

## CHAPTER 8420

### BOARD OF WATER AND SOIL RESOURCES

### WETLAND CONSERVATION

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**NOTE:** Chapter 8420 was amended by exempt rules adopted at 20 SR 2629. These amendments are not included in this text. The amendments are effective for two years from the date of publication in the State Register (June 10, 1996) unless superseded by permanent rules. Laws 1996, chapter 462, section 39.

#### PURPOSE AND DEFINITIONS

##### 8420.0100 PURPOSE.

This chapter implements the Wetland Conservation Act of 1991, Laws of Minnesota 1991, chapter 354, as amended by Laws 1993, chapter 175. This chapter shall be interpreted to implement the purpose of the act, which is to:

A. achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;

B. increase the quantity, quality, and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;

C. avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of wetlands; and

D. replace wetland values where avoidance of activity is not feasible and prudent.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

##### 8420.0105 SCOPE.

After July 26, 1993, wetlands must not be drained or filled wholly or partially unless replaced by restoring or creating wetland areas of at least equal public value, except that a local government unit may elect to operate under Article 7 of the act, Minnesota Statutes, section 103G.2369, after July 1, 1993, but not beyond December 31, 1993.

This chapter does not prevent the use of the bed of wetlands for pasture or cropland during dry periods if dikes, ditches, tile lines, or buildings are not constructed and the agricultur-

al use does not result in the drainage of the wetlands. This chapter does not prevent filling a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage. This chapter does not prevent control of noxious weeds if the control does not drain or fill the wetland. This chapter does not prevent excavation in wetlands if done in a manner such that the wetlands are not wholly or partially drained or filled.

This chapter does not apply to the public waters and public waters wetlands as defined in Minnesota Statutes, section 103G.005, subdivisions 15 and 15a, which have been inventoried by the commissioner according to Minnesota Statutes, section 103G.201. This chapter is in addition to other regulations including those of the United States Army Corps of Engineers, United States Department of Agriculture, Minnesota state agencies, watershed districts, and local governments.

This chapter does not apply to peat mining as defined in Minnesota Statutes, section 93.461, which is subject to the permit to mine and reclamation requirements of Minnesota Statutes, sections 93.44 to 93.51, and the rules of the commissioner adopted under those sections.

This chapter does not require state agencies to obtain local government unit approvals. However, state agencies shall coordinate with local government units when conducting activities in wetlands within the jurisdiction of the local government unit. The state agencies shall follow the same sequencing and replacement requirements as prescribed by this chapter.

In addition to the provisions of this chapter, governmental decisions on draining and filling of wetlands are subject to Minnesota Statutes, chapters 116B and 116D, which provide that an action which is likely to have material adverse effects on natural resources must not be allowed if there is a feasible and prudent alternative consistent with the requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its natural resources. Economic considerations alone do not justify adversely effective actions.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.335*

**History:** *18 SR 274; L 1996 c 462 s 43*

#### **8420.0110 DEFINITIONS.**

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Act.** "Act," when not used in reference to a specific state or federal act, means the Wetland Conservation Act of 1991, Laws 1991, chapter 354, as amended by Laws 1993, chapter 175.

Subp. 3. **Activity.** "Activity" means draining or filling a wetland wholly or partially.

Subp. 4. **Agricultural land.** "Agricultural land," for use in part 8420.0120, subparts 7 and 8, means land devoted to the production of horticultural, row, close grown, introduced pasture, introduced hayland crops, and growing nursery stock.

For use in all other places in this chapter, agricultural land means land devoted to the production of horticultural, row, close grown, introduced pasture, and introduced hayland crops, and to the pasturing of livestock and dairy animals, growing nursery stock, and animal feedlots, and shall include contiguous land and buildings under the same ownership associated with the production of the above, for example, farmyards.

Subp. 5. **Agricultural Stabilization and Conservation Service or ASCS.** "Agricultural Stabilization and Conservation Service" or "ASCS" means an agency of the United States Department of Agriculture.

Subp. 6. **Aquaculture.** "Aquaculture" means to cultivate plants and animals in water for harvest, including hydroponics and raising fish in fish farms.

Subp. 7. **Best management practices.** "Best management practices" means state-approved and published practices associated with draining, filling, or replacing wetlands that are capable of preventing and minimizing degradation of surface water and groundwater.

Subp. 8. **Board.** "Board" means the board of water and soil resources under Minnesota Statutes, section 103B.101.

Subp. 9. **City.** "City" means a home rule charter or statutory city.

Subp. 10. **Commissioner.** "Commissioner" means the commissioner of the Department of Natural Resources.

Subp. 11. **Creation.** "Creation" means construction of wetlands in an area that was not wetlands in the past.

Subp. 12. **Day.** "Day" means working days when used in a time period of 15 days or less and calendar days when used in a time period greater than 15 days. The day of the event shall not be used in counting any period of time.

Subp. 13. **Department.** "Department" means the Department of Natural Resources.

Subp. 14. **Ditch.** "Ditch" means an open channel to conduct the flow of water, as defined in Minnesota Statutes, section 103E.005, subdivision 8.

Subp. 15. **Drain or drainage.** "Drain" or "drainage" means any method for removing or diverting waters from wetlands. The methods shall include, but are not limited to, excavation of an open ditch, installation of subsurface drainage tile, filling, diking, or pumping.

Subp. 16. **Drainage system.** "Drainage system" means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets.

Subp. 17. **Excavation.** "Excavation" means the displacement or removal of the sediment or other materials by any method.

Subp. 18. **Fill.** "Fill" means any solid material added to or redeposited in a wetland that would alter its cross-section or hydrological characteristics, obstruct flow patterns, change the wetland boundary, or convert the wetland to a nonwetland. It does not include posts and pilings for linear projects such as bridges, elevated walkways, or powerline structures, or structures traditionally built on pilings such as docks and boathouses. It does include posts and pilings that result in bringing the wetland into a nonaquatic use or significantly altering the wetland's functions and values, such as the construction of office and industrial developments, parking structures, restaurants, stores, hotels, multifamily housing projects, and similar structures. It does not include slash or woody vegetation, if the slash or woody vegetation originated from vegetation growing in the wetland and does not impair the flow or circulation of water or the reach of the wetland.

Subp. 19. **Floodplain wetland.** "Floodplain wetland" means a wetland located in the floodplain of a watercourse, with no well defined inlets or outlets, including tile systems, ditches, or natural watercourses. This may include the floodplain itself when it exhibits wetland characteristics.

Subp. 20. **Flow-through wetland.** "Flow-through wetland" means a wetland with both a well defined outlet and one or more well defined inlets, including tile systems, ditches, or natural watercourses.

Subp. 21. **Hydric soils.** "Hydric soils" means soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

Subp. 22. **Hydrophytic vegetation.** "Hydrophytic vegetation" means macrophytic plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

Subp. 23. **Impact.** "Impact" means a loss in the quantity, quality, or biological diversity of a wetland caused by draining or filling.

Subp. 24. **Impacted wetland.** "Impacted wetland" means a wetland that has been drained or filled, partially or wholly, and is subject to replacement.

Subp. 25. **Infrastructure.** "Infrastructure" means storm water and sanitary sewer piping, outfalls, inlets, street subbase, roads, and ditches, culverts, bridges, and any other work defined specifically by a local government unit as constituting a capital improvement.

Subp. 26. **Introduced hayland.** "Introduced hayland" means an area devoted to the production of forage and cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the ten-year period before January 1, 1991. The ten-year period may be enlarged to the 20-year period before January 1, 1991, upon clear evidence of the qualifying practice in Agricultural Stabilization and Conservation Service or other aerial photographs or records, or the affidavit of a plant ecologist certified by the Ecological Society of America. These areas must be harvested by mechanical methods at

least two years during the period January 1, 1986 to January 1, 1991. These areas are considered to be in agricultural crop production.

Subp. 27. **Introduced pasture.** "Introduced pasture" means an area devoted to the production of forage and cultivated in a rotation of row crops or small grains or interseeded with introduced species at least twice during the ten-year period before January 1, 1991. The ten-year period may be enlarged to the 20-year period before January 1, 1991, upon clear evidence of the qualifying practice in ASCS or other aerial photographs or records, or the affidavit of a plant ecologist certified by the Ecological Society of America. These areas must be harvested by grazing at least two years during the period January 1, 1986 to January 1, 1991. These areas are considered to be in agricultural crop production.

Subp. 28. **Isolated wetland.** "Isolated wetland" means a wetland without well defined inlets or outlets, including tile systems, ditches, or natural watercourses.

Subp. 29. **Landowner.** "Landowner" means a person or entity having the rights necessary to drain or fill a wetland, or to establish and maintain a replacement or banked wetland. Typically, the landowner is a fee title owner or a holder of an easement, license, lease, or rental agreement providing the necessary rights. The right must not be limited by a lien or other encumbrance that could override the obligations assumed with the replacement or banking of a wetland.

Subp. 30. **Local government unit.** "Local government unit" means:

A. outside of the seven-county metropolitan area, a city council or county board of commissioners or their delegate;

B. in the seven-county metropolitan area, a city council, town board, or watershed management organization under Minnesota Statutes, section 103B.205, subdivision 13, or their delegate; and

C. in those cases where an activity or replacement will occur on state land, the agency with administrative responsibility for that land.

Subp. 31. **Mining.** "Mining" means the removal of peat and metallic minerals as provided in Minnesota Statutes, sections 93.461 and 93.481.

Subp. 32. **Nondegraded wetland.** "Nondegraded wetland" means a wetland that has not been partially drained or filled by human activities.

Subp. 33. **Pasture.** "Pasture" means land used for grazing by domestic livestock.

Subp. 34. **Peace officer.** "Peace officer" has the meaning given it in Minnesota Statutes, section 626.84.

Subp. 35. **Project.** "Project" means an action or series of actions necessary to accomplish an ultimate purpose and that will cause a physical manipulation of the environment, directly or indirectly. Draining or filling of wetlands may be a component of a project.

Subp. 36. **Project-specific.** "Project-specific" means the applicant for the replacement plan approval will construct the replacement as part of the project, rather than obtain the replacement from a wetland bank.

Subp. 37. **Public transportation project.** "Public transportation project" means a project conducted by a public agency involving transportation facilities open to the public.

Subp. 38. **Public value of wetlands.** "Public value of wetlands" means the public benefit and use of wetlands for water quality, floodwater retention, public recreation, commercial uses, and other public uses.

Subp. 39. **Public waters wetlands.** "Public waters wetlands" means all types 3, 4, and 5 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition), that were inventoried by the department as public waters under Minnesota Statutes, section 103G.201.

Subp. 40. **Replacement wetland.** "Replacement wetland" means a wetland restored or created to replace public values lost at an impacted wetland.

Subp. 41. **Restoration.** "Restoration" means reestablishment of an area that was historically wetlands but currently provides no or minimal wetland functions due to manmade alteration such as filling or drainage.

Subp. 42. **Right-of-way acreage.** "Right-of-way acreage" has the meaning given it in Minnesota Statutes, section 103E.285, subdivision 6.

Subp. 43. **Riverine wetland.** "Riverine wetland" means a wetland contained within the banks of a channel that may contain moving water or that forms a connecting link between two bodies of standing water.

Subp. 44. **Set aside.** "Set aside" means the cropland acreage annually retired as a condition to landowner participation in United States Department of Agriculture commodity programs.

Subp. 45. **Silviculture.** "Silviculture" means the scientific management of forest trees.

Subp. 46. **Soil and water conservation district.** "Soil and water conservation district" means a legal subdivision of state government under Minnesota Statutes, chapter 103C.

Subp. 47. **Soil Conservation Service.** "Soil Conservation Service" means an agency of the United States Department of Agriculture.

Subp. 48. **Tributary wetland.** "Tributary wetland" means a wetland with a well defined outlet, including tile systems, ditches, or natural watercourses, but without a well defined inlet.

Subp. 49. **Utility.** "Utility" means a sanitary sewer, storm sewer, potable water distribution, and transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications.

Subp. 50. **Watershed.** "Watershed" means the 81 major watershed units delineated by the map "State of Minnesota Watershed Boundaries - 1979" as produced by the Minnesota Department of Natural Resources, Office of Planning and Research, Water Policy Planning Program, with funding from the Legislative Commission on Minnesota Resources.

Subp. 51. **Watershed management organization.** "Watershed management organization" means a watershed district wholly within the metropolitan area or a joint powers entity established wholly or partly within the metropolitan area by special law or by agreement that performs some or all of the functions of a watershed district for a watershed and that has the characteristics and the authority specified under Minnesota Statutes, section 103B.211. Lake improvement or conservation districts are not watershed management organizations.

Subp. 52. **Wetlands, a wetland, the wetland, or wetland area.**

A. "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water.

For purposes of this subpart, wetlands must:

- (1) have a predominance of hydric soils;
- (2) be inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- (3) under normal circumstances, support a prevalence of hydrophytic vegetation.

B. "A wetland" or "the wetland" means a distinct hydrologic feature with characteristics of item A, surrounded by nonwetland and including all contiguous wetland types, except those connected solely by riverine wetlands. "Wetland area" means a portion of "a wetland" or "the wetland."

C. Wetlands does not include public waters wetlands and public waters that are designated on the public waters inventory maps prepared under Minnesota Statutes, section 103G.201.

Subp. 53. **Wetlands in a cultivated field.** "Wetlands in a cultivated field" means a wetland where greater than 50 percent of its boundary abuts land that was in agricultural crop production in six of the ten years before January 1, 1991.

Subp. 54. **Wetlands located on agricultural land.** "Wetlands located on agricultural land" means a wetland where greater than 50 percent of its boundary abuts agricultural land.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

#### 8420.0112 INCORPORATION BY REFERENCE.

This rule incorporates by reference the following documents:

United States Fish and Wildlife Service Circular No. 39 (1971 edition).

Federal Manual for Identifying and Delineating Jurisdictional Wetlands (January 1989).

Cowardin, et al. 1979, Classification of Wetlands and Deepwater Habitats of the United States.

Criteria and Guidelines for Assessing Geologic Sensitivity of Groundwater Resources in Minnesota (Minnesota Department of Natural Resources, 1991).

United States Geological Survey Hydrologic Unit Map for Minnesota.

Minnesota Wetland Evaluation Methodology.

State of Minnesota Watershed Boundaries – 1979 (a map).

National Wetland Inventory maps (United States Fish and Wildlife Service).

Anderson and Craig, 1984, Growing Energy Crops on Minnesota Wetlands: The Land Use Perspective.

These documents are available through the Minitex interlibrary loan system, except the National Wetland Inventory maps, which are available at Minnesota soil and water conservation district offices. None of the documents are subject to frequent change.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

#### **8420.0115 SCOPE OF EXEMPTION STANDARDS.**

When considering if a drain or fill activity qualifies for an exemption listed in a specified clause of Minnesota Statutes, section 103G.2241, subdivision 1, the exemption standards in part 8420.0120 apply.

An activity is exempt if it qualifies for any one of the exemptions, even though it may be indicated as not exempt under another exemption.

These exemptions do not apply to calcareous fens as identified by the commissioner.

No exemptions apply to wetlands that have been previously restored or created as a result of an approved replacement plan. All such wetlands are subject to replacement on subsequent drainage or filling.

Nonexempt wetlands cannot be partially drained or filled in order to claim an exemption or no-loss determination on the remainder. Therefore, no exemptions or no-loss determinations can be applied to the remaining wetland that would not have been applicable before the impact.

Present and future owners of wetlands drained or filled without replacement under an exemption in part 8420.0120, subparts 1, 2, 4, 7, 8, and 23, can make no use of the wetland area after it is drained or filled, other than as agricultural land, for ten years after the draining or filling, unless it is first replaced under the requirements of Minnesota Statutes, section 103G.222, paragraph (g). Also, for ten years the wetland may not be restored for replacement credit. At the time of draining or filling, the landowner shall record a notice of these restrictions in the office of the county recorder for the county in which the project is located. At a minimum, the recorded document must contain the name or names of the landowners, a legal description of the property to which the restrictions apply, a statement of the restrictions, the date on which the ten-year period expires, the name of the local government which certified the exemption, if such occurred, the signatures of all owners, and an acknowledgment.

A person conducting an activity in a wetland under an exemption in part 8420.0120 shall ensure that:

A. appropriate erosion control measures are taken to prevent sedimentation of the water;

B. the activity does not block fish activity in a watercourse; and

C. the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under Minnesota Statutes, chapter 103H.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.0120 EXEMPTION STANDARDS.**

Subpart 1. **Exemption (1).** A replacement plan for wetlands is not required for:

(1) activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was required to be set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991.

Documentation, such as Agricultural Stabilization and Conservation Service aerial photographs, Agricultural Stabilization and Conservation Service form 578 or equivalent, United States Department of Agriculture records, or affidavit of landowner must be required by the local government unit to show and use as evidence for this exemption.

Set aside land used for this exemption must be wetland types 1 and 2.

Subp. 2. **Exemption (2).** A replacement plan for wetlands is not required for:

(2) activities in a wetland that is or has been enrolled in the federal conservation reserve program under United States Code, title 16, section 3831, that:

(i) was planted with annually seeded crops, was in a crop rotation seeding, or was required to be set aside to receive price support or payment under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to being enrolled in the program; and

(ii) has not been restored with assistance from a public or private wetland restoration program.

Federal documentation that the wetland is or has been enrolled in the federal conservation reserve program may be used as evidence for the exemption. The landowner must also meet the same requirements of subpart 2 for the exemption stated in Minnesota Statutes, section 103G.2241, subdivision 1, clause (1), except that the years required are at least six of the ten years preceding the year of enrollment in the conservation reserve program. The landowner must also state in writing that the wetland was not restored with assistance from a public or private wetland restoration fund, or that the restoration was done under a contract or easement providing the landowner with the right to drain the restored wetland.

Subp. 3. **Exemption (3).** A replacement plan for wetlands is not required for:

(3) activities necessary to repair and maintain existing public or private drainage systems as long as wetlands that have been in existence for more than 20 years are not drained.

This exemption allows maintenance which fills wetlands that have been in existence for more than 20 years when the wetlands are located within the right-of-way acreage of the ditch or within a one rod width on either side of the top of the ditch, whichever is greater, and the filling is limited to the side casting of spoil materials resulting from the maintenance and the spoil deposition area is permanently seeded into grass after maintenance activities are completed.

The owner must provide documentation that the wetlands which will be partially or completely drained by the maintenance have not existed for more than 20 years.

Aerial photographs from two years of normal or wetter than normal water level conditions showing no wetland are one form of acceptable documentation. If aerial photographs are unavailable, a sworn affidavit may be submitted. Otherwise, the landowner must show that the maintenance will not reduce the wetland from what it was 20 years ago or more.

This exemption includes lowering the elevation of previously placed tile when made necessary by land subsidence provided the lowering does not drain wetlands.

Subp. 4. **Exemption (4).** A replacement plan for wetlands is not required for:

(4) activities in a wetland that has received a commenced drainage determination provided for by the federal Food Security Act of 1985, that was made to the county agricultural stabilization and conservation service office prior to September 19, 1988, and a ruling and any subsequent appeals or reviews have determined that drainage of the wetland had been commenced prior to December 23, 1985.

The landowner must provide Agricultural Stabilization and Conservation Service documents confirming that the county agricultural stabilization and conservation service office determined before September 19, 1988, that drainage had begun before December 23, 1985, and that the determination has not been overturned by subsequent appeal or review and is not currently under administrative review.

Subp. 5. **Exemption (5).** A replacement plan for wetlands is not required for:

(5) activities exempted from federal regulation under United States Code, title 33, section 1344(f).

The local government unit may certify the exemption only if the landowner furnishes proof of qualification for one of the exemptions from the United States Army Corps of Engineers.

This exemption does not apply to a project with the purpose of converting a wetland to a nonwetland, either immediately or gradually, or converting the wetland to another use, or when the fill will result in significant discernible change to the flow or circulation of water in the wetland, or partly draining it, or reducing the wetland area.

Subp. 6. **Exemption (6).** A replacement plan for wetlands is not required for:

(6) activities authorized under, and conducted in accordance with, an applicable general permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, except the nationwide permit in Code of Federal Regulations, title 33, section 330.5, paragraph (a), clause (14), limited to when a new road crosses a wetland, and all of clause (26).

This exemption is for nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, and 25 issued under Code of Federal Regulations, title 33, section 330.5. The local government unit may certify such an exemption only if the applicant furnishes proof of qualification for one of these nationwide permits from the United States Army Corps of Engineers. Nationwide permit 14 for a new road does not qualify for this exemption, nor do nationwide permits under numbers not listed in this exemption.

To qualify for a nationwide permit, the applicant for a United States Army Corps of Engineers permit must meet any regional conditions imposed by the United States Army Corps of Engineers, and must obtain from the Minnesota Pollution Control Agency an individual section 401 certification when required.

Subp. 7. **Exemption (7).** A replacement plan for wetlands is not required for:

(7) activities in a type 1 wetland on agricultural land, as defined in United States Fish and Wildlife Circular No. 39 (1971 edition) except for bottomland hardwood type 1 wetlands.

The landowner must provide the same proofs required by the first paragraph of subpart 1, for lands abutting at least 50 percent of the wetland's boundary. The local government unit may seek the advice of the technical panel as to whether the wetland is a type 1 wetland not of the bottomland hardwood type.

The type of the wetland must be determined according to United States Fish and Wildlife Service Circular No. 39 (1971 edition). Alternatively, the type of the wetland can be determined from the Cowardin (et al. 1979) classification system: PEM1A, PEMA, PEMJ, and PEMIJ may be considered to be a type 1 wetland.

This exemption applies if the wetland is all type 1 wetland, or is a combination of types 1 and 2 wetlands, on agricultural land, and the type 2 wetland area is less than two acres.

Subp. 8. **Exemption (8).** A replacement plan for wetlands is not required for:

(8) activities in a type 2 wetland that is two acres in size or less located on agricultural land.

The landowner must provide the same material as required from the landowner by subpart 7. The local government unit may seek the advice of the technical panel as to whether the wetland is a type 2 wetland, two acres or less in size.

The wetland size is the area within its boundary. The boundary must be determined according to the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989). The type of the wetland must be determined according to United State Fish and Wildlife Service Circular No. 39 (1971 edition). Alternatively, type can be determined from the Cowardin (et al. 1979) classification system: PEM1B and PEMB may be considered to be a type 2 wetland.

This exemption applies if the wetland is a type 2 wetland, or is a combination of types 1 and 2 wetlands, on agricultural land, and the type 2 wetland area is less than two acres.

Subp. 9. **Exemption (9).** A replacement plan for wetlands is not required for:



(9) activities in a wetland restored for conservation purposes under a contract or easement providing the landowner with the right to drain the restored wetland.

The landowner must provide a contract or easement conveyance or affidavit demonstrating that the landowner or a predecessor restored the wetland for conservation purposes but retained the right to subsequently drain the restored wetland.

Subp. 10. **Exemption (10).** A replacement plan for wetlands is not required for:

- (10) activities in a wetland created solely as a result of:
  - (i) beaver dam construction;
  - (ii) blockage of culverts through roadways maintained by a public or private entity;
  - (iii) actions by public entities that were taken for a purpose other than creating the wetland; or
  - (iv) any combination of (i) to (iii).

Wetland areas created by beaver activities may be drained by removing those materials placed by beaver. Drainage is permitted by removing or moving materials blocking installed roadway culverts and drainage structures. Additional excavation or removal of other materials is not permitted unless it can be shown by aerial photographs that the proposed activity will not drain or fill wetland that was there before the beaver dam was built or the culvert became plugged.

Wetlands may be drained or filled if the landowner can show that the wetland was created solely by actions the purpose of which was not to create the wetland and were approved, permitted, funded, or overseen by a public entity.

Impoundments or excavations constructed in nonwetlands solely for the purpose of effluent treatment, storm water retention, soil and water conservation practices, and water quality improvements, and not as part of a compensatory wetland mitigation process that may, over time, take on wetland characteristics, are also exempted.

Subp. 11. **Exemption (11).** A replacement plan for wetlands is not required for:

(11) placement, maintenance, repair, enhancement, or replacement of utility or utility-type service, including the transmission, distribution, or furnishing, at wholesale or retail, of natural or manufactured gas, electricity, telephone, or radio service or communications if:

- (i) the impacts of the proposed project on the hydrologic and biological characteristics of the wetland have been avoided and minimized to the extent possible; and
- (ii) the proposed project significantly modifies or alters less than one-half acre of wetlands.

For new placement and enhancement of existing facilities, the utility must demonstrate that the character and extent of the impacts of the proposed project on the wetlands have been minimized and that the entire project will, cumulatively, drain or fill less than one-half acre of wetland.

For maintenance, repair, and replacement, the local government unit may issue a seasonal or annual exemption certification or the utility may proceed without local government unit certification if it is carrying out the work according to best management practices. Work of an emergency nature may proceed as necessary and any drain or fill activities shall be addressed with the local government unit after the emergency work has been completed.

Subp. 12. **Exemption (12).** A replacement plan for wetlands is not required for:

(12) activities associated with routine maintenance of utility and pipeline rights-of-way, provided the activities do not result in additional intrusion into the wetland.

This exemption is for maintenance, but not expansion, of the rights-of-way in which utilities are located. Spill remediation is not routine maintenance.

The local government unit may issue a seasonal or annual exemption certification or the utility may proceed if it is carrying out the work according to best management practices. Work of an emergency nature may proceed as necessary and any drain or fill activities shall be addressed with the local government unit after the emergency work has been completed.

Subp. 13. **Exemption (13).** A replacement plan for wetlands is not required for:

(13) alteration of a wetland associated with the operation, maintenance, or repair of an interstate pipeline within all existing or acquired interstate pipeline rights-of-way.

This exemption includes construction activities.

Subp. 14. **Exemption (14).** A replacement plan for wetlands is not required for:

(14) 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 activities do 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.

This exemption is for temporary-use roads constructed for the primary purpose of providing access for the conduct of silvicultural activities.

Subp. 15. **Exemption (15).** A replacement plan for wetlands is not required for:

(15) permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the access becoming a dike, drainage ditch or tile line; with filling avoided wherever possible; and there is no drainage of the wetland or public waters.

This exemption is the same as the exemption in subpart 14, except that it is for permanent forest roads which are roads constructed for the primary purpose of providing access for the conduct of silvicultural activities.

Subp. 16. **Exemption (16).** A replacement plan for wetlands is not required for:

(16) activities associated with routine maintenance or repair of existing public highways, roads, streets, and bridges, provided the activities do not result in additional intrusion into the wetland outside of the existing right-of-way.

This exemption does not prevent repairing washouts or adding material to the driving surface provided the road's occupancy of the wetland outside of the existing right-of-way does not increase.

Subp. 17. **Exemption (17).** A replacement plan for wetlands is not required for:

(17) emergency repair and normal maintenance and repair of existing public works, provided the activity does not result in additional intrusion of the public works into the wetland and do not result in the draining or filling, wholly or partially, of a wetland.

This exemption applies to public works other than roads, such as buildings and bridges.

Subp. 18. **Exemption (18).** A replacement plan for wetlands is not required for:

(18) normal maintenance and minor repair of structures causing no additional intrusion of an existing structure into the wetland, and maintenance and repair of private crossings that do not result in the draining or filling, wholly or partially, of a wetland.

This exemption applies to private structures, such as buildings and road crossings.

Subp. 19. **Exemption (19).** A replacement plan for wetlands is not required for:

(19) duck blinds.

This exemption allows floating duck blinds and blinds on poles or pilings. This exemption does not allow fill other than poles or pilings.

Subp. 20. **Exemption (20).** A replacement plan for wetlands is not required for:

(20) aquaculture activities including pond excavation and associated access roads and dikes 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, United States Code, title 33, section 1344, but not including buildings.

Subp. 21. **Exemption (21).** A replacement plan for wetlands is not required for:

(21) wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344.

Documentation demonstrating that the exemption applies may include showing possession of a United States Army Corps of Engineers permit for the project.

Subp. 22. **Exemption (22).** A replacement plan for wetlands is not required for:

(22) normal agricultural practices to control pests or weeds, defined by rule as either noxious or secondary weeds, in accordance with applicable requirements under state and federal law, including established best management practices.

This exemption does not allow diking, ditching, tiling, or filling, or other control practices that would result in the conversion of wetlands.

**Subp. 23. Exemption (23).** A replacement plan for wetlands is not required for:

(23) activities in a wetland that is on agricultural land annually enrolled in the federal Food, Agricultural, Conservation, and Trade Act of 1990, United States Code, title 16, section 3821, subsection (a), clauses (1) to (3), as amended, and is subject to sections 1421 to 1424 of the federal act in effect on January 1, 1991, except that land enrolled in a federal farm program is eligible for easement participation for those acres not already compensated under a federal program.

Documentation such as a written statement from the local Agricultural Stabilization and Conservation Service office that the proposed activity would not result in loss of eligibility for benefits under the farm program may be used as evidence for this exemption. If the activity would result in loss of eligibility, the landowner cannot qualify for the exemption by withdrawing from the program.

**Subp. 24. Exemption (24).** A replacement plan for wetlands is not required for:

(24) development projects and ditch improvement projects in the state that have received preliminary or final plat approval, or infrastructure that has been installed, or having local site plan approval, conditional use permits, or similar official approval by a governing body or government agency, within five years before July 1, 1991. In the seven-county metropolitan area and in cities of the first and second class, plat approval must be preliminary as approved by the appropriate governing body.

Subdividers who obtained preliminary plat approval in the specified time period, and other project developers with one of the listed approvals timely obtained, provided approval has not expired and the project remains active, may drain and fill wetlands, to the extent documented by the approval, without replacement. Those elements of the project that can be carried out without changing the approved plan and without draining or filling must be done in that manner. If wetlands can be avoided within the terms of the approved plan, they must be avoided.

For county, joint county, and watershed district ditch projects, this exemption applies to projects that received final approval in the specified time period.

**Subp. 25. Exemption (25).** A replacement plan for wetlands is not required for:

(25) activities that result in the draining or filling of less than 400 square feet of wetlands.

This exemption applies if the total wetland loss by draining and filling will be less than 400 square feet per year per landowner, and the cumulative impact by all persons on a wetland over time without replacement after January 1, 1992, does not exceed five percent of the wetland's area.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

## PROCEDURES

### 8420.0200 DETERMINING LOCAL GOVERNMENT UNIT.

The local government unit responsible for making exemption and no-loss determinations and approving replacement plans shall be determined according to items A to C.

A. Outside the seven-county metropolitan area, the local government unit is the county or city in which the drain or fill activity is located, or its delegate.

B. In the seven-county metropolitan area, the local government unit is the city, town, or water management organization regulating surface-water-related matters in the area in which the drain or fill activity is located, or its delegate. The watershed management plan adopted under Minnesota Statutes, section 103B.231, and related board rules will normally indicate the appropriate local government unit. Lacking an indication, the local government unit must be the city, town, or its delegate.

C. If the activity in a wetland is located in two jurisdictions, the local government unit shall be the one exercising zoning authority over the project or if both have zoning au-

thority, the one in which most of the wetland loss will occur. If no zoning permits are required, the local government unit shall be the one in which most of the wetland loss will occur. If an activity will affect wetlands in more than one local government unit, the board will coordinate the project review to ensure consistency and consensus among the local government units involved.

The board will resolve all questions as to which government entity is the responsible authority, applying the guidelines in items A to C.

Notwithstanding items A to C, the department shall be the approving authority for activities associated with projects requiring permits to mine under Minnesota Statutes, section 93.481.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

#### **8420.0210 EXEMPTION DETERMINATIONS.**

A landowner intending to drain or fill a wetland without replacement, claiming exemption under part 8420.0120, may contact the local government unit before beginning draining or filling activities for determination whether or not the activity is exempt. A landowner who does not request a determination may be subject to the enforcement provisions in part 8420.0290 and Minnesota Statutes, section 103G.2372. The local government unit must keep on file all documentation and findings of fact concerning exemption determinations for a period of ten years.

Local government units may offer exemption certificates as part of the wetland program within their jurisdiction. An exemption applies whether or not the local government unit chooses to issue certificates of exemption. If the wetland qualifies for an exemption, and the landowner requests a certificate of exemption, then the local government unit must issue one.

The landowner applying for exemption is responsible for submitting the proof necessary to show qualification for the particular exemption claimed.

The local government unit may place the decision authority for exemption applications with the zoning administrator, or establish other procedures it considers appropriate.

The local government unit decision shall be based on the exemptions standards in part 8420.0120. If the decision requires a finding of wetland size or type, the local government unit should seek the advice of the technical panel as described in part 8420.0240.

A landowner draining or filling a wetland under an exemption shall ensure that appropriate erosion control measures are taken to prevent sedimentation of the water, the drain or fill does not block fish passage, and the drain or fill is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under Minnesota Statutes, chapter 103H.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

#### **8420.0220 NO-LOSS DETERMINATIONS.**

A landowner unsure if proposed work will result in a loss of wetland may apply to the local government unit for a determination. A landowner who does not request a determination may be subject to the enforcement provisions in part 8420.0290 and Minnesota Statutes, section 103G.2372. The local government unit must keep on file all documentation and findings of fact concerning no-loss determinations for a period of ten years.

The landowner applying for a no-loss determination is responsible for submitting the proof necessary to show qualification for the claim.

The local government unit may place the decision authority for no-loss applications with the zoning administrator, or establish other procedures it considers appropriate.

The local government unit shall issue a no-loss certificate if the landowner requests and if either:

- A. the work will not drain or fill a wetland;

B. water level management activities will not result in the conversion of a wetland to another land use;

C. the activities are in a surface impoundment for containment of fossil fuel combustion waste or water retention, and are not part of a compensatory wetland mitigation program; or

D. the activity is being conducted as part of an approved replacement plan or is conducted or authorized by public agencies for the purpose of wetland restoration and the activity is restricted to placing fill in a previously excavated drainage system to restore a wetland to its original condition.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

#### **8420.0230 REPLACEMENT PLAN DETERMINATIONS.**

A landowner intending to drain or fill a wetland who does not qualify for an exemption or no-loss determination shall obtain approval of a replacement plan from the local government unit before beginning draining or filling. A person who does not do so is subject to the enforcement provisions in this chapter and Minnesota Statutes, section 103G.2372.

The local government unit may use its usual notice and comment procedures on the application for approval of a replacement plan if, within ten days of receipt of the application, the local government unit mails a copy of the application and an invitation to submit comments to the board, which will publish it in the Environmental Quality Board Monitor; members of the public who have requested a copy; the soil and water conservation district; the watershed district or water management organization, if there is one; the county board; mayors of cities within the watershed; and the commissioners of agriculture and natural resources. At the same time, the local government unit shall publish notice of the application with an invitation for comment in a general circulation newspaper in the area affected.

The local government unit shall not make its decision before 30 days and not more than 60 days have elapsed from the mailing of notice, publication in the Environmental Quality Board Monitor, when required, or publication in the newspaper, whichever is later. The local government unit decision shall not be effective until 30 days after a copy of the decision has been mailed to the Environmental Quality Board Monitor for publication, when required, and mailed to the same list specified above for notice of the application, and to the applicant. The mailing to the applicant shall be by registered mail and must advise that the decision is not effective for 30 days, and is stayed if it is appealed.

Publication in the Environmental Quality Board Monitor of replacement plan applications and decisions is required, except for the fill activities described in the next paragraph, when the local government unit publishes a general notice in the Environmental Quality Board Monitor that it will not be publishing notice of such individual activities, but will instead provide mailed notice of each project to anyone asking to be put on the local government unit's mailing list for such projects. This notice must be published not less often than once every year. The notice must advise how persons may submit their names and addresses to be put on the mailing list.

Projects eligible for this form of Environmental Quality Board Monitor notice are all those which will fill less than one-tenth acre of wetland; and all those which will fill less than one-quarter acre of wetland, and result from a private road fill or the construction or expansion of a single-family dwelling unit or a farm building when the project cannot be modified so as to avoid the fill.

The local government unit decision shall be based on the replacement standards in parts 8420.0500 to 8420.0630, and on the technical determination of the technical evaluation panel concerning the public values, location, size, and type of the wetland being altered. The local government unit shall consider the recommendation of the technical evaluation panel to approve, modify, or reject the proposed replacement plan.

For wetland replacement plans involving more than one local government unit, approval of all local government units involved or as specified in part 8420.0200 shall constitute final approval of the replacement plan and is required before the project may proceed. The local government unit with jurisdiction for the impact site must approve all components of

the replacement plan, following the procedures in parts 8420.0500 to 8420.0630. The local government unit with jurisdiction for the replacement site shall limit the review to evaluation of the replacement site as in parts 8420.0540 to 8420.0630 and make a decision accordingly.

As part of the approval of the replacement plan, the local government unit with jurisdiction for the replacement site assumes responsibility for ensuring compliance with monitoring provisions according to parts 8420.0600 to 8420.0630. The local government unit with jurisdiction for the replacement site may enter into joint powers agreements with a local government unit with jurisdiction for the impact site, assess fees, or develop other procedures considered necessary to facilitate the process.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

#### **8420.0235 WETLAND BANKING PROCEDURES.**

For wetland banking procedures, refer to parts 8420.0700 to 8420.0760. Appeals of the local government unit banking decisions are taken according to part 8420.0250.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

#### **8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.**

For each local government unit, there is a technical evaluation panel of three persons: a technical professional employee of the board, a technical professional employee of the soil and water conservation district of the county in which the activity is occurring, and a technical professional with expertise in water resources management appointed by the local government unit. One member selected by the local government unit shall act as the contact person and coordinator for the panel. Two members of the panel must be knowledgeable and trained in applying methodologies of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (January 1989), and evaluation of public values. The technical evaluation panel may invite additional wetland experts to help the panel in its work.

The panel shall make technical determinations on questions of public values, location, size, and type for replacement plans if requested to do so by the local government unit, the landowner, or a member of the technical evaluation panel. The panel may review replacement plans and recommend to the local government unit either approval, approval with changes or conditions, or rejection. The panel shall make no determinations or recommendations without at least one member having made an on-site inspection. Panel determinations and recommendations must be endorsed by at least two of the three members.

If the local government unit has a comprehensive wetland management plan that delineates location, size, and type for all wetlands, approved by the technical evaluation panel, and subsequently incorporated into local ordinance, then the local government unit can make determinations in place of the technical evaluation panel.

The panel, or one of its members when so authorized by all of the members, may assist the local government unit in making wetland size and type determinations when asked to do so by the local government unit as part of making an exemption or no-loss determination.

If requested by the local government unit, the landowner, or a member of the technical evaluation panel, the panel shall answer technical questions or participate in the monitoring of replacement wetlands according to parts 8420.0600 to 8420.0630, and shall similarly participate in the monitoring of banked wetlands according to parts 8420.0700 to 8420.0760.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

#### **8420.0245 OTHER LOCAL GOVERNMENT UNIT WETLAND RULES AND ORDINANCES.**

This chapter and the act provide minimum standards. Local government units may require more procedures and more wetland protection, but not less.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.0250 APPEAL OF LOCAL GOVERNMENT UNIT DECISIONS.**

Subpart 1. **Appeal of replacement plan decisions.** The decision of a local government unit to approve, approve with conditions, or reject a replacement plan, becomes final if not appealed to the board within 30 days after the date on which the decision is mailed to those required to receive notice of the decision.

Appeal may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located.

Appeal is effective upon mailing of the notice of appeal to the board with an affidavit that a copy of the notice of appeal has been mailed to the local government unit. The local government unit shall then mail a copy of the notice of the appeal to all those to whom it was required by part 8420.0230 to mail a copy of the notice of decision.

**Subp. 2. Appeal of exemption and no-loss determinations.**

A. An exemption or no-loss determination may be appealed to the board by the landowner after first exhausting all local administrative appeal options.

B. Those required to receive notice of replacement plan decisions as provided for in part 8420.0230 may petition the board to hear an appeal from an exemption or no-loss determination. The board shall grant the petition unless it finds that the appeal is meritless, trivial, or brought solely for the purposes of delay. In determining whether to grant the appeal, the board shall also give consideration to the size of the wetland, other factors in controversy, any patterns of similar acts by the local government unit or landowner or petitioner, and the consequences of the delay.

C. The determination of the local government unit on the exemption or no-loss application is final unless an appeal or petition is mailed to the board within 30 days after the decision is mailed to the landowner. The appeal or petition must be accompanied by an affidavit that a copy has been sent to the local government unit, and to the landowner if it is a petition.

Subp. 3. **Board appeal procedures.** The appeal will be decided by the board within 60 days after receiving the notice of appeal and affidavit or granting the petition. Parties to the appeal are the appellant, the local government unit, and in the case of replacement plan appeals, all those required to receive notice of the local government unit decision.

Upon appeal, the local government unit shall forward to the board the record on which it based its decision. The board will make its decision on the appeal after hearing. Thirty days' notice of the hearing shall be given by the board to the parties. The parties may present written and oral argument. When the local government unit has made formal findings contemporaneously with its decision and there is an accurate verbatim transcript of the proceedings and the proceedings were fairly conducted, the board will base its review on the record. Otherwise it may take additional evidence, or remand the matter.

The board will affirm the local government unit's decision if the local government unit's findings of fact are not clearly erroneous; if the local government unit correctly applied the law to the facts, including this chapter; and if the local government unit made no procedural errors prejudicial to a party. Otherwise, the board will reverse the decision, amend it, or remand it with instructions for further proceedings.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.0260 PENALTY FOR LOCAL GOVERNMENT UNIT FAILURE TO APPLY LAW.**

The board shall send copies of this chapter to all local government units at least 60 days before July 1, 1993. By January 1, 1994, each local government unit of the state, except tribal lands, shall acknowledge to the board that it is assuming its responsibilities under this chapter and the act. Local government units from which an affirmative response is not received will be given notice by the board that there is a 60-day moratorium in the local government unit's jurisdiction on exemption, no-loss, replacement plan, and banking determinations. The board will end the moratorium within the 60 days upon agreement by the local government unit that it will assume its duties under this chapter and the act. If at the end of the initial 60-day moratorium an agreement has not been made for the local government unit to apply

the law, the board can extend the moratorium until the local government unit agrees to apply the law.

If the board has information that a local government unit is not following this chapter or the act in making exemption, no-loss, replacement plan, or banking determinations, the board shall notify the local government unit of its concerns. If not satisfied with the local government unit's response, the board shall ask the local government unit to appear at a hearing before the board to discuss the matter. If it is determined at the hearing, that corrective action is necessary, the board shall write the local government unit directing specific corrective action within 60 days. The notice shall explain the reason for the action.

If, after the 60-day period described in this part the local government unit has not corrected the problem to the satisfaction of the board, the board shall take appropriate legal action to ensure compliance.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

#### **8420.0270 COMPENSATION.**

Replacement plan applicants who have completed the local government unit process and the board appeal process, and the plan has not been approved as submitted, may apply to the board for compensation under Minnesota Statutes, section 103G.237.

The application must identify the applicant, locate the wetland, and refer the board to its appeal file in the matter.

The application must include an agreement that in exchange for compensation the applicant will convey to the state a perpetual conservation easement in the form required by Minnesota Statutes, section 103F.516. The applicant must provide an abstract of title demonstrating the ability to convey the easement free of any prior title, lien, or encumbrance. Failure to provide marketable title negates the state's obligation to compensate.

The applicant must submit official documentation from the United States Army Corps of Engineers, the Minnesota Pollution Control Agency, the watershed district or water management organization if any, the county, and the town or city, as applicable, that the proposed drain or fill activity and the proposed subsequent use of the wetland are lawful under their respective legal requirements.

The landowner must demonstrate that the proposed drain or fill is a feasible and prudent project and that the replacement plan as proposed is a reasonable good faith effort to fulfill the replacement requirements of parts 8420.0500 to 8420.0630 and the act.

If the plan was approved, but with conditions or modifications, the applicant must show that the conditions or modifications make the replacement unworkable or not feasible. A plan is unworkable or not feasible if the replacement must be on land that the applicant does not own, the applicant has made good faith efforts to acquire a replacement site and not succeeded, and there is not a qualifying replacement available in a wetland bank. A plan is also unworkable or not feasible if it is not possible to carry out for engineering reasons. The applicant must show that not going ahead with the proposed project will cause the applicant damages and that disallowing the proposed use will enhance the public values of the wetland.

The applicant must submit the requirements in this part in writing, by certified mail, to the board. If the applicant wants to make oral argument to the board, it must be indicated as part of the application. The board may require that the applicant appear before the board.

If the board finds that the applicant has submitted a complete application and proved the requirements in this part, the board shall compensate the applicant as required by law within 90 days after the board received a completed application, provided that within the same time period the applicant must convey to the board a conservation easement in the form required by Minnesota Statutes, section 103F.516. If the board does not provide the required compensation in exchange for the conservation easement, the applicant may drain or fill the wetland in the manner proposed, without replacement.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*



**8420.0280 APPEAL FROM BOARD DECISIONS.**

An appeal of a board decision is taken to the state court of appeals and must be considered an appeal from a contested case decision for purposes of judicial review under Minnesota Statutes, sections 14.63 to 14.69.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.0290 ENFORCEMENT PROCEDURES.**

**Subpart 1. Enforcing authorities.** The commissioner, conservation officers, and other peace officers may issue cease and desist orders and restoration and replacement orders.

**Subp. 2. Cease and desist orders.** Site-specific cease and desist orders may be issued when the enforcement authority has probable cause that a drain or fill activity is being or has been conducted in a wetland and does not qualify for an exemption or a no-loss determination under parts 8420.0210 and 8420.0220 and is being or has been conducted without prior approval of a replacement plan by a local government unit under part 8420.0230.

A cease and desist order must not be issued if the landowner has a valid certificate of exemption or no-loss from the local government unit, or has evidence to support an exemption. Otherwise:

A. the enforcement authority may issue a cease and desist order upon discovery of the drain or fill activity;

B. the order may be withheld to give the landowner time to produce the evidence required by part 8420.0120 to the enforcement authority of qualification for an exemption or no-loss determination; or

C. a cease and desist order may be issued with an effective date three weeks from the date of issuance. The enforcement authority shall exercise this option when the enforcement authority cannot readily make a determination on the facts and circumstances to deny a landowner's claim of exemption or no-loss, and continued drain or fill activity would not cause irreparable harm to the wetland.

The enforcement authority shall advise the landowner that the landowner's application, if any, for an exemption or no-loss determination, should be made immediately to the local government unit and that whatever drain and fill work the landowner has done may require restoration according to a restoration plan designed by the soil and water conservation district, if the application for exemption or no-loss determination is denied.

The enforcement authority issuing a cease and desist order shall promptly submit copies to the soil and water conservation district, local government unit, and department.

If an application for an exemption or no-loss determination is triggered by a cease and desist order, the local government unit or the technical evaluation panel shall make a decision within three weeks from the date of the application. The local government unit or technical evaluation panel shall review evidence of exemption or no-loss produced by the landowner, inspect the site if necessary, and determine:

(1) if the area in question is a wetland; and

(2) if the activity qualifies for an exemption or no-loss determination under parts 8420.0210 and 8420.0220.

In cases where the cease and desist order has been issued to a local government unit, the determination of exemption or no-loss shall be made by the board.

If the decision is that the activity is exempt or results in a no-loss determination, the decision maker shall issue a certificate of exemption or no-loss, request that the enforcement authority rescind the cease and desist order, and notify the soil and water conservation district, the department, and the landowner.

If the application is denied, the decision-maker shall immediately notify the soil and water conservation district, the department, the enforcement authority, and the landowner.

**Subp. 3. Restoration and replacement orders.** The enforcement authority shall issue a restoration order or replacement order when the drain or fill has already been completed when discovered, or after a cease and desist order has been issued and the landowner does not seek an exemption or no-loss determination within three weeks, or the local government unit denies the application.

Promptly upon being informed by the enforcement authority of the need, the soil and water conservation district staff person shall inspect the site and prepare a plan in consultation with the local government unit for restoring the site to its prealtered condition, unless the soil and water conservation district person concludes that restoration is impossible. The soil and water conservation district shall incorporate its plan into a restoration or replacement order and send it to the enforcement authority for service in person or by certified mail to the landowner.

The restoration order must specify a date by which the landowner must either:

A. restore the wetland according to the soil and water conservation district plan and obtain a certificate of satisfactory restoration from the soil and water conservation district; or

B. submit a replacement plan to the local government unit.

The order shall state that it will be canceled when the landowner obtains a certificate of exemption or no-loss from the local government unit, or a certificate that restoration has been completed according to an approved restoration plan. Otherwise, the landowner must restore the wetland in the manner required by the restoration order.

If the soil and water conservation district determines that restoration will not restore all the loss 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, as determined by the soil and water conservation district. The order must direct the landowner to obtain replacement plan approval from the local government unit. The order must specify that if replacement plan approval is not obtained, the landowner must restore the wetland in a manner determined by the soil and water conservation district.

Each cease and desist, restoration, and replacement order shall tell the landowner that violation of the order is a misdemeanor.

If, as part of a misdemeanor proceeding, the court orders restoration or replacement, the soil and water conservation district shall determine which is appropriate, and if it is restoration, the method of restoration. If the court orders replacement, the landowner must follow the replacement plan process in parts 8420.0500 to 8420.0630 unless the court orders otherwise.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

## MINING

### 8420.0300 MINING.

Wetlands may not be drained or filled as part of a project for which a permit to mine is required by Minnesota Statutes, section 93.481, except as approved by the commissioner. Draining or filling of wetlands created by pits, stockpiles, or tailing basins by actions whose purpose was not to create the wetland are exempt under part 8420.0120, subpart 10.

A. For new mining operations that are permitted and initiated after July 1, 1993:

(1) mining shall not be conducted without first receiving a permit to mine issued under chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic minerals; and

(2) the mining and reclamation operating plans or annual reports submitted by the applicant as required in the permit to mine shall include an approved wetland replacement plan that meets the same principles and standards for replacing wetlands under parts 8420.0500 to 8420.0630.

B. For mining operations in existence before July 1, 1993, and operated on or after that date under a permit to mine issued under chapter 6130 for iron ore and taconite or chapter 6132 for nonferrous metallic minerals:

(1) no draining or filling activities shall be conducted within wetlands for which these activities were approved but not initiated before July 1, 1993, until the operating plan or annual report as required in the permit to mine includes an approved wetland replacement plan for the undisturbed wetlands. The wetland replacement plan shall meet the same principles and standards for replacing wetlands under parts 8420.0500 to 8420.0630;

(2) for filling activities that were approved and initiated before July 1, 1993, the placement of fill atop a stockpile, roadway, or other mining-related facility that occupies a wetland filled before July 1, 1993, shall be allowed to continue within the areal extent, as it existed on July 1, 1993, of the stockpile, roadway, or other mining-related facility without the requirement of a replacement plan or amendment of the permit to mine. An expansion of the areal extent of the fill in the wetland requires an approved replacement plan in the operating plan or annual report as required in the permit to mine, according to subitem (1);

(3) for draining activities that were approved and initiated before July 1, 1993, the draining of a wetland to facilitate mining, using ditches and other drainage facilities that existed on July 1, 1993, shall be allowed to continue without the requirement of a replacement plan or amendment of the permit to mine. Maintenance of the ditches and structures shall be allowed without the requirement of a replacement plan or amendment of the permit to mine, provided that as a result of the maintenance, wetlands are not drained beyond the extent that existed as of July 1, 1993. Otherwise, the permit to mine must be amended to provide for replacement according to subitem (1).

C. Applicable procedures are those required for permits to mine.

D. This part shall not apply to peat mining as defined under Minnesota Statutes, section 93.461, that is subject to the mine permit and reclamation requirements under Minnesota Statutes, sections 93.44 to 93.51 and the rules of the commissioner adopted under those sections.

E. Mining that is not subject to the permit and reclamation requirements under Minnesota Statutes, sections 93.44 to 93.51, must replace drained and filled wetlands according to parts 8420.0500 to 8420.0630.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

### HIGH PRIORITY REGIONS AND AREAS

#### 8420.0350 HIGH PRIORITY REGIONS AND AREAS.

**Subpart 1. High priority regions.** Parts of the state that are high priority regions for preservation, enhancement, restoration, and establishment of wetlands include all of the counties that have lost 50 percent or more of their presettlement wetland base, which are those listed in part 8420.0540, subpart 5, item B.

In all other counties of the state, high priority regions are high priority areas approved as such by the board according to subpart 2.

#### **Subp. 2. High priority areas.**

A. Water management plans prepared by water management organizations in the metropolitan area under Minnesota Statutes, section 103B.231, by counties outside the metropolitan area under Minnesota Statutes, section 103B.311, and by watershed districts outside the metropolitan area under Minnesota Statutes, sections 103D.401 and 103D.405, must identify those areas that qualify as high priority areas for wetland preservation, enhancement, restoration, and establishment. These priority areas shall be included in the next scheduled water management plan update.

B. Plans should give strong consideration to identifying as high priority areas minor watersheds having less than 50 percent of their original wetland acreages, and intact wetlands, diminished wetlands, and the areas once occupied by wetlands that have been diminished or eliminated and could feasibly be restored taking into account the present hydrology and use of the area. Plans should give strong consideration to identifying as high priority areas all type 1 or 2 wetlands, and other wetlands at risk of being lost by permanent conversion to other uses. When individual wetlands are identified as high priority for preservation and restoration, the high priority area shall include the wetland and an adjacent buffer strip not less than 16.5 feet wide around the perimeter of the wetland and may include up to four acres of upland for each wetland acre.

C. In all counties, plans may identify additional high priority areas where preservation, enhancement, restoration, and establishment of wetlands would have high public value by providing benefits for water quality, flood water retention, public recreation, com-

mercial use, and other public uses. High priority areas should be delineated by minor or major watershed. For the purposes of this part, "watershed" means major or minor watershed or subwatershed. To identify high priority areas, the local government unit shall consider at least the landscape characteristics in subitems (1) to (11).

(1) Land use and cover types. Wetlands located in watersheds having a high proportion of cultivated land, developed areas, or other intensive land use are likely to have high value for water quality, flood water retention, and public recreation. Watersheds with high proportions of intensive land use should be considered as priority preservation and restoration areas.

(2) Wetland and watershed ratio. Wetlands located in watersheds having a low proportion of wetlands relative to the size of the watershed are likely to have high value for water quality, flood water retention, and public recreation. Watersheds with a low wetland and watershed ratio should be considered as priority preservation and restoration areas.

(3) Soil erosion rates. Wetlands located in watersheds where erosion rates are high are likely to have high value for water quality. Watersheds with high erosion rates should be considered as priority preservation and restoration areas.

(4) Watershed gradient. Wetlands in watersheds where the difference between the highest and lowest points of the watershed is great are likely to have high value for flood water retention and water quality. Watersheds with a high gradient should be considered as priority preservation and restoration areas.

(5) Surface water retention. Wetlands in watersheds where direct runoff is high are likely to have high value for flood water retention and water quality. Watersheds with high levels of direct runoff should be considered as high priority preservation and restoration areas.

(6) Soil fertility. Wetlands in watersheds where soil fertility is high are likely to have high value for wildlife habitat and commercial uses. Watersheds with high soil fertility should be considered as high priority preservation and restoration areas.

(7) Geology. Wetlands in watersheds with high subsurface permeability are likely to have high value for groundwater recharge and water quality. Watersheds with high subsurface permeability should be considered as high priority preservation and restoration areas.

(8) Wetland complexes. Wetlands in watersheds where a diversity of wetland types and sizes are or were historically present are likely to have high value for public recreation. Watersheds with an existing or historical high diversity of wetland types should be considered as priority preservation and restoration areas.

(9) Proximity to population centers. Wetlands in watersheds that are close to population centers are likely to have high value for water quality, flood water retention, public recreation, and commercial uses. Watersheds near population centers should be considered as high priority preservation and restoration areas.

(10) Public ownership. Wetlands in watersheds with a high proportion of land in public ownership are likely to have high value for public recreation. These watersheds should be considered as high priority preservation and restoration areas.

(11) Significant wildlife use. Wetlands in watersheds with current or historical records of use by significant numbers or species of wildlife or fish are likely to have high value for public recreation and commercial uses. Watersheds with records of significant fish or wildlife use should be considered as high priority preservation and restoration areas.

D. The board will review the inclusion of high priority areas in plans as part of the standard process for plan review established in statute. High priority areas approved by the board that are not in a high priority region listed in item C become high priority regions with board approval.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

## WETLAND PRESERVATION AREAS

**8420.0400 WETLAND PRESERVATION AREAS.**

Subpart 1. **Purpose.** Wetlands located in areas that are both high priority regions and high priority areas as identified in part 8420.0350 are eligible for enrollment as wetland preservation areas. A wetland so enrolled is exempt from property tax.

Subp. 2. **Landowner application for wetland preservation area.** A landowner may apply to the county for designation of a wetland as a wetland preservation area on forms provided by the board. The applicant must include a strip of upland 16.5 feet wide around the perimeter of the wetland. The applicant may include up to four acres of upland for each acre of wetland.

The application must be accompanied by a restrictive covenant on a form provided by the board. The covenant will contain the same limitations on use that are provided in Minnesota Statutes, section 103F.515, subdivision 4, including a covenant that the enrolled upland area will be vegetated by the landowner to permanent vegetation other than noxious weeds. The covenant must be signed, acknowledged, and ready for recording.

Subp. 3. **County review of application.** The county shall accept the application if the wetland is in a high priority region and high priority area, if it includes the 16.5 foot strip, and is accompanied by the proper covenant.

The county may limit or reject additional upland proposed to be included according to standards the county establishes.

The county may reject the application if the application does not qualify, or send it back for modification and resubmittal if that is appropriate. If the application qualifies, the county shall approve it and mark the date of approval on the application.

Within five days of approval of the application, the county shall forward it to the county recorder for recording of the restrictive covenant or memorialization of the application on the certificate of title. The county shall also send a copy of the approved application to the county assessor for entry in the assessor's records as a wetland preservation area. The county shall also send copies of the approved application to the soil and water conservation district, the regional development commission, the local government unit, and the board.

Subp. 4. **Applicable statutes.** In addition to this chapter, wetland preservation areas are subject to Minnesota Statutes, sections 103F.612 to 103F.616, and the property tax provisions of Minnesota Statutes, section 272.02, subdivision 1, clause (10).

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

STANDARDS AND PROCEDURES FOR EVALUATING  
WETLAND REPLACEMENT PLANS**8420.0500 PURPOSE.**

Parts 8420.0500 to 8420.0630 specify the procedures and criteria for avoiding and minimizing wetland impacts and for ensuring adequate replacement of lost public values for unavoidable wetland impacts.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.0505 INTERIM REPLACEMENT PLANS.**

Replacement plans approved under the interim guidelines in Minnesota Statutes, section 103G.2369, must be completed in entirety by June 30, 1995. If the replacement plan is not completed by June 30, 1995, replacement of the impacted wetland becomes subject to the process and provisions in parts 8420.0500 to 8420.0630. This does not apply to phased projects approved during the interim period. Phased projects may be completed under the conditions and guidelines for which they were approved.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.0510 PROCEDURES.**

Subpart 1. **Generally.** No person shall drain or fill a wetland, wholly or partially, without first having a wetland value replacement plan approved by the governing body of the local government unit, or the lead local government unit if so designated by the board, consistent with parts 8420.0120 to 8420.0290, and provided that the activity is not prohibited under the special considerations provisions in part 8420.0540, subpart 9.

Subp. 2. **Preapplication conference and site visit.** Before preparation of a wetland value replacement plan, it is recommended that the landowner meet with the local government unit for a preapplication conference and site visit. The local government unit is encouraged to inform the landowner of all sequencing requirements and the criteria used to evaluate replacement plans. A landowner may submit the information required in part 8420.0520 and request a determination of compliance with the sequencing requirements from the local government unit before preparing a replacement plan.

Subp. 3. **Evaluation.** As provided for in part 8420.0240, technical questions concerning the public value, location, size, and type of wetland shall be submitted to the technical evaluation panel. The local government unit may use a technical evaluation panel to predetermine public value, location, size, or type of wetlands under its jurisdiction and use this determination in administering the act. Wetland boundaries must be determined using the methodologies in the federal Manual for Identifying and Delineating Jurisdictional Wetlands (January 1989). Wetland type must be identified according to Cowardin, et al., 1979, Classification of Wetlands and Deepwater Habitats of the United States and according to United States Fish and Wildlife Service Circular No. 39 (1971 edition) "Wetlands of the United States." The technical evaluation panel shall provide its determinations to the local government unit for consideration.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.0520 SEQUENCING.**

Subpart 1. **Requirement.** Except for wetlands located in cultivated fields that are subject to subpart 8, and calcareous fens that are subject to subpart 9, the local government unit may not consider or approve a wetland replacement plan unless the local government unit finds that the applicant has demonstrated that the activity impacting a wetland has complied with all of the following principles in descending order or priority:

A. avoids direct or indirect impacts to the wetland that may destroy or diminish the wetland under the criteria in subpart 3;

B. minimizes the impact to the wetland by limiting the degree or magnitude of the wetland activity and its implementation under the criteria in subpart 4;

C. rectifies the impact by repairing, rehabilitating, or restoring the affected wetland under the criteria in subpart 5;

D. reduces or eliminates the impact to the wetland over time by preservation and maintenance operations under the criteria in subpart 6; and

E. replaces unavoidable impacts to the wetland by restoring or creating substitute wetland areas having equal or greater public value as provided for in parts 8420.0530 to 8420.0630.

Subp. 2. **Application options.** An applicant may either submit the information required for sequencing analysis as part of the application for replacement plan approval or apply for a preliminary sequencing determination from the local government unit before preparing a replacement plan. The local government unit may request additional information needed to make a determination. For projects impacting wetland areas less than 0.1 acres the local government unit may provide an on-site sequencing determination without written documentation from the applicant; except for projects which are located in wetlands adjacent to and within 1,000 feet of outstanding resource value waters as defined in chapter 7050; trout streams as designated in Commissioner's Order Number 2294; and trout lakes as designated in Commissioner's Order Number 2230.

Subp. 3. **Determination of impact avoidance.**

A. Avoidance must be required when indicated by part 8420.0540, subpart 9.

## B. Wetland dependence determination:

(1) Based on information provided by the applicant, the local government unit shall determine if the proposed project is wetland dependent. A project is wetland dependent if wetland features, functions, or values are essential to fulfill the basic purpose of the project. A wetland present at the site of a proposed project does not make that project wetland dependent.

(2) A project that has been determined by the local government unit to be wetland dependent is exempt from the analysis of avoidance alternatives in item C.

## C. Alternatives analysis:

(1) The applicant shall provide the local government unit with documentation describing at least two alternatives in addition to the proposed project, one of which may be the no-build alternative, that would avoid impacts to wetlands. The alternatives may include consideration of alternate sites or alternative project configurations on the proposed site. The alternatives must be judged by the local government unit as good faith efforts, or the local government unit may require the applicant to redraft them for reconsideration.

(2) The local government unit shall determine whether any feasible and prudent alternatives are available that would avoid impacts to wetlands. An alternative shall be considered feasible and prudent if it is capable of being done from an engineering point of view, is in accordance with accepted engineering standards and practices, is consistent with reasonable requirements of the public health, safety, and welfare, is an environmentally preferable alternative based on a review of social, economic, and environmental impacts, and would create no truly unusual problems. The local government unit shall consider the following in evaluating alternatives as applicable:

(a) whether the basic project purpose can be reasonably accomplished using one or more other sites in the same general area that would avoid wetland impacts. An alternate site may not be excluded from consideration only because it includes or requires an area not owned by the applicant that could reasonably be obtained, used, expanded, or managed to fulfill the basic purpose of the proposed project;

(b) the general suitability of alternate sites considered by the applicant;

(c) whether reasonable modification of the size, scope configuration, or density of the project would avoid impacts to wetlands;

(d) efforts by the applicant to accommodate or remove constraints on alternatives imposed by zoning standards or infrastructure, including requests for conditional use permits, variances, or planned unit developments; and

(e) the physical, economic, and demographic requirements of the project. Economic considerations alone do not make an alternative not feasible and prudent.

(3) If the local government unit determines that a feasible and prudent alternative exists that would avoid impacts to wetlands, it shall deny the replacement plan. If no feasible and prudent alternative is available that would avoid impacts to wetlands, the local government unit shall evaluate the replacement plan for compliance with subparts 4 to 6.

**Subp. 4. Determination of impact minimization.**

A. The applicant shall demonstrate to the local government unit's satisfaction that the activity will minimize impacts to wetlands. In reviewing the sufficiency of the applicant's efforts to minimize wetland impacts, the local government unit must consider:

(1) the spatial requirements of the project;

(2) the location of existing structural or natural features that may dictate the placement or configuration of the project;

(3) the purpose of the project and how the purpose relates to placement, configuration, or density;

(4) the sensitivity of the site design to the natural features of the site, including topography, hydrology, and existing vegetation;

(5) the value, function, and spatial distribution of the wetlands on the site;

(6) individual and cumulative impacts; and

(7) an applicant's efforts to:

(a) modify the size, scope, configuration, or density of the project;

(b) remove or accommodate site constraints including zoning, infrastructure, access, or natural features; and

(c) otherwise minimize impacts.

B. If the local government unit finds that an applicant has not complied with the requirements to minimize wetland impacts, the local government unit shall list, in writing, its objections to the project. If, within 30 days, the applicant does not withdraw the project proposal or indicate intent to submit an amended project proposal satisfying the local government unit's objections, the statement of objections shall constitute a denial.

**Subp. 5. Determination of impact rectification.** Temporary impacts to a wetland must be rectified by repairing, rehabilitating, or restoring the affected wetland.

A. Activities may qualify for a no-loss determination in part 8420.0220 by meeting all of the following conditions:

(1) the physical characteristics of the affected wetland, including ground elevations, contours, inlet dimensions, outlet dimensions, substrate, and hydrologic regime, are restored to preproject conditions sufficient to ensure that all preproject functions and values are restored;

(2) the activity is completed and the physical characteristics of the wetland are restored within six months of the start of the activity; and

(3) the party responsible for the activity provides a performance bond to the local government unit for an amount sufficient to cover the estimated cost to restore the wetland to preproject conditions. The local government unit shall return the performance bond to the responsible party upon a determination by the local government unit that the conditions in this item and item B have been met.

B. An applicant shall be granted a no-loss determination under the criteria in item A once in a ten-year period for a particular site within a wetland, except that repairs to the original project shall be allowed under the no-loss determination, if the local government unit determines the request to be necessary and reasonable.

C. Wetland impacts that do not qualify for a no-loss determination according to the criteria in item A are subject to replacement under the criteria in parts 8420.0530 to 8420.0630.

**Subp. 6. Determination of reduction or elimination of impacts over time.** After an activity is completed, further wetland impacts from the draining or filling must be reduced or eliminated by maintaining, operating, and managing the project in a manner that preserves and maintains remaining wetland functions and values. The local government unit must require applicants to implement best management practices to protect wetland functions and values.

**Subp. 7. Unavoidable impacts.** Unavoidable wetland impacts that remain after efforts to minimize, rectify, or reduce or eliminate them must be replaced according to parts 8420.0530 to 8420.0630.

**Subp. 8. Wetlands on cultivated fields.** If the wetland is located on a cultivated field, replacement must be accomplished through restoration without regard to the priority order in subpart 1. A wetland drained or filled under this provision must not be converted to nonagricultural land for ten years. The landowner must execute and record a notice of this requirement in the office of the county recorder for the county in which the property is located.

**Subp. 9. Calcareous fens.** Calcareous fens, as identified by the commissioner, may not be filled, drained, or otherwise degraded, wholly or partially, by any action, unless the commissioner, under an approved management plan, decides some alteration is necessary, as provided in part 8420.1010.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

#### **8420.0530 REPLACEMENT PLAN COMPONENTS.**

On an application form provided by the local government unit, and with needed attachments supplied by the applicant, the following documentation must be provided, except that for replacement plans utilizing the wetland bank in parts 8420.0700 to 8420.0760, items B



and D do not apply; instead the applicant shall submit the credit transfer form prescribed in part 8420.0740, subpart 2, item E:

A. organizational information, including the following:

- (1) the post office address of the applicant;
- (2) for corporations, the principal officers of the corporation, any parent companies, owners, partners, and joint venturers, and a designated contact person;
- (3) managing agents, subsidiaries, or consultants that are or may be involved with the wetland draining or filling project;

B. either an affidavit confirming that the wetland values will be replaced before or concurrent with the actual draining or filling of a wetland or an irrevocable bank letter of credit or other security acceptable to the local government unit to guarantee the successful completion of the wetland value replacement;

C. for the impacted wetland:

- (1) a recent aerial photograph or accurate map of the impacted wetland area;
- (2) the location of the wetland, including the county, watershed name or number, and public land survey coordinate of approximate wetland center;
- (3) the size of the wetland, in acres or square feet;
- (4) the type of wetland using United States Fish and Wildlife Service Circular No. 39 (1971 edition) and National Wetland Inventory mapping conventions (Cowardin et al., 1979);

(5) a list of the dominant vegetation in the impacted wetland area, including common names of the vegetation exceeding 20 percent coverage and an estimate of coverage, for example, 50 percent willow, 20 percent cattails, and 30 percent sedge;

(6) a soils map of the site showing soil type and substrate, where available;

(7) the size of the watershed that drains surface water into the wetland as determined from a United States Government Survey topographical map or other suitable topographical survey;

(8) the locations of any surface inlets or outlets, natural or otherwise, draining into or out of the wetlands, and if the wetland is within the floodplain of a stream, river, or other watercourse, the distance and direction to the watercourse;

(9) a map, photograph, or written description of the land use of the immediate watershed within one mile of the impacted wetland. The surrounding land use information shall also indicate the presence and location, if any, of wetland preservation regions and areas, wetland development avoidance regions and areas, and wetland deficient regions and areas as identified in the comprehensive water plan;

(10) the nature of the proposed project, its areal extent, and the impact on the wetland must be shown in sufficient detail to allow the local government unit to determine the amount and types of wetland to be impacted and to demonstrate compliance with the replacement sequencing criteria in part 8420.0520, if applicable;

(11) evidence of ownership or rights to the affected areas, including a legal description. When two or more landowners are involved, including both the impact site and the proposed replacement site, a contract or other evidence of agreement signed by all landowners and notarized must be included with the replacement plan. The contract or agreement must contain an acknowledgment of the covenant provisions in item D, subitem (6), by landowners on which a replacement wetland is proposed and the location and acreage of replacement wetlands. The contract becomes binding upon final approval of the replacement plan;

(12) a list of all other local, state, and federal permits and approvals required for the activity; and

(13) other information considered necessary by the local government unit for evaluation of the activity;

D. for the replacement wetland, item C, subitems (1) to (9) and (11) to (13), and:

(1) an explanation of the size and type of wetland that will result from successful completion of the replacement plan;

(2) scale drawings showing plan and profile views of the replacement wetland and fixed photo-reference points for monitoring purposes. Photo-reference points

should include views of any control structures and enough additional points to adequately depict the entire project;

(3) how the replacement wetland shall be constructed, for example, excavation or restoration by blocking an existing tile; the type, size, and specifications of outlet structures; elevations, relative to Mean Sea Level or established bench mark, of key features, for example, sill, emergency overflow, and structure height; and best management practices that will be implemented to prevent erosion or site degradation;

(4) for created wetlands only, additional soils information sufficient to determine the capability of the site to produce and maintain wetland characteristics;

(5) a timetable that clearly states how and when implementation of the replacement plan shall proceed, and when construction of the replacement wetland shall be finalized;

(6) a notice in a form provided by the board attached to and recorded with the deed for lands containing a replacement wetland, specifying the following:

(a) the location of the replacement wetland;

(b) that the wetland is subject to the act;

(c) that the fee title owner is responsible for the costs of repairs or reconstruction, if necessary, or for replacement costs;

(d) that reasonable access to the replacement wetland shall be granted to the proper authorities for inspection, monitoring, and enforcement purposes;

(e) that costs of title review and document recording is the responsibility of the fee title owner; and

(f) that the local government unit or board can require necessary repairs or reconstruction work to return the wetland to the specifications of the approved replacement plan and require reimbursement of reasonable costs from the wetland owner, or can require replacement of the wetland according to the act;

(7) a statement that the replacement wetland was not previously restored or created under a prior approved replacement plan;

(8) a statement that the replacement wetland was not drained or filled under an exemption during the previous ten years;

(9) a statement that the replacement wetland was not restored with financial assistance from public conservation programs;

(10) a statement that the replacement wetland was not restored using private funds other than those of the landowner unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the local government unit in writing that the restored wetland may be considered for replacement;

(11) a plan for monitoring the success of the replacement plan in meeting the project goal in subitem (1), and as specified in parts 8420.0610 and 8420.0620; and

(12) other information considered necessary for evaluation of the project by the local government unit.

E. The applicant must provide information known to the applicant or readily available concerning the special considerations criteria in part 8420.0540, subpart 9.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

#### **8420.0540 REPLACEMENT PLAN EVALUATION CRITERIA.**

**Subpart 1. Sequencing.** Before consideration or approval of a replacement plan, the local government unit must ensure that the applicant has exhausted all possibilities to avoid and minimize adverse wetland impacts according to sequencing in part 8420.0520.

The applicant must demonstrate to the local government unit that the replacement plan complies with this part and part 8420.0550.

**Subp. 2. Type of replacement.** The order of preference for the method of replacement, from most preferred to least preferred, is project-specific restoration, project-specific cre-

ation, then wetland banking. Modification or conversion of nondegraded wetlands from one wetland type to another, for example by impoundment of additional water, does not constitute adequate replacement. Wetlands drained or filled under an exemption may not be restored for replacement credit for ten years after draining or filling.

**Subp. 3. Timing of replacement.** Replacement of wetland values must be completed before or concurrent with the actual draining or filling of a wetland, unless an irrevocable bank letter of credit or other security acceptable to the responsible government unit is submitted to the responsible government unit to guarantee successful completion of the replacement. All wetlands to be restored or created for replacement must be designated for replacement before restoration or creation. Submission to the local government unit of the information required in part 8420.0530 and subsequent approval shall be considered evidence of designation for replacement, provided the information is submitted before the actual restoration or creation.

**Subp. 4. Location of replacement wetlands.** Replacement wetlands shall be located within the same watershed or county as the impacted wetlands, except that counties or watersheds in which 80 percent or more of the presettlement acreage is intact may accomplish replacement in counties or watersheds in which 50 percent or more of the presettlement wetland acreage has been filled, drained, or otherwise degraded. Replacement wetlands should be located as close to the impacted wetland as possible, preferably in the same watershed.

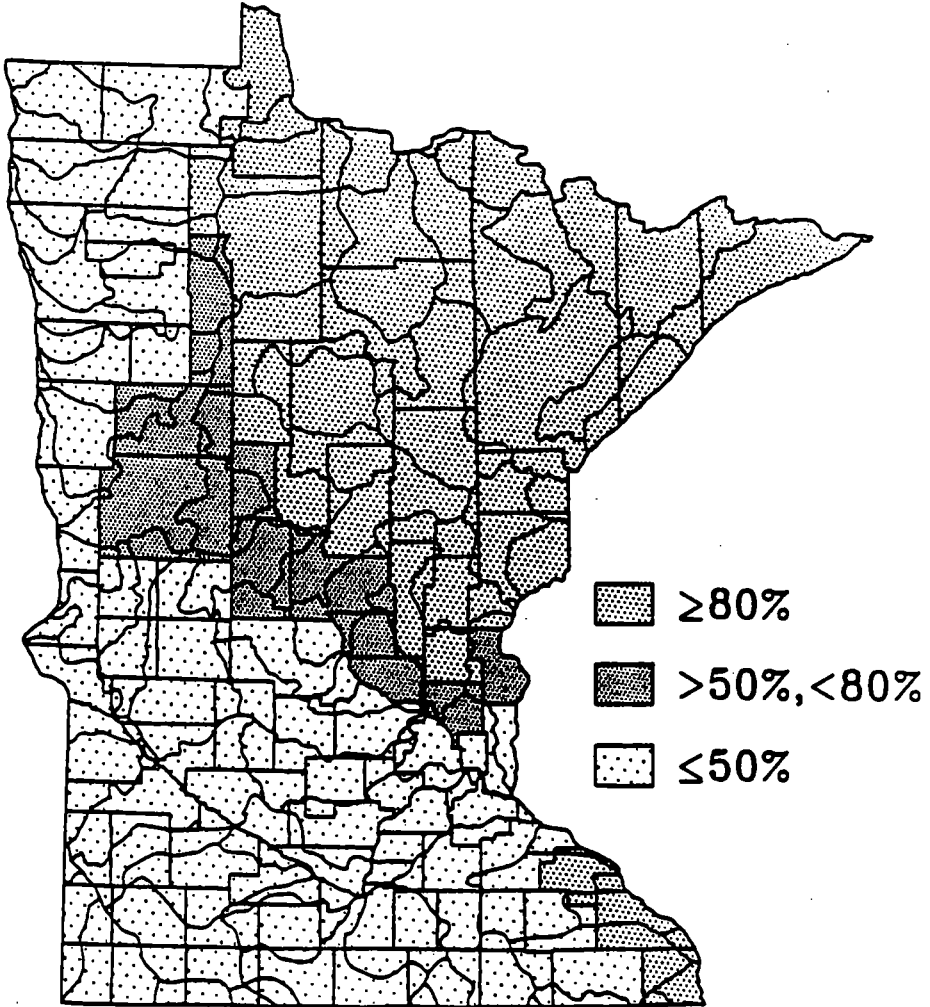
**Subp. 5. Statewide replacement for public transportation projects.** Wetlands impacted by public transportation projects may be replaced statewide, provided they are approved by the commissioner under an established wetland banking system, or under the rules in parts 8420.0700 to 8420.0760.

A. For purposes of this part, the following counties have 80 percent or more of their presettlement wetland acreage intact: Aitkin; Beltrami; Carlton; Cass; Cook; Crow Wing; Houston; Hubbard; Isanti; Itasca; Kanabec; Koochiching; Lake; Lake of the Woods; Mille Lacs; Pine; St. Louis; Wabasha; and Winona.

B. For purposes of this part, the following counties have 50 percent or less of their presettlement acreage intact: Big Stone; Blue Earth; Brown; Carver; Chippewa; Clay; Cottonwood; Dakota; Dodge; Douglas; Faribault; Fillmore; Freeborn; Goodhue; Grant; Hennepin; Jackson; Kandiyohi; Kittson; Lac Qui Parle; Le Sueur; Lincoln; Lyon; Mahnommen; Marshall; Martin; McLeod; Meeker; Mower; Murray; Nicollet; Nobles; Norman; Olmsted; Pennington; Pipestone; Polk; Pope; Ramsey; Red Lake; Redwood; Renville; Rice; Rock; Roseau; Scott; Sibley; Stearns; Steele; Stevens; Swift; Traverse; Waseca; Washington; Watonwan; Wilkin; Wright; and Yellow Medicine.

REMAINING ACREAGE OF PRESETTLEMENT WETLANDS

Figure 1. Distribution of remaining acreage of presettlement wetlands by county with watersheds superimposed. Adapted from: Anderson and Craig, 1984.



**Subp. 6. Size of replacement wetlands.** Replacement wetlands must be of a size sufficient to ensure that they provide equal or greater public value than the wetland that was drained or filled. Except for counties or watersheds in which 80 percent or more of the presettlement wetland acreage exists, for a wetland located on nonagricultural land, the minimum size of the replacement wetland must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland. For a wetland located on agricultural land, or in counties or watersheds in which 80 percent or more of the presettlement wetland acreage exists, the minimum size of the replacement wetland must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland. The actual replacement ratios required for a replacement wetland may be more than the minimum, subject to the evaluation of wetland functions and values in subpart 10.

Except for counties or watersheds in which 80 percent or more of the presettlement wetland acreage exists, future owners may make no use of the wetland after it is altered, other than as agricultural land for a period of ten years unless future replacement to achieve a 2:1 ratio occurs. The landowner shall record a notice of this restriction in the office of the county recorder in which the project is located.

**Subp. 7. Carbon balance.** When it is necessary to replace a drained or filled peatland, the replacement wetland must be revegetated with planted or naturally invading vegetation established within three growing seasons.

**Subp. 8. Ecological consistency.** Restoration and replacement of wetlands must be accomplished according to the ecology of the landscape area affected. A replacement plan that would result in wetlands or wetland characteristics that do not naturally occur in the landscape area in which the replacement will occur will not be approved.

**Subp. 9. Special considerations.** The factors in items A to I, when identified as being applicable to an impact site or a replacement site, must be considered by the local government unit in the review of replacement plans.

A. Federal or state-listed endangered species. A replacement plan for activities that involve sites where species listed in parts 6134.0200 to 6134.0400 are known to be present will not be approved if it is determined that the proposed activities will constitute a taking of those listed species under Minnesota Statutes, section 84.0895. Limited information on the presence of listed species at a particular site is available from the department's natural heritage program. Activities that involve taking listed species are subject to Minnesota Statutes, section 84.0895.

B. Rare natural communities. A replacement plan for activities that involve the modification of a rare natural community as determined by the department's natural heritage program will not be approved if the local government unit determines that the proposed activities will permanently adversely affect the natural community.

C. Special fish and wildlife resources. A replacement plan for activities that would have a significant adverse impact that cannot be mitigated on a special or locally significant fish and wildlife resource will not be approved. These activities include, but are not limited to:

- (1) fish passage and spawning areas;
- (2) colonial waterbird nesting colonies;
- (3) migratory waterfowl concentration areas;
- (4) deer wintering areas; and/or
- (5) wildlife travel corridors.

Activities involving streams must not block fish passage unless approved by the department.

D. Archaeological or historic sites. A replacement plan for activities that involve the modification of known archaeological or historical sites on or eligible for the National Register of Historic Places, as designated by the state historic preservation officer, will not be approved if the local government unit determines that the proposed activities will have a significant adverse impact on the archaeological or historical value of the site.

E. Groundwater sensitivity. A replacement plan for activities will not be approved if the local government unit determines the activities would have a significant adverse im-

pact on groundwater quality. The publication "Criteria and Guidelines for Assessing Geologic Sensitivity of Ground Water Resources in Minnesota" (MDNR, 1991) may be used as a guide in determining potential impacts.

F. Sensitive surface waters. A replacement plan will not be approved if the local government unit determines the activities will have a significant adverse impact on the water quality of outstanding resource value waters listed in part 7050.0180 or on trout waters designated by the commissioner.

G. Education or research use. Wetlands known to be used for educational or research purposes must be maintained or adequately replaced.

H. Waste disposal sites. The local government unit must evaluate the type and amount of waste material found at the site. Activities involving known or potential hazardous wastes or contaminants must be conducted according to applicable federal and state standards.

I. Consistency with other plans. The local government unit must consider the extent to which proposed activities are consistent with other plans, such as watershed management plans, land use plans, zoning, and master plans.

**Subp. 10. Evaluation of wetland functions and values.**

A. Evaluation options. Replacement wetlands must replace the functions and values that are lost from a wetland that is drained or filled. A replacement wetland should replace the same combination of functions and values provided by the impacted wetland. The wetland type index system in items D and E uses relative values of wetland functions compared across wetland types to evaluate the adequacy of wetland replacement. The local government unit may allow the evaluation of wetlands by measuring and comparing public values specified in Minnesota Statutes, section 103B.3355, with the current version of the Minnesota wetland evaluation methodology or another scientifically accepted methodology in item G.

B. Wetland types: wetlands classification equivalency chart. For purposes of this part, the following table serves as a key for using Table 2 (part 8420.0540, subpart 10, item D, subitem (1)) and Table 4 (part 8420.0550, subpart 3) and as a wetland classification equivalency chart for the wetland classification developed by the United States Fish and Wildlife Service (Cowardin et al. 1979), and the approximate wetland type from the United States Fish and Wildlife Service Circular No. 39 (1971 edition).

Table 1. Wetland Classification Equivalency Chart.

Cowardin System Class or Subsystem and Water Regime	Table 2 and 4 Row and Column Headings	Approximate Circular 39 Type
PEMA	PEA	1
PEMB	PEB	2
PEMC	PEC	3
PEMD	PEC	3
PEME	PEC	3
PEMF	PEF	4
PEMG	PEF	4
PEMH	PEF	4
PEMJ	PEA	1
PEMK	PEF	4
PEMW	PEA	1
PEMY	PEB	2
PEMZ	PEF	4
PEMU	PEF	4
PSSA	PSA	6
PSSB (except PSS3B)	PSB	6
PSS3B	PSX	8
PSSC	PSC	6

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PSSD	PSC	6
PSSE	PSC	6
PSSF	PSC	6
PSSG	PSC	6
PSSH	PSC	6
PSSJ	PSA	6
PSSK	PSC	6
PSSW	PSA	6
PSSY	PSB	6
PSSZ	PSC	6
PSSU	PSC	6
PFOA	PFA	1
PFOB	PFB	7
PFOC	PFC	7
PFOD	PFC	7
PFOE	PFC	7
PFOF	PFC	7
PFOG	PFC	7
PFOH	PFC	7
PFOJ	PFA	1
PFOK	PFC	7
PFOW	PFA	1
PFOY	PFB	7
PFOZ	PFC	7
PFOU	PFC	7
PML (all)	PSX	8
PAB (all)	PA	5
PUB (all)	PU	5
PRB (all)	PU	5
POW (all)	PU	5
PUS (all)	PU	5
L1 (all)	L1	5*
L2 (all)	L2	5
R2 (all)	R2	**
R3 (all)	R3	**
R4 (all)	R4	**

\* Circular No. 39 does not classify deep water as a wetland type, but for purposes of this table, these areas can be approximated as a type 5.

\*\* No equivalent. Circular No. 39 does not address riverine wetlands.

NOTE: In the case of wetland identified using the Cowardin system with both numerator and denominator wetland types, the numerator type is considered the dominant wetland type, with the exception that the denominator wetland type is to be used when the numerator wetland type vegetation is dead.

Table 4, in part 8420.0550, provides technical specifications for constructing wetland types. In evaluating a wetland replacement plan, the local government unit must determine whether the wetland type stated as the replacement plan goal will result from the replacement plan specifications. If a wetland type other than the replacement plan goal is likely to result, the local government unit must evaluate the plan based on this determination.

The local government unit may consider allowing constructed storm water detention basins for replacement credit if the basin conforms to the following specifications:

- (a) the basin design uses a two-cell system in which the upstream cell has a 24-hour retention time for a two-year storm event;
- (b) the downstream cell is designed for a maximum 12-inch rise in water level for a ten-year storm event;
- (c) the standards in part 8420.0550 are followed; and
- (d) the design goal is a palustrine emergent wetland that meets all statutory definitions of a wetland, for example, soils, hydrology, and vegetation.

Only the downstream cell can be counted for wetland credit, and the replacement plan must include a plan and schedule for maintenance of the storm water basin system. Storm water basins which allowed for replacement are not eligible for the exemption in part 8420.0120, subpart 10, and are subject to parts 8420.0500 to 8420.0630.

Stormwater management basins constructed for the primary purpose of controlling or treating stormwater runoff from impervious surfaces or developed areas, not conforming to the specifications in units (a) to (d), are not considered wetlands. These are therefore exempt from replacement plan requirements when constructed in nonwetlands, and also cannot be considered for credit as part of a replacement plan, regardless of their location.

C. Replacement ratios for in-kind replacement. When wetland functions lost as a result of drainage or filling are replaced by restoring a wetland of the same type and in the same watershed and with the same inlet and outlet characteristics as described in item D, subitem (3), and related definitions, the replacement shall be considered to be in-kind and the minimal replacement ratio shall be used to determine the necessary size of the replacement wetland. For impacted wetlands on agricultural land, or in counties or watersheds in which 80 percent or more of the presettlement wetland acreage exists, the minimum replacement ratio is 1:1, requiring an equal area be replaced for the area impacted. Except for counties or watersheds in which 80 percent or more of the presettlement wetland acreage exists, for impacted wetlands on nonagricultural land, the minimum replacement ratio is 2:1, requiring two times the impacted area be replaced.

D. Out-of-kind replacement ratios. If the wetland functions lost as a result of drainage or filling are to be replaced by creating a wetland or restoring a wetland of a different type than the impacted wetland, or if the replacement wetland is in a watershed other than the impacted wetland or had different inlet and outlet characteristics than the impacted wetland, the replacement shall be considered to be out-of-kind and the local government unit shall use the replacement ratios in this subpart to determine the amount of replacement wetland needed to replace the lost wetland values.

(1) Wetland type ratio. Differences in wetland functions and values among wetland types are to be evaluated and replaced using the wetland type ratio table in this part, to be applied as specified in subitem (5). The wetland type ratio table incorporates an evaluation of public values as specified in Minnesota Statutes, section 103B.3355, for the purposes of comparison among wetland types.

If a wetland to be drained or filled exhibits more than one wetland type as determined by the technical evaluation panel, and more than one wetland type is proposed to be drained or filled, the local government unit shall use the following procedure to determine needed replacement. The acreage of each wetland type to be converted to nonwetland shall be determined. The wetland type ratio table shall then be used to determine the amount of replacement wetland for each wetland type. The sum of the replacement for each wetland type shall be the resultant acreage requirement for the wetland type ratio.



Table 2. Wetland type ratio values for use in determining wetland replacement ratios for out-of-kind replacement.

IMPACTED WETLAND	REPLACEMENT WETLAND																	
	PFA	PFB	PFC	PSA	PSB	PSC	PSX	PEA	PFB	PEC	PEF	PA	PU	L1	L2	R2	R3	R4
PFA	1.0	1.5	1.5	2.0	1.5	2.0	3.0	3.0	1.5	1.0	1.0	1.5	1.5	1.5	1.5	2.0	1.5	2.0
PFB	1.5	1.0	1.0	2.0	1.0	2.0	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0
PFC	1.5	1.5	1.0	2.0	1.0	2.0	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0
PSA	1.5	1.5	1.0	1.0	1.0	1.5	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0
PSB	1.5	1.5	1.0	1.0	1.0	1.5	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0
PSC	1.5	1.5	1.0	1.0	1.0	1.0	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	2.0	1.5	2.0
PSX	1.0	1.5	1.0	2.0	1.0	2.0	1.0	1.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	2.0	1.5	2.0
PEA	1.5	1.5	1.0	2.0	1.0	2.0	1.5	1.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0
PFB	1.5	1.5	1.0	2.0	1.0	2.0	2.0	2.0	1.0	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0
PEC	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0
PEF	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.5	1.5	1.5	1.5	3.0	1.5	3.0
PA	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	2.0	1.0	2.0
PU	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	2.0	1.0	2.0
L1	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	2.0	1.0	2.0
L2	1.0	1.5	1.5	2.0	1.5	2.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.0	2.0	1.0	2.0
R2	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	1.0	1.0	1.5
R3	1.5	1.5	1.5	3.0	3.0	3.0	3.0	3.0	1.5	1.0	1.0	1.0	1.0	1.0	1.5	2.0	1.0	2.0
R4	1.5	1.5	1.5	3.0	3.0	3.0	2.0	2.0	1.5	1.0	1.0	1.0	1.0	1.5	1.0	1.0	1.0	2.0

\*See text of subpart 10, item B, for wetland classification equivalency.

NOTE: Wetland types L1, L2, and R2 are generally not subject to this chapter and cannot be used for wetland replacement, but are included for possible future coordination purposes.

(2) Hydrologic unit ratio.

(a) Except as noted in unit (b), when a replacement wetland is located in a different hydrologic unit than the impacted wetland, as indicated by the United States Geological Survey Hydrologic Unit Map for Minnesota (Figure 2), the following ratios must be applied, as specified in subitem (5):

Location of sites	Replacement ratio
Within same watershed	0.0
Different watershed	0.1
Different accounting unit	0.3
Different subregion	0.5
Different region	1.0

(b) The hydrologic unit ratio does not apply when replacement for impacts within counties or watersheds having 80 percent or more of their presettlement wetland acreage intact is accomplished in counties or watersheds in which 50 percent or more of the presettlement acreage has been drained or filled.

(3) Inlet and outlet characteristics ratio. If the inlet and outlet characteristics of a replacement wetland differ from those of the impacted wetland, the following ratios shall be applied, as specified in subitem (5).

The inlet and outlet characteristics ratio does not apply when replacement for impacts within counties or watersheds having 80 percent or more of their presettlement wetland acreage intact is accomplished in counties or watersheds in which 50 percent or more of the presettlement acreage has been drained or filled.

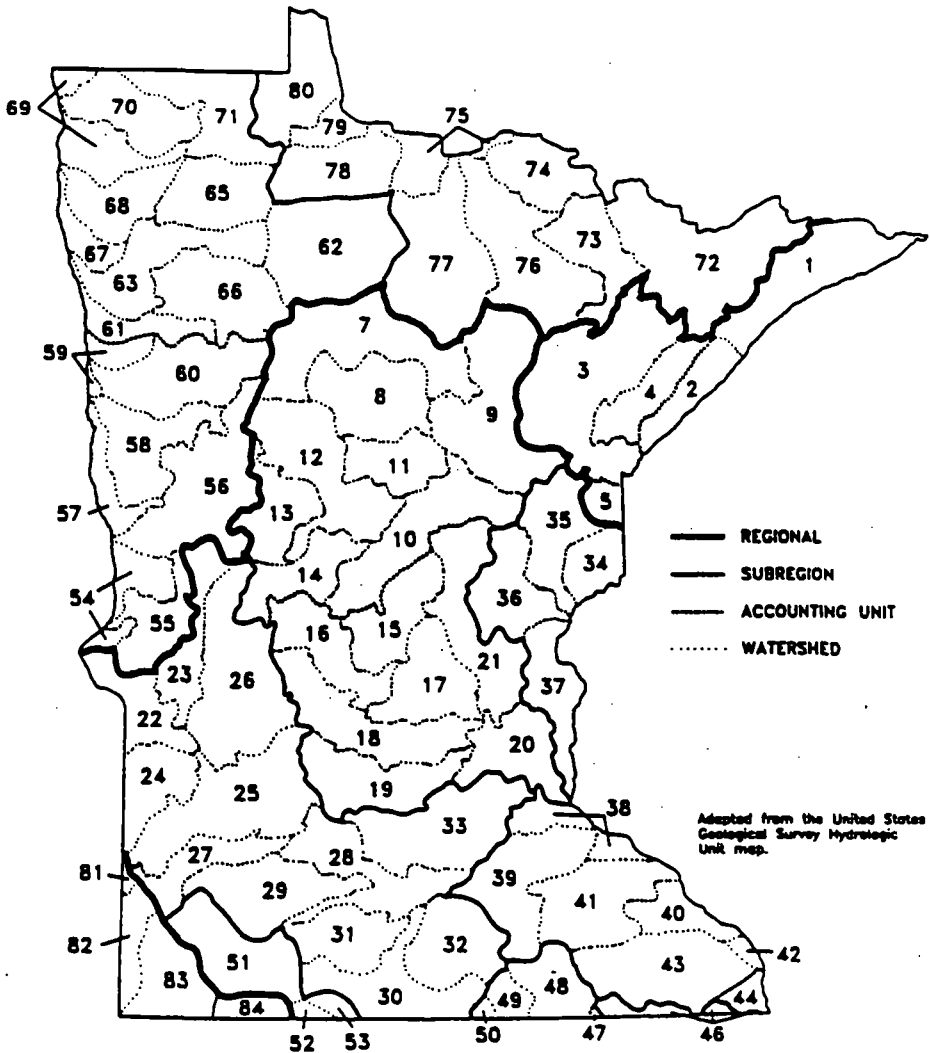
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Table 3. Inlet and Outlet Characteristics.

Impact Wetland	Replacement Wetland Riverine	Flow-Through	Tributary	Floodplain	Isolated
Riverine	0.0	0.2	0.4	0.6	1.0
Flow-Through	0.2	0.0	0.4	0.6	0.8
Tributary	0.4	0.2	0.0	0.2	0.4
Floodplain	0.6	0.6	0.2	0.0	0.2
Isolated	1.0	0.8	0.4	0.2 <td>0.0</td>	0.0

## HYDROLOGIC UNITS

Figure 2.



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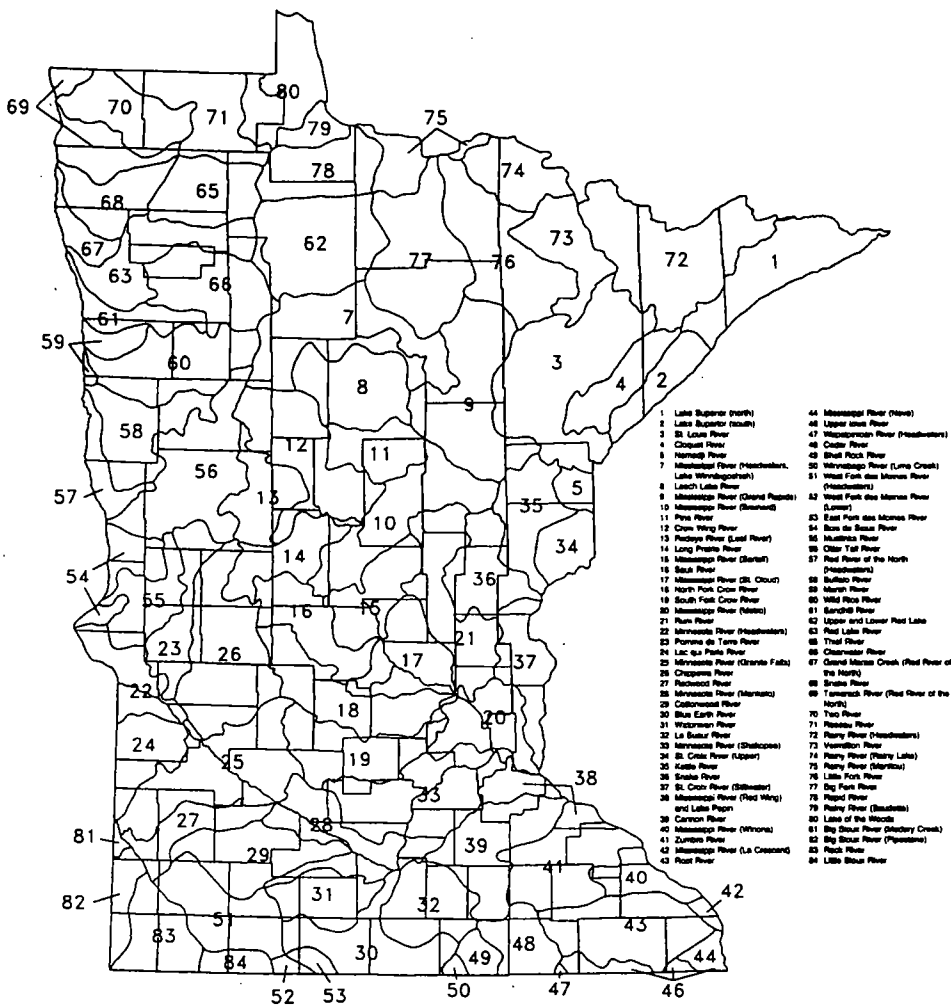
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## STATE OF MINNESOTA WATERSHED BOUNDARIES - 1979 (81 MAJOR WATERSHED UNITS)

Figure 3.

### STATE OF MINNESOTA WATERSHED BOUNDARIES - 1979 (81 MAJOR WATERSHED UNITS)



(4) Local public value ratio. A local government unit may by ordinance establish additional local public value ratios to address wetland conservation or preservation issues of local concern. These ratios must have a minimum value of zero and should be based on wetland management objectives of a local water management plan adopted under Minnesota Statutes, chapter 103B or 103D. The local preservation ratios must be applied as specified in subitem (5).

(5) Application of replacement ratios. The required replacement ratio for out-of-kind replacement shall be the sum of the wetland type ratio plus the hydrologic unit ratio plus the inlet and outlet characteristics ratio plus the local public value ratio. When this ratio is less than the minimum in-kind ratio of 1:1 for wetlands on agricultural land or in counties or watersheds in which 80 percent or more of the presettlement wetland acreage exists, or 2:1 for wetlands on nonagricultural lands in counties where 50 percent or less of presettlement wetlands exist, the minimum in-kind ratio shall be the required replacement ratio.

E. Determining impacts of partial drainage. In cases where wetlands will be partially or incompletely drained, the amount of wetland to be replaced must be determined according to the following formula:

$$\text{Where: } NI = OA - \frac{1}{RR}(RA)$$

NI = Net impact (acres of original wetland type to be replaced)

OA = Original acreage of original wetland type

RR = Replacement ratio, determined from table

1, using the original wetland type as the impacted wetland type and the wetland type resulting from the partial drainage as the replacement wetland type

RA = Remaining acres of the original wetland

Calculation of partial drainage credit is explained by the following example:

A ten-acre type 3 (PEMC) wetland is partially drained resulting in a five-acre type 1 (PEMA) wetland.  $(NI = 10 - 1/3(5) = 8 \frac{1}{3})$  Eight and one-third acres of type 3 wetland is the net impact subject to replacement.

F. Determining credit for restoration of partially drained wetlands. In cases where partially drained wetlands are restored to their former state, the acres credited for restoring a partially drained wetland is in two parts. The first is the new wetland credit (NWC) caused by the restoration (for example, if the preresoration wetland is one acre and postrestoration will be three acres, the new wetland credit is two acres). The second credit is for the change in value of the preresoration wetland acres. This is the public value credit (PVC) and must be computed as follows:

$$PVC = \left( \frac{RR - 1}{RR} \right) OA$$

Where: PVC = Public value credit

RR = Replacement ratio, determined from table

1, using the preresoration wetland type as the replacement wetland type, and the postrestoration type as the impacted wetland type

OA = Wetland acreage before restoration

The credit for increase in new acres can be used in its entirety. The public value credit can only be used for that portion of wetland replacement requiring greater than a 1:1 ratio.

Calculation of partial restoration credits is explained by the following example:

A partially drained five-acre type 1 (PEMA) wetland is to be restored to a ten-acre type 3 (PEMC) wetland.

$$\left(\frac{3-1}{3}\right)5 = 3 \frac{1}{3} \text{ PVC}$$

This restoration is proposed as replacement for a ten-acre type 6 (PSSA) wetland. The wetland is located on nonagricultural land in a "less than 80 percent county or watershed" so the minimum replacement ratio is 2:1. This means 20 acres of replaced wetland is needed.

From the wetland type value in table 2, the replacement ratio is 1. The replacement is located in the same watershed, so the hydrologic unit ratio is 0.0. The inlet and outlet characteristics are isolated for the impacted wetland and tributary for the replacement wetland, so the inlet and outlet characteristics ratio is 0.4. The out-of-kind replacement ratio is the sum of  $1.0 + 0.0 + 0.4 = 1.4$ . This is less than the minimum of 2:1, so additional acreage is needed.

To ensure no-net loss of wetlands, at least ten acres of new wetland credit must be used to offset the ten acres of wetland lost. The remaining ten acres of required replacement can use either new wetland credit or public value credit.

The proposed restoration is insufficient to replace the proposed impact, therefore an identical site is also selected for restoration. From site one, new wetland credit equals five; from site two, new wetland credit equals five; ( $5 + 5 = 10$  acres of NWC). The no-net loss wetland acreage requirement is satisfied. Ten acres must still be found to satisfy the 2:1 requirement. Site one still has three and one-third acres of public value credit, as does site two; ( $3 \frac{1}{3} + 3 \frac{1}{3} = 6 \frac{2}{3}$ ). An additional three and one-third acres of either new wetland credit or public value credit must be found to meet the additional acreage requirements.

G. Special cases or appeals. For projects of unusual complexity, or replacement plans that have been denied and are being appealed, and for which the local government unit believes an alternative evaluation process may produce a substantially different replacement requirement, the local government unit may evaluate the replacement plan using the current version of the Minnesota wetland evaluation methodology or another scientifically accepted methodology approved by the board, in consultation with the commissioner, that evaluates all wetland functions and values for both the impacted and replacement wetlands.

When using the Minnesota wetland evaluation methodology or another board, in consultation with the commissioner, approved methodology to evaluate replacement plans, the ratio of impact wetland to replacement wetland must not be less than the minimum acreage requirements as listed in part 8420.0540, subpart 6. Further, the hydrologic unit ratio in item D, subitem (2), the inlet and outlet characteristics ratio in item D, subitem (3), and the local public value ratio, if any, in item D, subitem (4), must also be considered when using the Minnesota wetland evaluation methodology or another board, in consultation with the commissioner, approved methodology.

H. Adequacy decision. A replacement plan that fails to meet the requirements in items A to G must be considered inadequate in replacing lost functions and values and shall not be approved by the local government unit. A replacement plan that has been considered by the local government unit and not approved may be revised and resubmitted for consideration by the local government unit. As required by part 8420.0250, the decision of a local government unit to approve, approve with conditions, or not approve a replacement plan becomes final if not appealed to the board within 30 days after the date on which the decision is mailed to those required to receive notice of the decision. Before construction of the replacement wetland may proceed, the notice specified in part 8420.0530, item D, subitem (6), must be recorded and proof of recording provided to the local government unit.

I. Replacement wetlands eligible for RIM. A landowner who drains or fills a wetland and replaces it by restoring an impacted wetland on the landowner's property under an approved replacement plan may apply to the board for enrollment of the replacement wet-

land into the Reinvest in Minnesota program no sooner than one year after completion of the replacement project.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

#### **8420.0550 WETLAND REPLACEMENT STANDARDS.**

Subpart 1. **General requirements.** The standards and guidelines in this part shall be used in wetland creation and restoration efforts to ensure adequate replacement of wetland functions and values.

Table 4 provides general guidelines for the physical characteristics that each type of replacement wetland should have.

Subp. 2. **Specific requirements.** The standards in items A to H shall be followed in all wetland replacements unless the technical evaluation panel determines that a standard is clearly not appropriate.

A. Water control structures must be constructed using specifications provided in the Minnesota Wetland Restoration Guide or their equivalent. Control structures may be subject to the department dam safety regulations.

B. Best management practices must be established and maintained adjacent to the entire perimeter of all replacement wetlands.

C. For replacement wetlands where the dominant vegetation of the wetland type identified as the replacement goal in part 8420.0530, item D, subitem (1), is not likely to recover naturally in a five-year period, wooded and shrub wetlands especially, the replacement wetland must be seeded or planted with appropriate species, as determined by the soil and water conservation district, in coordination with the department. If the replacement wetland is seeded or planted, the seed or planting stock should be of local wetland origin to preserve local genotypes. During the monitoring period, the applicant must take reasonable steps to prevent invasion by any species, for example, purple loosestrife and Eurasian water milfoil, that would defeat the revegetation goal of the replacement plan.

D. Erosion control measures as determined by the soil and water conservation district must be employed during construction and until permanent ground cover is established to prevent siltation of the replacement wetland or nearby water bodies.

E. For all restored wetlands where the original organic substrate has been stripped away and for all created wetlands, provisions must be made for providing an organic substrate. When feasible, the organic soil used for backfill should be taken from the drained or filled wetland.

F. The bottom contours of created types 3, 4, and 5 wetlands should be undulating, rather than flat, to provide a variety of water depths to be consistent with part 8420.0540, subpart 8.

G. Sideslopes of created wetlands and buffer strip must not be steeper than 5:1, five feet horizontally for every one foot vertically as averaged around the wetland. Sideslopes of 10:1 to 15:1 are preferred.

H. Created wetlands should have an irregular edge to create points and bays to be consistent with part 8420.0540, subpart 8.

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Subp. 3. **Table 4.** Physical characteristics of wetlands referencing the wetland classification equivalency chart found in part 8420.0540, subpart 10, item B.

WETLAND TYPE	MEAN DEPTH*	WATERSHED RATIO	DOMINANT VEGETATION**	DEPRESSIONAL?
<b>FORESTED</b>				
PFA (T1)	INTMTNT	—	TREES	SOMETIMES
PFB (T7)	SATUR'D	≥ 3:1	TREES	YES
PFC (T7)	6" - 3'	≥ 5:1	TREES	YES
<b>SCRUB-SHRUB</b>				
PSA (T6)	INTMTNT	—	SHRUBS	YES
PSB (T6)	SATUR'D	≥ 3:1	SHRUBS	YES
PSX (T8)	SATUR'D	≥ 3:1	SHRUBS	SOMETIMES
PSC (T6)	SAT.-INT.	—	SHRUBS	YES
<b>EMERGENT</b>				
PEA (T1)	INTMTNT	—	HERB/EMERG	YES
PEB (T2)	SATUR'D	≥ 3:1	HERB/EMERG	YES
PEC (T3)	6" - 2'	≥ 5:1	HERB/EMERG	YES
PEF (T4)	2' - 4'	≥ 10:1	HERB/EMERG	YES
<b>DEEP MARSH</b>				
PA (T5)	4' - 6'	≥ 15:1	AQUATIC BED	YES
PU (T5)	4' - 6'	≥ 15:1	ALGAE/FLOATG	YES
<b>LAKES</b>				
L1 (T5)	≥ 6'	≥ 25:1	ALGAE/FLOATG	YES
L2 (T5)	≤ 6'	≥ 25:1	HERB	YES
<b>RIVERINE</b>				
R2 (NA)	≥ 2'	—	ALGAE, SUB	FLOWAGE
R3 (NA)	6" - 2'	—	ALGAE, SUB	FLOWAGE
R4 (NA)	INTMTNT	—	RIPARIAN	FLOWAGE

\* INTMTNT = Intermittent or temporarily flooded, SATUR'D = Saturated in the rooting zone

\*\* HERB = Herbaceous, EMERG = Emergent, SUB = Submergent, FLOATG = Floating-leaved

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

### 8420.0600 MONITORING.

The purpose of wetland value replacement monitoring is to ensure that the replacement wetland achieves the goal of replacing lost functions and values.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

### 8420.0610 DURATION OF MONITORING.

Monitoring shall be by means of an annual report as specified in part 8420.0620 and shall continue for five years following completion of the wetland replacement project. Through written notification to the applicant, the local government unit may extend the required monitoring period for not more than an additional five-year period if, at the end of the initial five-year period, the goal of the replacement plan has not been achieved, but may be achieved with more time.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.0620 MONITORING ANNUAL REPORT.**

Subpart 1. **Purpose.** The purpose of the annual report is to describe actual wetland restoration or creation activities completed during the past year, activities planned for the upcoming year, and the information in subpart 2. The applicant shall submit the annual report to the local government unit on a date determined by the local government unit until the applicant has fulfilled all of the requirements of the local government unit. The local government unit, at its discretion, may prepare the annual report for the applicant.

Subp. 2. **Report content.** The annual report shall include the following information and other site-specific information identified by the local government unit:

A. a description of the project location, size, current wetland type (Cowardin classification), and desired wetland type (goal);

B. a comparison of the as-built specifications versus the design specifications (first annual plan only) and a rationale for significant changes;

C. hydrology measurements: seasonal water level elevations during the period April through October (msl or referenced to a known bench mark);

D. a list of the dominant vegetation in the wetland, including common names of the vegetation exceeding 20 percent coverage and an estimate of coverage, for example, 50 percent willow, 20 percent cattail, and 30 percent sedge; and

E. color photographs of the project area taken anytime during the period June through August, referenced to the fixed photo-reference points identified on the wetland replacement plan and labeled accordingly.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.0630 MONITORING DETERMINATIONS BY THE LOCAL GOVERNMENT UNIT.**

The local government unit responsible for monitoring as determined under part 8420.0230:

A. must inspect the project when construction is complete and certify compliance with construction specifications, and may inspect the project at any time during the construction and monitoring period, and any time after that to assess the long-term viability of the replaced wetland. When the local government unit certifies that the construction specifications have been met, the local government unit shall so advise the applicant and return any bond or other security that the applicant had provided;

B. may order corrective action at any time during the required monitoring period if it determines that the goal of the approved replacement plan will not be met, and may require the applicant to prepare an amended wetland value replacement plan for review and approval by the local government unit, which describes in detail the corrective measures to be taken to achieve the goal of replacing lost wetland functions and values;

C. shall make a finding based on a site visit at the end of the monitoring period as to whether the goal of the replacement plan has been met. If the goal of the replacement plan has not been met, the local government unit shall order corrective action and extend the monitoring period; and

D. shall require one or more of the following actions if during the monitoring period the local government unit finds that the goal of the replacement plan will not be met:

(1) order the applicant to prepare and implement a new replacement plan;

(2) issue a cease and desist order on the draining and filling activity if it has not been completed;

(3) order restoration of the impacted wetland;

(4) obtain forfeiture of a bond or other security and use the proceeds to replace the lost wetland values;

(5) ask the district court to order the applicant to fulfill the replacement plan;

or



(6) other actions that the local government unit determines necessary to achieve the goal of the replacement plan.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

## STANDARDS AND CRITERIA FOR STATE WETLAND BANKING

### 8420.0700 PURPOSE.

The purpose of parts 8420.0700 to 8420.0760 is to provide standards for the establishment and administration of a state wetland banking system as authorized by Minnesota Statutes, section 103G.2242.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

### 8420.0710 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 8420.0700 to 8420.0760, the terms in this part have the meanings given them.

Subp. 2. **Account or wetland bank account.** "Account" or "wetland bank account" means a record of wetland debits and credits established by an account holder within the state wetland banking system.

Subp. 3. **Account holder.** "Account holder," in the state wetland banking system, is a person, corporation, government agency, or organization that is the owner of credits.

Subp. 4. **Applicant.** "Applicant" is a person, corporation, government agency, or organization that makes an application to withdraw wetland credits from the wetland bank.

Subp. 5. **Credits or wetland credits.** "Credits" or "wetland credits" means acres or parts of acres of restored or created wetland, catalogued by abbreviated Cowardin, et al. wetland type from part 8420.0540, subpart 10, item B, and inlet and outlet characteristics deposited in the wetland bank.

Subp. 6. **State wetland banking system, wetland bank, or bank.** "State wetland banking system," "wetland bank," or "bank" means a system of identifying wetlands restored or created for replacement credit, providing for, and facilitating and tracking the exchange of wetland credits for projects that require replacement plans.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

### 8420.0720 PRINCIPLES OF WETLAND BANKING.

Subpart 1. **Goal.** Implementation of a wetland banking system must comply with the purposes and goals of the act by achieving a no-net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands.

Subp. 2. **Sequencing prerequisite.** The state wetland banking system may only be used for replacement of drained or filled wetlands when the local government unit determines that the applicant has complied with all of the sequencing requirements of part 8420.0520; that the project would otherwise be allowed if adequate replacement could be secured by the applicant; that project-specific replacement is not reasonable or desirable; and that the owner of the account agrees to the withdrawal of credits from the account.

Subp. 3. **Geographic limitations.** In counties having greater than 80 percent of their presettlement wetlands intact, wetland banking is allowed for any impact. Wetland banking in counties with less than 80 percent of their presettlement wetlands intact can be considered only in situations involving impacts of less than five acres, except in certain circumstances as noted in part 8420.0740, subpart 2, item B, subitem (2).

Subp. 4. **Eligible wetlands.** Restored wetlands are eligible for deposit into the wetland bank. Created wetlands are eligible for deposit in the wetland bank in counties in which 80 percent or more of the presettlement wetlands are intact. In other counties, created wetlands are eligible for deposit in the bank only if they are created by excavation in nonwetlands, by dikes or dams along public or private drainage ditches, or by dikes or dams associated with

the restoration of previously drained or filled wetlands. Modification or conversion of non-degraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.

Subp. 5. **Ineligible wetlands.** Wetlands that are drained or filled under an exemption in part 8420.0120 and subsequently restored are not eligible for deposit in the wetland bank.

Subp. 6. **Account balance.** Accounts must maintain a positive balance. A wetland bank account shall specify acreage by wetland type deposited by the account holder minus subsequent withdrawals.

Subp. 7. **Credit transfers.** Wetland credits may be transferred to another account holder providing the fee title or easement or license is transferred also, and providing all the remaining credit for a wetland remains in one account. Wetland credits may be withdrawn by an applicant and partial withdrawals are allowed. The account holder is responsible for the success of the wetland until completion of monitoring. After completion of monitoring, the fee title owner or easement or license holder and anyone who has contracted with the owner is responsible for maintaining the wetland and replacing it according to this chapter if the wetland is subsequently drained or filled, by structural failure, or otherwise.

Subp. 8. **Deed recording.** For wetlands proposed for deposit, a deed covenant must be recorded stating that the subject wetland was or will be restored or created for mitigation banking purposes.

Subp. 9. **Qualification.** A wetland cannot be deposited for credit that cannot, under parts 8420.0500 to 8420.0630, be used for replacement.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

#### **8420.0730 ADMINISTRATION AND MANAGEMENT AUTHORITY.**

Subpart 1. **Establishment.** The board shall establish a state wetland bank. The board or the board's assignee is responsible for management of the bank including recording all bank transactions, maintaining bank records, and ensuring that the operation of the bank complies with parts 8420.0700 to 8420.0760. The board shall notify all local government units upon establishment of the bank. Any banking system including those established by local governments must comply with parts 8420.0700 to 8420.0760 and must be approved by the board and the commissioner.

Subp. 2. **Deposit prerequisites.** To be deposited into the wetland bank, a wetland must be certified as eligible for deposit by the local government unit in which it is located, according to part 8420.0740, subpart 1. The method of certification by local government units is optional, but wetland credits may not be deposited into the bank within that local government units jurisdiction without certification. If a local government unit elects to certify wetlands for the wetland bank, the local government unit is also responsible for ensuring that the monitoring provisions in part 8420.0750 are fulfilled. A local government unit may decline to certify all wetlands within its jurisdiction or, based on a comprehensive local water plan, a local government unit may elect to certify wetlands for deposit into the wetland bank only in selected areas, for example, high priority regions and areas. If the local government unit elects to reject or limit banking, it must do so by rule or ordinance, as applicable.

Subp. 3. **Annual report.** Each local government unit participating in the wetland bank shall submit an annual report to the board on a form prescribed by the board.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

#### **8420.0740 PROCEDURES.**

##### **Subpart 1. Deposits and credits.**

A. Restored wetlands are eligible for deposit into the wetland bank. Created wetlands are eligible for deposit in the wetland bank in counties in which 80 percent or more of the presettlement wetlands are intact. In other counties, created wetlands are eligible for deposit in the bank only if they are created by excavation in nonwetlands, by dikes or dams along public or private drainage ditches, or by dikes or dams associated with the restoration of previously drained or filled wetlands. Modification or conversion of nondegraded natural-

ly occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.

B. Wetland replacement credits approved before July 1, 1993, are eligible for deposit into the state wetland banking system if the wetland replacement credit was authorized by a public agency specifically for a wetland bank that has been approved by the commissioner. Also, wetland replacement credits that have been deposited in a local government unit bank before July 1, 1993, and after January 1, 1992, are eligible for deposit into the state wetland banking system if the deposit meets all the criteria in parts 8420.0700 to 8420.0760 based on a site inspection and review by the board and the commissioner.

C. After July 1, 1993, wetlands restored or created without prior local government unit approval as specified in this part are not eligible for deposit into the wetland bank.

D. The minimum wetland acreage eligible to establish an account in the wetland bank is 0.1 acres.

E. There is no maximum wetland acreage eligible for deposit in the wetland bank. The local government unit, upon recommendation of the technical evaluation panel, must identify the acreage that will receive credit. As an incentive to encourage the deposit of small wetlands, the local government unit shall assign credit to wetland acreage as follows:

Wetland Acreage	Credit
0 to 10 acres	100 percent
over 10 acres	90 percent

The local government unit may modify the credit given, up to a maximum of 100 percent, if agreed to by the technical evaluation panel.

F. The initial deposit of wetland credits must be done by the fee title owner or easement or license holder of the wetland.

G. Except as provided for in item B, in order to deposit wetland acres into the wetland bank, the depositor must notify the local government unit in writing, before restoration or creation, that the proposed wetland is specifically designated for deposit into the wetland bank. This notification may be part of the documentation requested in item H. In cases where excess wetland acreage is expected to result from a specific replacement plan according to parts 8420.0530 to 8420.0550, the owner must indicate on the replacement plan that the excess acreage is to be considered available for wetland banking.

H. In cases where a wetland is proposed to be restored or created solely for wetland banking purposes, that is, the wetland is not part of a project-specific wetland replacement plan, the depositor must submit to the local government unit a bank plan containing the information required in part 8420.0530, items A and D.

A copy of the bank plan shall be mailed to members of the technical evaluation panel, members of the public who have requested a copy, and members of the watershed district or watershed management organization if there is one. Based on input from the technical evaluation panel and other comments received, the local government unit must determine the likelihood that the restoration or creation will be successful and, if affirmative, approve the plan and advise the depositor of the wetland acreage likely to be accepted into the wetland bank. Approval of the plan shall be considered official acknowledgment that the wetland is designated for replacement.

I. In cases where a wetland is to be restored or created by an agency, department, or subdivision of the local government unit for deposit into the wetland bank, the local government unit must prepare the information required in part 8420.0530, items A and D, and notice this information according to part 8420.0740, subpart 1, item H.

J. The proposed wetland must be restored or created within two years of approval or the bank plan must be resubmitted for consideration. Upon approval, the depositor shall restore or create the wetland and notify the local government unit when construction has been completed. The technical evaluation panel shall inspect the site when construction is completed to ensure that construction specifications have been followed. Failure to follow approved construction specifications is sufficient grounds for the local government unit to deny consideration of the wetland for banking.

K. No sooner than six months after construction has been completed and approved for restored wetlands, and no sooner than one year after construction has been completed and approved for created wetlands, the depositor shall contact the local government unit to request a final determination of wetland bank acceptability and approved quantities of wetland credits for deposit. The technical evaluation panel shall ensure that sufficient time has been allowed for the wetland to become established, especially vegetation and hydrology, before making this determination. If the technical evaluation panel has reason to believe that the wetland characteristics may change substantially, the panel must postpone its recommendation to the local government unit until the wetland has stabilized.

Based on a site visit, the technical evaluation panel will determine the size and type of wetland, using the abbreviated Cowardin et al. classification in part 8420.0540, subpart 10, item B, as well as inlet and outlet characteristics resulting from the to be deposited wetland. The technical evaluation panel will provide the information to the local government unit.

L. The local government unit shall notify the depositor of its findings as to the suitability of the wetland and approved wetland credits. If the depositor chooses to proceed with a deposit into the bank, the depositor must record the notice specified in part 8420.0530, item D, subitem (6), and submit proof of the recording to the local government unit for the wetlands to be deposited. If the depositor chooses not to proceed with the deposit, the depositor may return the wetland to its preconstruction condition without replacement within five years. At any time within the five-year period, the depositor may request certification for deposit into the bank or may amend the bank plan and submit the plan to the local government unit for approval and subsequent certification. After five years, any activity in the wetland is subject to this chapter.

M. To be deposited into the bank, the following information concerning the wetland must be submitted to the board by the local government unit in which the wetland is located:

- (1) name, address, and telephone number of the depositor;
- (2) location of the wetland, including legal description, public land survey coordinates, county, and watershed;
- (3) a copy of the deed for the property containing the wetland with the required covenant recorded;
- (4) size of the wetland acreage to be deposited, to the 0.1 acre, by wetland type, using the abbreviated Cowardin, et al. classification in part 8420.0540, subpart 10, item B, and inlet and outlet characteristics; and
- (5) certification that the wetland is approved for deposit into the bank.

N. The board shall acknowledge the deposit to the depositor and local government unit and officially enter the information in item M into the wetland bank. Information on deposited wetlands shall be available from the board on request according to subpart 2, item D.

O. Wetlands deposited into the wetland bank, on which withdrawals have occurred, are subject to replacement for any subsequent drainage or filling.

P. Wetlands deposited into the wetland bank are subject to the monitoring provisions in part 8420.0750.

#### Subp. 2. **Withdrawals.**

A. Before consideration of use of the wetland bank, applicants must satisfy the requirements of part 8420.0520. It must be clearly demonstrated that the applicant has made a good faith effort to avoid, minimize, rectify, or reduce or eliminate over time the impact on the wetland, and that no feasible and prudent alternative to the impact exists. The local government unit must certify that the project would otherwise be allowed if adequate replacement could be secured by the applicant and that the applicant has made a good faith effort to do so and has not succeeded in locating a site.

B. The use of the wetland bank is limited to:

- (1) projects occurring in counties having greater than 80 percent of their presettlement wetlands;
- (2) counties with less than 80 percent of their presettlement wetlands remaining, with the use of the wetland bank limited to:

- (a) linear-type transportation or utility projects with impacts less than five acres per basin, minus any project-specific replacement acreage;
- (b) other projects with a cumulative impact of less than five acres, minus any project-specific replacement acreage; or
- (c) whenever the local government unit determines that the use of the wetland bank is reasonable and desirable.

C. When using the wetland bank to replace drained or filled wetlands, the replacement must comply with part 8420.0540.

D. The board, on request, will provide the following information to persons making inquiries concerning available wetland bank deposits with a local government unit jurisdiction, county, or watershed:

- (1) account holder: name, address, and telephone number;
- (2) available wetlands: wetland acres by abbreviated Cowardin et al. classification type and inlet and outlet characteristics;
- (3) location: section, township, range, county, and watershed.

E. The applicant may then contact, negotiate, and purchase the required wetland acreage from the account holder. When the account holder and applicant come to agreement, the applicant will provide requested information on a notarized credit transfer form developed by the board, and include the credit transfer form as part of the wetland replacement plan transmitted to the local government unit. The credit transfer form will include information indicating the wetland type by acres for transferal, location of banked wetland, and the inlet and outlet characteristics of the banked wetland.

F. The local government unit must circulate the applicant's wetland replacement plan and the credit transfer form to identify specific wetland bank credits as the applicable replacement wetland, using the public comment and review process in part 8420.0230 and to the local government unit whose jurisdiction covers the location of the wetland bank acreage. The local government unit must contact the board to verify that replacement credits indicated on the credit transfer form are available before final approval of wetland bank withdrawals.

G. Wetlands impacted by public transportation projects may be replaced statewide, provided the replacements are approved by the commissioner under an established wetland banking system or under the rules for wetland banking as provided for in parts 8420.0700 to 8420.0760.

The commissioner shall notify the local government unit and the board of the decision within 30 days of the date that the replacement plan is received by the commissioner. If the commissioner does not approve the replacement plan, the local government unit shall not approve the replacement plan.

H. On approval of the applicant's wetland replacement plan using wetland bank acreage as wetland replacement, the local government unit shall notify the board to debit the appropriate banked wetland by type and acreage. The board will complete the accounting transactions and send a notice of credit transfer to the account holder.

I. The applicant shall not be allowed to begin proposed drain or fill activities until the local government unit formally approves the wetland replacement plan using the acknowledged wetland bank credits as replacement.

J. An individual, corporation, local government unit, or other organization may buy and hold credits from account holders in the bank for later use or resale. Transfer of credits must be accomplished through use of a board credit transfer form, and must be maintained in an account in the state wetland banking system. An account will be established for the individual or organization on presentation to the board of a credit transfer form, and required organization information. The board will notify both account holders on transfer of the wetland credits. An account transfer must be accompanied by transfer of the fee title or easement or license. A credit for a wetland may not be split between accounts. Wetland credits may also be transferred between banks approved by the board.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.0750 AUDITING AND MONITORING.****Subpart 1. Annual report and audit.**

A. The board will develop wetland bank deposit, withdrawal, and credit transfer forms and distribute them to local government units indicating a desire to certify restored wetland acreage for deposit in the wetland bank.

B. The wetland bank data file maintained by the board will contain at least the following information:

(1) wetland acres by abbreviated Cowardin et al. classification type, inlet and outlet characteristics, restoration or creation date, and bank acceptance date, fee owner, location by (public land survey coordinates, local government unit, county, and watershed of the banked wetland); and

(2) previous withdrawals against each banked wetland by impact wetland (wetland acres by abbreviated Cowardin, et al. classification type, inlet and outlet characteristics, date of wetland impact), ownership (fee owner, address, telephone number) and location (public land survey coordinates, local government unit, county, and watershed of the impacted wetland).

C. The board may periodically inspect wetland bank records and correspondence maintained by a local government unit to determine compliance with this part.

D. An annual wetland bank report shall be prepared and distributed by the board to applicable local government units, soil and water conservation districts, watershed districts, watershed management organizations, the department, and on request.

**Subp. 2. Monitoring.**

A. After the wetland is entered into the bank, the local government unit responsible for monitoring under part 8420.0230 and the account holder shall continue monitoring according to parts 8420.0600 to 8420.0630. The account holder is responsible for the success of the wetland until completion of monitoring, even after all the credit has been withdrawn.

B. The board shall inspect wetlands deposited into the wetland bank at least once each five years to ensure that the wetlands conform to conditions specified in the approved bank plan, and to make a determination of needed corrective action.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.0760 ENFORCEMENT AND CORRECTIVE ACTIONS.**

A. Enforcement of parts 8420.0700 to 8420.0750 is governed by part 8420.0290 and Minnesota Statutes, section 103G.2372.

B. If, on inspection, the board determines that wetlands deposited in the wetland bank are not in compliance with this chapter, the board must prescribe corrective measures to the local government unit to bring the wetland into compliance.

C. If satisfactory remediation does not result, the board may refuse future wetland bank certifications by the local government unit and require all wetland replacements to be on a project-specific basis.

D. If a local government unit determines that a banked wetland does not substantially meet the specifications in the approved bank plan, the local government unit must notify the board, and the board shall restrict further withdrawals from the account until the local government unit notifies the board that the wetland has been brought into compliance. The board may also restrict withdrawals when a local government unit is the account holder and the board determines that a banked wetland does not substantially meet the specifications in the approved bank plan.

E. The local government unit or the board can undertake reconstruction work and require reimbursement of reasonable costs from the fee title owner or easement or license holder.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**STANDARDS AND CRITERIA FOR IDENTIFICATION,  
PROTECTION, AND MANAGEMENT OF CALCAREOUS FENS****8420.1010 PURPOSE.**

The purpose of parts 8420.1010 to 8420.1060 is to provide minimum standards and criteria for the identification, protection, and management of calcareous fens as authorized by Minnesota Statutes, section 103G.223. Calcareous fens may not be drained or filled or otherwise altered or degraded except as provided for in a management plan approved by the commissioner.

Part 8420.0120 does not apply to calcareous fens.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.1020 IDENTIFYING CALCAREOUS FENS.**

A calcareous fen is a peat-accumulating wetland dominated by distinct groundwater inflows having specific chemical characteristics. The water is characterized as circumneutral to alkaline, with high concentrations of calcium and low dissolved oxygen content. The chemistry provides an environment for specific and often rare hydrophytic plants.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.1030 PROCEDURES TO LIST CALCAREOUS FENS.**

A. The commissioner shall investigate wetlands to determine if the wetland is properly identified as a calcareous fen.

B. The commissioner shall maintain a current list of known calcareous fens in the state and their location.

C. The commissioner shall provide an updated list of calcareous fens to the board for further distribution.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.1040 MANAGEMENT PLANS.**

Calcareous fens may not be drained or filled or otherwise altered or degraded except as provided for in a management plan approved by the commissioner.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.1050 RESTORATION.**

The commissioner may approve management plans to restore or upgrade a previously damaged calcareous fen.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*

**8420.1060 APPEALS.**

A. A landowner or project proposer may challenge the commissioner's determination that a wetland is a calcareous fen or the commissioner's calcareous fen management plan by demanding a hearing. The hearing will be carried out in the same manner as water permit hearings under Minnesota Statutes, chapter 103G.

B. The hearing must be demanded within 30 days after mailed notice of the commissioner's decision to the project proposer, otherwise the decision becomes final and may not be challenged by the project proposer.

C. Appeal of the commissioner's decision after the hearing must be done in the manner provided for appeals from contested case decisions in Minnesota Statutes, chapter 14.

**Statutory Authority:** *MS s 14.06; 103B.101; 103B.3355*

**History:** *18 SR 274*