

Drainage Project Fact Sheet for Wetland Conservation Act Compliance

Wetlands Section, Minnesota Board of Water & Soil Resources

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Purpose

Projects that involve the installation, improvement, repair and/or maintenance of public or private drainage systems (collectively referred to as "drainage projects") must comply with the provisions of the Minnesota Wetland Conservation Act (WCA). These projects typically involve construction-type activities in or near wetlands regulated under WCA rules and have the potential to impact these wetlands. Wetland impacts regulated by the WCA include drainage, fill and excavation (under certain circumstances). This fact sheet is intended to identify the type of information that is often needed to evaluate drainage projects for WCA compliance. Drainage authorities, private landowners and consultants can use this document to inform their applications for WCA compliance, and local government unit (LGU) and technical evaluation panel (TEP) representatives can use it to inform their review of applications.

WCA Compliance Information

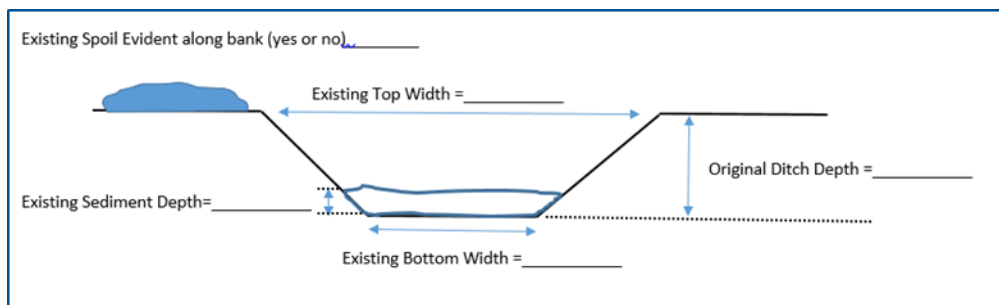
Drainage authorities and private landowners should coordinate with the applicable WCA LGU for the area of their proposed project to determine if their project is WCA compliant. The WCA LGU is typically the County or SWCD and sometimes a watershed district, township or city. A list of all WCA LGUs is available by county on the BWSR website or applicants can contact the local SWCD office to for information on the LGU. Some drainage projects involve DNR Protected Waters and Wetlands for which drainage authorities and private landowners must coordinate with DNR (and are sometimes required to obtain a permit). Compliance with the DNR Protected Waters Permit Program (PWPP) does not necessarily mean that a project is compliant with the WCA. In part this is because WCA regulates substantially more wetlands and more wetland area than the DNR PWPP.

The WCA has a number of exemptions and "no-loss" provisions as well as an approval process for replacing wetland impacts resulting from a project/activity. Some exemption and no-loss provisions may be applicable to certain public and private drainage projects. BWSR highly encourages drainage authorities and private landowners to seek approval from the applicable WCA LGU prior to conducting drainage projects. Failure to document WCA compliance through the approval process could result in enforcement if it is not evident that the project complies with WCA. The preferred and most expedient method for seeking WCA approval for a drainage project is to start with a pre-application meeting with the WCA TEP prior to or in the very early stages of project

design/development. This meeting is typically arranged through the WCA LGU representative. Discussion of the purpose, scope and methods to be used for the project will help determine what type of information is needed to determine WCA compliance. While the TEP can assist applicants with determining the appropriate content of their project application, it is ultimately up to the applicant to provide information in their application to demonstrate compliance.

While every drainage project is unique and may require different types of information for determining WCA compliance, the following list of questions are relevant for many projects.

1. **Is the project being proposed on a public or private ditch system?** There are differing exemption provisions for public versus private drainage maintenance and repair projects in WCA.
2. **Is the project a maintenance or repair of an existing drainage system, or does it involve an improvement to the system.** For WCA, an improvement refers to increasing drainage beyond its original or subsequent legally-improved capacity when it was installed/constructed.
3. **What is the existing condition of the drainage system?** This includes the following type of information:
 - a. Watershed/drainage area of the system
 - b. All known sources of hydrologic input into the drainage system
 - c. Location of all drainage system features (ditches, tiles, pumps, culverts, etc.) in relation to wetlands and benefited lands
 - d. Elevation profile of any ditches or tiles
 - e. Elevation, depth and width of any ditches
 - f. Approximate depth of sediment in any ditches proposed for clean-out/excavation
 - g. Size, type and condition of any tile
 - h. Elevation, size and type of culverts, dams, levees and any other features that affect flow in the drainage system
 - i. The legal profile of any public ditch/tile systems proposed for maintenance or repair



4. **What is the proposed condition of the drainage system?** This should include information on all proposed changes to any of the information provided for the existing condition in the above question 3.

5. ***What is the location, type and approximate size of any wetlands that may be impacted by the project?***
A map showing the location and size of wetlands on lands that will receive benefits from the drainage project is typically required. Making these determinations can often be accomplished through offsite wetland delineation methods in agricultural landscapes with minimal effort compared to onsite field delineation methods used in nonagricultural landscapes. BWSR has guidance on methods for delineating wetlands on agricultural lands as well as guidance on offsite delineation procedures and requirements, referred to as a "level 1" delineation. Wetland types should be identified using the Circular 39 system (Types 1 through 8) and in some circumstances the Cowardin system used for National Wetland Inventory mapping. For maintenance and repair of public drainage systems it is especially important to identify wetland types and their approximate acreages to determine if certain exemptions apply.
6. ***Is there any filling or excavation of wetland proposed?*** Areas of fill and excavation should be identified on a map and quantified in areal square footage. Areas of both temporary and permanent fill and excavation should be identified and differentiated.
7. ***What is the drainage maintenance history of the system?*** This includes information on when maintenance/repair was performed in the past, the extent of that maintenance and any plans or as-built information. The best drained condition of the drainage system within the past 25 years is of particular relevance to the WCA drainage exemption for projects that are strictly maintenance/repair. In certain instances the history of public drainage assessments, expenditures, maintenance/repairs and inspection from 1/1/1972 to 1/1/1992 is important in determining exemption applicability on certain lands.
8. ***Do any of the identified wetlands that may be impacted by the project have cropping history relevant to WCA agricultural exemptions?*** Some WCA agricultural exemptions are applicable to wetlands that are planted to crops (or in a crop rotation) at least 8 of the last 10 years or at least 6 of the 10 years prior to January 1, 1991.
9. ***Are any of the wetlands located on agricultural pasture land?*** There is a WCA agricultural exemption in WCA for impacts to pasture land provided it remains in the same use. Wetland type, size and location are important for this exemption determination.

Applicants may have to provide additional information depending on the specific project proposal and the specific exemption, no-loss or replacement plan approval they are seeking.

Contact

For questions on this fact sheet or to obtain more information on your drainage project, contact your regional BWSR Wetland Specialist or Ken Powell, WCA Operations Coordinator at ken.powell@state.mn.us