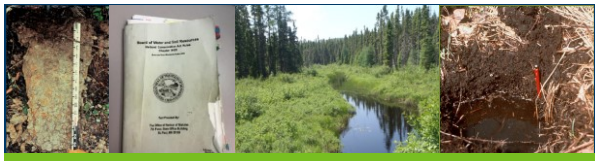


MN Wetland Professional Certification Program Introduction Class- Day 3

BOARD OF WATER AND SOIL RESOURCES

Minnesota Wetland Professional Certification Program

1

Quiz

1) Which of the following key characteristics are related to wetland hydrology?

a) Depth and source of saturation/inundation
b) Frequency and source of saturation/inundation
c) Frequency and duration of saturation/inundation
d) Vegetation adapted to live in saturated soil conditions and hydric soils

2) Describe what the following hydrology indicators look like:

Drift Deposits Debris deposited or entangled to objects

Water-Stained Leaves: Dead leaves turned greyish or black due to inundation for long periods

Saturation: Visual Observation of water glistening on soil associated with water table

Geomorphic Position: Concave landscape positions, drainage ways, floodplains, toeslope

Sediment Deposits: Sediment remaining after ponding or flooding

2

Quiz

3) Which of the following meets the technical standard for hydrology?

a) Saturation to the surface observed during the growing season in a normal year.
b) Observation of two primary hydrology indicators.
c) Water table within 12 inches of the surface for at least 14 consecutive days during the growing season in a normal year.
d) Water table observed in an open bore hole.

4) Which of the following soil textures could use the "S" hydric soil group indicators?

a) Sandy clay loam
b) Loamy fine sand
c) Loam
d) Fine sandy loam

3

3

Quiz

5) For the following description of a soil layer, what is the value of the matrix?

0– 10" 10YR 3/2 with 2% 7.5YR 4/6 concentrations

a) 6
b) 4
c) 3
d) 10

6) Which of the following is true regarding hydric soil indicators?

a) The final version is located in the regional supplements
b) Their applicability varies by region
c) They all require the presence of iron in the soil
d) They can all be assessed within 2 feet of the soil surface

4

4

7) Circle the three processes that normally occur in a soil when it is saturated for an extended period?

a)It becomes aerobic
b)It becomes anaerobic
c)Iron becomes reduced
d)It becomes a wetland
e)Organic matter accumulates

8) The hydric soil indicators A, F, and S are used for what soil types. Use the table below.

Indicator	Soils
A	All Soils
F	Loamy and clay Soils
S	Sandy Soils (sand, loamy fine sand)

5

5

9) Which of the following is <u>not</u> used in identifying Hydric Soil Indicators:

a) Land Resource Region
b) Soil textures
c) Soil colors
d) Flood frequency >25%

10) When assessing wetland hydrology for a wetland delineation on cropland utilizing aerial imagery, what does the term "normal years" refer to?

a) Years when the area being evaluated was in normal crop production.
b) Years when crop production was unaffected by wetland hydrology.
c) Years when antecedent precipitation conditions were normal.
d) Years when both antecedent precipitation and crop production were normal.

6

Basic Agenda

Monday

- 3 Parameters, Delineation Methods, Wetland Function & Classification Systems, Hydrology Indicators, Critical Definitions, Data Sheet Field Exercise

Tuesday

- Quiz 1, Antecedent Precipitation, Offsite Resources and Hydrology Methods, Soil Concepts, Hydric Soil Indicators, Web Soil Survey, Soil Texture Lab, Soil profile description field exercise

Wednesday

- Quiz 2, Intro to Regulatory Programs, WCA Basic Decision Types, LGU Duties, Technical Evaluation Panel, WCA Application Procedures, Wetland Vegetation, Vegetation Field Plots Exercise

Thursday

- Quiz 3, Small Group delineation Field Exercise, Submitting Delineations, Replacement Plans, Wetland Banks, Monitoring

Friday

- WCA Enforcement, Altered Hydrology and Wetland Restoration, Functional Assessments Methods, Course Summary & Summary Quiz

- MWPCP Professional Exams

7

Wetland Regulatory/Compliance Programs in Minnesota

BOARD OF WATER AND SOIL RESOURCES

Minnesota Wetland Professional Certification Program

8

Regulations in MN

- Wetland Regulations in MN

9

Programs

- Minnesota Wetland Conservation Act (WCA)
- Public Waters Work Permit Program (PWWPP)
- Section 404 of the Clean Water Act (404)
- Section 401 of the Clean Water Act (401)
- Swampbuster provisions of the Food Security Act (FSA)

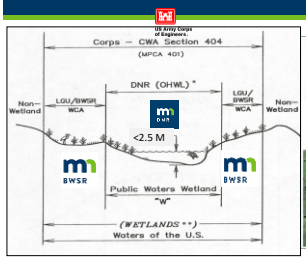
BWSR

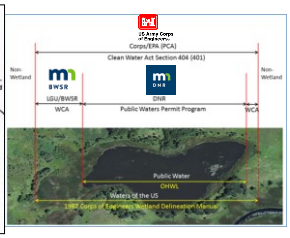
DNR

US Army Corps of Engineers

10

Jurisdiction





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Wetland Conservation Act (WCA)

Overview

BOARD OF WATER AND SOIL RESOURCES

Minnesota Wetland Professional Certification Program

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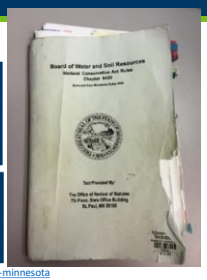
WETLAND CONSERVATION ACT (WCA)

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

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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 and Regional Supplements
- **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

Communities and Local Government

BWSR

MASWCD

MINNESOTA WATERSHEDS

DEPARTMENT OF NATURAL RESOURCES

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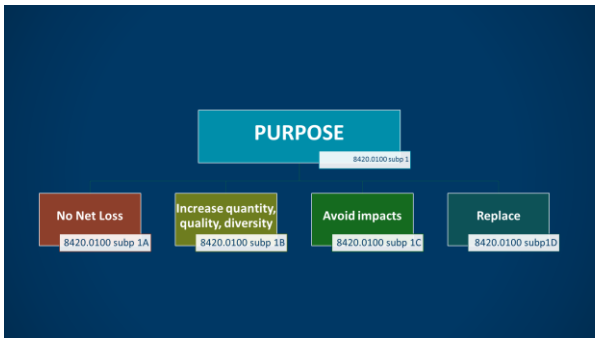

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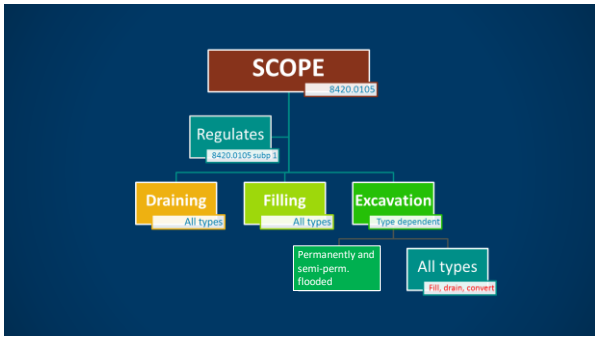

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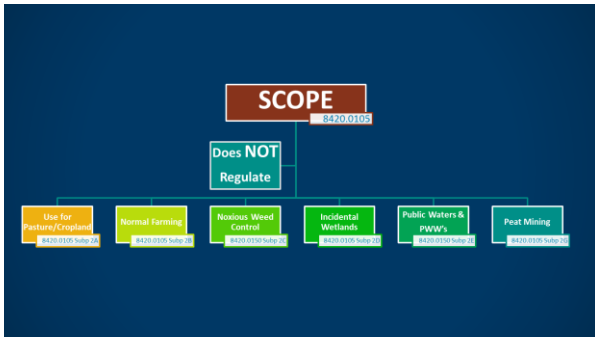
Is this regulated under WCA?

17



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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

19

WCA Authority on Tribal Lands?

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

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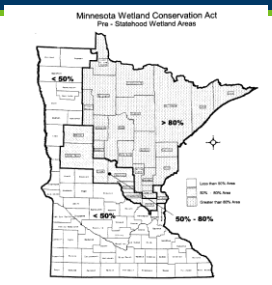
Pre-Statehood Areas



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

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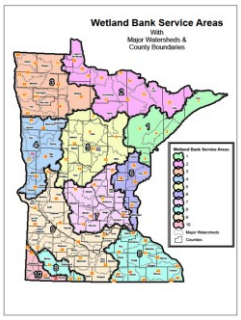

Bank Service Areas (BSA)

- Geographic area in which replacement wetlands, including banking credits, can provide replacement for wetland impacts
- Used in wetland mitigation siting
- BSAs are established by BWSR

22

Applications and Decisions

- 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.

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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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Public Waters Work Permit Program (PWWPP)

Overview

BOARD OF WATER AND SOIL RESOURCES

Minnesota Wetland Professional Certification Program

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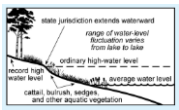
Public Waters Permit Program

- **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"



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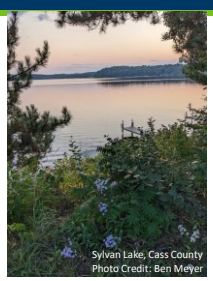
Purpose

To conserve and utilize the water resources of the state in the best interest of its people.



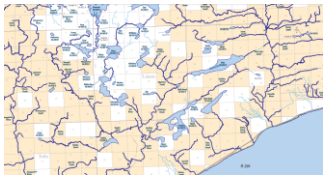
Sylvan Lake, Cass County
Photo Credit: Ben Meyer

27

What is a Public Water?

Waters that are (paraphrased and shortened from statute):

- Assigned a shoreland management classification; navigable waters; lakes; for a designated mgmt. purpose (trout and game lakes); designated as scientific and natural areas; located within and totally surrounded by publicly owned lands; state or federal govt. holds title to any of the beds or shores, with publicly-owned and controlled access; natural and altered watercourses with a total drainage area greater than two square miles; trout streams; and public waters wetlands.

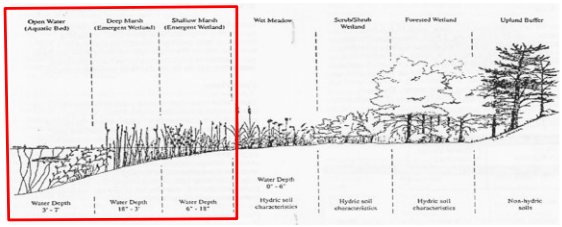


https://www.dnr.state.mn.us/waters/watermgmt_section/pwi/maps.html

28

What is a Public Water Wetland?

- All types 3, 4, and 5 wetlands that are ten or more acres in size in unincorporated areas or 2.5 or more acres in incorporated areas.



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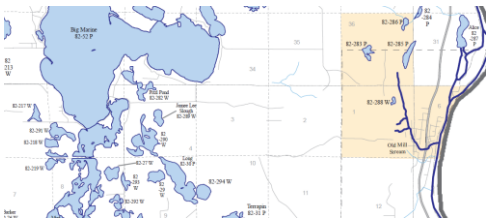
Watercourses and Wetlands



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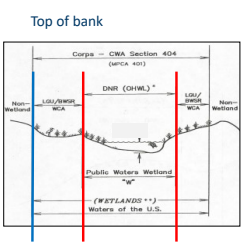
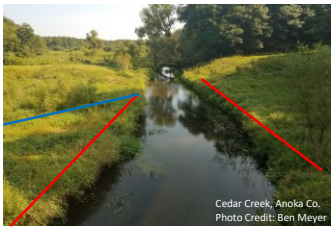
Public Watercourses





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Delineation of Public Waters/Public Waters Wetlands

- PWWPP does not use the same criteria and delineation methods as WCA (or any other programs we will discuss in this class.
- Uses the **Ordinary High Water Level (OHWL)** to define boundaries.
- OHWL is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

32

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OHWL vs Wetland Boundary

- **Wetlands** are transitional lands between *terrestrial* (living/growing on/in land/soil) and *aquatic* systems (living/growing on/in water). Wetland boundary is upper limit of hydric soils, wetland hydrology and hydrophytic vegetation.
- **Public waters** includes wetlands, but their boundaries are the upper limit of where high water has left evidence on the landscape, often this is the point where there is predominantly aquatic vegetation.

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OHWL vs Wetland Boundary

	Wetland Delineation	OHWL
Boundary Type	Line representing change from where all 3 parameters are present to where one or more parameters is absent.	Elevation representing where high water has left evidence on the landscape.
Key Factors	Hydrophytic vegetation, hydric soils and wetland hydrology	Evidence on landscape
Determination	Applicants/consultants make determination, regulatory agencies review and approve.	DNR makes determination

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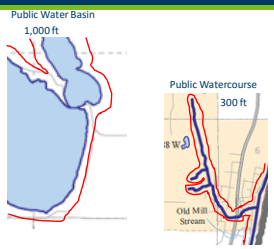
What is shoreland?

- DNR definition:
  - 1,000 ft from the OHWL of a public water basin or the shoreland area defined in local ordinance, which can be more restrictive
  - 300 ft from the OHWL of a public watercourse or the shoreland area defined in local ordinance, which can be more restrictive



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Standards (example)

Filling Public Waters

- Standards - Minimize encroachment, must be clean fill, must consider alternatives, must have erosion control, be consistent with floodplain/shoreland ordinance, etc.
- Prohibitions – in fish spawning areas, for veg control, to construct roadways (except public roads under certain circumstances), for disposal of materials, etc.

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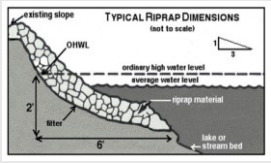
PW and applications

- No Permit Required – sand beach blankets (under certain conditions), riprap, in a watercourse with 5 sq. mile or less drainage area (under certain conditions), etc.
- Check with the LGU on WCA implications!



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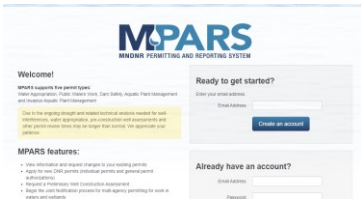
Permit Application Process

- Apply through Minnesota Permit Application Reporting System (MPARS), an online permit system.
- DNR has schedule of application fees.
- Application is noticed to city, SWCD, watershed district, Corps and BWSR.



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Waiving Jurisdiction between WCA and PWPP

- Jurisdiction between the two programs can be waived from one program to the other if a project impacts wetland areas both within and outside of public waters. But only for wetland areas, not watercourses or deepwater habitats (lakes).

Wetland_WCA_WCA-DNR_Prot_Waters_Permit_Prog_Coord_Guidance

39

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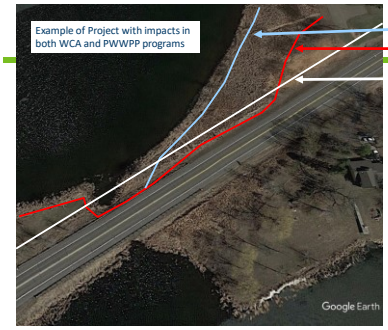

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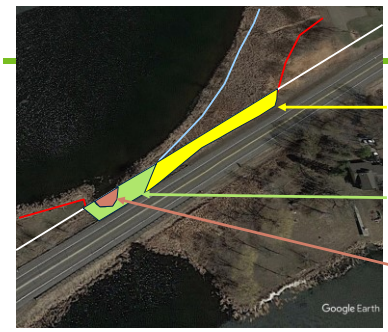

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Program Element	WCA	PWWPP
Basis of Authority	Mn Rules Chapter 8420 and associated statutes	Mn Rules Chapter 6115 and associated statutes
Regulated Waters	Wetlands except incidental and wetland areas of Public Waters (unless waived)	Public Waters and Public Waters Wetlands (which includes deepwater habitats, streams and wetlands)
Jurisdictional Boundaries	Wetland Delineation per 87 Manual & Regional Supplements	OHWL
Regulated Actions	Fill, drain, excavate (semi-perm. Flooded areas)	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)

BOARD OF WATER AND SOIL RESOURCES

Overview

US Army Corps of Engineers

Minnesota Wetland Professional Certification Program

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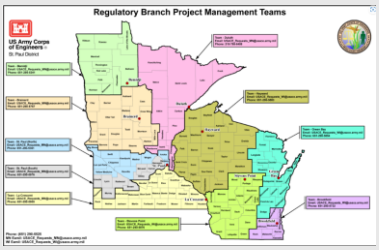
Corps Regulatory Program Administration

- National Program with regulatory authority delegated to 36 separate Districts.
- Each district develops their own tools and procedures to implement the Regulatory Program consistent with laws and national guidance.

44

St. Paul District field offices, general areas of responsibility and contact info. (on website)

- St. Paul District comprises the boundaries of Wisconsin and Minnesota
- District Office: St. Paul
- 8 field offices:
  - 4 in MN
  - 4 in WI



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Corps Jurisdiction in MN

Authority	Waters Regulated (Geographic Jurisdiction)	Scope of Regulation (Regulated Activities)
Section 10 Rivers & Harbors Act	Navigable Waters	Work in, over or under a navigable water
Section 404 Clean Water Act	WOTUS (which includes navigable waters)	Discharges of dredged or fill material

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Corps Jurisdiction in MN

1) Navigable - waters that are themselves jurisdictional Waters - ex. Mississippi River
   a) Determined by our regulations, specifically Sections 9 and 10 of the Rivers and Harbors Act,
   b) Determined by Federal Courts,
   c) or meet the legal definition of navigable-in-fact.
2) Waters that are connected to navigable waters.
   a) Tributary to a navigable water
   b) Wetlands adjacent to the navigable water or a tributary of a navigable water.

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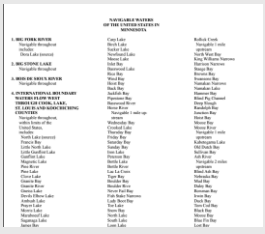
Section 10 Geographic Jurisdiction

- Navigable waters are jurisdictional in themselves.
- They don't rely on a connection to other waters.
- There is a list on our website: https://www.mvp.usace.army.mil/Missions/Regulatory/Additional-Information/



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Section 404 Geographic Jurisdiction

- Geographic Jurisdiction of Section 404 of the CWA are waters that meet the definition of a Water of the United States (WOTUS).
- The rulemaking process determines WOTUS.
- The definition of WOTUS changes with supreme court decisions and changes to the final rule.

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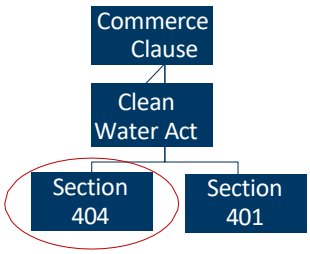
Section 404 of the Clean Water Act



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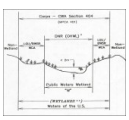
Section 404 Clean Water Act

- **Regulates:** Discharges of dredged or fill material into waters of the US including wetlands and below the ordinary high water mark of rivers, streams and lakes
- **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
- **Delineating Aquatic Resources:** 1987 Corps of Engineers Wetland Delineation Manual with appropriate Regional Supplement(s); Regulatory Guidance Letter 05-05 for Ordinary High Water Mark."
- **Jurisdictional boundary:** Waters of the United States as defined under current final rule
- **Review Standards:** Sequencing, public interest, adequate compensatory mitigation, guidelines compliance
- **Appeals:** COE administrative appeal
- **Enforcement:** COE and USEPA; administrative orders
- **Application:** Joint Application Form for Activities Affecting Water Resources in Minnesota

US Army Corps of Engineers



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404 Jurisdiction Trigger

Two Fold

1. Must have geographic jurisdiction.
2. Must have a "discharge" of dredged or fill material into WOTUS.



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Discharge of Dredged Material

- **Discharge of Dredged Material:** is defined as any addition of dredged material into, including the redeposit of dredged material within, the WOTUS.

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Discharge of Fill Material

- **Discharge of Fill Material:** addition of any material into WOTUS that has the effect of replacing any portion of a water body with dry land or changing the bottom elevation of a water body.

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Section 404 - Permitting

- **General Permit (GP)** – for categories of activities where regulated activities have minimal impacts. Can be issued on a nationwide, regional or state basis.
- We have Nationwide permits and Regional General permits.
- Review goal: 60 days
- ~97% of permit activities authorized by General Permits.

- **Individual Permit (IP)** - for regulated activities with more than minimal, and potentially significant effects.
- Does not have categories.
- Longer review time.
- Review goal: 150 days

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Section 404 - Permitting

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- We have Nationwide permits and Regional General permits.
- Review goal: 60 days
- ~97% of permit activities authorized by General Permits.

- **Individual Permit (IP)** - for regulated activities with more than minimal, and potentially significant effects.
- Does not have categories.
- Longer review time.
- Review goal: 120 days

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Nationwide Permits (NWPs)

- Each Corps District has the discretion adopt some or all NWPs for use in their district
- In general, cannot exceed ½ acre or 300 linear feet of impact


2026 Nationwide Permits available for use in Minnesota and Wisconsin

Collapse All Expand All

- Nationwide Permit Regional Conditions, General Conditions and Definitions
- 1. Aids to navigation
- 2. Structures in artificial canals
- 3. Maintenance
- 4. Fish and wildlife harvesting, enhancement and attraction devices and activities
- 5. Scientific measurement devices
- 6. Survey activities
- 7. Outfall structures and associated intake structures
- 9. Structures in fleeting and anchorage areas
- 10. Mooring buoys
- 11. Temporary recreational structures
- 13. Bank stabilization

https://www.mvp.usace.army.mil/missions/regulatory/nwp/

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Regional General Permits (RGPs)

Regional General Permits available for use in Minnesota and Wisconsin

Collapse All Expand All

- Bank Stabilization and Habitat Improvement
- Beach Creation and Nourishment
- Beach Raking
- Minor Discharges
- Piers and docks
- Transportation
- Utility
- Wildlife Ponds

https://www.mvp.usace.army.mil/missions/regulatory/rgp/

58

General Permit Application (PCN) and process

- Submit complete Preconstruction Notification (PCN) if required to usace_requests_mn@usace.army.mil with county name in the subject line of the email (e.g. Washington County).
- Corps sends acknowledgment email with assigned project number and Corps contact.
- Corps notifies applicant within 30 days if PCN incomplete.
- On average, general permit verifications are made within +/- 60 days

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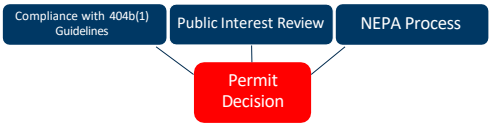
Individual permit process

- Submit complete application to usace_requests_mn@usace.army.mil with county name in the subject line of the email (e.g. Washington County).
- Corps sends acknowledgment email with assigned project number and Corps contact.
- Corps issues 15-30 day public notice within 15 days of receiving a complete application
- Includes a public notice, public interest review, environmental documentation, a Section 404(b)(1) Guidelines compliance analysis
- Goal of the Corps is to process individual permit decisions within +/- 120 days

60

Individual Permit Process



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Individual Permit Process

Decision Element	Type	Critical Elements
Public Interest Review	Substantive criteria for making a decision.	Project need, practicable alternatives and extent/permanence of effects.
404b(1) Guidelines	Substantive criteria for making a decision.	Practicable alternatives, minimization of potential harm, significant degradation to aquatic system, Federal mitigation rule. Must be LEDPA
NEPA	Procedural requirement, public disclosure and factors that must be considered in decision making.	EIS/EA, consultation with other agencies, consideration of effects on the human environment, alternatives, mitigation.

62

Other Important Considerations in MN

- **Section 7 of Endangered Species Act (ESA)** Corps must consult with U.S. Fish and Wildlife Service regarding affects on federally-threatened and endangered species by proposed permit actions.
- **Section 106 of National Historic Preservation Act (NHPA)** Corps must consider effects of regulated activities on historic properties, which includes sites listed on or eligible for listing on the National Register of Historic Places (NRHP). Consultation with State Historic Preservation Office (SHPO), Tribal Preservation Office (THPO) and other consulting parties depending on resource proposed to be impacted.

63

WCA and Corps Comparison

Program Element	WCA	Corps Regulatory
Basis of Authority	State statutes and rule (Mn Rules Chapter 8420)	Section 404 of Clean Water Act (CWA) and Section 10 of Rivers and Harbors Act (RHA)
Regulated Waters	Wetlands except incidental and wetland areas of Public Waters (unless waived)	Navigable Waters and Waters of the U.S. (WOTUS)
Regulated Actions	Fill, drain, excavate (semi-perm. Flooded areas)	Discharges of dredged or fill material (404 CWA) Work in, over, or under navigable waters (Section 10 RHA)
Program Administration	LGU implementation, BWSR oversight, DNR enforcement	Corps Districts implement, EPA oversight on 404
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

64

Section 401 of Clean Water Act (in MN)

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US Army Corps of Engineers

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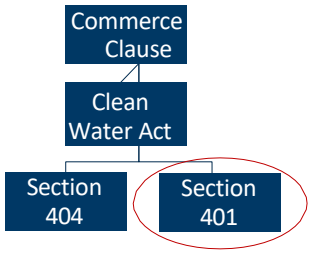
Section 401 of the Clean Water Act



66

401 Review Trigger

No federal 404 Permit Required → No 401 Certification Required

67

Section 401 Program Basics

- Federal agencies may not issue a permit unless a certification that the discharge complies with water quality requirements or waives certification.
- Minnesota Pollution Control Agency (MPCA) is responsible for adopting state water quality standards and issuing Section 401 certifications outside of the exterior boundaries of Federally Recognized Indian reservations.
- On tribal lands where the Tribe is not authorized to issue water quality certification, EPA is the certifying authority.

68

Program Administration

- All General Permits (GPs) in MN have various levels of certifications, denials or special conditions depending on the location of the project and general permit.
- Individual Permits (IP's) and GPs without certification require an individual certification.

69

Outstanding Resource Values Waters (ORVWs)

Two Types of ORVWs:

- **Restricted** – activities are restricted as necessary to preserve the existing water quality and to maintain and protect the exceptional characteristics.
- **Prohibited** - prohibits activities that result in a net increase in loading or other causes of degradation.

70

WCA, Corps, and 401Comparison

Program Element	WCA	Corps Regulatory Program	401
Basis of Authority	State statutes and rule (Mn Rules Chapter 8420)	Section 404 of Clean Water Act and Section 10 of Rivers and Harbors Act	Section 401 of Clean Water Act
Regulated Waters	Wetlands except incidental and wetland areas of Public Waters (unless waived)	Waters of the U.S. (WOTUS)	Waters of the U.S. (WOTUS)
Regulated Actions	Fill, drain, excavate (semi-perm. Flooded areas)	Discharges of dredged or fill material	Federally permitted or licensed activities that may result in a discharge into WOTUS
Program Administration	LGU implementation, BWSR oversight, DNR enforcement	Corps Districts implement, EPA oversight	MPCA, EPA and Authorized Tribes implement
Type of Approvals	WCA decisions	Permit authorizations via IPs, GPs, NWPs	Water Quality Certifications
Applying for Approval	WCA application or request for decision	Pre-Construction Notification (PCN) for GPs/NWPs, Application for IP	Request Pre-filing meeting 30 days in advance of request for certification. Anti-degradation assessment form.
Mitigation for Impacts	Replacement	Compensatory Mitigation	Mitigation

71

Food Security Act (Wetland Conservation Provisions)

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Minnesota Wetland Professional Certification Program

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Program Basics

- The U.S. Dept of Agriculture (USDA) via the 1985 Food Security Act provides benefits (loans, assistance payments, insurance premium subsidies, etc.) to producers of agricultural crop commodities. Typically referred to as the "Farm Program".
- The program is modified and re-authorized periodically by congress. This is typically referred to as the "Farm Bill".

73

Agency Roles (related to wetland conservation provisions)

- **Natural Resource Conservation Service (NRCS):**
  - Makes technical determinations by assigning labels to farm fields that are significant in determining compliance with wetland conservation provisions.
  - Provides technical assistance to producers to assist in wetland conservation compliance.
- **Farm Service Agency (FSA):**
  - determines whether production/planting occurred on converted wetland and if producer is in compliance with wetland conservation provisions.

74

Wetland Conservation Provisions of Food Security Act

Producers must complete form AD-1026 certifying they will not:

- Plant or produce an agricultural commodity on a converted wetland; or
- Convert a wetland with the intent to make production of an agricultural commodity possible.

75

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.

76

How Does NRCS Evaluate Compliance?

- For 404 purposes, a PC (Prior Converted Cropland) determination that impacts Corps jurisdiction.
- Corps does not have jurisdiction over PC areas unless there is a change in use.
- All other determinations, do not necessarily impact Corps jurisdiction including PC/NW.

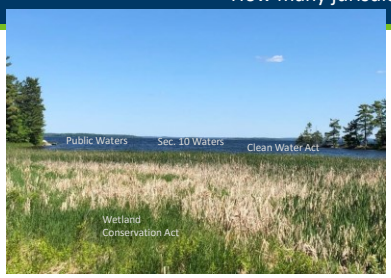
77

WCA, Corps, and FSA Comparison

Program Element	WCA	404	Wetland Conservation Provisions of Food Security Act
Basis of Authority	State statutes and rule (Mn Rules Chapter 8420)	Clean Water Act	Food Security Act
"Regulated" Waters	Wetlands except incidental and wetland areas of Public Waters (unless waived)	Waters of the U.S. (WOTUS)	All wetlands
"Regulated" Actions	Fill, drain, excavate (semi-perm. Flooded areas)	Discharges of dredged or fill material	Draining, dredging, filling, leveling, or otherwise manipulating to make crop production possible.
Program Administration	LGU implementation, BWSR oversight, DNR enforcement	Corps Districts implement, EPA oversight	Farm Service Agency, technical determinations by NRCS
Type of Approvals	WCA decisions	Permit authorizations via IPs, GPs, NWPs	Eligible to receive benefits
Applying for Approval	WCA application or request for decision	PCN	Form 1026
Mitigation for Impacts	Replacement	Compensatory Mitigation	Mitigation

78

How many jurisdictions?



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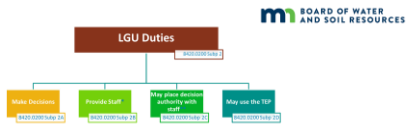
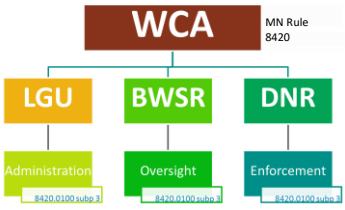


WCA Local Government Duties

80

WCA



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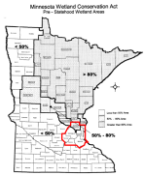
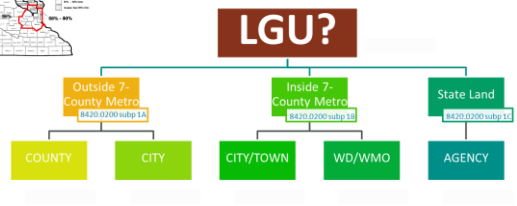
WCA





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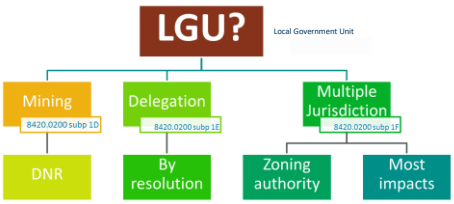
WCA



83

Who is the LGU?

- 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.
- BWSR may coordinate project review to ensure consistency

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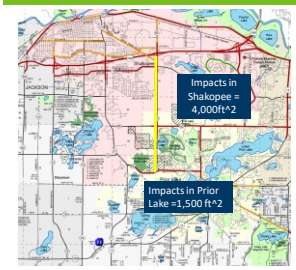
Example



Scenario 1 – Shakopee delegates duties to PL but is still noticed and comments. Prior Lake responsible for LGU duties.

Scenario 2 – Per rule (most impact) Shakopee reviews entire application and is responsible for LGU duties

Scenario 3 – Cities agree that both review and approve application within their respective jurisdictions, and both administer LGU duties. Result: two applications.

85

Who defines a project?

The LGU defines the project

Definition of "project" (8420.0111 Subp. 54):

Project means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal as defined by a local government unit. As used in this chapter, a project may not be split into components or phases for the purpose of gaining additional exemptions.

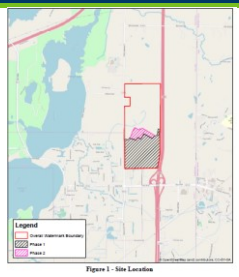


Figure 1 - Site Location

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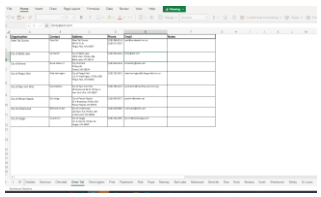
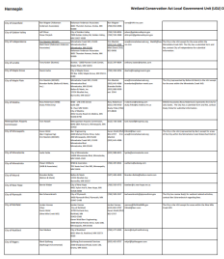
LGU List

WCA Contacts





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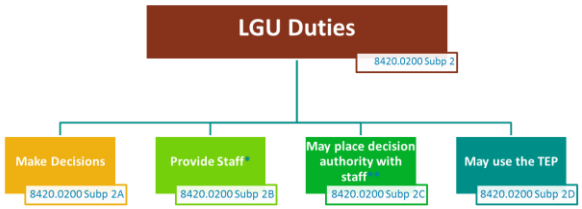
LGU Duties



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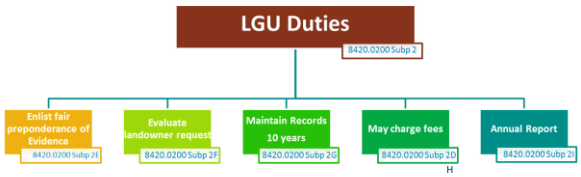
LGU Duties, cont.



89

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.

90

Failure to Apply Law

If the LGU is not following WCA:

1) BWSR notify LGU in writing of its concerns
2) Spot Checks, PRAP, Audits
3) Can then impose moratorium on making decisions

91

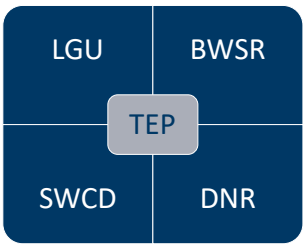
Local Wetland Ordinances

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

92

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.

94

TEP

A TEP

Too many people for a TEP

95

TEP Roles

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

The TEP <u>does not</u>:

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

96

TEPs can and do operate informally

- Not subject to open meeting law.
- Field reviews.
- Open discussions.
- Healthy debates.
- Gather info.

97

When should you hold a TEP meeting?

- Complex or difficult projects
- Visible, high-profile, or public projects
- LGU is applicant
- Enforcement cases
- Bank plan and monitoring report reviews
- Local Government Road Wetland Replacement Program projects

98

When is TEP required to make findings?

- Requested by LGU, landowner, or a member of TEP
- LGU extends decision timeline beyond 5 years
- Enforcement when determining whether restoration is not possible or prudent

99

TEP

Who can Request a TEP?

- LGU
- TEP member
- Landowner
- Others who have requested to be noticed

100

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)

101

TEP findings & recommendations:

- Communicate the cumulative result of field visits, report reviews & informal discussions.
- Give the applicant/landowner direction on next steps (if any).
- Often provide the LGU with the basis for their decision.

102

Tips on Well-Written TEP Findings

- Purpose & audience
- Timing
- Active voice
- Subjective language & “legal-ease”
- Relevant
- Findings vs minutes
- Honesty

103

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

104

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.

105

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."

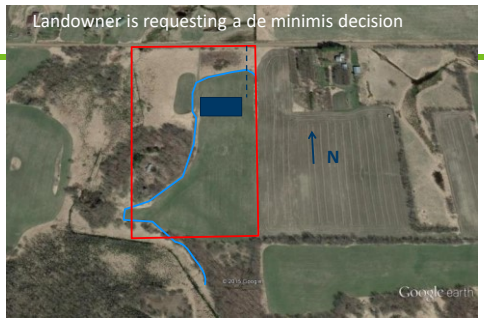
106

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."

107

Landowner is requesting a de minimis decision



108

What TEP findings <u>should</u> include:

- Landowner needs to find out DNR jurisdiction first.
- Include TEP's assessment of delineation and need for adjustments to line and type before approval.
- Inform landowner of potential applicable *de minimis* amount.
- Inform landowner that he/she must be able to explain why the access road cannot be built on the adjacent parcel (seemingly in the same ownership) in order to minimize wetland impacts.

What TEP findings <u>should *not*</u> include:

- Historic cropping conditions from the 1980s.
- Landowner's warehouse 1 mile west.

109

Basic WCA Decision Types

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Minnesota Wetland Professional Certification Program

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WCA

- WCA Program Guidance

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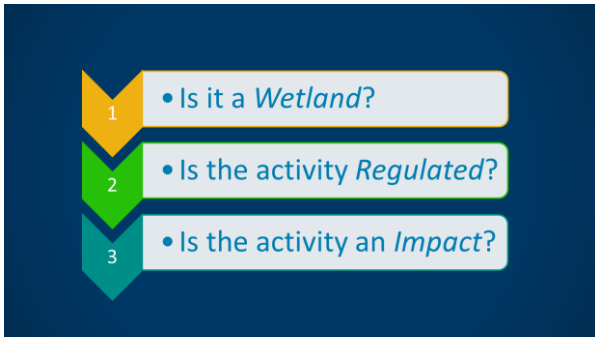
Basic WCA Decision Types

WCA Basic Decision Types	
Boundary and Type	Approves wetland delineation
No-Loss	Approves activities that do not result in permanent impacts
Exemption	Approves impacts exempt from replacement

112



113

What is regulated by WCA?

What is considered Impact?

A loss in quantity, quality, or biological diversity of a wetland *caused* by draining or filling in all types or by excavation in semipermanently and permanently flooded areas.

114

What is Drainage?

Any method for removing or diverting waters from a wetland.

- Excavation of a ditch
- Tile Installation
- Filling
- Diking
- Pumping
- Diverted water
- Etc.

115

115

What is Fill?

Any solid material **added or redeposited** in a wetland

- Alters cross-section or hydrological characteristics,
- Obstructs flow patterns,
- Changes Boundary, or
- Converts to non-wetland.

116

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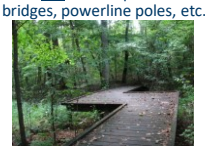
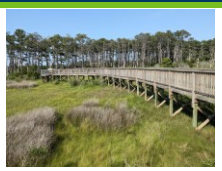
Wetland Fill

- Does not include posts for walkways, bridges, powerline poles, etc.

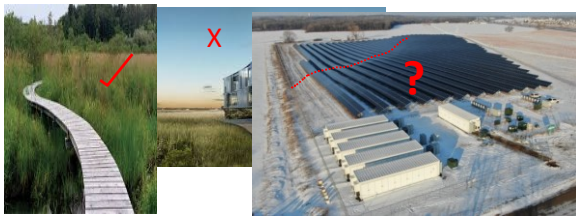




- Does not include slash or woody vegetation as long as it originated from vegetation growing in the wetland and does not impair flow or circulation of water.

117

- Wetland fill *does not* include posts and pilings unless it turns wetland into a nonaquatic use or significantly alters its functions and value.



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What is Excavation?

Removal of soil by any method if it results in an impact.

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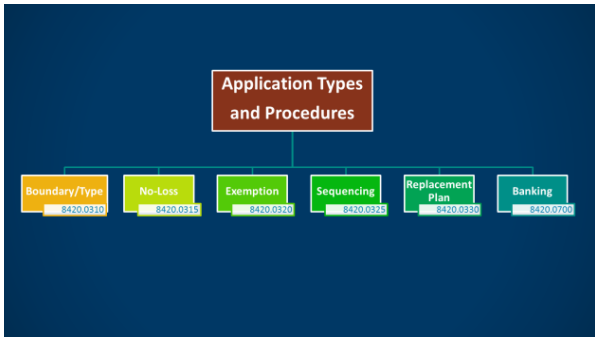

120

Boundary/Type Applications: Where wetland regulation meets science

- Boundaries must be delineated using USACE 1987 Manual and Supplements (8420.0405 subp 1)
- Wetland Types must be identified using HGM (WCA) and Eggers and Reed (Corps)
- Requires NOA and NOD.
- Technical Decision- one member of TEP must make a site visit

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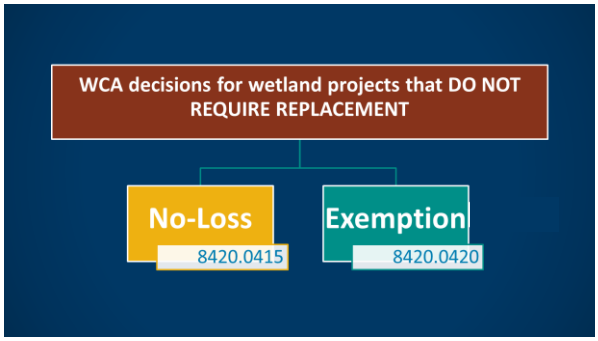

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No-loss and Exemption conditions

- Every activity in wetland, regardless of whether an application is submitted must:
  - Implement erosion control measures to prevent sedimentation of wetlands
  - Not block fish activity
  - Comply with all other applicable local, State, Federal requirements, including best management practices

123

No Loss Activity Basics

Defined:

No permanent loss of, or impact to, wetlands from an activity.

124

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No-Loss Criteria

"No-loss" means no permanent loss of, or impact to, wetlands from an activity according to the criteria in this part.

- **Will not impact a wetland (**8420.0415 Subp A.)
- **Excavation limited to removal of sediment or debris** Trees, logs, beaver dams, trash, blockage of culverts (8420.0415 Subp B.)
- **Water level management (**8420.0415 Subp C.)
- **Excavation limited to removal of sediment** in wetlands utilized as storm water basins. (8420.0415 Subp E.)
- **Operation, Maintenance or Emergency Repair**. (culverts) (8420.0415 Subp F.)
- **Temporary impact** if: Returned to previous conditions. Activity completed within 6 months (8420.0415 Subp H.)

125

No-Loss

- **Temporarily crossing or entering a wetland to perform silvicultural activities**, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activity does not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters (8420.0415 Subp G)
- **Activity conducted as part of an approved replacement or banking plan, conducted or authorized by public agencies** for the purpose of wetland restoration or fish and wildlife habitat restoration (8420.0415 Subp D)

126

General Exemption Requirements for ALL

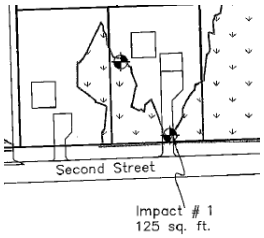
- Only has to fit one; not disqualified if not exempt by another
- If impacts exceed max allowed = nothing is exempt
- Max may not apply to all situations or wetlands-**very specific**
- May not be combined on a project
- Must stabilized to prevent sedimentation/erosion.

127

127

Exemptions 8420.0420

- Impacts to wetlands that **DO NOT** require replacement.
  - The activity is still regulated.
  - WCA does not REQUIRE an application; some LGU's may via ordinance.
  - May not be combined on a project.
- Exemptions do not apply to calcareous fens, wetland bank sites, project-specific replacement sites (8420.0420 Subp 1B)



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Exemptions – Agricultural Activities

"Agricultural land" means land devoted to the following uses and includes any contiguous land associated with the uses:

(1) pasture or hayland for domestic livestock or dairy animals;

(2) producing agricultural crops;

(3) growing nursery stocks; or

(4) animal feedlots.

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Agricultural Exemption Statute

Replacement plan for wetlands is not required for:

- impacts to wetlands on agricultural land labeled prior-converted (PC) cropland and
- impacts to wetlands resulting from drainage maintenance activities authorized by the Natural Resources Conservation Service, on areas labeled farmed wetland, farmed wetland pasture, and wetland.

Provision 1

Provision 2

The prior-converted cropland, farmed wetland, farmed-wetland pasture, or wetland must be labeled on a valid final certified wetland determination issued by the Natural Resources Conservation Service.

Applies to both

Landowner is responsible to provide a copy of the final certified wetland determination (026 and CWD map) to, and allow the Natural Resources Conservation Service to share related information with, the local government unit and the board for purposes of verification;

130

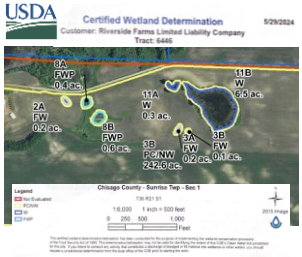
Exemptions – Ag Activities

Exempt under Ag Exemption

- Prior Converted Cropland (PC)

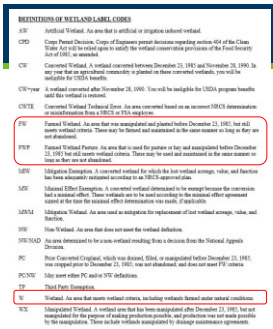
Exempt if applying for drainage maintenance under Ag Exemption

- Wetland (W)
- Farmed Wetland (FW)
- Farmed Wetland Pasture/Hayland (FWP)



131

Other CWD Labels



DEFINITIONS OF WETLAND LABEL CODES

AW	Artificial Wetland. An area that is artificial or irrigation induced wetland.
CPD	Corps Permit Decision. Corps of Engineers permit decisions regarding section 404 of the Clean Water Act will be relied upon to satisfy the wetland conservation provisions of the Food Security Act of 1985, as amended.
CW	Converted Wetland. A wetland converted between December 23, 1985 and November 28, 1990. In any year that an agricultural commodity is planted on these converted wetlands, you will be ineligible for USDA benefits.
CW+year	A wetland converted after November 28, 1990. You will be ineligible for USDA program benefits until this wetland is restored.
CWTE	Converted Wetland Technical Error. An area converted based on an incorrect NRCS determination or misinformation from a NRCS or FSA employee.
FW	Farmed Wetland. An area that was manipulated and planted before December 23, 1985, but still meets wetland criteria. These may be farmed and maintained in the same manner so long as they are not abandoned.
FWP	Farmed Wetland Pasture. An area that is used for pasture or hay and manipulated before December 23, 1985 but still meets wetland criteria. These may be used and maintained in the same manner so long as they are not abandoned.
MW	Mitigation Exemption. A converted wetland for which the lost wetland acreage, value, and function has been adequately restituted according to an NRCS-approved plan.
MW	Minimal Effect Exemption. A converted wetland determined to be exempt because the conversion had a minimal effect. These wetlands are to be used according to the minimal effect agreement signed at the time the minimal effect determination was made, if applicable.
MWM	Mitigation Wetland. An area used as mitigation for replacement of lost wetland acreage, value, and function.
NW	Non-Wetland. An area that does not meet the wetland definition.
NW/NAD	An area determined to be a non-wetland resulting from a decision from the National Appeals Division.
PC	Prior Converted Cropland, which was drained, filled, or manipulated before December 23, 1985, was cropped prior to December 23, 1985, was not abandoned, and does not meet FW criteria.
PC/NW	May meet either PC and/or NW definitions.
TP	Third Party Exemption.
W	Wetland. An area that meets wetland criteria, including wetlands farmed under natural conditions.
WX	Manipulated Wetland. A wetland area that has been manipulated after December 23, 1985, but not manipulated for the purpose of making production possible, and production was not made possible by the manipulation. These include wetlands manipulated by drainage maintenance agreements.

- Numerous other label codes
- Only PC, W, FW and FWP specific to the new statute

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Exemptions – Agricultural Activities

Subp. 2. C.

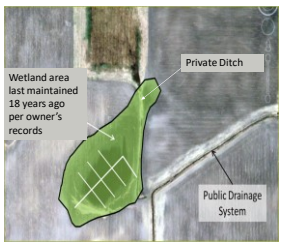
Impacts resulting form soil and water conservation projects that are certified by the SWCD staff after review by TEP

- The projects must minimize impacts to the hydrologic and biologic characteristics of the wetland.

133

Exemptions – Drainage Exemption

A replacement plan is not required for draining or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing drainage systems, including public drainage systems.



134

Drainage/Ditch Maintenance

Replacement not required for maintenance or repair of existing drainage systems

WHEN:

The work does not drain Wetland that have existed more than 25 years.

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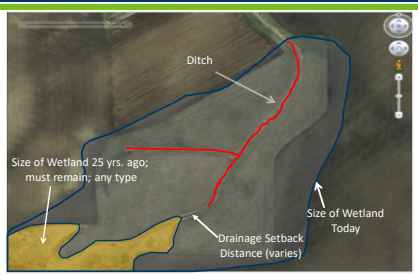
Drainage/Ditch Maintenance Illustration



136

Ditch Maintenance

CONDITIONS:

- Spoil must be placed and stabilized to minimize impacts.
  - place on existing spoil and/or remove
- Ditch must be stable and not degrade water quality downstream.

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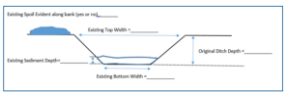
Drainage/Ditch Maintenance

What items may be needed to demonstrate this exemption is met?

- Past records of maintenance (receipt to contractors)
- Aerial Photo review
- Amount of Sediment Proposed to be removed(can be critical)
- Depth of ditch/soil types
- Culvert elevation and location
- Site visit
- Lateral Effect Calculations or estimates



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Exemptions

- **Federal Approvals** 8420.0420 Subp 4

Impacts authorized by Corps of Engineers that meet standards agreed to by BWSR, Dept. of Ag., DNR, and MPCA.

  - Pipelines, electrical, broadband, etc.

- **Utilities** MS 103G.2241

A replacement plan for wetlands is not required for wetland impacts resulting from:

- new placement or maintenance, repair, enhancement, realignment, or replacement of existing utility or utility-type service, including pipelines, when wetland impacts are authorized under and conducted in accordance with a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act
- Repair and updating existing septic systems to comply with local, state and federal regulations

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Exemptions – de minimis

- The de minimis exemption covers small impacts to wetlands typically used for driveways, culverts, small projects by landowners, etc.
- Very specific requirements depending on location in state, local area, shoreland, etc.

Table 1: de minimis exemption amounts per MS 103G.2241 (Aug. 1, 2024)

Impacts to wetlands, **excluding** permanent and semipermanently flooded areas of wetland.	Presettlement area of state	Impact area up to (acres):	Impact area up to: (square feet):
Outside of Shoreland Wetland Protection Zone	Greater than 80 percent area	One-quarter (1/4)	10,890
	50 to 80 percent area	One-tenth (1/10)	4,356
	Less than 50 percent area	One-twentieth (1/20)	2,178
Within Shoreland Protection Zone, but beyond structure setback	Statewide	N/A	100
Within Shoreland Protection Zone and structure setback	Statewide	N/A	20 (100)*
Impacts to permanent and semipermanently flooded areas of wetlands	Statewide	N/A	400

*Increased amount shown in parenthesis may be allowed if wetland is isolated from the public water, or if permanent water runoff retention or infiltration measures are established in proximity to the impact and approved by the shoreland management authority.

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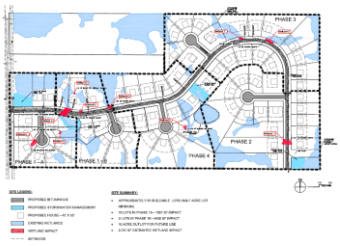
De Minimis Exemption

- Can't be combined
- If total area of impacts exceed de minimis, a replacement plan is required for the entire amount.
- May not divide property simply to get more



141

141

Exemptions

- Subp. 7. **Forestry.** The exemption under this subpart is for roads and crossings solely constructed, and primarily used, for the purpose of providing access for the conduct of silvicultural activities. A replacement plan is not required for impacts resulting from construction of forest roads and crossings so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not include, or result in, the access becoming a dike, drainage ditch, or tile line; impacts are avoided wherever possible; and there is no drainage of the wetland or public waters.

142

Exemptions

- **Wildlife Habitat** 8420.0420 Subp 9
- Excavation or the associated deposition of spoil within a wetland for the primary purpose of wildlife habitat, if:
  - Deposition is less than 5% or ½ acre
  - No adverse effect on Threatened & Endangered Species
  - Improve habitat as determined by SWCD
  - All spoil must be stabilized with native, noninvasive vegetation.

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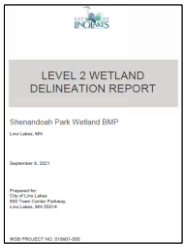
Summary of Basic WCA Decisions

- Boundary/Type: approving wetland delineation that used Corps manual: Level 1, 2, 3 or comprehensive.
- No-loss: activity that does not result in wetland impacts
- Exemptions: wetland impacts that are exempt from replacement



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Exempt?

- Located in >80% area
- Not in shoreland
- Proposed impact=7,490 SF

Impacts to wetlands, **excluding** permanent and semipermanently flooded areas of wetland.	Presettlement area of state	Impact area up to (acres):	Impact area up to: (square feet):
Outside of Shoreland Wetland Protection Zone	Greater than 80 percent area	One-quarter (1/4)	10,890
	50 to 80 percent area	One-tenth (1/10)	4,356
	Less than 50 percent area	One-twentieth (1/20)	2,178

Figure 3: Proposed Driveway

Qualifies for de minimis exemption
MN Rule 8420.0420 Subp. 8

Yes, less than ¼ acre (10,890 SF)

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De minimis - Examples

Table 1: de minimis exemption amounts per MS 103G.2241 (Aug. 1, 2024)

Impacts to wetlands, **excluding** permanent and semipermanently flooded areas of wetland.	Presettlement area of state	Impact area up to (acres):	Impact area up to: (square feet):
Outside of Shoreland Wetland Protection Zone	Greater than 80 percent area	One-quarter (1/4)	10,890
	50 to 80 percent area	One-tenth (1/10)	4,356
	Less than 50 percent area	One-twentieth (1/20)	2,178
Within Shoreland Protection Zone, but beyond structure setback	Statewide	N/A	100
Within Shoreland Protection Zone and structure setback	Statewide	N/A	20 (100)*
Impacts to permanent and semipermanently flooded areas of wetlands	Statewide	N/A	400

*Increased amount shown in parenthesis may be allowed if wetland is isolated from the public water, or if permanent water runoff retention or infiltration measures are established in proximity to the impact and approved by the shoreland management authority.

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Scenario 1

A project is located outside of shoreland in a 50-80% area of the State and proposes to fill and impact 4,975 ft^2 of saturated mineral flat wetland for a driveway access.

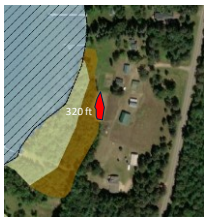
Does Not Qualify:
De minimis is up to 1/10 acre (4,356 sf)

147

Scenario 2

A project is located within the building setback zone within shoreland in a >80% area of the State and proposes to fill and impact 320 ft^2 of a lacustrine fringe wetland.

Does not Qualify:
De minimis statewide for all wetland types within building setback is up to 20 sf.



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Scenario 3

A project is located outside of shoreland in a greater 80% area of the State and proposes to fill and impact 5,800 ft^2 of a saturated mineral flat wetland.

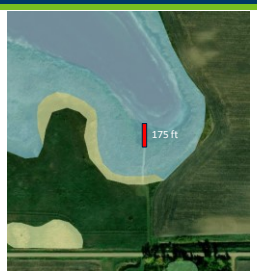
Qualifies:
De minimis is up to 10,890 sf (1/4 acre)

149

Scenario 4

A project is located in the less than 50% area of the State and proposes to excavate 175 ft^2 of a permanently flooded area of wetland.

Not enough info to determine:
What is the shoreland status?



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WCA Application Procedures

BOARD OF WATER AND SOIL RESOURCES

Minnesota Wetland Professional Certification Program

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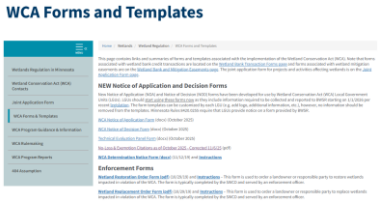
BWSR website

- WCA Forms and Templates



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WCA Application Procedures

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

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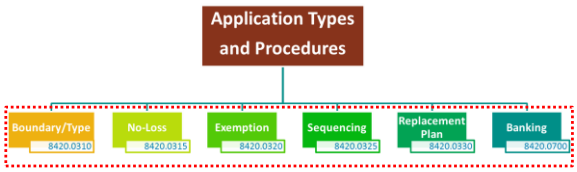
Application



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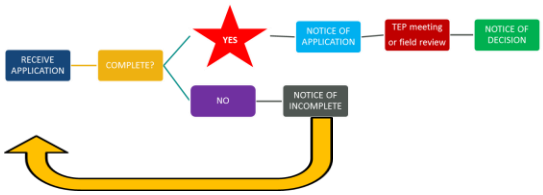
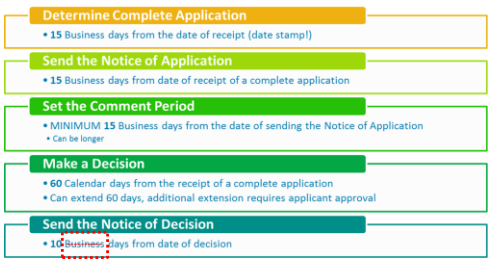
Procedures and Process



155

Timelines and deadlines- MN Statute 15.99



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Timelines

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

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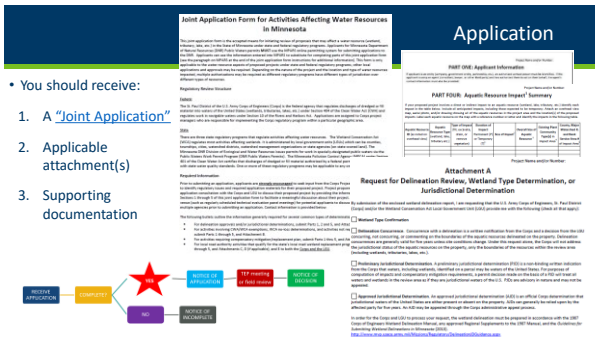
Application

- You should receive:
  1. A "Joint Application"
  2. Applicable attachment(s)
  3. Supporting documentation



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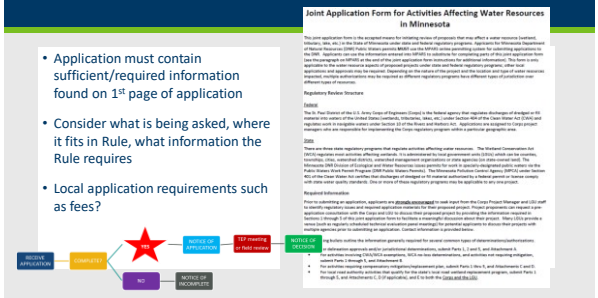
Is the application complete?

- 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?



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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, Tribal governing body and others who requested notice

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NOA Use

Summary of LGU Application Types		
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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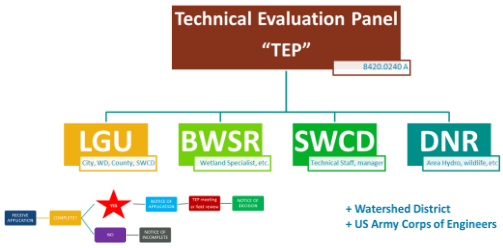
Review



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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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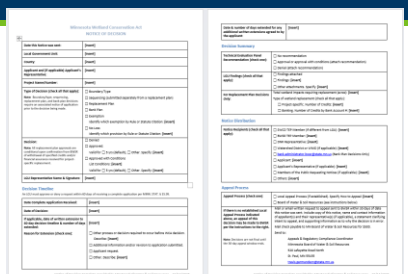
Notice of Decision



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TEP Form Attached to NOD

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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

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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
- LGUs can have local appeal process
- Extension possible by mutual agreement

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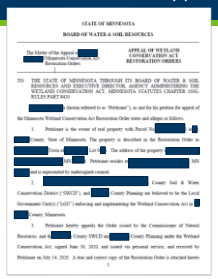
Appeals

- 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.



STATE OF MINNESOTA

BOARD OF WATER & SOIL RESOURCES

[redacted] Minnesota Conservation Act Restoration Order.

APPEAL OF WETLAND CONSERVATION ACT RESTORATION ORDERS

TO: THE STATE OF MINNESOTA THROUGH ITS BOARD OF WATER & SOIL RESOURCES AND EXECUTIVE DIRECTOR, AGENCY ADMINISTERING THE WETLAND CONSERVATION ACT. MINNESOTA STATUTES CHAPTER 103G; RULES PART 8420

[redacted] (hereto referred to as "Petitioner"), as and for his petition for appeal of the Minnesota Wetland Conservation Act Restoration Order states and alleges as follows:

1. Petitioner is the owner of real property with Parcel No. [redacted] County, State of Minnesota. The property is described in the Restoration Order as [redacted]. The address of the property [redacted] MN. Petitioner resides at [redacted] MN [redacted] and is represented by undersigned counsel.

2. [redacted] County Soil & Water Conservation District ("SWCD"), and [redacted] County Planning are believed to be the Local Governance Unit(s) ("LGU") enforcing and implementing the Wetland Conservation Act in [redacted] County, Minnesota.

3. Petitioner hereby appeals the Order issued by the Commissioner of Natural Resources, and the [redacted] County SWCD as [redacted] County Planning under the Wetland Conservation Act, signed June 30, 2020, and issued via personal service, and received by Petitioner on July 14, 2020. A true and correct copy of the Restoration Order is attached hereto

1

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Summary of LGU Review Process

- Discussion (pre app meeting?),
- Review of application,
- On-site review,
- TEP meeting(s)/Rec.,
- Amendment(s)?
- more discussion……

*** Don't forget to include our Army Corps of Engineers partners!!*

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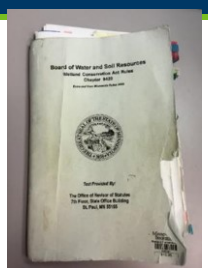
How long is a WCA decision valid for?

A) One year

B) Three Years

C) Five Years

D) Ten Years



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WCA Application Procedures Review

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

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Hydrophytic Vegetation Indicators and Determination

BOARD OF WATER AND SOIL RESOURCES

MWPCP | bwsr.state.mn.us

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Outline

- Hydrophytic Vegetation Definition
  - Define Hydrophyte
  - What makes a plant a hydrophyte
  - Why it matters
- Hydrophytic Vegetation Indicators
  - Indicator status
  - Field indicators
  - Dominance
- Determining Hydrophytic Plant Community
  - Rapid Test
  - 50/20 Rule
  - Prevalence Index
  - Morphological Adaptations

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Hydrophytic Vegetation Definition

Wetland definition includes the language: "…and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

1987 Manual says in a wetland, "The prevalent vegetation consists of macrophytes that are typically adapted to areas having hydrologic and soil conditions described above. Hydrophytic species, due to morphological, physiological, and/or reproductive adaptation(s), have the ability to grow, effectively compete, reproduce, and/or persist in anaerobic soil conditions."

Hydrophytic Vegetation: Hydrophytic vegetation is defined herein as the sum total of macrophytic plant life that occurs in areas where the frequency and duration of inundation or soil saturation produce permanently or periodically saturated soils of sufficient duration to exert a controlling influence on the plant species present.

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Hydrophytic Vegetation Definition

What Is a Hydrophyte?

Hydrophyte
Water Plant

OR

Any plant that is adapted to grow in water or in wet habitats.

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Hydrophytic Vegetation Definition

- What makes a plant a hydrophyte?.....ADAPTATIONS!
  - Morphological adaptations ---→ visible changes/growth habits
  - Reproductive adaptations ---→ changes in how the reproduce
  - Physiological adaptations ----→ internal chemical process changes

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Morphological Adaptations

List of Examples

- Buttressed tree trunks
- Multiple trunks
- Pneumatophores
- Adventitious roots
- Shallow roots
- Hypertrophied lenticels
- Aerenchyma
- Polymorphic leaves
- Floating leaves

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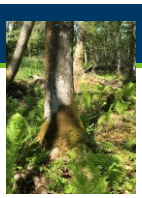
Morphological Adaptations



Buttressed bases

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Examples

Multiple Trunks

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Examples

Shallow Roots - Adventitious Roots



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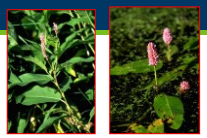
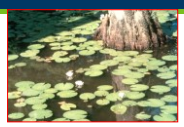
Morphological Adaptations



Polymorphic Leaves
Water Smartweed (*Persicaria amphibia*)



Floating leaves

Aerenchyma Tissue for Oxygen Transport

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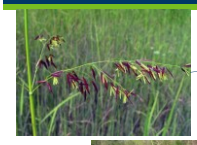
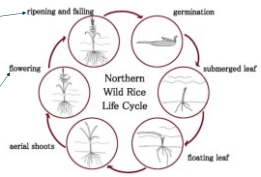
Reproductive Adaptations





Wild Rice lifecycle

183

Why Hydrophytes Matter

- They have adapted to life in saturated/ponded/anaerobic conditions
- A prevalence of hydrophytes in a plant community indicates the area likely experiences a period of ponded or saturated soils such that they out compete the non-hydrophytes
- The vegetation component in wetland delineation requires each species be classified as a hydrophyte or non-hydrophyte, and then apply to the community as a whole

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What about bryophytes?

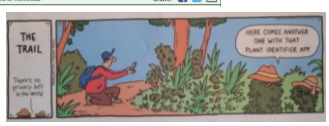
- Bryophytes are not vascular plants.
- Sphagnum moss is listed as bog plant community species but does not have an indicator status

185

Plant Identification

Plant ID Applications:

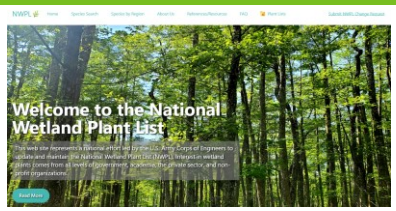
Seek/iNaturalist
PictureThis
NatureID
LeafSnap
PlantIn
PlantNet
PlantSnap
FlowerChecker



BWSR does not endorse specific products.

186

Individual Plant Indicator Status



https://nwpl.sec.usace.army.mil/

https://www.usace.army.mil/Media/Announcements/Article/3679433/13-february-2024-final-2022-national-wetland-plant-list-is-available/

187

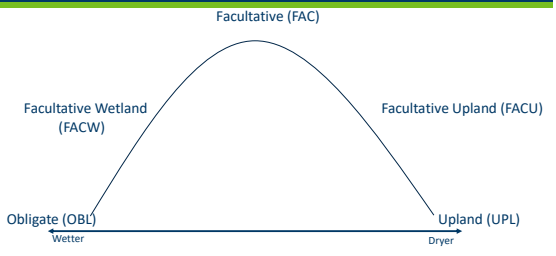
Plant Indicator Status

Wetland Indicator Status	Indicator Symbol	Definition
Obligate Wetland	OBL	Plants that almost always grow in wetlands. Estimated probability of >99% for growing in wetland.
Facultative Wetland	FACW	Plants that usually occur in wetlands. Estimated probability of 67% - 99% for growing in wetland (1%-33% in upland)
Facultative	FAC	Plants with similar likelihood of occurring in both wetland and upland. Estimated 33%-67% for growing in wetland.
Facultative Upland	FACU	Plants that sometimes grow in wetland. Estimated 1% - <33% for growing in wetland.(>67% - 99% in upland).
Obligate Upland	UPL	Plants that rarely occur in wetland. Estimated probability of <1% for growing in wetland (>99% in upland).

Hydrophytes

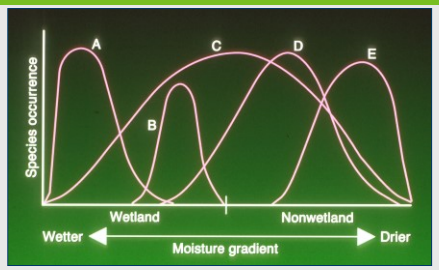
188

Plant Indicator Status



189

Plant Indicator Status Distributions

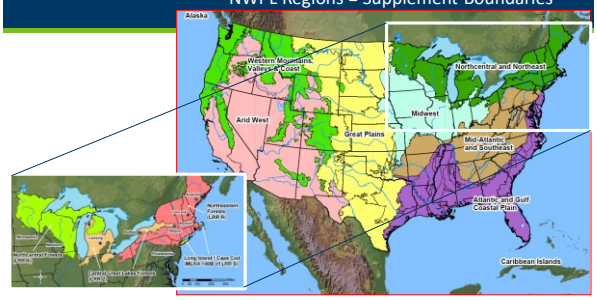


Indicator Status

Obligate	A
FACW	B
FAC	C
FACU	D
Upland	E

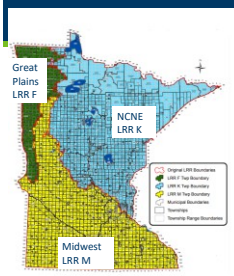
190

NWPL Regions = Supplement Boundaries



191

Plant Indicator Status



Plant Details

Scientific Name: Populus tremuloides Michx.
Family Name: Salicaceae Mirb. - Willow family
Common Name: quaking aspen
Symbol: POTR5
Date Modified: June 23, 2023, 1:27 p.m.

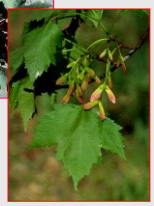
Wetland Ratings

AGCP	AW	CB	EMP	GP	HI	MW	NCNE	WMVC	AR
FAC	FACU		FAC	FAC		FAC	FACU	FACU	FAC

192

Indicator Status Comparisons

Silver Maple (**FACW**: NC/NE; Midwest)(**FAC**:GP)



Swamp Ecotype: shallow root system

Upland Ecotype: tap root to water table

Red Maple (**FAC**)

Sugar Maple (**FACU**: NC/NE; Midwest) (**UPL**: GP)

193

Indicator Status Comparisons

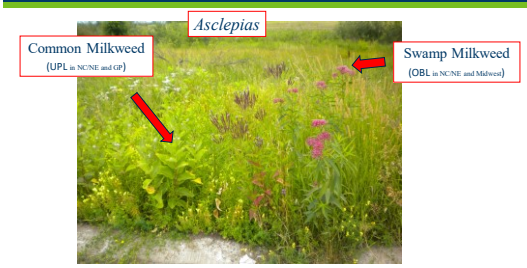
Asclepias

Common Milkweed (**UPL**: NC/NE; GP)(**FACU**: Midwest)
A. syriaca

Swamp Milkweed (**OBL**: NC/NE; Midwest)(**FACW**: GP)
A. incarnata

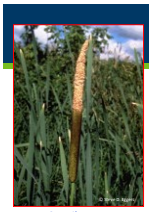
194

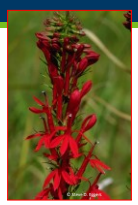
Indicator Status Trust



195

OBL Species Examples


Cattail


Cardinal Flower
(NC/NE and MW)


Lake Sedge

White Lady's-slipper


196

FACW Species Examples


Giant Goldenrod


Showy Lady's-slipper


Red-osier Dogwood

197

FAC Species Examples


Yellow Birch


Plains Cottonwood

198

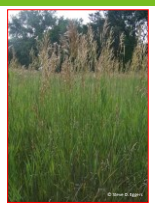
FACU Examples

Canada goldenrod


Black Cherry

199

UPL Species Examples


Smooth Brome
(NC/NE; GP)


Common Milkweed
(NC/NE; GP)

Butter and Eggs

200

Reed Canary Grass - FACW

Is RCG a true hydrophyte because it occasionally occurs in uplands?

RCG fits well within the concept of a FACW species as it usually occurs in wetlands, but may occur in non-wetlands

The fact that RCG occasionally occurs in uplands is why it wasn't assigned an OBL indicator status

201

Indicator Status

Malus sylvestris
(crab apple)

Plant species is not on the list…

Using incorrect name or synonym?

Searching under most current scientific name? (some have changed)

If still not on the list: then

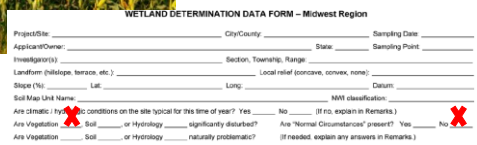
species is UPL

202

Indicator Status for Crop Species?

Corn, soybeans and other crops do not have an indicator status:

Normal Circumstances? Atypical for vegetation?



WETLAND DETERMINATION DATA FORM – Midwest Region

Project/Site: _____ City/County: _____ Sampling Date: _____

Applicant/Owner: _____ State: _____ Sampling Point: _____

Investigator(s): _____ Section, Township, Range: _____

Landform (hillslope, terrace, etc.): _____ Local relief (concave, convex, none): _____

Slope (%): _____ Lat: _____ Long: _____ Datum: _____

Soil Map Unit Name: _____ NWI classification: _____

Are climatic / hydrologic conditions on the site typical for this time of year? Yes _____ No _____ (If no, explain in Remarks.)

Are Vegetation _____ Soil _____ or Hydrology _____ significantly disturbed? Are "Normal Circumstances" present? Yes _____ No _____

Are Vegetation _____ Soil _____ or Hydrology _____ naturally problematic? (If needed, explain any answers in Remarks.)

203

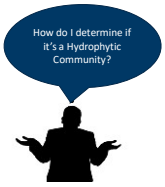
From Individual to the Community

Vegetation Component Focus is on plant communities and not individual plants

Focus

204

From Individual to the Community



Delineation relies heavily on FIELD based INDICATORS applied to the whole veg community

Field Indicators for Hydrophytic Vegetation relies on the dominance or prevalence of hydrophytes in the community

**** Data collection/sampling is required to demonstrate/prove the veg community is dominated by hydrophytes for an indicator to be met.**

205

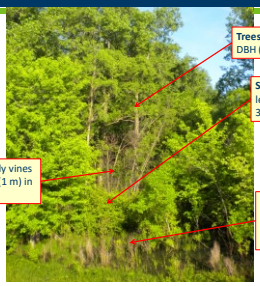
205

Native Plant Communities of Minnesota

https://www.dnr.state.mn.us/npc/index.html

206

Vegetation Strata (layers of vegetation)



Trees: woody plants 3 inches or more DBH (regardless of height)

Saplings/Shrubs: woody plants less than 3 in. DBH and taller than 3.28 feet (1 m)

Woody Vines: all woody vines greater than 3.28 feet (1 m) in height

Herbaceous: all non-woody plants including herbaceous vines, regardless of size, and woody plants less than 3.28 feet (1 m) in height

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Vegetation Strata

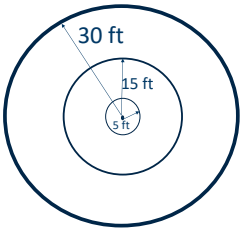
Trees: woody plants 3 inches or more DBH regardless of height

Shrubs/Saplings: woody plants less than 3 inches DBH and taller than 1 meter (3.28 feet) in height

Herbaceous: all non-woody plants regardless of size AND woody plants less than 1 meter (3.28 feet) in height

208

Typical Vegetation Sampling

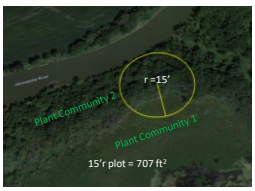


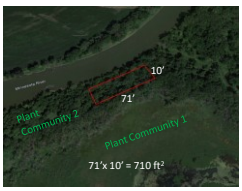
5 ft Herbaceous; 15 ft Shrub/Sapling; 30 ft Tree/Woody Vine

209

Vegetation Sampling Adjustments

Circular plot overlaps two different plant communities?
Then use rectangular plot of same square footage.





210

Determining Dominance- Sampling

- Within plots relative abundance of a species is used as the metric for determining dominance
  - Typical abundance measures include:
    - basal area for tree species
    - **percent areal cover**
    - stem density
    - frequency based on point-intercept sampling.

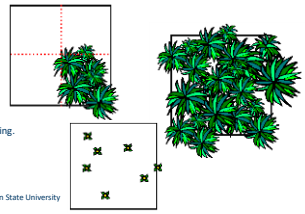


Photo Credit: © 2007 Mark V. Wilson and Oregon State University

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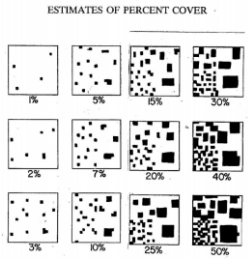
Determining Dominance- Sampling



Percent Areal Cover

- Estimate can vary from person to person
- Almost NEVER adds up to 100%...sometimes more; sometimes less
- Is recommended method for determining cover
- Used by 50/20 Rule
- Used by Prevalence Index

- Is different than Absolute Cover = Actual or Total cover

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Determining Dominance- Sampling

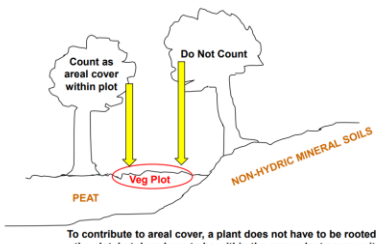

Photo credit USACE

To contribute to areal cover, a plant does not have to be rooted in the plot, but does have to be within the same plant community

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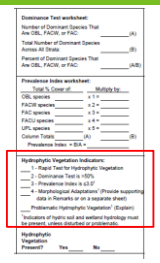
Determination of Hydrophytic Vegetation

Sequence of Field Indicators

1. Rapid Test
2. Dominance Test (“50/20 Rule”)
3. Prevalence Index
4. Morphological Adaptations


Dominance Test worksheet:
Number of Dominant Species That Are OBL, FACW, or FAC: _____ (A)
Total Number of Dominant Species Across All Strata: _____ (B)
Percent of Dominant Species That Are OBL, FACW, or FAC: _____ (A/B)
Prevalence Index worksheet:
Total % Cover of: _____ Multiply by:
OBL species _____ x 1 = _____
FACW species _____ x 2 = _____
FAC species _____ x 3 = _____
FACU species _____ x 4 = _____
UPL species _____ x 5 = _____
Column Totals _____ (A) _____ (B)
Prevalence Index = B/A = _____
Hydrophytic Vegetation Indicators:
___ 1 - Rapid Test for Hydrophytic Vegetation
___ 2 - Dominance Test is >50%
___ 3 - Prevalence Index is ≤3.0¹
___ 4 - Morphological Adaptations¹ (Provide supporting data in Remarks or on a separate sheet)
___ Problematic Hydrophytic Vegetation¹ (Explain)
¹Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.
Hydrophytic Vegetation Present? Yes ____ No ____

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Determining Hydrophytic Vegetation

The procedure for using hydrophytic vegetation indicators is as follows:

1. Apply Indicator 1 (Rapid Test for Hydrophytic Vegetation).
2. Apply Indicator 2 (Dominance Test).
   a) **If the plant community fails the dominance test, but indicators of hydric soil and wetland hydrology are both present, proceed to step 3.**
3. Apply Indicator 3 (Prevalence Index).
4. Apply Indicator 4 (Morphological Adaptations).
   a) If none of the indicators is satisfied, then hydrophytic vegetation is absent unless indicators of hydric soil and wetland hydrology are present and the site meets the requirements for a problematic wetland situation

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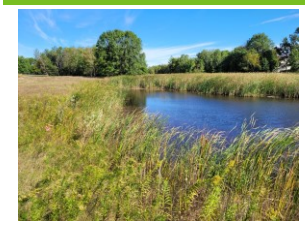
Hydrophytic Plants – Rapid Test

All dominant species across all strata are rated OBL or FACW, or a combination of these two categories, based on a visual assessment

216

1. Rapid Test for Hydrophytic Vegetation



All dominant species are rated OBL or FACW, or a combination of the two, based on a visual assessment

Example:
50% cattail (OBL), 50% areal cover by reed canary grass (FACW)

217

Hydrophytic Plants – Dominance Test

- Dominance Test AKA 50/20 Rule
  - Used to determine which species are dominant in each strata (layer of veg)
  - Once dominate species are identified their percent cover does not matter; all treated equally
    - Example: Tree Strata may have low number of species compared to Shrub Strata, but may still have a dominant component.
  - IF greater than 50% of the dominant species across all strata are OBL, FACW, or FAC, THEN hydrophytic plant community exists
    - Example: 5 dominant species are identified. 3 dominant species are FACW and 2 dominants are FACU. MEETS CRITERIA FOR HYDROPHYTIC PLANT COMMUNITY; 3/5=.6 or 60% FACW dominants

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Hydrophytic Vegetation – Dominance Test (50/20 Rule)

1. Estimate absolute percent cover of each species in first stratum. Species must be at least 5% to be considered dominant.
2. Rank species from most to least abundant
3. Calculate the total percent cover of all species (usually not 100 percent) in that stratum
4. Calculate 50% of total cover
5. Calculate 20% of total cover
6. Begin at top of list and add percent covers together until 50% threshold is met
7. Continuing after last species in 50%, next identify species that ALONE meet or exceed 20% threshold
8. Repeat for each stratum

219

Hydrophytic Vegetation – Dominance Test

50/20 Rule Example

Strata 1

Species	% Cover
Species a	*45*
Species b	*30*
Species c	*25*
Species d	*10*
Species e	*5*
Species f	*5*
Total Cover	120

120 x 50% (0.50) = 60
120 x 20% (.20) = 24

Species a + Species b = 75 ---Together exceed 50%

Species c = 25 ---individually meet/exceed 20%

Species a, b, and c are dominant

Note: if species percent cover is a tie, include both

220

50/20 Example #2

Strata 1

Species A: 60%
Species B: 35%
Species C: 35%
Species D: 25%
Species E: 20%
Species F: 10%

Tied; count both

Dominants

TOTAL : 185

50% = 185 x 0.50 = 92.5 20% = 185 x 0.20 = 37

221

Dominance Test

Stratum	Species Name	Wetland Indicator Status (Region 1)	Absolute Percent Cover	Dominant?
Herb	Impatiens capensis	FACW	15	Yes
	Geranium carolinianum	UPL	7	Yes
	Taxodiendron radicans	FAC	5	No
	Lonicera tatarica	FACU	2	No
	Glyceria striata	OBL	2	No
	Parthenocissus quinquefolia	FACU	1	No
	Arisaema triphyllum	FACW	0.5	No
	Carex laxiflora	FACU	0.5	No
		Total cover	33.0	
		50/20 Thresholds: 50% of total cover = 16.5% 20% of total cover = 6.6%		
Sapling/shrub	Carpinus caroliniana	FAC	35	Yes
	Carya ovata	FACU	10	No
	Acer saccharum	FACU	5	No
	Quercus rubra	FACU	5	No
		Total cover	55.0	
		50/20 Thresholds: 50% of total cover = 27.5% 20% of total cover = 11.0%		
Tree	Quercus bicolor	FACW	40	Yes
	Fraxinus pennsylvanica	FACW	17	Yes
	Ulmus americana	FACW	10	No
	Carya ovata	FACU	8	No
		Total Cover	75.0	
		50/20 Thresholds: 50% of total cover = 37.5% 20% of total cover = 15.0%		
Woody vine	Taxodiendron radicans	FAC	1	No[2]
Hydrophytic Vegetation Determination	Total number of dominant species across all strata = 5. Percent of dominant species that are OBL, FACW, or FAC = 80%. Therefore, this community is hydrophytic by Indicator 2 (Dominance Test).			

1. Tally number of dominants across all strata – 5
2. Tally number of dominants that are FAC, FACW, or OBL – 4
3. Calculate if FAC, FACW, OBL dominants comprise more than 50% of plant communities – 4/5 = 80%

222

Class exercise

How many dominant species are there in the sample point data?

1, 2, 3, or 4?

Note: if fails but have Hydrology and Soil, go to Prevalence Index

Species	Strata	% Coverage
Species A	Herbaceous	35
Species B	Herbaceous	30
Species C	Herbaceous	22
Species D	Herbaceous	20
Species E	Herbaceous	15
Species F	Shrub/sapling	5
Species G	Tree	3

223

Class exercise

How many dominant species are there in the sample point data?

3

Species	Strata	% Coverage
Species A	Herbaceous	35
Species B	Herbaceous	30
Species C	Herbaceous	22
Species D	Herbaceous	20
Species E	Herbaceous	15
Species F	Shrub/sapling	5
Species G	Tree	3

224

Apply indicator – Result?

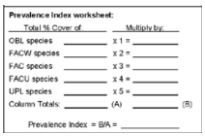
- Does this pass the dominance test?
- IF greater than 50% of the dominant species across all strata are OBL, FACW, or FAC, THEN hydrophytic plant community exists

Species	Strata	Ind. Status
Species A	Herbaceous	FACW
Species B	Herbaceous	FAC
Species C	Herbaceous	FAC
Species D	Herbaceous	FACW
Species E	Herbaceous	FAC
Species F	Shrub/sapling	FACU
Species G	Tree	OBL

225

Hydrophytic Vegetation – Prevalence Index

- Prevalence Index
  - A numerical calculation used to determine whether a hydrophytic plant community is present
  - Uses a weighted average and uses all plant species in the plot, not just dominant
  - Values range from 1 to 5
  - Values less than or equal to 3 indicate hydrophytic plant community


Prevalence Index worksheet:

Total % Cover of:	Multiply by:
OBL species ____	x 1 = ____
FACW species ____	x 2 = ____
FAC species ____	x 3 = ____
FACU species ____	x 4 = ____
UPL species ____	x 5 = ____
Column Totals: ____ (A)	____ (B)

Prevalence Index = B/A = ____

226

Hydrophytic Vegetation – Prevalence Index

Species	% Cover	Indicator
Tree Strata		
Species a	*45*	*FACW*
Species b	*30*	*OBL*
Species c	*25*	*FAC*
Species d	*10*	*FAC*
Species e	*5*	*FACU*
Species f	*5*	*UPL*
Herbaceous Strata		
Species A	55	OBL
Species B	35	FACW
Species C	35	FACW
Species D	25	FAC
Species E	20	FACU
Species F	10	UPL

Prevalence Index worksheet:

Total % Cover of:		Multiply by:	
OBL species	85	x 1 =	85
FACW species	115	x 2 =	230
FAC species	60	x 3 =	180
FACU species	25	x 4 =	100
UPL species	15	x 5 =	75
Column Totals:	300 (A)		670 (B)

Prevalence Index = B/A = 2.23

227

Class Exercise

	Herb Stratum	Plot Size (5)	Absolute % Cover	Dominant Species	Indicator Status
1	*Poa pratensis*		30	Y	FACU
2	*Bromus inermis*		20	Y	UPL
3	*Rubus idaeus*		15	Y	FAC
4	*Phalaris arundinacea*		5	N	FACW
5	*Solidago canadensis*		5	N	FACU

Prevalence Index Worksheet

Total % Cover of:		
OBL species ____	x 1 =	____
FACW species ____	x 2 =	____
FAC species ____	x 3 =	____
FACU species ____	x 4 =	____
UPL species ____	x 5 =	____
Column totals ____ (A)		____ (B)

Prevalence Index = B/A = ____

228

Class Exercise

Prevalence Index Worksheet

Total % Cover of:

OBL species	0	x 1 =	0
FACW species	5	x 2 =	10
FAC species	15	x 3 =	45
FACU species	35	x 4 =	140
UPL species	20	x 5 =	100
Column totals	75 (A)		295 (B)

Prevalence Index = B/A = 3.93

Prevalence Index worksheet:

Total % Cover of:	Multiply by:	
OBL species	x 1 =	
FACW species	x 2 =	
FAC species	x 3 =	
FACU species	x 4 =	
UPL species	x 5 =	
Column Totals: (A)		(B)

Prevalence Index = B/A =

Hydrophytic Vegetation Indicators:

___ 1 - Rapid Test for Hydrophytic Vegetation

___ 2 - Dominance Test is >50%

___ 3 - Prevalence Index is ≤3.0[1]

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Hydrophytic Vegetation – Morphological Adaptations

Morphological Adaptations

- Use when more than 50% of FACU plants exhibit morphological adaptations to saturated soil conditions AND criteria for hydric soils and hydrology is present
  1. For each FACU species exhibiting adaptations, record percentage of individuals with morphological adaptations on data sheet so long as the adaptations are not also common in the same species within nearby uplands areas.
  2. If more than 50% have adaptations then re-assign indicator status for that species from FACU to FAC
  3. Recalculate dominance test and/or prevalence index

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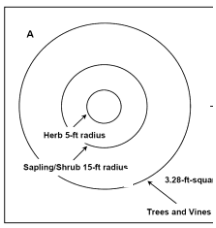
Vegetation Sampling Field Exercise



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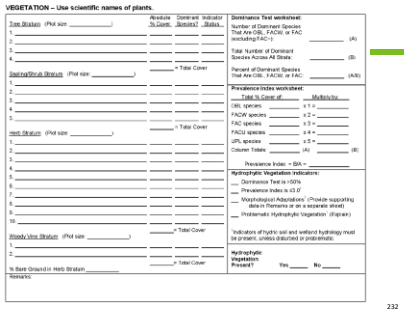

VEGETATION – Use scientific names of plants.

Tree Stratum (Plot size: _____)	Absolute % Cover	Dominant Species?	Indicator Status
1.			
2.			
3.			
4.			
	= Total Cover		
Sapling/Shrub Stratum (Plot size: _____)			
1.			
2.			
3.			
4.			
5.			
	= Total Cover		
Herb Stratum (Plot size: _____)			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
	= Total Cover		
Woody Vine Stratum (Plot size: _____)			
1.			
2.			
	= Total Cover		

% Bare Ground in Herb Stratum _____

Remarks:

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC (excluding FAC-): _____ (A)

Total Number of Dominant Species Across All Strata: _____ (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: _____ (A/B)

Prevalence Index worksheet:

Total % Cover of:	Multiply by:
OBL species	x 1 =
FACW species	x 2 =
FAC species	x 3 =
FACU species	x 4 =
UPL species	x 5 =
Column Totals: (A)	(B)

Prevalence Index = B/A = _____

Hydrophytic Vegetation Indicators:

___ Dominance Test is >50%

___ Prevalence Index is ≤3.0[1]

___ Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)

___ Problematic Hydrophytic Vegetation[1] (Explain)

[1]Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Hydrophytic Vegetation Present? Yes ____ No ____

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