

# WCA Enforcement

## 2013 BWSR Academy



Minnesota

Department of Natural Resources



Minnesota  
Board of  
Water & Soil  
Resources

# Topics for this Training

- Initial Enforcement options (CDO;ICR;RPN)
- Role review
- Violation scenario
- Restoration/Replacement orders
- Investigation techniques
- Court Procedures

# Handouts

- Acromyns
- Form examples (5)
- Restoration Order template
- Restoration Order Instructions
- Field Guide/Evidence worksheet
- Enforcement checklist



# Acronyms

- RPN – Resource Protection Notification
- CDO – Cease and Desist Order
- ICR – Incident Complaint Report
- CDOR – Cease and Desist Order Rescind
- WCA – Wetland Conservation Act
- LGU – Local Government Unit
- SWCD – Soil and Water Conservation Dist.
- BWSR – Board of Water and Soil Resources



# Statute Of Limitations/Criminal

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- Three Years for Criminal.
  1. C&D is violated or a restoration/replacement plan is violated.
  2. Must state violation is a misdemeanor.
  3. Three Years from expiration date of order to file criminal charge.



# Statute of Limitations/Civil

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- Civil violation have a Statute of Limitations of Six Years.
- Six Years from date of discovery.
- Orders (C&D's, Restoration/Replacement Orders) are Civil.
- Violating an order is a criminal misdemeanor violation.



# Enforcement Process Review

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- Violation detected
- CDO issued/ICR written
- possibly nothing from enforcement...only if officer receives complaint, otherwise no ICR or CDO. RPN tracking # through WREO.
- Restoration/Replacement Order issued.



# Cease and Desist Orders

- Can be issued to stop unlawful activity that is or is likely to continue in wetlands.
- Issued by your local conservation officer.
- Is site specific and does not stop activity in upland.
- It is a violation to work after the CDO has been issued.



# Cease and Desist Order

## DNR ENFORCEMENT CEASE AND DESIST ORDER

866834

NA-01197-D10

CDO#		<input type="checkbox"/> Wetland (WCA)
ICR #:		<input type="checkbox"/> Public Waters (PW)
Date:		<input type="checkbox"/> Aquatic Plant (APM)
Time:	<input type="checkbox"/> Airplane Used	
<input type="checkbox"/> Contractor	<input type="checkbox"/> Landowner	<input type="checkbox"/> Responsible party
<input type="checkbox"/> Other		
First	Middle	Last
Address – Street, Apt #		
City	State	Zip Code
DOB:	DL #:	Phone:

**CEASE AND DESIST ORDER (CDO):** The above, and his/her/its agents, contractors, heirs, successors, and assigns, are hereby ordered, pursuant to Minnesota Statutes, Section 103G.2372 or 103G.615, immediately to cease and desist any activity draining, filling, or excavating the wetland in the following area; immediately stop all unauthorized activity within the public waters in the following area:

County:	County No:
PWI No.:	
Location (T-R-S, GPS, or PID):	
Location: (cont.)	
Violation (type) Description:	

Local Government Unit/DNR Contact:	Phone:
Address:	

**ANY VIOLATION OF THIS ORDER IS A MISDEMEANOR**

Issuing Officer: (signature)	Badge No.:	Agency:
Officer's Name: (printed)	Station No.:	Phone No.:
Corresponding CDO No.:	Citation No.:	

OFFICER





# Landowner/Contractor Form



## Landowner Statement and Contractor Responsibility For Work in Wetlands or Public Waters



MN Statutes Sections 103G.2212 and 103G.241 stipulate that an agent or employee of another may not:

- 1) drain, excavate, or fill a wetland, wholly or partially; or
- 2) construct, reconstruct, remove, or make any change in any reservoir, dam, or the course, current, or cross-section of any public water;

unless the agent or employee has obtained a signed statement from the property owner stating that any permit or wetland replacement plan required for the work has been obtained, or that a permit or replacement plan is not required; **AND** this statement is mailed to the appropriate office with jurisdiction over the wetland or public water prior to initiating the work (see next page for information on where to send this notification).

**This form is a notification only and is not an application or authorization for any activities described in it.**

### 1. PROJECT INFORMATION

Project will affect (check all that apply):

Lake, Watercourse, or Public Waters Wetland     Non-Public Waters Wetland     Wetland of Unknown Jurisdiction

Address or description of project location (attach map if necessary):

Legal address

County	Gov't Lot(s)	Quarter Section(s)	Section(s)	Township(s)	Range(s)	Lot, Block, Subd.
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Description of proposed work (include sketch and/or attach additional pages if needed):

### 2. LANDOWNER STATEMENT

I certify that, as the owner of the property listed on this form (check one):

- I have obtained all permits or approvals required to perform the work described above.  
 No permits or approvals are required for this work.

Property Owner (Print Name)	Address		
Signature	Date	Phone Number and E-mail Address (Optional)	

### 3. CONTRACTOR VERIFICATION

By signing below, I verify that I have received a signed copy of this form and will be performing the indicated work as described above.

Company and Individual Performing Proposed Work (Print)	Address	
Signature	Date	Phone Number and E-mail Address (Optional)

Note: The contractor is responsible for ensuring this form is mailed to the appropriate office when complete.

**This statement is invalid if any of the above information is not supplied or is inaccurate. Work in violation of this notification requirement is a separate and independent offense from other violations of Minnesota Statutes chapter § 103G and is a misdemeanor punishable by fines up to \$1,000 and/or 90 days in jail. The State Department of Natural Resources (DNR) Commissioner also has the authority to require restoration of any work done without the necessary permits or approvals or work that is beyond what was authorized.**

### 4. INFORMATION AND RESOURCES

A Wetland Conservation Act (WCA) replacement plan is required for any wetland draining, excavation, or filling activity that is not exempt under Minnesota Rules Chapter 8420.0420. A DNR Waters permit is required for any work in public waters.

National wetland inventory maps are available for review at the County Soil and Water Conservation District (SWCD) office and online at <http://www.fws.gov/wetlands/Data/Mapper.html>. Many wetlands are not identified on the maps but are still restricted from draining, excavating, or filling. If you are unsure the proposed work will affect a wetland, contact your local government unit (LGU) or SWCD for assistance.

Public Waters of the State of Minnesota include the channel to the top of the channel bank for watercourses and the basin from the ordinary high water level waterward for public waters (i.e. lakes) and public waters wetlands. Public waters inventory maps are available for review at the County Auditor's office, DNR Division of Waters regional offices, and online at [http://www.dnr.state.mn.us/waters/watermgmt\\_section/pwi/download.html](http://www.dnr.state.mn.us/waters/watermgmt_section/pwi/download.html).

General information about public waters, wetlands, and related regulations are available on the DNR website at <http://mndnr.gov> and the MN Board of Water and Soil Resources (BWSR) website at <http://www.bwsr.state.mn.us>.

### 5. WHERE TO SEND THIS NOTIFICATION

- For work in public waters (lake, watercourse, or public waters wetland), send this completed form to the DNR Regional Enforcement Office serving the project's area. See below for DNR regional office information. A map of DNR regions can be found on the DNR website at: [http://files.dnr.state.mn.us/aboutdnr/dnr\\_regions.pdf](http://files.dnr.state.mn.us/aboutdnr/dnr_regions.pdf)
- For work in any wetland that is not a public waters wetland, send this completed form to the WCA LGU with jurisdiction over the project area. The LGU is usually the County or SWCD, except in urban areas the City is often the LGU. Contact any of these local governments or BWSR for assistance. BWSR also maintains a list of LGUs on its website at: <http://www.bwsr.state.mn.us/directories/WCA.pdf>.
- If it is not known if the wetland is a public waters wetland, send the completed form to both the DNR Regional Enforcement Office and the WCA LGU.

Department of Natural Resources Regional Offices			
Northwest Region: 2115 Birchmont Beach Rd. NE Bemidji, MN 56601 Phone: 218-308-2700	Northeast Region: 1201 E. Hwy. 2 Grand Rapids, MN 55744 Phone: 218-327-4455	Central Region: 1200 Warner Road St. Paul, MN 55106 Phone: 651-259-5800	Southern Region: 261 Hwy. 15 South New Ulm, MN 56073 Phone: 507-359-6000

Keep a copy of this form for your records!





# ICR Incident Complaint Report

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- Written when work is on-going and C&D is issued
- Written by local conservation officer only when investigated by local CO.
- Copy delivered to LGU/SWCD if requested to assist in investigation.
- **Not public information,  
does not go to landowner**



# Cease and Desist Orders/ICR's

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- CDO is a stop work order.
- ICR is an informational report from enforcement when officer is onsite
- SWCD does not need a CDO or ICR to prepare a restoration or replacement order.



## ICR cont.

- No Conservation Officer contact, there will be no paperwork from Enforcement
- You will need to contact WREO for RPN tracking number(Resource Protection Notification) for top of restoration/replacement orders





Maybe...  
no violation...

Rescind  
Cease  
& Desist Order

### ORDER TO RESCIND CEASE AND DESIST ORDER

NA-01198-10

CDO#	<input type="checkbox"/> Wetland (WCA)	
Date:	<input type="checkbox"/> Public Waters (PW)	
County:	<input type="checkbox"/> Aquatic Plant (APM)	
LGU/DNR Contact:	County Number:	
Recipient Name:		
Address, Street, Apt #		
City	State	Zip Code
DOB:	DL #:	Phone:

This notice is to inform you that the Local Government Unit/DNR Area Hydrologist/APM Specialist has determined that the activity described on the above Cease and Desist is either:

- \_\_\_\_\_ exempt \_\_\_\_\_ qualifies for "no-loss"  
\_\_\_\_\_ allowed by DNR permit \_\_\_\_\_ allowed without a permit  
\_\_\_\_\_ not within public waters

Cease and Desist Order No. \_\_\_\_\_ is hereby rescinded.

- Contact the above LGU before any additional filling or draining is done at this site.
- Contact the above DNR Area Hydrologist/APM Specialist before any additional work is done in public waters at this site.

Issuing Officer: (Printed) \_\_\_\_\_ Badge No.: \_\_\_\_\_

Signature: \_\_\_\_\_

Station No.: \_\_\_\_\_ Phone No.: \_\_\_\_\_

OFFICER



# A violation is detected now what?

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- Burden is on the landowner only if CDO is issued.
- If CDO is issued, landowner has 3 weeks to apply, if no application - restoration order



# DNR Enforcement Role

- Landowner contact if Cease and Desist Orders
- Write ICR (incident complaint report)
- Gather Evidence of the violation including contractors info
- Issue Restoration and Replacement Order
- Grant Extensions
- Initiate enforcement action
- Follow and track all violation cases
- Issue RPN for documentation.



# From the officer's perspective

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- Remember we are the enforcement experts not wetland experts.
- They get a complaint but are not sure if violation, meet officer on site.
- Will look to you the technical experts in wetlands
- Unsure of exemptions
- Wetland types/multiple types
- May want your input prior to issuing CDO
- Hesitant to stop lawful activity

## SWCD Role in a violation

- Landowner contact for IRC or RPN
- Site visit- gather information/evidence
- Prepare Restoration/Replacement Order
- Monitor restoration/ replacement site.
- Certificate of Satisfactory Completion
- Track the cases.



## 8420.0900 Subp. 3. Restoration and Replacement orders.

- 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.



# LGU Role in a violation

- Help Determine if site has permit for work or prior work done.
- Assist SWCD on Restoration/Replacement Orders
- Assist with gathering evidence
- Receive application from landowner for exemption, no-loss determinations, and replacement plans
- Track the cases





# Landowner contact

- ICR's do not provide any info to landowner
- First point of contact may be restoration order
- Some LGU's have drafted and sent letters to owners advising them of possible violations



# Trespass Issues

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- Open – fields Doctrine – Does not violate 4<sup>th</sup> amendment.
- No reasonable expectation of privacy.
- Legally posted property – ask permission.
- If told to leave – Leave the property.
- Communicate with local prosecutor – get to know him/her.

## Breaking Down the Process

- A violation is detected/reported.
- WHO investigates?
- What paperwork is issued?.





2013/09/05













# Basic Investigation Tactics

- Who
- What
- Why
- When
- Where
  
- Sometimes How



# RO example



# Restoration Order

- Landowner Options
  - Appeal
  - Apply for replacement
  - Restore
  - Court/Deed Restriction



## RO –who went to what site?

- On September 3, 2009 the **Technical Evaluation Panel (TEP)** comprised of LGU representative Joy Morning, BWSR representative Keith Grow, and SWCD representative Canby Happy, reviewed the site for impacts to the shoreland **Type 1 Seasonally Flooded/Type 2 Sedge Meadow** at the request of the SWCD for assistance.



## RO- what is the impact?

- Findings of Fact: Philip Fill placed **approximately 800 square feet** of fill within a wetland to widen an existing private road. The purpose was to create a driveway access to the lakeshore.....The landowner also placed **approximately 5,000 square feet of fill within a wetland** to create a larger recreational area in the yard.





## RO -what is the violation?

- Total wetland impact is approximately 5,800 square feet. The landowner is allowed less than 400 square feet of impact within the shoreland protection area. This is a violation of the Minnesota Wetlands Conservation Act.



**[REDACTED] - Isle Harbor Sec 4**  
2007 aerial background



**Legend**

-  Approximate New Fill
-  Original pathway
-  Approximate wetland boundary



0 65 130 260 Feet



## RO- what should Phil do?

- **Restore the wetland to pre-altered condition.** In the yard area, remove the 5000 square feet of fill/spoil down to the original vegetation line. (See area in red on attachment A). All fill/spoil must be completely removed from the wetland boundary to an upland site to be determined by the LGU/SWCD.



## RO –what else should Phil do?

- The existing road which was established in 1958 will be allowed to remain but the 800 square feet of new fill/spoil located in the wetland must be removed. This fill must also be removed to an upland site to be determined by the LGU/SWCD (See area in red on attachment A).



## RO ..and

- The original wetland hydrology must be restored. The non-functioning culvert must be replaced at the same size and elevation in order to reestablish the natural hydrologic flow to both sides of the existing road.



## RO.... and

- Slopes to wetland shall be no steeper than 5:1 and stabilized. Erosion control best management practices must be used to prevent any erosion to wetlands. Any erosion occurring into the wetland will be considered in violation of the Wetland conservation Act.



## RO .....and

- The entire impacted wetland area must be seeded using a native wetland seed mix (see attachment B). The impact will not be certified until wetland seed is confirmed growing sufficient enough to re-vegetate the impact area.



Mixture W2 (BWSR Native Sedge/Wet Meadow-Mitigation Projects)						
	Common Name	Botanical Name	Indicator Status	Seeds/oz.	Seeds/ft <sup>2</sup>	% of Mix
Grasses	Slough grass, American	<i>Beckmannia syzigachne</i>	OBL	50,000	36.7	25.0
	Brome, fringed	<i>Bromus ciliata</i>	FACW	10,000	1.5	5.0
	Blue-joint grass	<i>Calamagrostis Canadensis</i>	OBL	280,000	8.2	1.0
	Wild-rye, Virginia	<i>Elymus virginicus</i>	FACW-	4,200	3.1	25.0
	Manna grass, reed	<i>Glyceria grandis</i>	OBL	80,000	2.4	1.0
	Manna grass, fowl	<i>Glyceria striata</i>	OBL	160,000	4.7	1.0
	Bluegrass, fowl	<i>Poa palustris</i>	FACW+	118,000	86.7	25.0
Graminoids	Sedge, bottlebrush	<i>Carex comosa</i>	OBL	30,000	0.9	1.0
	Sedge, tussock	<i>Carex stricta</i>	OBL	53,000	0.8	0.5
	Sedge, fox	<i>Carex vulpinoidea</i>	OBL	100,000	5.9	2.0
	Rush, slender	<i>Juncus tenuis</i>	FAC	1,000,000	8.8	0.3
	Dulrush, green	<i>Schypus atrovirens</i>	OBL	460,000	13.3	1.0
	Wool grass	<i>Scirpus cyperinus</i>	OBL	1,700,000	5.0	0.1
	Bulrush, river	<i>Scirpus fluviatilis</i>	OBL	4,300	0.1	0.4
	Bulrush, soft-stem	<i>Scirpus validus</i>	OBL	31,000	1.5	1.6
Forbs	Anemone, Canada	<i>Anemone canadensis</i>	FACW	8,000	0.1	0.6
	Milkweed, marsh	<i>Asclepias incarnata</i>	OBL	4,800	0.1	1.0
	Aster, swamp	<i>Aster puniceus</i>	OBL	80,000	0.5	0.2
	Aster, flat-topped	<i>Aster umbellatus</i>	FACW	67,000	0.8	0.4
	Joe-pye weed	<i>Eupatorium maculatum</i>	OBL	95,000	0.6	0.2
	Boneset	<i>Eupatorium perfoliatum</i>	FACW+	160,000	0.9	0.2
	Goldenrod, grass-leaved	<i>Euthamia graminifolia</i>	FACW-	350,000	1.0	0.1
	Sneezeweed	<i>Helenium autumnale</i>	FACW+	130,000	0.8	0.2
	Sunflower, serrated	<i>Helianthus grosseserratus</i>	FACW-	15,000	0.2	0.4
	Iris, blue-flag	<i>Iris versicolor</i>	OBL	1,300	0.18	4.6
	Blazingstar, meadow	<i>Liatris ligulistylis</i>	FACU+	10,000	0.2	0.6
	Lobelia, great-blue	<i>Lobelia siphilitica</i>	FACW+	500,000	2.9	0.2
	Monkey flower	<i>Mimulus ringens</i>	OBL	2,300,000	6.8	0.1
	Mint, mountain	<i>Pycnanthemum virginianum</i>	FACW+	220,000	1.3	0.2
	Goldenrod, giant	<i>Solidago gigantea</i>	FACW	80,000	0.5	0.2
Vervain, blue	<i>Verbena hastata</i>	FACW+	93,000	1.1	0.4	
Ironweed	<i>Veronica fasciculata</i>	FACW	24,000	0.3	0.4	
Culver's root	<i>Veronicastrum virginicum</i>	FAC	800,000	2.4	0.1	
<b>Total:</b>						<b>100.0</b>
Recommended Rate: 8.0 (PLS lbs/acre)						
Summaries						
Mix Seeds Per Square Foot		Mix Seeds Per Square Yard		Mix Seeds Per Acre		
200		1,802		8,719,360		
% by wt. Grasses		% by wt. Graminoids		% by wt. Forbs		





If you choose to appeal the terms or conditions of this order, a written request must be submitted to the Minnesota Board of Water and Soil Resources (BWSR) Executive Director within 30 days of receiving this order, along with a minimum filing fee of \$500. If this written request is not submitted to BWSR within 30 days, this restoration order shall become final.

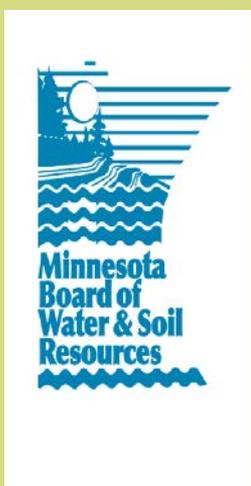
Printed name  
-  
-  
-

Badge #

Issuance Record: in person; or by certified mail on \_\_\_ / \_\_\_ / \_\_\_  
[Date]

Distribute Copies To:

Mail Appeal Request to:





Within 30 days, this restoration order shall become final.

Julie Olson  
Enforcement Officer

12-31-09  
Date

Julie Olson  
Printed name

379  
Badge #

Issuance Record:  in person; or  by certified mail on 12/31/09  
[Date]

7006 2150 0002 5134 3735

**Distribute Copies To:**

DNR Conservation Officer  
DNR Wetland Enforcement Officer  
BWSR Board Conservationist  
Local Government Unit (LGU)  
Soil and Water Conservation District (SWCD)  
Landowner

**Mail Appeal Request to:**

Minnesota BWSR  
Executive Director  
520 Lafayette Road North  
St. Paul, MN 55155



# Tactics Continued

- Get RO to the officer as soon as possible Enforcement will serve the order (must be served in person or certified mail)
- **MAKE SURE YOU HAVE A SIGNED COPY FOR YOUR FILE!**
- We recommend to officers to use only certified mail.
- Easy for everyone to track time line.



# Extensions

- Are given only by enforcement and if
  - The landowner has a good reason for not getting it done
  - Has made some progress
  - Maybe weather related (heavy rains, early freeze)

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

ENFORCEMENT DIVISION

**NOTICE OF RESTORATION ORDER EXTENSION**

LANDOWNER:

CEASE AND DESIST ORDER NUMBER:

RESTORATION ORDER ORIGINAL COMPLETION DATE:

RESTORATION COMPLETION DATE EXTENSION:

The restoration completion date for all restoration work required by the Restoration Order listed above has been changed. By agreement of the Local Government Unit, Soil and Water Conservation District, and the Enforcement authority the completion date listed above is changed to. All required restoration work must be completed by this date.

CONSERVATION OFFICER: Julie Olson

Signature:

Date: //08



# Restoration Orders are not complete until:

- Rescinded, exempt, no-loss or not a violation (only reason)
- Received approved after the fact replacement plan and completed work
- Or certified Complete by SWCD
- A Certificate of Completion must be filled out for each RO involved in the case, this includes all violations whether CDO, ICR issued or not.
- We need to capture all violations



# Officers notes

- Always include RPN # on Orders and Certificate of Completion.
- Voluntary restoration and the process.  
Can be problematic
- Be specific in what they are required to do.
- Follow up with written communication.
- And note that even voluntary restoration requires a Certificate of Completion.



# Remember

- Do not request an officer to rescind the restoration order after restoration has been completed---  
Only closed by certificate of satisfactory completion



# So, the landowner will not comply, now what?

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- Enforcement will work with you!
- Letter
- Phone call
- Deed restriction
- Criminal citation
- Court



# Deed Restrictions

Usually place when sale of property is likely  
Or Before criminal citation is issued

Cost to place is expensive

Landowner is charged with costs/work to lift  
after notified by WREO after cert of  
completion



# Deed Restrictions: Not perfect

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- If landowner never sells property, may not be incentive to restore
- Unfortunately, heir then inherits the problem



# Keep a good file

- Photos
  - Application
  - Notes both from inspection and phone calls
  - Landowner/contractor statements
  - Violation documentation
- Aerial photos, soil sample evidence, staff present



# Court Process

- Not as scary as you may think
- Preparation is Key
- Thorough work early on eases the follow up needed if case goes to court



# What to expect going to court:

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- Before the citation is issued take the time to prepare the case.
- All your notes, photos, contacts should be put in a summary format for the prosecutor.
- Copies of documents
- Get them to the WREO or local officer to be turned over with the entire case files.



- The citation is mandatory court.
- Few ever get to trial.
- If trial you can expect to be sworn in as a witness and testify to the facts.
- The WREO or conservation officer should be the contact with the prosecutor.



# Court Appearance

- Wear business attire
- NO GUM in courtroom, Period!
- Don't be nervous
- State your answers clear and calm
- Avoid Umm's
- You can refer to your notes if needed
- Don't fidget or twiddle your thumbs



# Recommendation

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- Go to a misdemeanor or court day and a trial to see the procedures.



# Enforcement Data Base

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- Open Case file
- Listed by county
- Violator name
- Restoration/replacement due date
- Deed Restriction
  
- If not on list: Closed case complete

# Enforcement Database

CDO#	FirstName	LastName	OfficerName	Restore By Date	Replace By Date
860082	RAYMOND	SYMANITZ	C PALMER		
<b>MILLE LACS</b>					
864256	STEVEN	JOHNSON	M LEE	12/1 /2008	
861313	ALLEN	KAMPA	D		10/15/2006
860627	TIMOTHY	MEINERT	J OLSON	7 /30/2009	
863505	BYRON	LEE	M LEE		
862544	GREGORY	WESTERLUND	J OLSON		
860098	RICHARD	SLUIS	D PERRON	5 /15/2005	
861383	DANIEL	OHRLEIN	D PERRON	6 /15/2009	
862334	TODD	KAUFMAN	D		7 /24/2008
861374	DARRYL	SCHMITZ	D PERRON	8 /1 /2009	
863506	DARON	STENVOLD	M LEE	6 /15/2009	
861380	TODD	CHRISTENSON	D PERRON	7 /14/2008	
<b>MORRISON</b>					
864475	KEVIN	PROZINSKI	R HABERMAN	6 /30/2009	
863995	CAROL	FARRIS	R HABERMAN	8 /31/2008	
863913	GEORGE	DAY	T RICHARDS	6 /21/2007	
864530	JOHN	JUETTEN	J TISCHLER	9 /15/2009	
864527	RALPH	RINKLE	J TISCHLER	9 /15/2009	



# Remember

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Enforcement of  
WCA

is a

TEAM

Effort



# ➤ Questions



