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Crash Course in WCA Administration Virtual Training- February 6-7

Day One

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

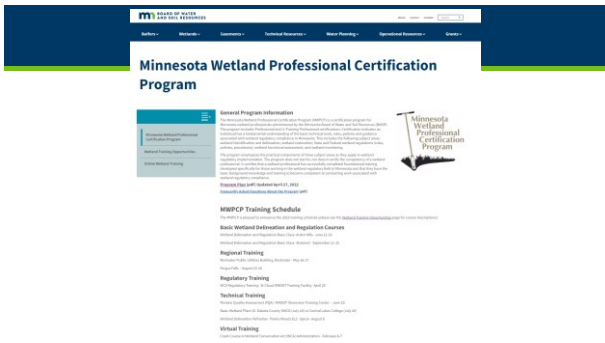
Day Two

- Basic Decisions
- Replacement Plans
- Wetland Banking
- Q/A & Quiz



bwsr.state.mn.us/minnesota-wetland-professional-certification-program

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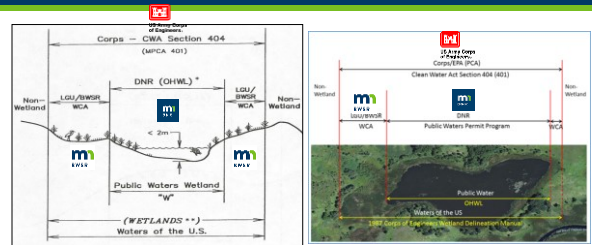
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Programs

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

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Jurisdiction



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Public Waters Work Permit Program (PWPP)


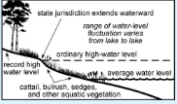
Overview




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Public Waters Permit Program

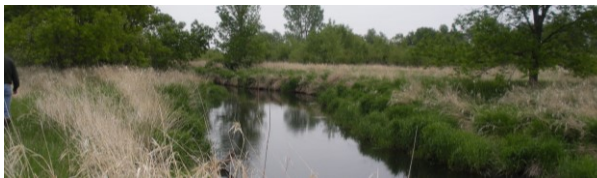
- **Regulates:** changes to "course, current or cross-section"
- **Administered by:** DNR – Area Hydrologists
- **Authorities:** M.S. 103G; M.R. Chapter 6115
- **Jurisdictional boundary:** "Ordinary High Water Level"
- **Review standards:** Public interest; reasonable/practical; Riparian rights; Availability 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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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	OHWL
Regulated Actions	Fill, drain, excavate (semi-perm. Flooded areas of type 3, 4, 5)	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)



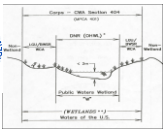
Overview

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Clean Water Act Section 404

- **Regulates:** Discharges of dredged or fill material, including redeposit
- **Administered by:** U.S. Army Corps of Engineers – St. Paul District
- **Authorities:** 33 U.S.C. §1251; 33 CFR Parts 320-332; 40 CFR Part 230
- **Jurisdictional boundary:** 1987 Corps of Engineers Wetland Delineation Manual
- **Review Standards:** Sequencing, public interest, adequate compensatory mitigation
- **Appeals:** COE administrative appeal
- **Enforcement:** COE and USEPA; administrative orders
- **Application:** Joint Application Form for Activities Affecting Water Resources in Minnesota

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Program Element	WCA	404
Basis of Authority	State statutes and rule (Mn Rules Chapter 8420)	Clean Water Act
Regulated Waters	Wetlands except incidental and wetland areas of Public Waters (unless waived)	Waters of the U.S. (WOTUS)
Regulated Actions	Fill, drain, excavate (semi-perm. Flooded areas of type 3, 4, 5)	Discharges of dredged or fill material
Program Administration	LGU implementation, BWSR oversight, DNR enforcement	Corps Districts implement, EPA oversight
Type of Approvals	WCA decisions	Permit authorizations via IPs, GPs, NWP
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

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Food Security Act (Wetland Conservation Provisions)




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How Does NRCS Evaluate Compliance?

Primarily through Certified Wetland Determination (CWD).

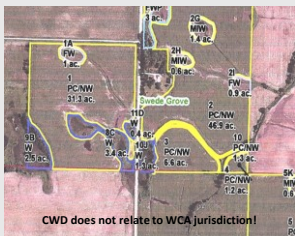
Involves identifying wetlands and then assigning a label that has implications for compliance. For example, if producer drains a wetland for crop production, that would result in a label change that could result in producer being ineligible.

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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.





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Wetland Conservation Act (WCA)



Overview

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Wetland Conservation Act

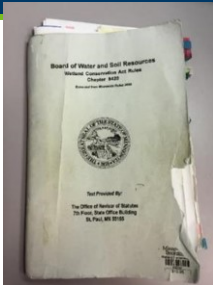
- **Regulates:** draining, filling, some excavation
- **Administered by:** Local Government Units, SWCDs, Watershed Districts
- **Oversight by:** MN Board of Water and Soil Resources
- **Authorities:** M.S. 103A, 103B, 103G; M.R. Chapter 8420
- **Jurisdictional boundary:** 1987 Corps of Engineers Wetland Delineation Manual
- **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

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What is it?

- Series of laws passed in 1991
- Major component – wetland regulatory provisions, Minnesota Rules Chapter 8420.
- Regulatory provisions implemented under temporary rules in 1991 and permanent rules in 1993.



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Purpose?

- Maintain and *increase* the quantity, quality and biological diversity of Minnesota's wetlands. (QQB)
- *Avoid* wetland impacts from activities that negatively effect quantity, quality and biological diversity.
- *Replace* wetland values where avoidance is not feasible and prudent.
- The sequence of avoid, minimize and then replace for wetland impacts is referred to as **Sequencing** in WCA rules.

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What does WCA regulate?

- **Wetland Impacts** are defined in WCA rule.
- **Wetlands** are identified and their boundaries determined by 87 Manual.
- Two exceptions:
 - Incidental wetlands
 - Wetland areas of DNR public waters and public waters wetlands unless regulatory jurisdiction waived by DNR to WCA.

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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



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WCA Wetlands vs Public Waters

- DNR public waters regulated by the DNR Public Waters Work Permit Program (PWWPP) are generally pre-determined (they are on a map).
- WCA wetlands are identified and determined via the 87 Manual on a case-by-case basis.

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Implementation Structure

- **Local Government Units (LGUs)** are primarily responsible for implementing WCA.
- **BWSR** provides oversight and assistance to LGUs. BWSR implements certain limited provisions of WCA.
- **DNR** has an enforcement role in WCA.

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Implementation by LGUs

- LGU can be:
 - County, City/Town
 - Township (in certain 7-county metro areas only)
 - Watershed district, management organization or commission
 - State agency on state owned or administered lands
 - For projects that require a Permit to Mine under state law, DNR's Division of Lands and Minerals administers the provisions of the WCA under their Permit

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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

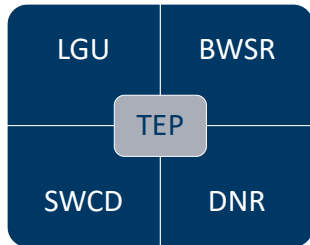
Decision Type	Application Requirement
Wetland Boundary/Type	Application required
Exemption or No-Loss Provision	Application not required (unless LGU has more restrictive local requirement)
Replacement Plan	Application required
Banking Plan	Application required

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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.

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How many jurisdictions?



BWSR Wetland Section | www.bwsr.state.mn.us/wetlands

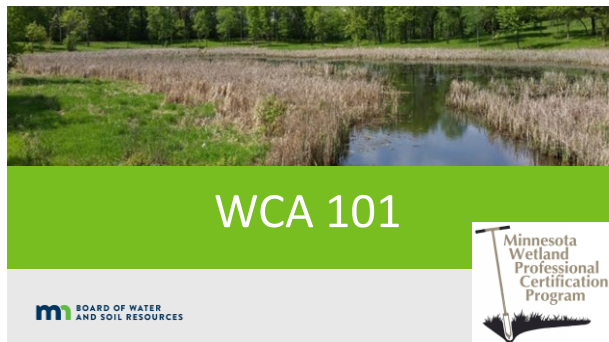
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How many jurisdictions?

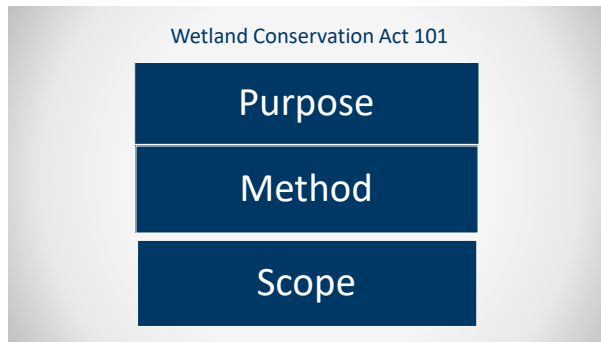


BWSR Wetland Section | www.bwsr.state.mn.us/wetlands

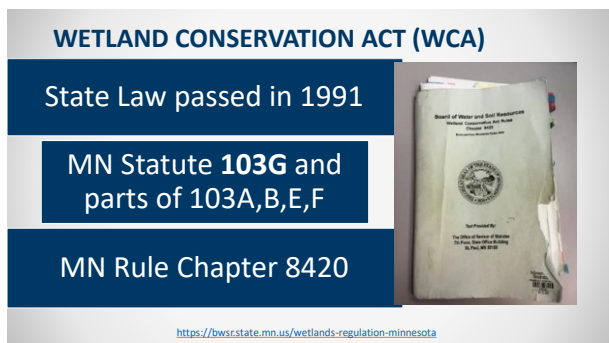
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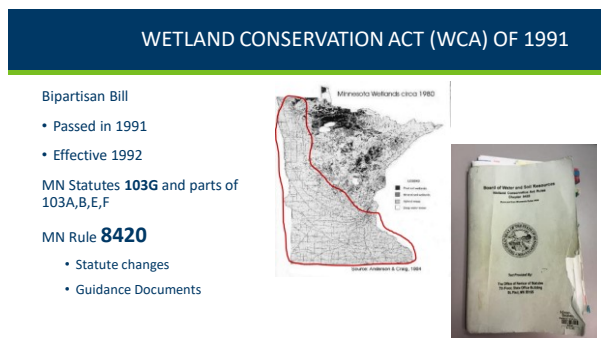
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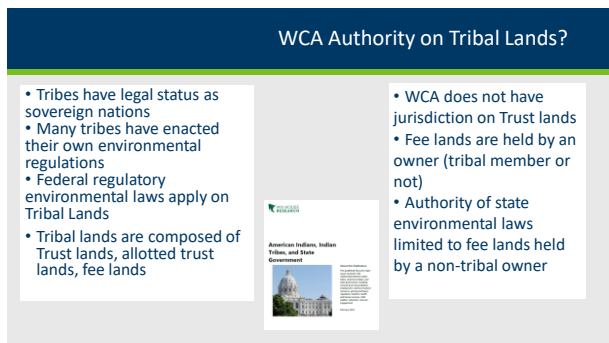
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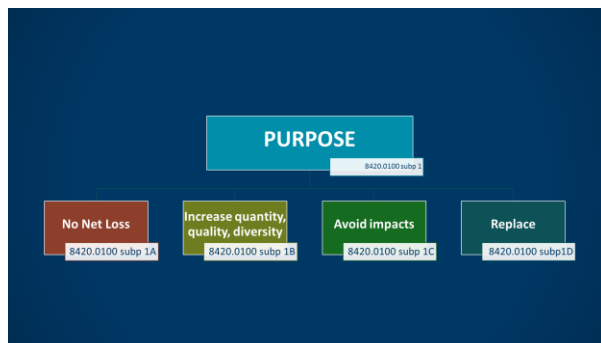
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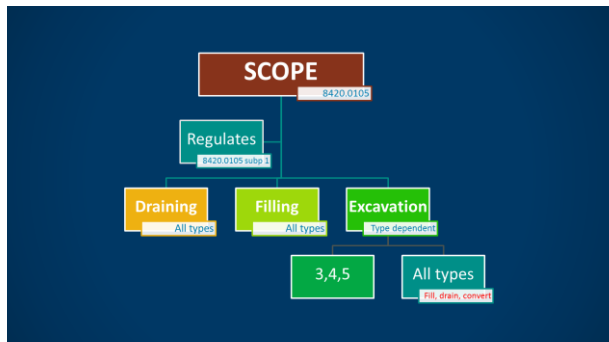
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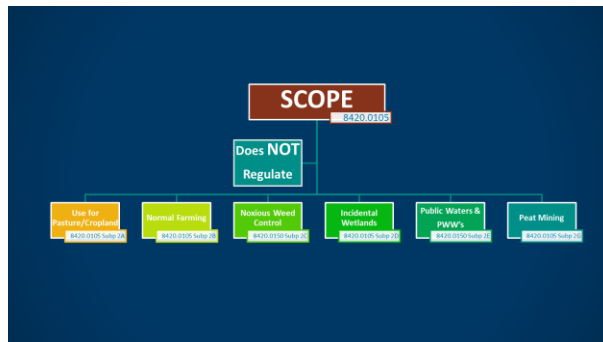
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What Does WCA Regulate?

Draining or filling of wetlands (wholly or partially)

Excavation of wetlands (under certain conditions)



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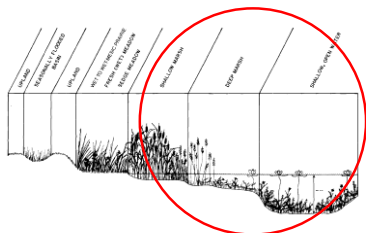
Excavation

WCA regulates excavation in *permanently* and *semi-permanently* flooded areas of *Type 3, 4, or 5* wetlands and in all wetland types if the excavation results in conversion to nonwetland (i.e. deepwater habitat which is defined as average water depth of 8.2 feet or greater).

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Excavation

What is permanently and semi-permanently flooded?



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What WCA Does NOT Regulate

- The use of wetlands for pasture or cropland
- Normal farming practices (plowing, seeding, timber harvesting, etc.)
- Control of noxious weeds
- Impacts to created (non-natural) wetlands (ditches, ponds, etc. created in upland areas)



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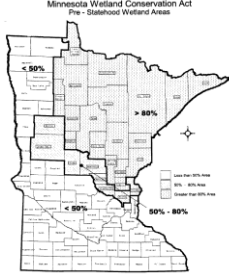
WCA Does NOT regulate

- DNR Public Waters & PWW**
 - DNR can waive to WCA for public water wetlands
- Peat Mining**
 - Subject to DNR permit to mine under MN Statute 93.44-93.51
 - WCA applies if project does not require DNR permit to mine




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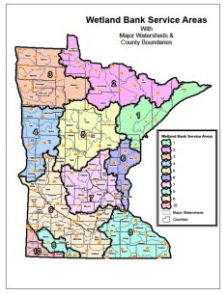
Where you are in the State matters



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

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Bank Service Areas



- Used in wetland mitigation siting

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Watersheds

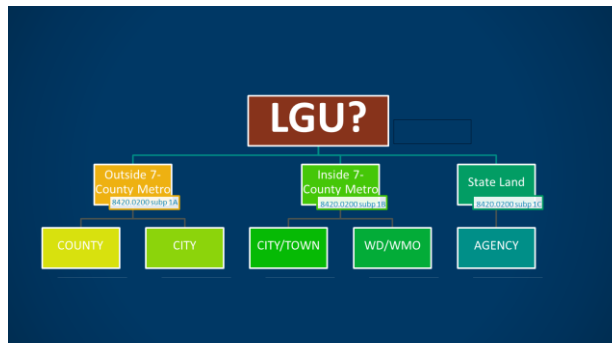


- Factored into project-specific replacement siting

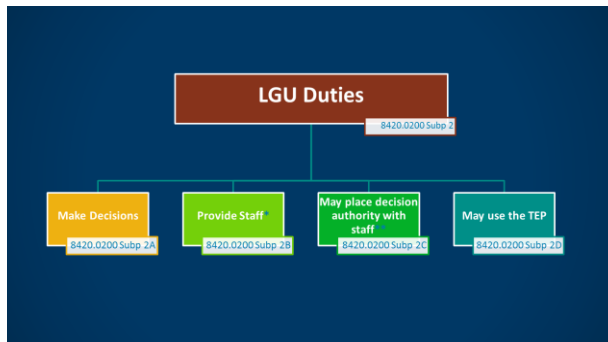
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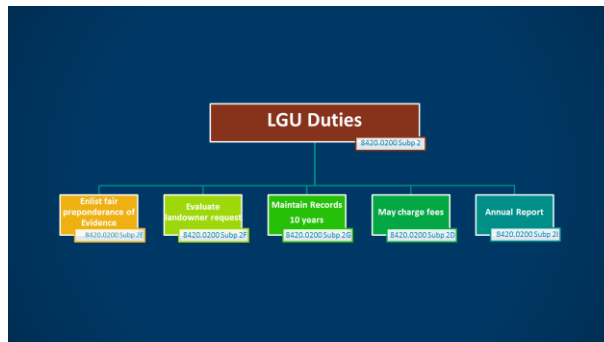
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Delegation of Decision-Making Authority to Staff

- 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.

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Failure to Apply Law

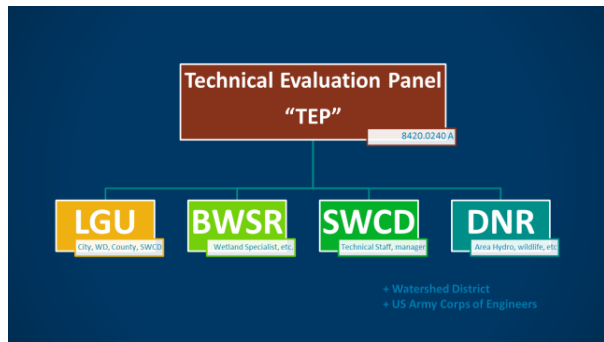
- If the LGU is not following WCA:
- 1) BWSR notify LGU in writing of its concerns
 - 2) File Review spot check
 - 3) Can then impose moratorium on making decisions

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Local Wetland Ordinances

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

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Detailed reasons for not following TEP recommendation?

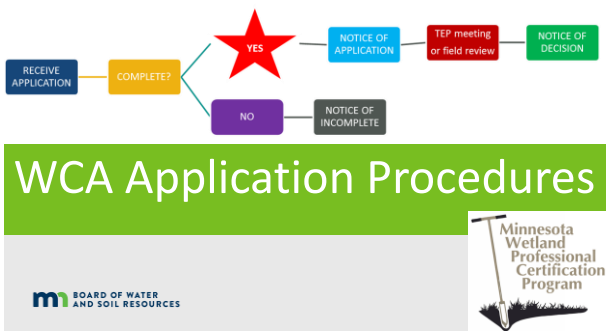
“The Board felt that the TEP’s recommendation to deny the application was unreasonable and therefore we approve the application.”

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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.”

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BWSR website

- [WCA Forms and Templates](#)

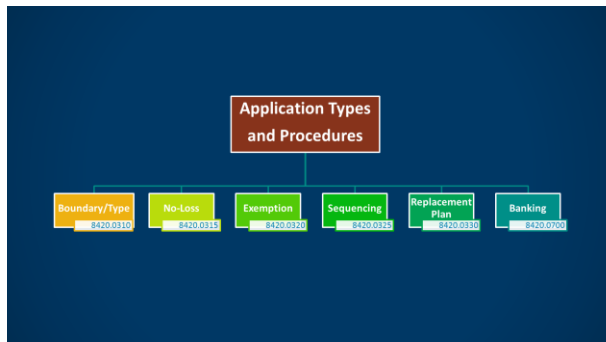
WCA Forms and Templates

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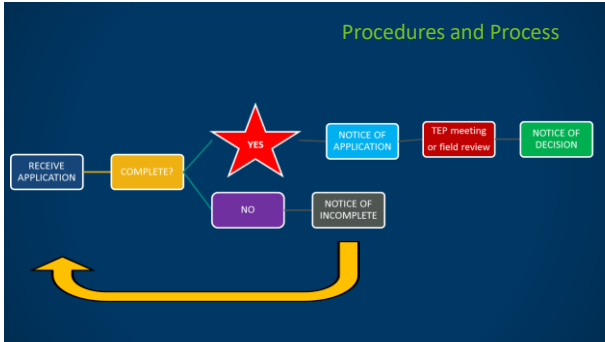
WCA Application Procedures



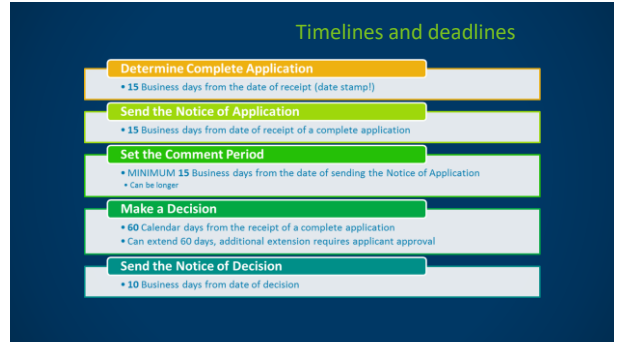
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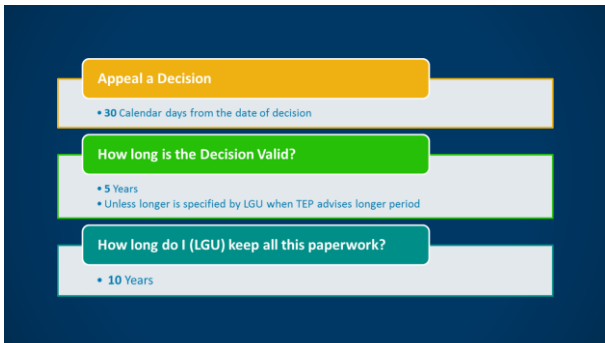
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Now you've got yourself an application

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

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Is the application complete?

Joint Application Form for Activities Affecting Water Resources in Minnesota

- 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 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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Technical Evaluation Panel "TEP"

8420.0240A

LGU
City, WD, County, SWCD

BWSR
Wetland Specialist, etc.

SWCD
Technical Staff, manager

DNR
Area Hydro, wildlife, etc.

+ Watershed District
+ US Army Corps of Engineers

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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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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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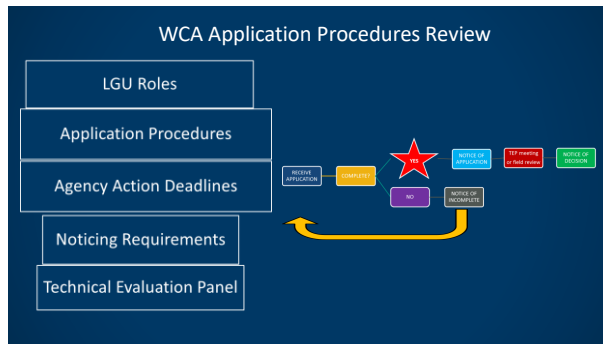
General Appeal Process

- 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
- Extension possible by mutual agreement

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- 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.

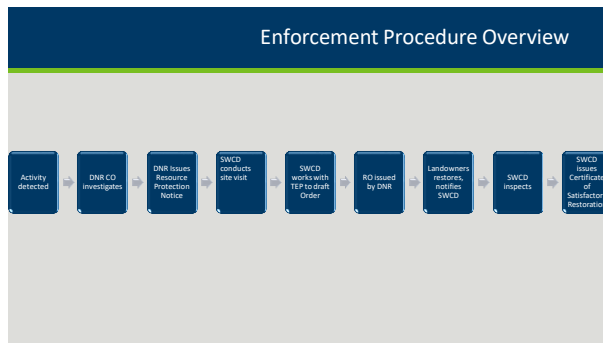
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8420.0900 Subp. 3. Restoration and Replacement orders.

- B. Promptly upon being informed by the enforcement authority or the local government unit of the need, a soil and water conservation district staff person **must** inspect the site and prepare a plan in consultation with the local government unit and the enforcement authority for restoring the site to its prealtered condition.

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- ### SWCD Role in a violation
- Landowner contact for CDO or RPN
 - Site visit- gather information/evidence
 - Prepare Restoration/Replacement Order
 - Monitor restoration/ replacement site.
 - Certificate of Satisfactory Completion
 - Track the cases.

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LGU Role in a violation

- Help Determine if site has permit for work or prior work done.
- Assist SWCD on Restoration/Replacement Orders
- Assist with gathering evidence
- Receive application from landowner for exemption, no-loss determinations, and replacement plans
- Track the cases

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BWSR's Role in a violation

- Rule interpretation
- Bounce ideas back and forth (appropriate seed mixes)
- May contact more specialist BWSR staff to assist in difficult projects
- Assist SWCD/LGU in developing RO's
- Assist in technical findings

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DNR Enforcement Role

- Landowner contact if Cease and Desist Orders
- Write Summary of information on violation
- Gather Evidence of the violation including contractors info
- Issue Restoration and Replacement Order
- Grant Extensions
- Initiate enforcement action
- Follow and track all violation cases
- Issue RPN for after the fact cases. (not in progress)

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Resource Protection Notices

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Cease & Desist Orders

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Data Collection

- Who – landowner and/or responsible party, contractor
 - RO will go to all
- What – type of disturbance or activity that occurred
 - Useful for determining impact
- Why – purpose of action? Were goals achieved? (i.e. some drainage is not effective...)

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Data Collection

When – estimated time of activity occurrence


- Helpful in determining responsible party if ownership change has occurred
- Aerial photos/PID information
- Did the activity work?

Where – Property location (critical), but also landscape position, slope, etc.

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Data Collection

- Maps
- Illustrations
- TEP Findings and Recommendation
- Discussions with landowner/responsible party
- Survey information
- You may only have one opportunity to be on site




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The RO

Restoration Order Gives the Landowner Options

- Restore
- Apply for replacement, exemption, no-loss
- Appeal- w/in 30 days + \$500 fee
- Court/Deed Restriction if no action is taken by landowner



After-the-fact replacement ratio must be twice the ratio otherwise required

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The RO

- Send RO to the Officer OR WREO ASAP Enforcement will serve the order (must be served in person or certified mail)
 - We recommend to officers to use only certified mail
 - Easy for everyone to track time line
- **MAKE SURE YOU SIGN YOUR COPY BEFORE SENDING IT TO CO OR WREO.**
- Extensions are issued only by enforcement and if:
 - The landowner has a good reason for not getting it done
 - Has made some progress
 - Maybe weather related (heavy rains, early freeze)
 - Submitted application
 - Filed an Appeal

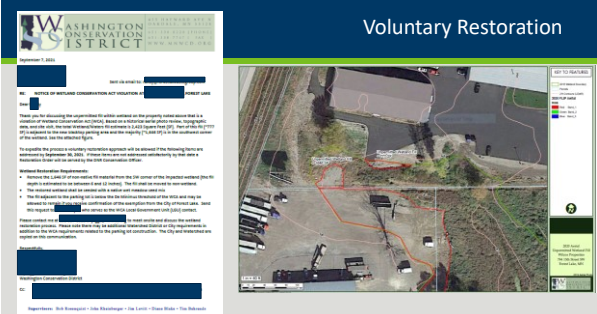
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Is a formal Restoration Order Always Required?

- No, voluntary restoration is allowed but should consider
 - Willingness to cooperate
 - Past history
 - Shortened timeframe for completion to allow for formal RO process
 - Some kind of written plan or agreement with deadlines
 - Communication and agreement with DNR Enforcement

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Voluntary Restoration



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Certificate of Satisfactory Restoration

Prepared and issued by the SWCD

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RO Non-Compliance

The landowner does not comply with the RO. Now what?

- Enforcement will work with you!
 - CO Sends a Letter
 - CO Makes a Phone call
 - Deed restriction in some cases
 - Landowner Served a Criminal Citation
 - Court

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Contractors Responsibility

- Prior to working they:
- Must have obtained signed statement from landowner
- Mailed a copy to the LGU
- They do not need to verify if the landowner has a permit or not. Just have the signed form and mailed it.

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Appeals

- Landowner has 30 days to appeal Order
- RO must allow >30 days to comply with Order

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Which of the following is not a LGU's role in administering the WCA:

- a) Make decisions on applications made under the WCA
- b) Completely fill out a joint application for the landowner
- c) Coordinate TEP meetings when needed
- d) Provide knowledgeable and trained staff

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Which of the following is not a LGU's role in administering the WCA:

- a) Make decisions on applications made under the WCA
- b) **Completely fill out a joint application for the landowner**
- c) Coordinate TEP meetings when needed
- d) Provide knowledgeable and trained staff

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Sometimes referred to as the "60 day Rule", this Minnesota State Statute determines the agency action deadline for all WCA LGUs to make a decision on a wetland application:

- a)MN Statute 8420
- b)MN Statute 15.99
- c)MN Statute 404
- d)MN Statute 103G

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- a)MN Statute 8420
- b)MN Statute 15.99
- c)MN Statute 404
- d)MN Statute 103G

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For a project in a shoreland area, the Technical Evaluation Panel consists of:

- a)The LGU, Army Corps and DNR.
- b)The LGU, SWCD, BWSR and Army Corps.
- c)The LGU, SWCD, BWSR and DNR.
- d)The Army Corps and DNR.

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For a project in a shoreland area, the Technical Evaluation Panel consists of:

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- b)The LGU, SWCD, BWSR and Army Corps.
- c)The LGU, SWCD, BWSR and DNR.
- d)The Army Corps and DNR.

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