal: Provide relevant, accessible and affordable technical and administrative training for all wetland professionals.

- Nationally recognized voluntary training program that certifies 500 individuals working in both private and public sectors from the upper midwest and beyond.
- Provide technical wetland delineation training and administrative training for implementing the MN Wetland Conservation Act.
- Certified individuals must pass In-training and Professional exams and complete continuing education during 3-year renewal periods.

bwsr.state.mn.us/minnesota-wetland-professional-certification-program



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2024 MWPCP Training Courses

<p>Introduction to Wetland Delineation and Regulations</p> <ul style="list-style-type: none"> Introduction to Wetland Delineation and Regulations: Arden Hills- June 10-14 Introduction to Wetland Delineation and Regulations: Brainerd - September 9-13 Introduction to Wetland Delineation and Regulations: Arden Hills- September 30-October 4 <p>Regulatory Training</p> <ul style="list-style-type: none"> Wetland Conservation Act (WCA) 101 Virtual Training- February 5-6 (3 online CEC per day) TEP Academy- St Cloud MNDOT Training Facility- April 9 (6 CEC) 	<p>Regional Training</p> <ul style="list-style-type: none"> Redwood Falls- August 27-28 (6 CEC per day) <p>Professional Exams</p> <p>MWPCP Exams will be offered at 1pm on:</p> <ul style="list-style-type: none"> June 14 in Arden Hills September 13 in Brainerd October 4 in Arden Hills.
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2024 MWPCP Training Courses

Technical Training

- Hydric Soils- Albany City Hall and Two Rivers County Park, Stearns County- April 30 & May 1 (6 CEC per day)
- Wetland Restoration-McLeod County Fairgrounds- May 15-16 (12 CEC)
- Wetland Delineation Methods- Prairie Woods Environmental Learning Center- Spicer- May 29-31 (18 CEC)
- Floristic Quality Assessment (FOA) Method- MNDOT Shoreview Training Center - June 17 or 18 (6 CEC per day)
- Wetland Plant ID- Lino Lakes (July 16) or Cloquet Forestry Center (July 18) (6 CEC per day)
- Antecedent Precipitation Tool- St Cloud MNDOT Training Center- October 17 (2 sessions) (3 CEC per session)



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Registration Information


Staggered registration:

- April- July classes will open the week of March 11th.
- August-October classes will open the week of July 1st.

Email will go out to our contact lists a couple of weeks prior

- Email bwsr.mwpcp@state.mn.us to be added to list.


MWPCP maintains a waitlist for all full classes



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Certification Updates

- COVID-related continuing policies lapsed
- Need 18 continuing education hours (6 online)
- Current renewal period ends on December 31, 2024 for individuals who passed exams in 2021.
- Do not need to report MWPCP classes
- Use Credit Reporting Form
- List of approved classes on MWPCP page
- If not listed, use Credit Determination Form
- Notify us if you change jobs or email



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Wetland Conservation Act 101 Virtual Training - February 5-6

Day One

- Wetland Regulatory Programs of MN
- Local Government Unit Duties & Technical Evaluation Panel Procedures
- WCA Application Procedures
- Enforcement Procedures
- Q/A & Quiz

Day Two

- Basic Decisions
- Replacement Plans
- Wetland Banking
- Q/A & Quiz



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Wetland Regulatory/Compliance Programs in Minnesota

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Programs

- Public Waters Work Permit Program (PWPPP) - DNR
- Section 404 of the Clean Water Act (404) - USACE
- Swampbuster provisions of the Food Security Act (FSA) - NRCS
- Minnesota Wetland Conservation Act (WCA) – Local Government Unit/BWSR

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Jurisdiction



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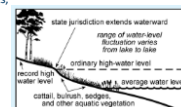
Public Waters Work Permit Program (PWPPP)

Overview

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Public Waters Work Permit Program


- **Regulates:** changes to "course, current or cross-section"
- **Administered by:** DNR – Area Hydrologists
- **Authorities:** M.S. 103G; M.R. Chapter 6115
- **Jurisdictional boundary:** "Ordinary High Water Level"
- **Review standards:** Public interest; reasonable/practical, Riparian rights, Availability of feasible & prudent alternatives, Compensatory mitigation
- **Appeals:** Contested case hearing
- **Enforcement:** DNR Conservation Officers; cease & desist, restoration orders
- **Application:** on-line via "MPARS"



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Program Element	WCA	PWWPP
Basis of Authority	Mn Rules Chapter 8420 and associated statutes	Mn Rules Chapter 6115 and associated statutes
Regulated Waters	Wetlands except incidental and wetland areas of Public Waters (unless waived)	Public Waters and Public Waters Wetlands (which includes deepwater habitats, streams and wetlands)
Jurisdictional Boundaries	Wetland Delineation per 87 Manual	DHWL
Regulated Actions	Fill, drain, excavate (semi-perm. Flooded areas of type 3, 4, 5)	Changes in course, current or cross-section
Program Administration	LGU implementation, BWSR oversight, DNR enforcement	DNR implementation
Type of Approvals	WCA decisions	Permit authorizations
Applying for Approval	WCA application or request for decision	MNPARS online application

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Section 404 Clean Water Act (in MN)



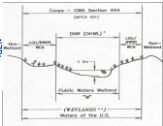
Overview

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Clean Water Act Section 404

- Regulates:** Discharges of dredged or fill material, including reposit
- Administered by:** U.S. Army Corps of Engineers – St. Paul District
- Authorities:** 33 U.S.C. §1251; 33 CFR Parts 320-332; 40 CFR Part 230
- Jurisdictional boundary:** 1987 Corps of Engineers Wetland Delineation Manual
- Review Standards:** Sequencing, public interest, adequate compensatory mitigation
- Appeals:** COE administrative appeal
- Enforcement:** COE and USEPA; administrative orders
- Application:** Joint Application Form for Activities Affecting Water Resources in Minnesota

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Program Element	WCA	404
Basis of Authority	State statutes and rule (Mn Rules Chapter 8420)	Clean Water Act
Regulated Waters	Wetlands except incidental and wetland areas of Public Waters (unless waived)	Waters of the U.S. (WOTUS)
Regulated Actions	Fill, drain, excavate (semi-perm. Flooded areas of type 3, 4, 5)	Discharges of dredged or fill material
Program Administration	LGU implementation, BWSR oversight, DNR enforcement	Corps Districts implement, EPA oversight
Type of Approvals	WCA decisions	Permit authorizations via IPs, GPs, NWPs
Applying for Approval	WCA application or request for decision	Pre-Construction Notification (PCN) for GPs/NWPs, Application for IP
Mitigation for Impacts	Replacement	Compensatory Mitigation

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Food Security Act (Wetland Conservation Provisions)




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How Does NRCS Evaluate Compliance?

Primarily through Certified Wetland Determination (CWD).

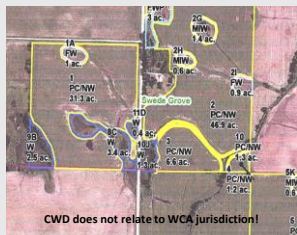
Involves identifying wetlands and then assigning a label that has implications for compliance. For example, if producer drains a wetland for crop production, that would result in a label change that could result in producer being ineligible.

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Involves identifying wetlands and then assigning a label that has implications for compliance. For example, if producer drains a wetland for crop production, that would result in a label change that could result in producer being ineligible.



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Wetland Conservation Act (WCA)

Overview

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Wetland Conservation Act

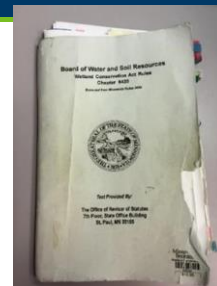
- **Regulates:** draining, filling, some excavation
- **Administered by:** Local Government Units including Cities, SWCDs, Watershed Districts
- **Oversight by:** MN Board of Water and Soil Resources
- **Authorities:** M.S. 103A, 103B, 103G; M.R. Chapter 8420
- **Jurisdictional boundary:** 1987 Corps of Engineers Wetland Delineation Manual
- **Review standards:** Avoid, minimize, replace (sequencing)
- **Enforcement:** DNR Conservation Officers; cease & desist, restoration orders
- **Application:** Joint Application Form for Activities Affecting Water Resources in Minnesota



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What is it?

- Series of laws passed in 1991
- Major component – wetland regulatory provisions, Minnesota Rules Chapter 8420.
- Regulatory provisions implemented under temporary rules in 1991 and permanent rules in 1993.



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Purpose?

- Maintain and *increase* the quantity, quality and biological diversity of Minnesota's wetlands. (QQB)
- *Avoid* wetland impacts from activities that negatively effect quantity, quality and biological diversity.
- *Replace* wetland values where avoidance is not feasible and prudent.
- The sequence of avoid, minimize and then replace for wetland impacts is referred to as **Sequencing** in WCA rules.

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What does WCA regulate?

- **Wetland Impacts** are defined in WCA rule.
- **Wetlands** are identified and their boundaries determined by 87 Manual.
- Two exceptions:
 - Incidental wetlands
 - Wetland areas of DNR public waters and public waters wetlands unless regulatory jurisdiction waived by DNR to WCA.

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Incidental Wetlands

- Wetlands created in naturally non-wetland areas not on purpose.



Temporary puddles



Stormwater ponds



Sewage treatment wetlands



Roadside ditch in upland



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WCA Wetlands vs Public Waters

- DNR public waters regulated by the DNR Public Waters Work Permit Program (PWWPP) are generally pre-determined (they are on a map).
- WCA wetlands are identified and determined via the 87 Manual on a case-by-case basis.

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WCA - Implementation Structure

- Local Government Units (LGUs) are primarily responsible for implementing WCA.
- BWSR provides oversight and assistance to LGUs. BWSR implements certain limited provisions of WCA.
- DNR has an enforcement role in WCA.

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Implementation by LGUs

- LGU can be:
 - County, City/Town
 - Township (in certain 7-county metro areas only)
 - Watershed district, management organization or commission
 - State agency on state owned or state-administered lands
 - For projects that require a Permit to Mine under state law, DNR's Division of Lands and Minerals administers the provisions of the WCA under their Permit

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Applications and Decisions

- In general, applicants demonstrate compliance with WCA through their submitted application.
- An LGU's decision to approve, deny or approve with conditions is saying if the project complies with WCA or not.
- An LGU can take the WCA decision process and fold it into a permit that they issue for a project. This is optional, but common among watershed districts and counties that issue permits for various other things.
- In general, LGUs can have more restrictive local requirements, but not less restrictive requirements.

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WCA Decision Types and Application Requirements

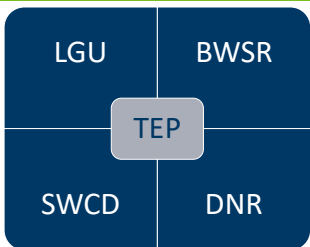
Decision Type	Application Requirement
Wetland Boundary/Type	Application required
Exemption or No-Loss Provision	Application not required (unless LGU has more restrictive local requirement)
Replacement Plan	Application required
Banking Plan	Application required

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Technical Evaluation Panel

- Plays a key role in implementation.
- Representative from LGU, SWCD, BWSR and DNR (if project effects public waters and/or in shoreland zone).
- Primary role is to advise LGU on decisions. Some decisions depend on TEP recommendation/concurrence.
- TEPs often advise landowners/applicants during pre and post application reviews.



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Key Roles in WCA Implementation

- **LGU** – make WCA decisions, leads Technical Evaluation Panel
- **SWCD** – serve on TEP, write restoration plans for violation orders
- **BWSR** – serve on TEP, hear appeals, administer wetland bank, oversee and train LGUs.
- **DNR** – serve enforcement orders and coordinate/collaborate with TEP, LGU and SWCD on enforcement process.

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How many jurisdictions?



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How many jurisdictions?



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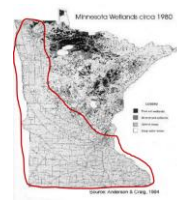
WCA 101

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WETLAND CONSERVATION ACT (WCA) OF 1991

- Bipartisan Bill
- Passed in 1991
- Effective 1992
- MN Statutes **103G** and parts of 103A,B,E,F
- MN Rule **8420**
 - Statute changes
 - Guidance Documents




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WCA Authority on Tribal Lands?

- Tribes have legal status as sovereign nations
- Many tribes have enacted their own environmental regulations
- Federal regulatory environmental laws apply on Tribal Lands
- Tribal lands are composed of Trust lands, allotted trust lands, fee lands

- WCA does not have jurisdiction on Trust lands
- Fee lands are held by an owner (tribal member or not)
- Authority of state environmental laws limited to fee lands held by a non-tribal owner



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PURPOSE

No Net Loss
8420.0100 subp 1A

Increase quantity, quality, diversity
8420.0100 subp 1B

Avoid impacts
8420.0100 subp 1C

Replace
8420.0100 subp 1D

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SCOPE

Regulates
8420.0105 subp 1

SCOPE
8420.0105

Draining
All types

Filling
All types

Excavation
Type dependent

3,4,5

All types
Fill, drain, convert

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SCOPE

Does NOT Regulate

SCOPE
8420.0105

Use for Fisheries/Cropland
8420.0105 subp 2

Normal Farming
8420.0105 subp 3

Noxious Weed Control
8420.0105 subp 4

Incidental Wetlands
8420.0105 subp 5

Public Waters & PWWs
8420.0105 subp 6

Peat Mining
8420.0105 subp 7

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What Does WCA Regulate?

Draining or filling of wetlands (wholly or partially)

Excavation of wetlands (under certain conditions)



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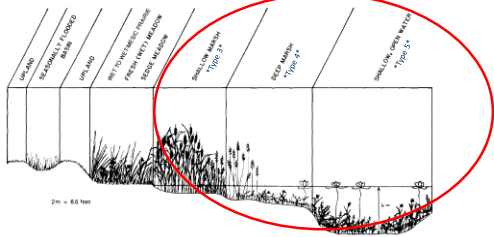
Excavation

WCA regulates excavation in *permanently* and *semi-permanently* flooded areas of *Type 3, 4, or 5* wetlands and in all wetland types if the excavation results in conversion to nonwetland (i.e. deepwater habitat which is defined as average water depth of 8.2 feet or greater).

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Excavation

What is permanently and semi-permanently flooded?



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What WCA Does NOT Regulate

- The use of wetlands for pasture or cropland
- Normal farming practices (plowing, seeding, timber harvesting, etc.)
- Control of noxious weeds
- Impacts to created (non-natural) wetlands (ditches, ponds, etc. created in upland areas)
 - Incidental wetlands



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WCA Does NOT regulate

DNR Public Waters & PWW

- DNR can waive to WCA for public water wetlands

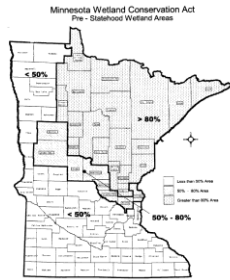
Peat Mining

- Subject to DNR permit to mine under MN Statute 93.44-93.51
- WCA applies if project does not require DNR permit to mine



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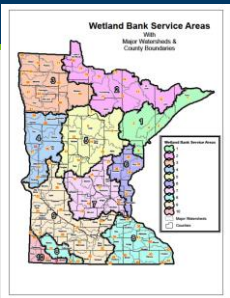
Where you are in the State matters



Different regulations apply depending on whether you are in a <50% area, 50 – 80% area, or >80% area.

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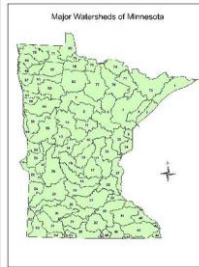
Bank Service Areas



- Used in wetland mitigation siting

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Watersheds

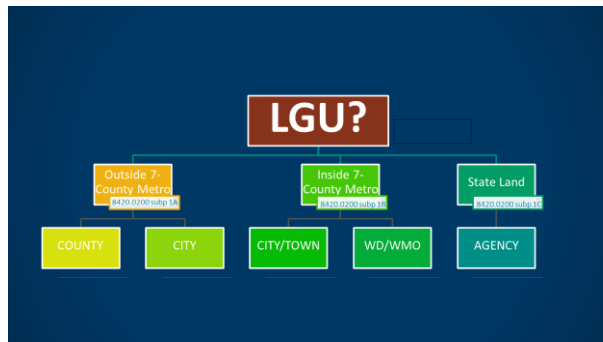


- Factored into project-specific replacement siting

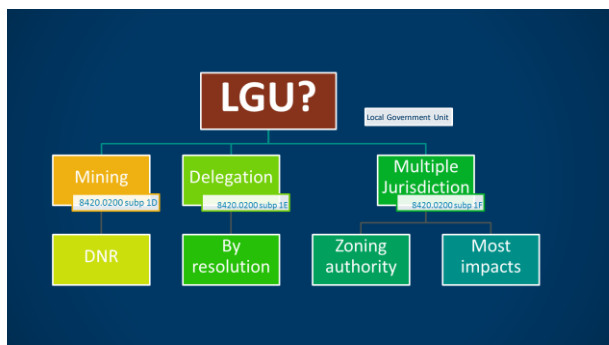
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Who is the LGU?

- Outside the 7-County Metro area – County or City
- Inside 7-County Metro – City, town, or WMO

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Who is the LGU (cont.)

- In 7-County Metro, watershed plan will indicate LGU, but lacking an indication, LGU must be City or town.
- For activities on State land, the LGU is the State agency with administrative responsibility for the land (e.g. DNR, MndOT). However, State agencies must coordinate with LGU that would otherwise have jurisdiction.

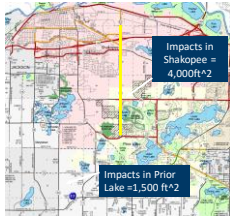
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Who is the LGU (cont.)

- LGU's can delegate some or all of their authority to another entity provided that both parties pass resolutions (see BWSR website for example resolutions).
- If project overlaps LGU jurisdiction, then the LGU is:
 - One with zoning authority over the project
 - If both have zoning authority, then the one in which the most impact occur.
 - Both LGUs can maintain separate jurisdiction if agreed upon.

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Example



Scenario 1 – Cities agree that both review and approve application within their respective jurisdictions, and both administer LGU duties.

Scenario 2 – Cities agree to have Shakopee review entire application and be responsible for LGU duties (most impact).

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BWSR Website

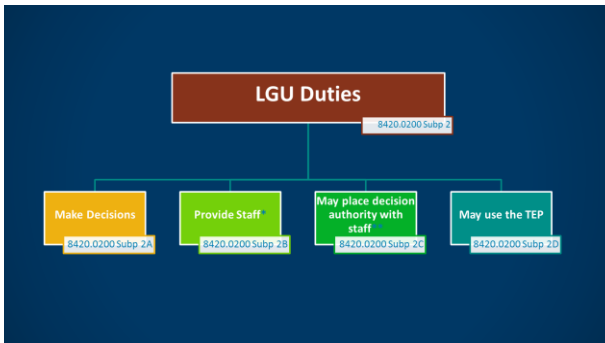
Wetland Conservation Act Contacts

WCA Contacts

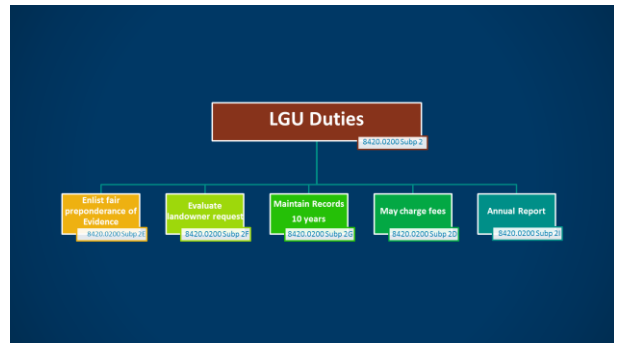


BWSR Wetland Section | www.bwsr.state.mn.us/wetlands

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Delegation of Decision-Making Authority to Staff

- Decision authority by default rests with the elected/appointed governing board (City Council, County Board, WMO Board, etc.)
- However, the LGU *may, through resolution, rule, or ordinance*, place decision-making authority with staff according to procedures it establishes.

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Failure to Apply Law

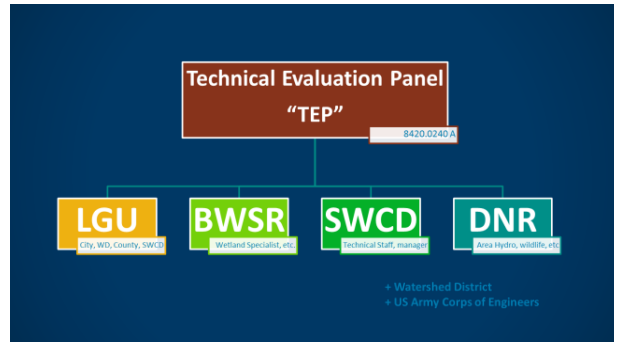
- If the LGU is not following WCA:
- 1) BWSR notify LGU in writing of its concerns
 - 2) File Review spot check
 - 3) Can then impose moratorium on making decisions

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Local Wetland Ordinances

- WCA provides minimum standards
- Local governments may require more procedures and more wetland protection, but not less

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TEP Roles

- Determine technical issues
- Generates findings, Documents specific evidence
- Makes recommendations to LGU
- Operate objectively, clearly, concisely, and timely

The TEP does not:

- Make decisions
- Perform LGU duties (notices, extensions, etc.)

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TEP

Who can Request a TEP?

- LGU
- TEP member
- Landowner



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TEP Meetings

- Step 1: Define purpose of TEP discussion/review (set a formal agenda)
- Step 2: Have an open discussion (there will be disagreements)
- Step 3: Summarize and agree to conclusions (find common ground)
- Step 4: Write Findings Report (be clear and concise)



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TEP recommendations

- TEP may recommend approval, approval with conditions or denial
- LGU must consider TEP findings and recommendations
- TEP cannot make findings without having at least one member make a site visit
- Findings and recommendations must be endorsed by a majority of members

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What if the LGU doesn't agree with TEP?

- The LGU must provide detailed reasons for rejecting the [TEP] finding of fact or recommendation in its record of decision; otherwise, the LGU has not sufficiently considered the TEP report.

I'm not arguing,
I'm just explaining
why I'm right.

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Detailed reasons for not following TEP recommendation?

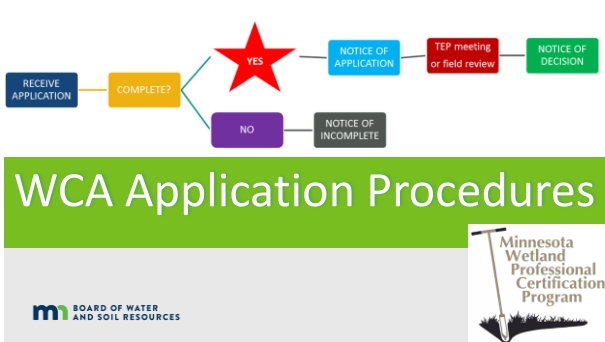
"The Board felt that the TEP's recommendation to deny the application was unreasonable and therefore we approve the application."

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Reasons for not following TEP recommendation

"The Board finds that the TEP's recommendation to reject the application based on the availability of a reasonable and prudent alternative alignment to the proposed road (impacting less wetland) did not give due consideration to the decreased public safety associated with alternative alignments. The alternative alignments mentioned in the TEP's recommendation result in unsafe sighting distances at road intersections according to national safety standards. Therefore, the Board finds that there are no feasible and prudent alternatives and approves the application."

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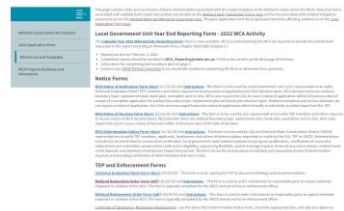


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BWSR website

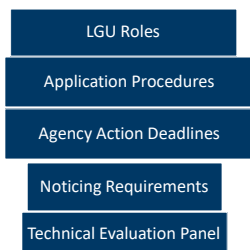
- [WCA Forms and Templates](#)

WCA Forms and Templates

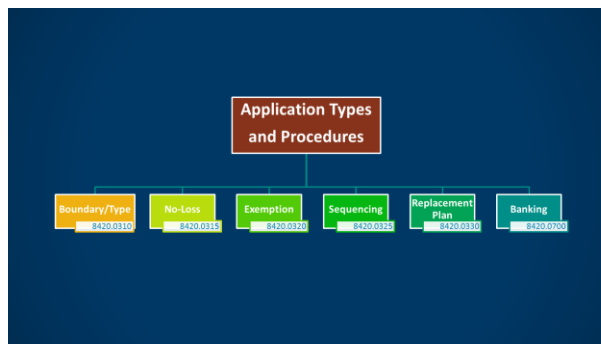


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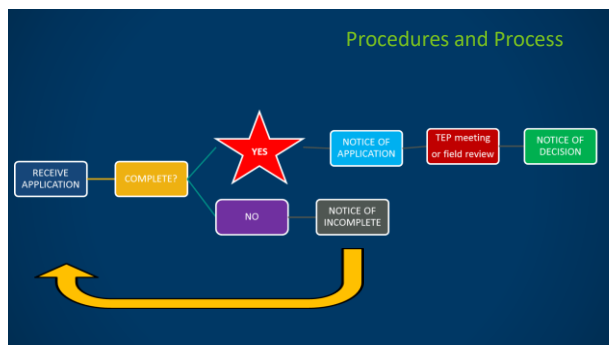
WCA Application Procedures



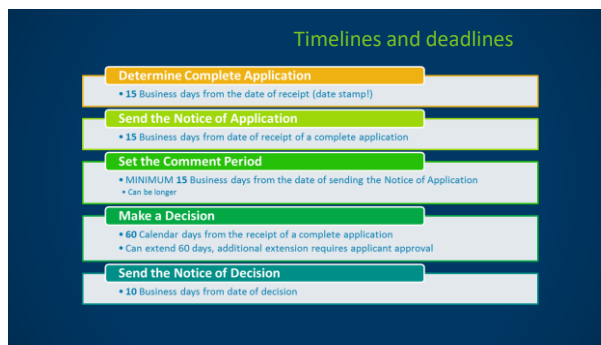
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Is the application complete?

Joint Application Form for Activities Affecting Water Resources in Minnesota

- Application must contain sufficient/required information found on 1st page of application
- Consider what is being asked, where it fits in Rule, what information the Rule requires
- Local application requirements such as fees?

Required Information:

- Project description and location
- Project purpose and justification
- Proposed project description
- Proposed project location
- Proposed project schedule
- Proposed project budget
- Proposed project personnel
- Proposed project equipment
- Proposed project materials
- Proposed project other resources
- Proposed project other information

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Application Review

- Use checklists/guidance
- Missing Information = Incomplete Application
- Notify applicant
 - Within 15 business days of receipt
 - Provide list of what is missing

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It's Complete! Notice of Application

- Complete BWSR form
- Mark all decision types
- Specify comment Period (min 15 days)
- Decision time information
- Send to applicant, agent, TEP and others who requested notice

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NOA Use

Decision Type	NOA Required	NOD Required
Boundary or Type	Yes	Yes
No-Loss	No	Yes
Exemption	No	Yes
Sequencing	Yes	Yes
Replacement Plan	Yes	Yes
Bank Plan	Yes	Yes

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Technical Evaluation Panel "TEP"

8420.02.40.A

- LGU: City, WD, County, SWCD
- BWSR: Wetland Specialist, etc.
- SWCD: Technical Staff, Storage
- DNR: Area Hydro, Wildlife, etc.

+ Watershed District
+ US Army Corps of Engineers

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Notice of Decision

Notice of Decision (NOD) should include:

- Summarize the project- Decision type requested, proposed impact including wetland type and amount
- Clearly state the decision
- Applicable rule citation(s)
- TEP findings
- Conditions of approval
- Location map

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LGU Decision

- Based on standards and procedures in WCA, TEP Findings, and Recommendation.
- Must occur within 60 days of complete application (or as extended)
- Requires a Notice of Decision within 10 days



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General Appeal Process

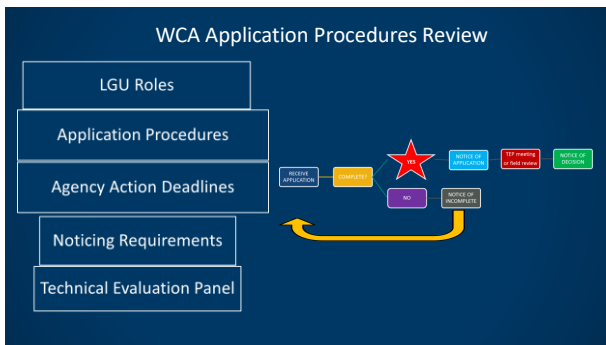
- 30 day appeal window following NOD
 - Any work completed during this period may be at risk.
- 30 days starts from postmarked date of mailing or date of electronic transmission
- Extension possible by mutual agreement



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- Appeals may be made by
 - landowner,
 - those required to be noticed (TEP/other*)
 - 100 residents in county where wetland is located.
- Appeal goes to BWSR – specific staff.
- Heard by Dispute Resolution Committee with final decision by full BWSR Board.

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8420.0900 Subp. 3. Restoration and Replacement orders.

- B. Promptly upon being informed by the enforcement authority or the local government unit of the need, a soil and water conservation district staff person **must** inspect the site and prepare a plan in consultation with the local government unit and the enforcement authority for restoring the site to its prealtered condition.

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SWCD Role in a violation

- Landowner contact for CDO or RPN
- Site visit- gather information/evidence
- Prepare Restoration/Replacement Order
- Monitor restoration/ replacement site.
- Certificate of Satisfactory Completion
- Track the cases.

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LGU Role in a violation

- Help Determine if site has permit for work or prior work done.
- Assist SWCD on Restoration/Replacement Orders
- Assist with gathering evidence
- Receive application from landowner for exemption, no-loss determinations, and replacement plans
- Track the cases

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BWSR's Role in a violation

- Rule interpretation
- Bounce ideas back and forth (appropriate seed mixes)
- May contact more specialist BWSR staff to assist in difficult projects
- Assist SWCD/LGU in developing RO's
- Assist in technical findings

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DNR Enforcement Role

- Landowner contact if Cease and Desist Orders
- Write Summary of information on violation
- Gather Evidence of the violation including contractors info
- Issue Restoration and Replacement Order
- Grant Extensions
- Initiate enforcement action
- Follow and track all violation cases
- Issue RPN for after the fact cases. (not in progress)

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Resource Protection Notices

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Cease & Desist Orders

Data Collection

Who – landowner and/or responsible party, contractor

- RO will go to all

What – type of disturbance or activity that occurred

- Useful for determining impact

Why – purpose of action? Were goals achieved? (i.e. some drainage is not effective...)

97

98

Data Collection

When – estimated time of activity occurrence

- Helpful in determining responsible party if ownership change has occurred
- Aerial photos/PID information
- Did the activity work?

Where – Property location (critical), but also landscape position, slope, etc.

99

Data Collection

- Maps
- Illustrations
- TEP Findings and Recommendation
- Discussions with landowner/responsible party
- Survey information
- You may only have one opportunity to be on site

100

The RO

Restoration Order Gives the Landowner Options

- Restore
- Apply for replacement, exemption, no-loss
- Appeal- w/in 30 days + \$500 fee
- Court/Deed Restriction if no action is taken by landowner

After-the-fact replacement ratio must be twice the ratio otherwise required

101

The RO

- Send RO to the Officer OR WREO ASAP Enforcement will serve the order (must be served in person or certified mail)
 - We recommend to officers to use only certified mail
 - Easy for everyone to track time line
- **MAKE SURE YOU SIGN YOUR COPY BEFORE SENDING IT TO CO OR WREO.**
- Extensions are issued **only** by enforcement and if:
 - The landowner has a good reason for not getting it done
 - Has made some progress
 - Maybe weather related (heavy rains, early freeze)
 - Submitted application
 - Filed an Appeal

102

Is a formal Restoration Order Always Required?

- No, voluntary restoration is allowed but should consider
 - Willingness to cooperate
 - Past history
 - Shortened timeframe for completion to allow for formal RO process
 - Some kind of written plan or agreement with deadlines
 - Communication and agreement with DNR Enforcement

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Voluntary Restoration

104

Certificate of Satisfactory Restoration

Prepared and issued by the SWCD

105

RO Non-Compliance

The landowner does not comply with the RO. Now what?

- Enforcement will work with you!
 - CO Sends a Letter
 - CO Makes a Phone call
 - Deed restriction in some cases
 - Landowner Served a Criminal Citation
 - Court

106

Contractors Responsibility

- Prior to working they:
- Must have obtained signed statement from landowner
- Mailed a copy to the LGU
- They do not need to verify if the landowner has a permit or not. Just have the signed form and mailed it.

107

Appeals

- Landowner has 30 days to appeal Order
- RO must allow >30 days to comply with Order

108

Which of the following is not a LGU's role in administering the WCA:

- a) Make decisions on applications made under the WCA
- b) Completely fill out a joint application for the landowner
 - c) Coordinate TEP meetings when needed
 - d) Provide knowledgeable and trained staff

109

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110

Sometimes referred to as the "60 day Rule", this Minnesota State Statute determines the agency action deadline for all WCA LGUs to make a decision on a wetland application:

- a) MN Statute 8420
- b) MN Statute 15.99
- c) MN Statute 404
- d) MN Statute 103G

111

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112

For a project in a shoreland area, the Technical Evaluation Panel consists of:

- a) The LGU, Army Corps and DNR.
- b) The LGU, SWCD, BWSR and Army Corps.
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113

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