

## Wetland Conservation Act (WCA) Topic of the Week

### Excavation in Wetlands

June 17, 2020

*WCA topics of the week are a series of informal fact sheets that provide practical information on WCA program implementation in a question and answer format. They are intended to better clarify and summarize certain aspects of WCA implementation and should be considered as supplemental to WCA statutes, rules and any associated BWSR guidance and policy. Information in these fact sheets are subject to change over time.*

**Question:** Does WCA regulate excavation in wetlands?

**Answer:** Yes, but only under specific conditions. Excavation is regulated if it occurs in the permanently and semi-permanently flooded portion of a Type 3, 4 or 5 wetland or if it results in converting any type of wetland to non-wetland.

**Question:** Why is the regulation of excavation specific to permanently and semi-permanently flooded areas of Type 3, 4 and 5 wetlands?

**Answer:** A statutory provision was passed in the 1990s allowing the Department of Natural Resources' Public Waters Work Permit Program (PWWPP) to waive its permitting authority for certain projects impacting both WCA-regulated wetlands and wetland areas of public waters and public waters wetlands. Unlike the PWWPP, WCA did not regulate excavation at the time of this statute change. To ensure that wetlands received an equal amount of protection when permitting authority was waived from the PWWPP to WCA, excavation was added to fill and drainage as an action that impacts wetlands. Wetland areas of public waters are typically shallow open water, shallow marsh or deep marsh which are semi-permanently and/or permanently flooded. Therefore, excavation as an impact was limited to these areas.

**Question:** What are permanently and semi-permanently flooded areas of Type 3, 4 and 5 wetlands?

**Answer:** They are wetland areas where surface water persists throughout the growing season in most years. When surface water is absent, the water table is usually at or very near the land surface.

**Question:** How are permanently and semi-permanently flooded areas of Type 3, 4 and 5 wetlands identified?

**Answer:** They are identified by evaluating the plant community and other indicators of sustained and persistent flooding. Certain plant species grow in these areas including cattails, arrowheads, pickerelweed, reeds, bulrushes, spikerushes, wild rice, pondweeds, coontail, water milfoils, duckweeds, and water lilies. Familiarity with wetland plant communities and Circular 39 typing is needed to assess this indicator. Other indicators include standing water, water marks on vegetation, water-stained leaves, and other wetland hydrology indicators (from the 1987 Wetland Delineation Manual supplements) associated with prolonged flooding. See Appendix for a couple of examples.

**Question:** How is excavation regulated by WCA in wetland areas that are *not* permanently or semi-permanently flooded?

**Answer:** Excavation is allowed in these areas provided it does not convert the wetland into a deep water habitat (~6 to 8 feet or more in depth) or result in draining adjacent wetland areas. Some WCA Local Government Units (LGUs) have their own more restrictive ordinances/rules that regulate excavation in all types of wetland areas.

**Question:** Does all excavation in permanently and semi-permanently flooded areas of Type 3, 4 and 5 wetlands require replacement?

**Answer:** No. WCA rules allow some types of excavation without replacement under no-loss and exemption provisions. Examples of allowable excavation activities not requiring replacement include maintenance or restoration projects to remove accumulated sediment and debris (no lower than the “natural” bottom), removal of contaminated sediments, and projects to improve fish and wildlife habitat.

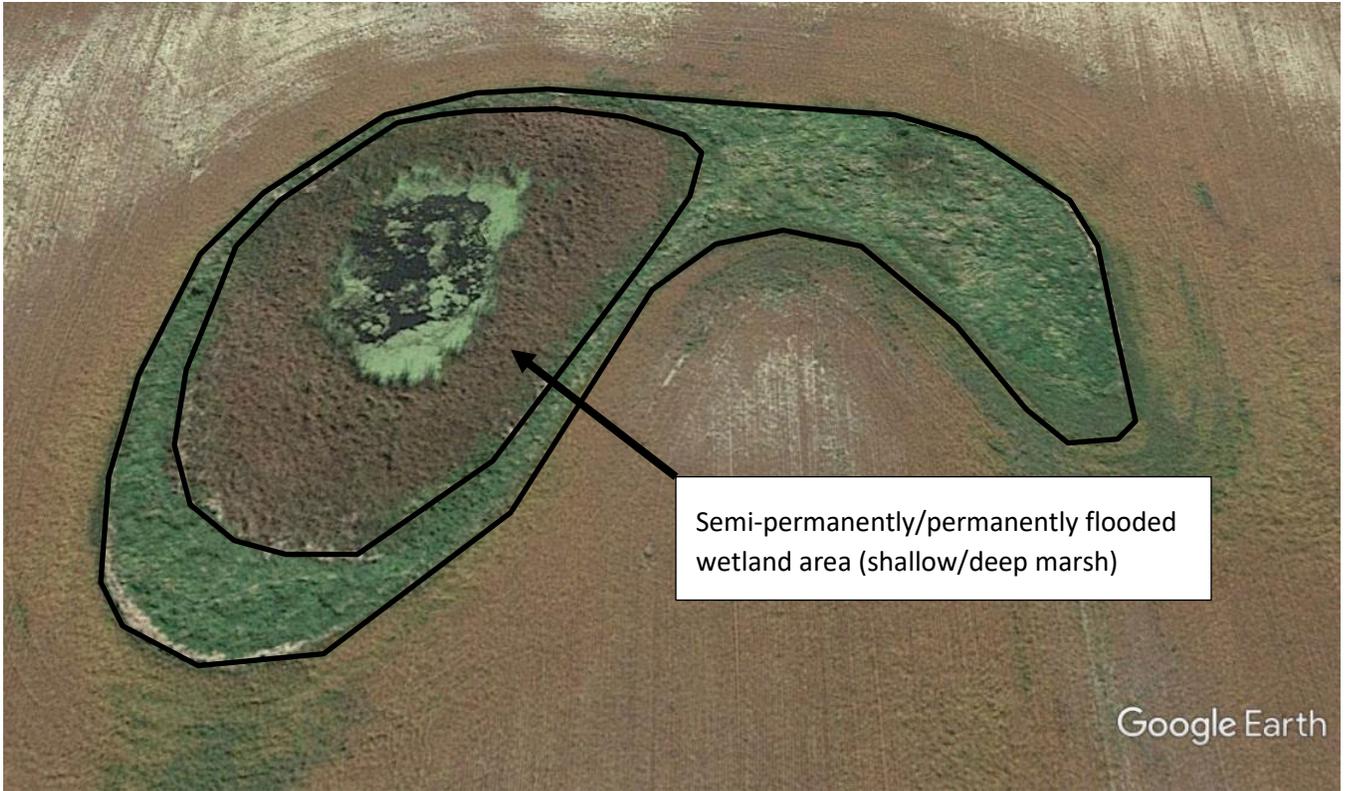
**Question:** How is excavation in stormwater wetlands/ponds regulated by WCA?

**Answer:** Stormwater wetlands/ponds that were constructed in natural upland areas are incidental wetlands and not regulated by WCA. WCA does regulate stormwater wetlands/ponds that were constructed in natural wetlands or where natural wetlands were utilized for stormwater management. Excavation is allowed in permanently and semi-permanently flooded areas of stormwater wetlands/ponds if the excavation is limited to accumulated sediment/debris and it does not result in the draining of adjacent wetland areas. It is important to establish the depth of accumulated sediment/debris through soil borings, surveys and/or other means prior to implementing an excavation plan.

**Question:** What types of fish and wildlife habitat improvement projects allow excavation without replacement?

**Answer:** Fish and wildlife habitat improvement projects conducted or authorized by a public agency. This no-loss provision allows excavation in permanently and semi-permanently flooded areas of Type 3, 4 and 5 wetlands (as well as fill and drainage). It is intended to be used for projects conducted by natural resource agencies (DNR, USFWS, etc.) and for habitat improvement programs sponsored and administered by these agencies (e.g. cost-share programs) under the assumption that overall functional gain in habitat outweighs any potential wetland impact. There is also a separate exemption for wildlife habitat improvement projects where excavation and associated wetland fill from deposition of excavated material is limited to one-half acre or five percent of the wetland area, whichever is less. This exemption is not limited to projects conducted or approved by public natural resource agencies, but it does require concurrence from the local Soil and Water Conservation District or WCA Technical Evaluation Panel that the project will improve wildlife habitat.

## Appendix – Examples of Semi-Permanently Flooded and Permanently Flooded Wetland Areas



Shallow marsh community (water plantain, cattails, etc.)



Shallow marsh community during dry period (cattails, duckweed, etc.)