

8420.0900 ENFORCEMENT PROCEDURES.

Subpart 1. **Enforcement 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.**

A. Cease and desist orders may be issued when the enforcement authority has probable cause that an activity is being or will again be conducted that impacts a wetland, does not qualify for no-loss or an exemption under parts 8420.0415 and 8420.0420, and is being or will again be conducted without prior approval of a replacement plan by a local government unit under part 8420.0255 or involving a decision stayed by the board pursuant to part 8420.0905.

B. A cease and desist order must not be issued if the landowner:

(1) has, and is complying with, a valid replacement plan, exemption, or no-loss approved by the local government unit or a completed and submitted public road project notification that has not been stayed, remanded, or reversed on appeal under part 8420.0905; or

(2) has sufficient evidence to support qualification for an exemption or no-loss.

C. The enforcement authority must advise the landowner that the landowner's written application, if any, for a replacement plan, exemption, or no-loss should be made immediately to the local government unit and that any wetland that has been impacted may require restoration if the application for replacement plan, exemption, or no-loss is denied or reversed on appeal. The enforcement authority issuing a cease and desist order must promptly submit copies to the soil and water conservation district, local government unit, and Department of Natural Resources.

D. If an application for a replacement plan, exemption, or no-loss approval is triggered by a cease and desist order, the local government unit must make the decision according to part 8420.0255 and the standards and application procedures applicable to the type of application.

E. If the decision is that the activity is exempt or qualifies as a no-loss, the local government unit must request that the enforcement authority rescind the cease and desist order, pending the outcome of any appeal, and notify the soil and water conservation district, the enforcement authority, and the landowner.

F. If the application is denied, the local government unit must immediately notify the soil and water conservation district, the enforcement authority, and the landowner.

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

Subp. 3. Restoration and replacement orders.

A. The enforcement authority must issue a restoration order or replacement order when:

(1) the impact has already been completed when discovered or, after a cease and desist order has been issued, the landowner does not apply for a replacement plan, exemption, or no-loss within three weeks;

(2) the local government unit approves the application but it is reversed on appeal; or

(3) the local government unit denies the application.

B. Promptly upon being informed by the enforcement authority or the local government unit of the need, a soil and water conservation district staff person must inspect the site and prepare a plan in consultation with the local government unit and the enforcement authority for restoring the site to its prealtered condition. The soil and water conservation district may request assistance from the local government unit or technical evaluation panel in inspecting the site and preparing the plan. Restoration must be ordered unless the technical evaluation panel concludes that restoration is not possible or prudent. The soil and water conservation district must 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 or responsible party.

Subp. 4. Contents of order.

A. A restoration order must specify dates by which the landowner or responsible party must:

(1) 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

(2) submit a complete replacement plan, exemption, or no-loss application to the local government unit.

B. If an application submitted under item A, subitem (2), is denied, the landowner or responsible party must restore the wetland as specified in the order.

C. The restoration order must be rescinded if the landowner or responsible party obtains approval of an after-the-fact replacement plan, exemption, or no-loss from the local government unit that is not reversed on appeal.

D. A replacement order must specify a date by which the landowner or responsible party must submit a complete replacement plan application to the local government unit and a subsequent date by which the landowner or responsible party must replace the wetland according to the approved replacement plan and obtain a certificate of satisfactory replacement from the soil and water conservation district. The restoration or replacement order must specify a time period of at least 30 days for submittal of a complete application under this subpart.

E. If a complete application is not submitted within the time period specified in the restoration order, or as properly extended, the landowner or responsible party must restore the wetland as specified in the order before submitting an application under item A, subitem (2), unless the local government unit and the enforcement authority agree otherwise or unless allowed under appeal.

F. A certificate of satisfactory restoration or replacement may be issued with conditions that must be met in the future, such as for issues with wetland vegetation, weed control, inspections, monitoring, or hydrology. Failure to fully comply with any conditions that have been specified may result in the issuance of a new restoration or replacement order.

Subp. 5. Enforcement authority orders.

A. If the technical evaluation panel determines that restoration will not restore all the loss caused by the impact, the order may require a combination of restoration and replacement or may require replacement rather than restoration. The order must direct the landowner or responsible party to obtain replacement plan approval from the local government unit. The order must specify that if replacement plan approval is not obtained, the landowner or responsible party must restore the wetland as ordered.

B. Each cease and desist, restoration, and replacement order must state that violation of the order is a misdemeanor.

C. If, as part of a misdemeanor proceeding, the court orders restoration or replacement, the technical evaluation panel must determine which is appropriate, and if it is restoration, the method of restoration. If the court orders replacement, the landowner or responsible party must follow the replacement plan process under subpart 6 and part 8420.0330, and the wetland replacement, construction, and monitoring requirements of this chapter.

Subp. 6. After-the-fact replacement. If a landowner or responsible party seeks approval of a replacement plan after the proposed project has already impacted the wetland or if an approved replacement plan has not been implemented in advance of or concurrent with the impact, the local government unit must require the landowner or responsible party to replace the impacted wetland at a ratio twice the replacement ratio otherwise required,

unless the local government unit and enforcement authority concur that a lesser ratio is acceptable.

Subp. 7. **Misdemeanor.** A violation of an order issued under this part is a misdemeanor and must be prosecuted by the county attorney where the wetland is located or the illegal activity occurred.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

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