

Minnesota Wetland Conservation Act Guidance Paper 2004 – 01

Approved by BWSR: June 23, 2004

SUBJECT: Forestry Exemption Guidance for Local Government Units

Prepared by: Minnesota Board of Water and Soil Resources with assistance from the Minnesota Department of Natural Resources, U.S. Army Corps of Engineers, Fond du Lac Reservation and several Local Units of Government

1. Purpose and applicability.

- a. **Purpose.** The purpose of this guidance paper is to provide Local Government Units (LGUs) with guidance for determining landowner qualification for the forestry exemption (8420.0122 Subpart 7) under the Wetland Conservation Act.
- b. **Applicability.** LGUs are encouraged to use this guidance to help determine whether the forestry exemption is being properly implemented by a landowner for a temporary or permanent forest road.

2. General Considerations. This guidance recognizes that persons utilizing the forestry exemption are not required to obtain an exemption certificate from the LGU. In 1991, when the Wetland Conservation Act was enacted, the legislature recognized the importance of the forest products industry in Minnesota. The statute and rule provide for an exemption from the requirement to obtain an approved replacement plan for wetland impacts for certain silvicultural activities (see Minnesota Rule 8420.0122, Subpart 7.) This guidance is intended to protect the legitimate use of the forestry exemption, while providing guidance to LGUs for determining when the exemption is not properly being implemented. Some abuses of the forestry exemption have occurred in Minnesota. **The following examples are clear misuse of the forestry exemption when a road is constructed resulting in:**

- **Conversion of forested land to residential development**
- **Conversion of forested land to agricultural use**
- **Conversion of forested land to commercial development**
- **Conversion of forested land to industrial development**
- **Clearing and grubbing of forested land**
- **Construction of forest roads that have NOT limited impacts to the hydrologic and biologic characteristics of the wetland**

For less obvious determinations, LGUs may use the attached Forestry Exemption Guidance Worksheet to help determine whether an activity is eligible for the forestry exemption.

Legitimate silvicultural activities that meet the provisions of the Wetland Conservation Act forestry exemption as stated in Minnesota Rules 8420.0122 Subpart 7. are eligible for the forestry exemption.

When a road is legitimately constructed using the forestry exemption, but later the primary purpose of the road is converted to another use (for example providing access for residential development), this guidance recommends that wetland impacts be dealt with in the following manner:

- **If the forest road has been in place for less than 10 years when the primary purpose of the road changes from silviculture to another use, the entire wetland impacts, including the footprint of the forest road should be replaced in compliance with Minnesota Rules 8420.**

- **If the forest road has been in place for more than 10 years when the primary purpose of the road changes from silviculture to another use, the wetland impacts in excess of the original footprint of the forestry road should be replaced in compliance with Minnesota Rules 8420.**

LGUs are encouraged to document use of the exemption (as is practical) to help determine future wetland mitigation needs if the primary purpose of the road changes.

The Minnesota Board of Water and Soil Resources (BWSR) has developed this guidance in cooperation with Minnesota Department of Natural Resources Division of Forestry and Ecological Services and the U.S. Army Corps of Engineers, St. Paul District, in addition to several LGUs. The BWSR has developed this guidance to help determine the applicability of the forestry exemption when a landowner applies for the exemption, or when a wetland impact is inspected after the fact and the landowner claims the forestry exemption. This guidance is intended to help LGUs determine when the forestry exemption has been properly applied or has been misused which may initiate an enforcement action. LGUs should inform landowners that they should contact the U.S. Army Corps of Engineers for a determination of compliance with the federal Clean Water Act.

Minnesota Rules 8420.0290 Subpart 3.C. states, in part, *“The soil and water conservation district shall incorporate its plan into a restoration order or replacement order and send it to the enforcement authority for service in person or by certified mail to the landowner or responsible party.”* The rule definitions, 8420.0110, Subpart 40a states *“Responsible party means an individual, business, or other organization causing the draining, excavation, or filling of wetlands on the property of another, with or without landowner’s permission or approval.”* This rule language provides that the logger or contractor, in addition to the landowner, may be held liable for restoration or replacement of the wetland impacts if the LGU determines that a road is not eligible for the forestry

exemption. Loggers and contractors are encouraged to use the Minnesota Wetland Conservation Act **Contractor Responsibility and Landowner Statement Form** which can be found at the Minnesota Board of Water and Soil Resources web site www.bwsr.state.mn.us/wetlands/wcamanual/BWSR_Form_Enforcement.

The forest road exemption also covers skid trails (trails used for logging equipment to drag logs to the landing) provided the skid trails limit the impact on the hydrologic and biologic characteristics of the wetland and meet all other conditions of Minnesota Rules 8420.0122 Subpart 7. Landings (areas used to stockpile logs before loading onto trucks) are not considered to be eligible for the forest road exemption. Landings should be sited on uplands, or if the entire forest harvest area is in wetlands, harvesting in winter on frozen ground is recommended. Landings on frozen ground in wetlands are acceptable provided slash and woody debris from trees growing in uplands is not deposited in wetlands.

3. **Guidance** – LGUs are encouraged to review the reference “**Sustaining Minnesota Forest Resources: Voluntary Site-Level Forest Management Guidelines**” for information regarding best management practices for forest roads. This document can be found at the web site www.frc.state.mn.us/Fmgdline/Guidebook.html. LGUs may use the **Forestry Exemption Guidance Worksheet** below and the questions as evidence to determine applicability of Minnesota Rules 8420.0122 Subpart 7, the forestry exemption. **Questions A, B and C below should all be answered yes in order for landowner to be eligible for the forestry exemption.** If this evaluation has occurred after the road construction activity has occurred and the LGU determines that the road is not an exempt activity, then the enforcement procedures under Minnesota Rule 8420.0290 should be followed and restoration or replacement may be required.

Forestry Exemption Guidance Worksheet

<u>A. Is silvicultural activity occurring on the landowner’s property?</u>	<u>YES</u>	<u>NO</u>	<u>Staff Comments</u>

The following questions may be used by LGUs to help determine whether silvicultural activity is occurring.

<u>Question</u>	<u>Staff Comments</u>
1. Does the landowner have a written forest management plan? (For example, a Forest Stewardship Plan)	
2. Does the landowner have receipts for reforestation planting stock or other evidence that reforestation is occurring?	
3. Does the landowner have evidence of a logging	

contract?	
4. Does landowner plan to do site preparation on the property?	
5. Does the logger have a “Contractor Responsibility and Landowner Statement Form”?	
6. Other evidence of silvicultural activity? (explain)	

<u>B. Is Silviculture the primary purpose for the road?</u>	<u>YES</u>	<u>NO</u>	<u>Staff Comments</u>

The following questions may be used by LGUs to help determine whether silviculture is the primary purpose for the road.

<u>Question</u>	<u>Staff Comments</u>
1. Is the road providing access for buildings or other structures? <i>(Most silvicultural operations do not require buildings or other structures. If the road is providing access to homes, cabins or other structures, it raises questions whether silviculture is the primary purpose of the road.)</i>	
2. What is the intended use for the road after the logging or reforestation or timber stand improvement activity occurs?	
3. Will the road be built to the appropriate standard for the number of acres the road will service? <i>(A road built to a standard out of proportion to the resource being managed should be questioned. A major, all season road may be appropriate for silvicultural purposes if it provides access to several hundred acres. A road built to the same standard would be excessive for a 40-acre parcel under the silvicultural exemption).</i>	
4. Other than for silvicultural purposes, does the landowner have another proposed use for the road?	
5. How is land currently being accessed? (Why is new route needed?)	
6. What is the zoning status of the property and adjoining property?	
7. Is, or will access to the road be controlled?	
8. Other evidence? (please explain)	

<u>C. Will (or has) the road construction activity limit(ed) impacts to hydrologic and biological characteristics of the wetland?</u>	<u>YES</u>	<u>NO</u>	<u>Staff Comments</u>

The following questions may be used by LGUs to help determine whether the road has limited impacts to the hydrology and biology of the wetland.

<u>Question</u>	<u>Staff Comments</u>
1. Do plans for the proposed road incorporate the appropriate best management practices (BMPs), as outlined in the roads section of the guidebook Sustaining Minnesota Forest Resources: Voluntary Site level Forest Management Guidelines for Landowners, Loggers, and Resource Managers, so that impacts to the hydrologic and biologic functions of wetlands are avoided where practical and minimized when not?	
2. Can the proposed road location be modified to avoid or minimize wetland impacts? Are there practical alternate routes that could provide access to the forested land? Do these alternatives impact fewer wetlands?	
3. Where roads have already been constructed, have the above referenced BMPs been properly utilized to minimize hydrologic and biologic impacts to wetlands?	
4. Can the timber harvesting be done without road building, such as on frozen ground during winter while still meeting management objectives?	
5. Do the silvicultural objectives require activity during non-frozen conditions?	
6. Can the road be cost effectively located to avoid crossing a wetland?	
7. Is a temporary crossing that avoids the placement of fill in a wetland a practical option for the planned silvicultural activities?	
8. Will the type of crossing to be constructed provide adequate cross drainage to avoid blocking normal surface and subsurface water movement? Will properly sized culverts be installed?	
9. Where wetland impacts are unavoidable, will impact be minimized?	
10. If ditches are part of the road construction, will they drain wetlands?	
11. Will the upland approaches to a crossing, and any associated roadside ditches, avoid directing surface flow from adjoining upland into wetlands?	
12. Other evidence? <i>(Please explain)</i>	