

8420.0105 SCOPE.

Subpart 1. **Scope; generally.** Wetlands must not be impacted unless replaced by restoring or creating wetland areas of at least equal public value. This chapter regulates the draining or filling of wetlands, wholly or partially, and excavation in the permanently and semipermanently flooded areas of type 3, 4, or 5 wetlands, and in all wetland types if the excavation results in filling, draining, or conversion to nonwetland.

Subp. 2. Applicability.

A. 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 or improved and the agricultural use does not impact the wetlands.

B. This chapter does not regulate normal farming practices in a wetland. "Normal farming practices" means ranching, silvicultural, grazing, and farming activities such as plowing, seeding, cultivating, and harvesting for the production of feed, food, and fiber products, but does not include activities that result in the draining of wetlands.

C. This chapter does not prevent control of noxious weeds if the control does not impact the wetland.

D. This chapter does not regulate impacts to incidental wetlands. "Incidental wetlands" are wetland areas that the landowner can demonstrate, to the satisfaction of the local government unit, were created in nonwetland areas solely by actions, the purpose of which was not to create the wetland. Incidental wetlands include drainage ditches, impoundments, or excavations constructed in nonwetlands solely for the purpose of effluent treatment, containment of waste material, storm water retention or detention, drainage, soil and water conservation practices, and water quality improvements and not as part of a wetland replacement process that may, over time, take on wetland characteristics.

E. 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, except that:

(1) for projects affecting public waters wetlands, and for public transportation projects affecting the wetland areas of public waters, when the commissioner waives the requirement for a public waters work permit consistent with chapter 6115, the local government unit must make replacement, banking, wetland boundary, wetland type, no-loss, public road project notification, or exemption decisions; or

(2) for projects affecting both public waters and wetlands, the local government unit may, by written agreement with the commissioner, waive the requirement for a replacement plan, no-loss, or exemption decision if a public waters work permit is

required and the commissioner includes the provisions of this chapter in the public waters work permit.

F. 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.

G. 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.

H. This chapter does not require state agencies to obtain local government unit approvals. However, the state agencies must follow the procedures and standards prescribed by this chapter.

I. In addition to the provisions of this chapter, governmental decisions on impacting 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.3355; 103G.2242*

History: *18 SR 274; L 1996 c 462 s 43; 22 SR 1877; 25 SR 152; 27 SR 135; 34 SR 145*

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