Crash Course in WCA Administration
Virtual Training
Crash Course in WCA Administration Virtual Training - February 15-16

DAY ONE

Wetland Regulatory Programs 101
LGU Duties & TEP Procedures
Application Procedures
Enforcement Procedures
Q/A & Quiz

DAY TWO

Basic Decisions
Replacement Plans
Wetland Banking
Q/A & Quiz

bwsr.state.mn.us/minnesota-wetland-professional-certification-program
Wetland Regulatory/Compliance Programs in Minnesota
• Public Waters Work Permit Program (PWWPP)
• Section 404 of the Clean Water Act (404)
• Swampbuster provisions of the Food Security Act (FSA)
• Minnesota Wetland Conservation Act (WCA)
Public Waters Work Permit Program (PWWPP)

Overview
Public Waters 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”
<table>
<thead>
<tr>
<th>Program Element</th>
<th>WCA</th>
<th>PWWPP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basis of Authority</td>
<td>Mn Rules Chapter 8420 and associated statutes</td>
<td>Mn Rules Chapter 6115 and associated statutes</td>
</tr>
<tr>
<td>Regulated Waters</td>
<td>Wetlands except incidental and wetland areas of Public Waters (unless waived)</td>
<td>Public Waters and Public Waters Wetlands (which includes deepwater habitats, streams and wetlands)</td>
</tr>
<tr>
<td>Jurisdictional Boundaries</td>
<td>Wetland Delineation per 87 Manual</td>
<td>OHWL</td>
</tr>
<tr>
<td>Regulated Actions</td>
<td>Fill, drain, excavate (semiPerm. Flooded areas of type 3, 4, 5)</td>
<td>Changes in course, current or cross-section</td>
</tr>
<tr>
<td>Program Administration</td>
<td>LGU implementation, BWSR oversight, DNR enforcement</td>
<td>DNR implementation</td>
</tr>
<tr>
<td>Type of Approvals</td>
<td>WCA decisions</td>
<td>Permit authorizations</td>
</tr>
<tr>
<td>Applying for Approval</td>
<td>WCA application or request for decision</td>
<td>MNPARS online application</td>
</tr>
</tbody>
</table>
Section 404 Clean Water Act (in MN)

Overview
Clean Water Act Section 404

- **Regulates:** Discharges of dredged or fill material, including redeposit
- **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
<table>
<thead>
<tr>
<th>Program Element</th>
<th>WCA</th>
<th>404</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basis of Authority</td>
<td>State statutes and rule (Mn Rules Chapter 8420)</td>
<td>Clean Water Act</td>
</tr>
<tr>
<td>Regulated Waters</td>
<td>Wetlands except incidental and wetland areas of Public Waters (unless waived)</td>
<td>Waters of the U.S. (WOTUS)</td>
</tr>
<tr>
<td>Regulated Actions</td>
<td>Fill, drain, excavate (semi-perm. Flooded areas of type 3, 4, 5)</td>
<td>Discharges of dredged or fill material</td>
</tr>
<tr>
<td>Program Administration</td>
<td>LGU implementation, BWSR oversight, DNR enforcement</td>
<td>Corps Districts implement, EPA oversight</td>
</tr>
<tr>
<td>Type of Approvals</td>
<td>WCA decisions</td>
<td>Permit authorizations via IPs, GPs, NWPs</td>
</tr>
<tr>
<td>Applying for Approval</td>
<td>WCA application or request for decision</td>
<td>Pre-Construction Notification (PCN) for GPs/NWPs, Application for IP</td>
</tr>
<tr>
<td>Mitigation for Impacts</td>
<td>Replacement</td>
<td>Compensatory Mitigation</td>
</tr>
</tbody>
</table>
Food Security Act (Wetland Conservation Provisions)
How Does NRCS Evaluate Compliance?

<table>
<thead>
<tr>
<th>Primarily through <strong>Certified Wetland Determination (CWD)</strong>.</th>
<th>CWD does not relate to WCA jurisdiction!</th>
</tr>
</thead>
<tbody>
<tr>
<td>Involves identifying wetlands and then assigning a <strong>label</strong> 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.</td>
<td></td>
</tr>
</tbody>
</table>
Wetland Conservation Act (WCA)

Overview
Wetland Conservation Act

- **Regulates**: draining, filling, some excavation

- **Administered by**: Local Government Units, 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
• Series of laws passed in 1991
• Major component – wetland regulatory provisions, Minnesota Rules Chapter 8420.
• 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.
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.
Incidental Wetlands

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

Temporary puddles

Stormwater ponds

Sewage treatment wetlands

Roadside ditch in upland
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.
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.
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 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
• In general, applicants demonstrate through their application submittal that they are compliant with WCA.

• 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.
# WCA Decision Types and Application Requirements

<table>
<thead>
<tr>
<th>Decision Type</th>
<th>Application Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wetland Boundary/Type</td>
<td>Application required</td>
</tr>
<tr>
<td>Exemption or No-Loss Provision</td>
<td>Application not required (unless LGU has more restrictive local requirement)</td>
</tr>
<tr>
<td>Replacement Plan</td>
<td>Application required</td>
</tr>
<tr>
<td>Banking Plan</td>
<td>Application required</td>
</tr>
</tbody>
</table>
• 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.
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.
How many jurisdictions?
WCA 101
Wetland Conservation Act 101

Purpose

Method

Scope
WETLAND CONSERVATION ACT (WCA)

State Law passed in 1991

MN Statute **103G** and parts of **103A,B,E,F**

MN Rule Chapter **8420**

https://bwsr.state.mn.us/wetlands-regulation-minnesota
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
• 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 on tribal land is limited to fee lands held by a non-tribal owner
SCOPE

Regulates

Draining: All types

Filling: All types

Excavation: Type dependent

3,4,5

All types: Fill, drain, convert
What Does WCA Regulate?

Draining or filling of wetlands (wholly or partially)

Excavation of wetlands (under certain conditions)
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).
What is permanently and semi-permanently flooded?
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)
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 Statue 93.44-93.51

• WCA applies if project does not require DNR permit to mine
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.
Bank Service Areas

- Used in wetland mitigation siting
• Factored into project-specific replacement siting
Who is the LGU?

- Outside the 7-County Metro area – County or City
- Inside 7-County Metro – City, town, or WMO
• 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.
• 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.
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).
Wetland Conservation Act Contacts

The regulatory provisions of Minnesota’s Wetland Conservation Act (WCA) are primarily administered by local government units (LGUs) with oversight by the Board of Water & Soil Resources (BWSR). State agencies administer WCA on state-owned or controlled lands. Each LGU has an associated Technical Evaluation Panel (TEP) to provide technical expertise, advise and make recommendations to the LGU on WCA compliance. The TEP includes a BWSR wetland specialist as well as representatives from the Minnesota Department of Natural Resources (DNR), the local Soil and Water Conservation District (SWCD) and the LGU. DNR provides enforcement for the regulatory provisions of the act. The following documents provide key contact information.

WCA Local Government Unit (LGU) Directory - This is where you determine the LGU that makes WCA decisions in different geographic areas in the state.

LGU Directory (xls) 2/4/2022  LGU Directory (pdf) 2/4/2022  LGU Directory Overview (pdf) 12/12/19

The Metro Watershed Authority Map of watershed management authorities in the 7-county Minneapolis-St. Paul metro area should be used in conjunction with the LGU Directory for determining the appropriate LGU for a project or property in those counties.

Other Wetland Contacts

BWSR Wetland Specialist Work Areas (pdf) updated 1/10/22
DNR TEP Representatives (pdf) updated 1/28/2022
DNR Water Resource Enforcement Officer Work Areas (pdf) 9/27/19
MNDOT Contacts (pdf) updated 12/13/2021
LGU Duties

- Enlist fair preponderance of Evidence
  - 8420.0200 Subp 2E

- Evaluate landowner request
  - 8420.0200 Subp 2F

- Maintain Records 10 years
  - 8420.0200 Subp 2G

- May charge fees
  - 8420.0200 Subp 2D

- Annual Report
  - 8420.0200 Subp 2I
• 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.
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
Local Wetland Ordinances

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

Too many people for a TEP
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.)
Who can Request a TEP?

- LGU
- TEP member
- Landowner
• 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)
• 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
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.
“The Board felt that the TEP’s recommendation to deny the application was unreasonable and therefore we approve the application.”
“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.”
WCA Application Procedures

1. Receive application
2. Complete?
   - Yes: Notice of application
     - TEP meeting or field review
     - Notice of decision
   - No: Notice of incomplete
WCA Forms and Templates

This page contains links and summaries of forms and templates associated with the implementation of the Wetland Conservation Act (WCA). Note that forms associated with wetland bank credit transactions are located on the Wetland Bank Transaction Forms page and forms associated with wetland mitigation easements are on the Wetland Bank and Mitigation Easements page. The joint application form for projects and activities affecting wetlands is on the Joint Application Form page.

2021 WCA Reporting Form

2021 WCA Reporting Form with Instructions

Form must be completed by all WCA Local Government Units and returned to BWSR at WCA_Reporting@state.mn.us by February 4, 2022.

Notice Forms

WCA Notice of Application Form (docx) (11/12/19) and Instructions - This form is to be used by Local Government Unit (LGU) representatives to notify Technical Evaluation Panel (TEP) members and others required to receive notice of applications for WCA decision items. LGU decision items are wetland boundary type, replacement plan, bank plan, exemption and no-loss. WCA rules require the LGU to issue a notice of application within 15 business days of receipt of a complete application for wetland boundary type, replacement plan and bank plan decision types. Wetland exemption and no-loss decisions do not require a notice of application, but LGUs are encouraged to provide notice of application either formally or informally to solicit input from the TEP.

WCA Notice of Decision Form (docx) (11/12/19) and Instructions - This form is to be used by LGU representatives to notify TEP members and others required to receive notice of WCA decision items. WCA decision items are wetland boundary type, replacement plan, bank plan, exemption and no-loss. WCA rules require the LGU to issue a notice of decision within 10 business days of the date of decision.

WCA Determination Notice Form (docx) (11/12/19) and Instructions - This form is to be used by LGU and Soil and Water Conservation District (SWCD) representatives to notify TEP members, applicants, landowners and others of determinations requested or made by the LGU, TEP or SWCD. Determinations include but are not limited to construction certification, local government road wetland replacement program qualification, certification of successful replacement and restoration, preservation credit action eligibility, sequencing flexibility, partial drainage impacts, financial assurance release, wetland bank credit deposits and extension of temporary impact time period. The form serves the dual purpose of notifying and requesting review of determination requests and providing notification of determinations that were made.

TEP and Enforcement Forms

Technical Evaluation Panel Form (docx) (10/29/19) - This form is to be used by the TEP to document findings and recommendations.

Wetland Restoration Order Form (pdf) (10/20/19) and Instructions - This form is used to order a landowner or responsible party to restore wetlands impacted in violation of the WCA. The form is typically completed by the SWCD and served by an enforcement officer.

Wetland Replacement Order Form (pdf) (10/23/19) and Instructions - This form is used to order a landowner or responsible party to replace wetlands impacted in violation of the WCA. The form is typically completed by the SWCD and served by an enforcement officer.

Certificate of Satisfactory Restoration/Replacement - use the above WCA Determination Notice Form, check the appropriate box, and add description as necessary.
WCA Application Procedures

- LGU Roles
- Application Procedures
- Agency Action Deadlines
- Noticing Requirements
- Technical Evaluation Panel
Application Types and Procedures

- Boundary/Type: 8420.0310
- No-Loss: 8420.0315
- Exemption: 8420.0320
- Sequencing: 8420.0325
- Replacement Plan: 8420.0330
- Banking: 8420.0700
Timelines and deadlines

**Determine Complete Application**
- 15 Business days from the date of receipt (date stamp!)

**Send the Notice of Application**
- 15 Business days from date of receipt of a complete application

**Set the Comment Period**
- MINIMUM 15 Business days from the date of sending the Notice of Application
- Can be longer

**Make a Decision**
- 60 Calendar days from the receipt of a complete application
- Can extend 60 days, additional extension requires applicant approval

**Send the Notice of Decision**
- 10 Business days from date of decision
 Appeal a Decision

- 30 Calendar days from the date of decision

How long is the Decision Valid?

- 5 Years
- Unless longer is specified by LGU when TEP advises longer period

How long do I (LGU) keep all this paperwork?

- 10 Years
Now you’ve got yourself an application

- You should receive:
  1. A “Joint Application”
  2. Applicable attachment(s)
  3. Supporting documentation
Is the application complete?

- 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?
• Use checklists/guidance

• Missing Information = Incomplete Application

• Notify applicant
  • Within 15 business days of receipt
  • Provide list of what is missing
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
## Summary of LGU Application Types

<table>
<thead>
<tr>
<th>Decision Type</th>
<th>NOA Required</th>
<th>NOD Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boundary or Type</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No-Loss</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Exemption</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Sequencing</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Replacement Plan</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Bank Plan</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
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
LGU Decision

- Based on standards and procedures in WCA, TEP Findings, and Recommendation.
- Must occur within 60 day of complete application (or as extended)
- Requires a Notice of Decision within 10 days
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
Appeals may be made by
- landowner,
- those required to be noticed (TEP/other), or
- 100 residents in county where wetland is located.

Appeal goes to BWSR.

Heard by Dispute Resolution Committee with final decision by full BWSR Board.
WCA Application Procedures Review

LGU Roles

Application Procedures

Agency Action Deadlines

Noticing Requirements

Technical Evaluation Panel
WCA Enforcement
Enforcement Procedure Overview

1. Activity detected
2. DNR CO investigates
3. DNR Issues Resource Protection Notice
4. SWCD conducts site visit
5. SWCD works with TEP to draft Order
6. RO issued by DNR
7. Landowners restores, notifies SWCD
8. SWCD inspects
9. SWCD issues Certificate of Satisfactory Restoration
• 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.
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.
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
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
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)
Resource Protection Notices

DNR ENFORCEMENT
Resource Protection Notification

RPN # 883041

Date: 9/27/15

Time: 12:35

Citation #: ICR 15002990

[Contractor] [Landowner] [Responsible party] [Other]

First: [Redacted]

Address: [Redacted]

City: [Redacted]

County: Washington

PWI No.:

Location (Address/Town/Sec/Range, GPS, or PID):

Narrative:

Possible unpermitted work within wetland

Local Government Unit/DNR Contact:

Address: [Redacted]

Issuing Officer: (signature) [Redacted]

Officer's Name (printed) [Redacted]

Station No. 1937

Agency:

LGUSWCD
**Cease & Desist Orders**

**Minnesota Department of Natural Resources**

**Wetland**

**CEASE AND DESIST ORDER**

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Issued To</th>
<th>LMO#</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>12:21 PM</td>
<td>Landowner</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>First Name / Business Name</th>
<th>Middle</th>
<th>Last Name</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Address</th>
<th>City</th>
<th>State</th>
<th>Zip Code</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Line Lakes</td>
<td>MN</td>
<td></td>
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</table>

**VIOLATION INFORMATION:**

<table>
<thead>
<tr>
<th>County</th>
<th>Washington County</th>
<th>FWT No.</th>
<th>Airplane Used</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>0000</td>
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</table>

<table>
<thead>
<tr>
<th>Location Description (TR-S or RDN)</th>
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<tbody>
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</tbody>
</table>

**Violation (Type) Description:**

Excavating work to better route water flow, dirt moved to remove garbage, culvert installed to create crossing according to landowner. Possible violation.

**CEASE AND DESIST ORDER (CDO):**

The above, and his/her/its agents, contractors, heirs, successors, and assigns, are hereby ordered, pursuant to Minnesota Statutes, Section 103G.2371 or 103G.615, immediately cease and desist any illegal activity adversely affecting groundwater quantity, a wetland, public waters or the illegal gathering, harvesting, planting or transplanting, or destroying of aquatic vegetation or organisms in public waters.

**Local Government Unit**

Forest Lake, City of - 120 N Lake St, Forest Lake, MN 55025 (651) 464-5551

**LGU Contact**

<table>
<thead>
<tr>
<th>Name</th>
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**LGU Contact Phone**

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**ANY VIOLATION OF THIS ORDER IS A MISDEMEANOR**
**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..."
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.
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
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
• 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
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
Voluntary Restoration

September 7, 2021

RE: NOTICE OF WETLAND CONSERVATION ACT VIOLATION AT 7400 FOREST LANE

Deer County

Thank you for discussing the unpermitted fill within wetlands on the property noted above that is in violation of the Wetland Conservation Act (WCA). Based on a historical aerial photo review, topographic data, and site visit, the total unpermitted fill estimate is 2,413 Square Feet [SF]. Part of this fill (~717 SF) is adjacent to the new lookout parking area and the majority (~1,696 SF) is in the southwest corner of the wetland. See the attached figure.

To expedite the process a voluntary restoration approach will be allowed if the following items are addressed by September 30, 2021. If these items are not addressed satisfactorily by that date a Restoration Order will be served by the DNR Conservation Officer.

Wetland Restoration Requirements:
- Remove the 1,146 SF of non-native fill material from the SW corner of the impacted wetland (the fill depth is estimated to be 6 to 12 inches). The fill shall be moved to non-wetland.
- The restored wetland will be seeded with a native wetland species seed mix.
- The fill adjacent to the parking lot is below the 6 foot maximum of the WCA and may be allowed to remain if you receive confirmation of the exemption from the City of Forest Lake. Send this request to [redacted] who serves as the WCA Local Government Unit (LGU) contact.
- Please contact me at [redacted] to meet onsite and discuss the wetland restoration process. Please note there may be additional Wetland District or City requirements in addition to the WCA requirements related to the parking lot construction. The City and Watershed are copied on this communication.

Respectfully,

Washington Conservation District

Cc: [redacted]
Certificate of Satisfactory Restoration

Prepared and issued by the SWCD
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
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.
• Landowner has 30 days to appeal Order

• RO must allow >30 days to comply with Order
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
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
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
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a) MN Statute 8420
b) MN Statute 15.99
c) MN Statute 404
d) MN Statute 103G
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.
c) The LGU, SWCD, BWSR and DNR.
d) The Army Corps and DNR.
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