



**US Army Corps  
of Engineers**  
St. Paul District



**MEMORANDUM OF UNDERSTANDING**  
**REGARDING IMPLEMENTATION OF THE FEDERAL APPROVALS EXEMPTION**  
**UNDER THE MINNESOTA WETLAND CONSERVATION ACT**

This Memorandum of Understanding (MOU) is made and entered into by the Minnesota Board of Water and Soil Resources (BWSR), the Minnesota Department of Natural Resources (DNR) and the St. Paul District of the U.S. Army Corps of Engineers (Corps).

**WHEREAS**, BWSR has State oversight responsibilities for the Minnesota Wetland Conservation Act (WCA) and the rules through which it is implemented (MN Rules Chapter 8420);

**WHEREAS**, the DNR: is the “Local Government Unit” for activities affecting wetlands on DNR-administered land; has a consultation role with BWSR in developing WCA rules; by rule receives all WCA application notices for comment; and has indicated that its concurrence with any WCA federal approval exemptions is conditioned on it being a party to this MOU;

**WHEREAS**, the Corps administers Section 404 of the Clean Water Act (§404 of the CWA), which regulates the discharge of dredged or fill material into waters of the United States, and Section 10 of the Rivers and Harbors Act of 1899 (§10 of the RHA), which regulates certain structures and work in or affecting navigable waters of the United States;

**WHEREAS**, reducing regulatory duplication and inconsistency between Federal and State regulatory programs can result in cost savings to the governmental bodies administering those programs and also decrease costs, uncertainty and confusion to the regulated public;

**WHEREAS**, MN Stat. §103G.2241, Subdivision 3 provides for the establishment of a WCA federal approvals exemption for activities authorized under the federal regulations implementing §404 of the CWA or §10 of the RHA so long as those activities meet minimum State standards under WCA and have also been approved by BWSR, the DNR, the Minnesota Department of Agriculture, and the Minnesota Pollution Control Agency;

**WHEREAS**, a utility line is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission of electrical energy, telephone, electronic data, and radio or television communication.

**WHEREAS**, a utility line project is any project that includes the installation or maintenance of one or more utility lines.

**WHEREAS**, the aforementioned State agencies approved a Federal approvals exemption for utility projects on December 17, 2014; which becomes effective following the execution of a memorandum of understanding between the Corps, BWSR and the DNR identifying notification and comment procedures for those projects,

**THEREFORE**, the undersigned agencies establish the following notification and comment procedures to allow BWSR and DNR to have an opportunity to review and provide the Corps comments on activities that qualify for the WCA federal approvals exemption.

## **I. NOTIFICATIONS AND REVIEW PROCESS**

The following notification and review procedures apply to utility line projects and other classes of projects added by the parties by modification of this MOU.

- a. The Corps will provide notification to BWSR and the DNR upon receipt of a complete application for a Department of the Army permit for utility line projects that are anticipated to have permanent impacts to waters of the United States that are greater than, or equal to 0.5 acre as a result of filling, flooding, excavation, or drainage. These types of projects are typically reviewed as individual permits by the Corps (letters of permission or standard permits). The BWSR and the DNR shall provide points of contact for receipt of the notifications. The Corps' notification will generally be in the form of a link to the Internet posting for an application being evaluated under the letter of permission process or the public notice for an application being evaluated under the standard permit process. The notifications will be sent directly to the identified State agency points of contact.
- b. If the Corps provides notice in a manner other than described in paragraph I.a above, the notification will provide sufficient information to give a clear understanding of the nature and magnitude of the proposed activity to generate meaningful comment.
- c. The Corps will give full consideration and appropriate weight to all comments on matters within the BWSR and the DNR areas of expertise including the management of the State of Minnesota's natural resources.
- d. For projects covered by this MOU, the Corps will promptly send copies of any issued permits or other authorization documents to the BWSR and the DNR points of contact.

## **II. REVISIONS**

- a. This MOU applies only to utility line projects but may be modified in writing to include coordination procedures for additional activities that have been approved by the State for the WCA federal approvals exemption.
- b. This WCA federal approvals exemption applies to projects approved under the Corps' policies and guidance in place on the effective date of this MOU. The Corps agrees to notify BWSR of actual or anticipated changes in law, regulation or policy pertaining to the regulation and permitting of utility projects (as far in advance as practical).



c. This MOU may be modified only by written agreement of all parties. Any modification to this MOU will be effective when executed by all parties to this MOU unless a subsequent effective date is identified in the modification.

### **III. DISPUTE RESOLUTION**

In the event a dispute arises between the parties signatory to this MOU regarding its implementation, the parties will attempt to resolve the issue at the staff level. If the dispute cannot be resolved at staff level the issue will then be elevated to the Corps' Regulatory Branch Chief, the Executive Director of BWSR, and the DNR Commissioner for resolution through consultation.

### **IV. GENERAL TERMS**

a. This MOU does not create any rights or obligations, either substantive or procedural, enforceable by any party to this MOU or any third party. Deviation or variance from the protocols identified in this MOU will not constitute an excuse or defense for any violation of State or federal law.

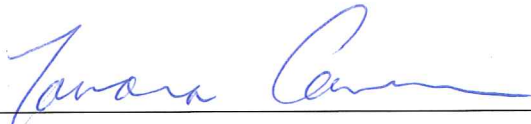
b. This MOU does not expand, diminish, modify, or otherwise affect the statutory or regulatory authorities of any signatory party or constrain the discretion of those parties in implementing their respective statutory and regulatory authorities. If any party intends to issue formal guidance regarding its interpretation or implementation of its responsibilities under this MOU, it will use its best efforts to coordinate that proposed formal guidance with the other parties to this MOU and consider their comments prior to implementing it.

c. This MOU is not a funds obligation document nor does it provide for the exchange of funds or manpower between the parties. Each party to this MOU is responsible for the costs of its own personnel, including pay and benefits, support, and travel. Each party to this MOU is also responsible for the supervision and management of its own personnel. All responsibilities identified in this MOU are subject to, and dependent on, the availability of sufficient funds appropriated and allocated for that purpose.

d. This MOU will take effect on the day after the date of the last signature below and will continue in effect until modified or terminated by the signatory parties. A signatory agency may terminate this MOU at any time by written notice to the other parties but will use its best efforts to provide the other parties a minimum of 60 days advance notice prior to the effective date of termination.

e. This MOU is based on the State and federal authorities as they exist on the date of execution. If there are changes in Federal or State law that affect the implementation or utility of this MOU, the parties will confer and modify or terminate this MOU as appropriate.

f. Entire understanding. This MOU embodies the entire understanding between the parties regarding the subject matter discussed in this MOU.



Tamara Cameron  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers, St. Paul District

29 June 2015

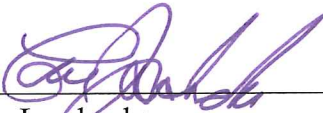
Date



John Jaschke  
Executive Director  
Minnesota Board of Water and Soil Resources

7/1/15

Date



Tom Landwehr  
Commissioner  
Minnesota Department of Natural Resources

7/9/15

Date