

# Wetlands- Wetland Conservation Act

Wetlands are regulated under the Minnesota Wetland Conservation Act (WCA) of 1991.

## Overview

**Purpose:** To maintain and protect Minnesota's wetlands and the benefits they provide. To retain the benefits of wetlands and reach the legislation's goal of no-net-loss of wetlands, the Wetland Conservation Act requires anyone proposing to drain, fill, or excavate a wetland first to try to avoid disturbing the wetland; second, to try to minimize any impact on the wetland; and, finally, to replace any lost wetland acres, functions, and values. Certain wetland activities are exempt from the act, allowing projects with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation.

**History:** In 1991, reacting to public concern about Minnesota's disappearing wetlands, the Minnesota Legislature approved and Governor Arne Carlson later signed the Wetland Conservation Act. An interim program became effective January 1, 1992. On January 1, 1994, the full program began.

**Regulations:** MN Rule 8420 implements the regulatory provisions of WCA.

**Administration:** Local government units (LGU's) cities, counties, watershed management organizations, soil and water conservation districts, and townships-implement the act locally. The Minnesota Board of Water and Soil Resources (BWSR) administers the act statewide, and the Department of Natural Resources enforces it.

**Benefits:** WCA recognizes a number of wetland benefits deemed important, including:

- Water quality, and recharging groundwater supplies;
- Floodwater and storm water retention, including reducing the potential for flooding;
- Public recreation and fish and wildlife benefits;
- Commercial benefits, including wild rice and cranberry growing areas and aquaculture areas;
- Low-flow augmentation during times of drought.

**How it works:** To retain the benefits of wetlands and reach the legislation's goal of no-net-loss of wetlands, WCA requires anyone proposing to drain or fill a wetland first to try to avoid disturbing the wetland; second, to try to minimize any impact on the wetland; and, finally, to replace any lost wetland acres, functions, and values. Certain wetland activities are exempt from the act, while allowing projects with minimal impact or projects located on land where certain pre-established land uses are present to proceed without regulation.

## AGENCIES AND JURISDICTIONS

Depending on the size, type, and location of wetlands and their proposed use, any combination of the following agencies may have jurisdiction.

### Local Government Unit (LGU)

WCA is administered by a LGU. The LGU is responsible for making decisions in accordance with the regulations, including reviewing and making determinations on WCA applications. St. Louis County is the LGU for wetland related activities that occur outside the municipal boundaries of cities. ( Mining activities are administered by the Minnesota Department of Natural Resources) Property owners should contact the appropriate LGU prior to starting any project and inquire about the necessary procedures and permits.

## **Soil and Water Conservation Districts (SWCD)**

Soil and Water Conservation Districts ( SWCD) w are political subdivisions of the state established under Minnesota Statute, Chapter 103C. Each SWDC is governed by a board of five elected supervisors. Minnesota has 90 SWCDs. The SWCDs provide soil and water conservation services to private land owners.

St. Louis County has two SWCDs, the South St. Louis County Soil an Water Conservation District and the North Soil and Water Conservation District. The SWCDS serve as as an informational clearinghouse for WCA in St. Louis County.

## **Board of Water and Soil Resources (BWSR)**

The Minnesota Board of Water and Soil Resources (BWSR) consists of 20 members, including local government representatives that deliver BWSR programs, state agencies, and citizens. The board sets a policy agenda designed to enhance service delivery though the use of local government. Board members, including the board chair, are appointed by the governor to four-year terms.

The board is the state's administrative agency for 90 soil and water conservation districts, 46 watershed districts, 23 metropolitan watershed management organizations, and 80 county water managers.

The BWSR mission is to improve and protect Minnesota's water and soil resources by working in partnership with local organizations and private landowners. Core functions include implementing the state's soil and water conservation policy, comprehensive local water management, and the Wetland Conservation Act as it relates to the 41.7 million acres of private land in Minnesota.

## **Technical Evaluation Panel (TEP)**

WCA requires the LGU to coordinate a Technical Evaluation Panel (TEP.) The panel membership consists of a technical professional employee from the BWSR, SWCD and LGU. If requested, the TEP must make technical findings and recommendations to the LGU regarding applications, applicability of exemptions and no-loss standards, direct and indirect impacts, possible violations of the MN Rule Chapter 8420 and enforcement matters.

## **Application Requirements**

An applicant intending to drain, fill or excavate a wetland who does not qualify for an exemption or no-loss determination shall obtain approval of a replacement plan from the LGU prior to impacting the wetland. The replacement plan application [Minnesota Local/State/Federal Application for Water/Wetland Projects](#) can be found at:

Prior to approval, proposed non-exempt activities must undergo a process known as sequencing. Sequencing is a review to assess the efforts made by the applicant to follow, in descending order, these principles: Avoidance, Minimization, Reduction or Elimination of impacts over time, and Replacement. Therefore, a LGU may not consider or approve a wetland replacement plan unless it ensures that the applicant has exhausted all sequencing requirements.

Once a completed wetland replacement application is received, a staff decision by the LGU to approve, approve with conditions, or deny an application can be made. While regulatory guidelines provide for a decision to be made within 60 days of receiving a completed application, there are circumstances involved that may result in extended review periods. Table 1 provides an approximate time frame and various steps involved in the application process.

**Table 1: General Time Frame for Wetland Application Process**

<b>Days</b>	<b>Activity</b>  (see Minnesota Rule 8420.0230 for complete information)
0-15	Application submittal and public notice: The LGU receives a complete WCA application from the landowner. The LGU must mail a Notice of Application within 15 days of receipt of a <u>complete</u> application to the appropriate agencies.
15-30	Comment period: The LGU will specify when the comment period ends. The comment period must be a minimum of 15 days.
30-60	LGU staff decision: The LGUs decision made by staff to approve, approve with conditions or deny the application requires a decision within 60 days.
	<b>Post Decision</b>
0-10	The LGU staff decision must be mailed to the landowner and those required to receive notice of the application within 10 business days. The notice of decision must include information on the process and time period to appeal the decision. If approval is given, the project may commence after all of the conditions of the project have been satisfied.
30	The LGU staff decision is final if not appealed to the St. Louis County Board of Adjustment within 30 days after the date on which the decision is sent.

## **Wetland Violations & Enforcement**

All draining and filling and some excavation activities conducted in wetlands under the jurisdiction of the Wetland Conservation Act (WCA) are subject to administration by the Local Government Unit (LGU). Enforcement of this act is directed by the Department of Natural Resources (DNR) Conservation Officers. Conservation Officers get involved when they become aware of draining or filling activities in a wetland. This may happen through contacts from the general public and public agencies or by observing the activity directly. It is the responsibility of the conservation officer to follow up and determine if the activity is a violation.

### **Issuing A Cease and Desist Order**

The conservation officer may choose to contact the landowner, contractor, LGU and/or the SWCD) to determine if an exemption applies or if there is an approved replacement plan. If evidence of an approved replacement plan or exemption is not forthcoming and the drain or fill activity is underway, the conservation officer may issue a Cease and Desist Order to the landowner. A Cease and Desist Order may be issued when the Conservation officer has probable cause that a drain, fill or excavation activity is in a wetland and is in violation of the WCA. Once the CDO is issued to the landowner, a copy is forwarded to the LGU, the DNR and the SWCD. Violation of a CDO is a misdemeanor.

### **After a Cease and Desist Order is Issued**

After a CDO is issued, all work within the wetlands must be stopped until further notice. If the landowner

feels that an exemption or no-loss determination applies, an application should be made to the LGU for a determination immediately. If the exemption or no-loss determination application is denied, a Restoration or Replacement Order prepared by the SWCD will then be in effect.

### **Restoration / Replacement Orders**

A technical representative from the SWCD will investigate the site and document findings. The SWCD will determine if it is possible to restore the wetland. If restoration is possible, a restoration order will be developed by the SWCD with consultation from the LGU. If the SWCD determines that restoration will not restore all losses caused by the drain or fill activity, the enforcement authority may order a combination of restoration and replacement, or may order replacement rather than restoration. The order will direct the landowner to obtain a replacement plan approval from the LGU. The SWCD must incorporate its plan into a restoration or replacement order and send to the enforcement authority for service in person or by certified mail to the responsible party. The restoration order will specify a date by which the landowner must either: restore the wetland and obtain a Certificate of Satisfactory Restoration; or appeal the restoration order; or submit a replacement plan application to the LGU. The order will specify that if a replacement plan approval is not obtained, the landowner must restore the wetland in a manner determined by the SWCD. Each Cease and Desist, Restoration and Replacement Order shall tell the landowner that violation of the order is a misdemeanor.

If the responsible party seeks approval of a replacement plan after the proposed project has already impacted the wetland, the LGU can require the party to replace the impacted wetland at twice the ratio required. Contractors are responsible if work drains, excavates, or fills a wetland unless they have received a signed statement from the landowner stating a replacement plan is not required or has been approved.