

Wetland Conservation Act (WCA) Topic of the Week

Technical Evaluation Panel (TEP)

June 3, 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: What is the TEP?

Answer: The TEP is a group of technical professionals designated in WCA rule to make technical findings and recommendations to the WCA Local Government Unit (LGU) on the implementation of WCA. There is a unique TEP for every LGU. The TEP consists of representatives from the LGU, the local Soil and Water Conservation District (SWCD) and the Board of Water and Soil Resources (BWSR). A representative from the Department of Natural Resources (DNR) is also a member of the TEP when evaluating projects that could affect public waters, public water wetlands, or wetlands within a shoreland protection zone.

Question: What does the TEP do?

Answer: The TEP makes technical findings and recommendations regarding WCA application reviews, the applicability of exemption and no-loss standards, wetland functions and value assessments, direct and indirect wetland impact assessments, evaluation of violation and enforcement matters, review of comprehensive wetland protection and management plans, local government road wetland replacement program qualification determinations, wetland bank plan reviews, wetland replacement monitoring evaluations and other technical issues related to WCA implementation.

Question: Who runs the TEP?

Answer: The LGU representative must coordinate the TEP.

Question: How often should the TEP meet?

Answer: Whenever they need to. The TEP must meet to make technical findings and recommendations if requested to do so by the LGU, the applicant/landowner of a project under consideration or any member of the TEP. The frequency of TEP meetings varies considerably across the state. Some LGUs have regularly-scheduled TEP meetings (monthly) where they discuss and review various WCA-related projects and applications. This works well for LGUs with moderate to high levels of WCA activity. LGUs with low WCA activity will often meet as needed whenever a project is submitted for review. Other LGUs may only meet when another TEP member requests it. The LGU and TEP are given broad discretion in how to operate in an efficient and effective manner provided they fulfill their WCA obligations.

Question: Does the TEP need to meet in person?

Answer: No. TEP “meetings” can be held remotely (conference calls and the like) or even via email exchanges. Some technical determinations require one or more TEP members to conduct onsite observations. It is important that all official TEP members be involved and participate in TEP evaluations.

Question: Do applicants and their consultants have to be invited to TEP meetings involving their project?

Answer: No. Unlike council and board meetings of elected/appointed public officials, TEP meetings are not open to the public. This is because the TEP is primarily an advisory body and not a decision-making body as boards and councils are. However, it is often helpful and advisable to invite applicants and consultants to at least a portion of a TEP meeting or meetings where their project or application is discussed. This allows the applicant/consultant to respond to questions and can be an efficient way to communicate TEP observations and concerns directly to the applicant. However, there are times where it is counterproductive to have the applicant/consultant present when the TEP is discussing a project such as matters concerning violations/enforcement or where the applicant/consultant is highly argumentative to the point of disrupting deliberations and discussion.

Question: Can the TEP invite others to their meetings/discussions?

Answer: Yes. The TEP has broad discretion to seek outside expertise to help them in their evaluations. However, those outside the TEP do not have a “vote” in regard to the TEP’s official recommendations and findings.

Question: Can the TEP produce findings and recommendations on a project/activity if an application has not been submitted or is incomplete?

Answer: Yes. In fact, TEP findings and recommendations related to a pre-application review are often a very effective way to provide landowners and potential applicants with feedback and direction on WCA compliance prior to submission of an application.

Question: Does the TEP need to produce findings and recommendations for every project discussed?

Answer: No. Specific requests by LGU, TEP members or landowners/applicants for findings and recommendations must be honored, but otherwise it is sometimes sufficient to simply document TEP discussions and observations and share them with the applicant and LGU.

Question: How detailed do findings have to be?

Answer: It depends. More detail is generally required for projects/applications with increased complexity and controversy. Findings and recommendations should always be concise, clear, justified and based on WCA rules and associated guidance. TEP Findings and recommendations should not be “meeting minutes” and should not include discussion of matters outside the purview of the TEP.