

## Lemm, Les P (BWSR)

---

**From:** Jed Chesnut <JChesnut@mnwcd.org>  
**Sent:** Wednesday, December 16, 2015 1:17 PM  
**To:** Lemm, Les P (BWSR)  
**Subject:** WCA Rule comments - WCD

Les,

The Washington Conservation District offers the following comments on the current Wetland Conservation Act Rule:

1. 8420.0420 Exemptions: Reinstate incidental wetland exemption. From a Rule implementation perspective, LGU's commonly receive applications for a decision to allow wetland impact without replacement based on the wetland being "incidental." The exemption remains in Statute and putting it back into Rule would make regulation of these waterbodies much easier. Currently, "no loss" decisions are frequently used citing the project doesn't impact wetland, by definition. While this approach seems to work, having the specific exemption would make implementation of the Rule clearer.
2. 8420.0105 Scope and 8420.0111 Subp. 32 Impact: The Rule limits excavation activities in Type 3, 4, 5 wetlands or in all wetland types if the activity results in a conversion to nonwetland. The real-word effect of this definition of impact (and scope of WCA) allows for activities that impact wetland via excavation. For the other wetland types, especially native Type 2, 6, and 8 wetlands, the excavation activity significantly disturbs the natural system, most likely introduces invasive species via equipment, and creates disturbed soils that provides the ecological opportunity for invasive species to thrive, all of which impacts the wetland. The excavation truly results in a loss in the quality and possibly the biological diversity of these other Types of wetlands, but the activity is allowed by the definition of impact. Additionally, excavation in seasonally flooded basins can result in the loss of breeding habitat for organisms that rely on seasonally flooded wetlands. Conversely, an excavation activity in a Type 3 or 4 wetland may have less of an adverse impact since the result is often just a slightly deeper wetland with no significant loss in quality, quantity or diversity. Obviously if the excavation occurs in a high quality native-dominated shallow marsh, there would be impact, but generally the potential for significant impact seems less for excavation in deeper wetland regimes. A revision to the rule would add protection to the other wetland types for excavation. A "quality" based process that allows for impacts to degraded Types 1, 2, 6, 8 could also be included since excavation in a reed canary grass wet meadow, for example, could enhance the wetland by provided more habitat in a highly altered system. The wildlife habitat exemption could be slightly changed to cover this scenario.
3. 8420.0420, Subp. 5 Restored wetlands – the exemption also applies to created wetlands, not just restored wetlands. Changing the section title to "Restored or Created wetlands" would add clarity to the Rule and make it easier to find the exemption covering created wetlands.

This concludes the WCD's comment on the current WCA Rule. Thank you,

### Jed Chesnut

Wetland/Natural Resource Specialist  
Washington Conservation District  
455 Hayward Ave | Oakdale, MN 55128  
Ph: (651) 330-8220 x25 | Fax: (651) 330-7747  
[jchesnut@mnwcd.org](mailto:jchesnut@mnwcd.org) | [www.mnwcd.org](http://www.mnwcd.org)