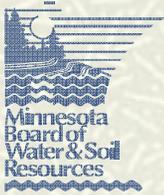


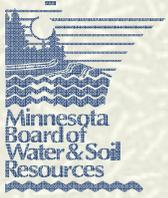
Section VI

WETLAND BANKING



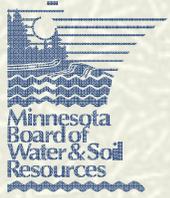
8420.0705

**ESTABLISHING A
WETLAND BANK SITE**



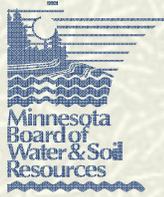
Subp. 2. LGU and board authority.

- **Based on a comprehensive local water or wetland protection and management plan approved by the board, an LGU may, by rule or ordinance, limit the establishment of bank sites within its jurisdiction.**
- The board may reject or modify an application for deposit if, during its review, any part of the bank application or plan is missing, incorrect, or inconsistent with this chapter.



Subp. 3. Application Procedures

- # **The banking plan must also contain specific performance standards and a proposed credit release schedule based upon achievement of those standards.**
- # The TEP must review the banking plan application and may recommend changes or additions to the performance standards and credit allocation schedule.

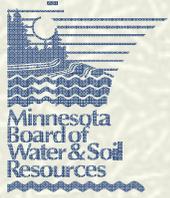


Example of Credit Release Schedule

Table #5 – Proposed Credit Release Schedule (Credits)

*(numbers in the table represent the amount of credit proposed for release dependant on the aerial coverage of invasive species)

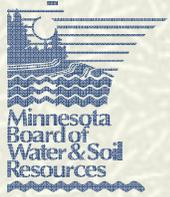
Plant Zone and Action Eligible for Credit	Acres	R1 -15 % Credit 11/2010	R2 -30 % Credit 11/2011	R3-25 % Credit 11/2012	R4-30 % Credit 11/2013
% Invasive Species		(40%)	(30%)	(20%)	(10%)
MW 2 – Sub. #3	24.00	9.60	7.20	4.80	2.40
% Invasive Species		(40%)	(30%)	(20%)	(10%)
MW 2 – Sub. #2	1.55	0.62	0.46	0.31	0.16
% Invasive Species		(40%)	(30%)	(20%)	(10%)
NS	8.63	3.45	2.58	1.74	0.86
% Invasive Species		(40%)	(30%)	(20%)	(10%)
UPL – Sub. #6	2.82	1.12	0.84	0.56	0.282



Performance Standards Example

Hydrology:

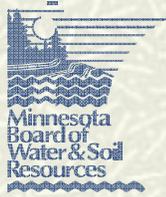
- **Fresh (Wet) Meadows, Sedge Meadows, Shrub-Carrs (Peat/Muck Soils):** *Hydrology shall consist of a water table at or within 12 inches of the surface throughout the growing season, except in drought years. Inundation shall not occur (unless there are site-specific conditions). An exception can be made for sites with hummocky microtopography -- hollows between hummocks can have standing water depths of up to 6 inches for extended duration. (USACE regional guidance)*



Performance Standards Example

Vegetation:

- **Fresh (Wet) Meadows, Sedge Meadows, Shrub-Carrs (Peat/Muck Soils):** *The plant community shall include 12 or more species of native grasses, sedges, rushes, forbs and/or ferns and achieve approximately 80 percent or greater areal coverage by Year -3 and approximately 90 percent or greater areal coverage by Year -5. If shrub-carr areas regenerate, there should be at least 3 species of native shrubs and 10 species of native hydrophytic grasses, sedges, or forbs.*
- *Areas where reed canary grass is becoming established in stands of native vegetation: Areal cover of invasive species should show a decrease in areal cover from 50% to 30% to 10% (target). Native hydrophytic species should increase in areal cover from 50% to 80% (target).*
- *Areas of the site dominated by reed canary grass will be cleared and reseeded to native species: Invasive species areal cover should not exceed 10% (target). The areal cover of native hydrophytic species should increase from 80% to 90% (target).*
- *The bank area shall have no purple loosestrife (*Lythrum salicaria*) present at the end of the monitoring period.*

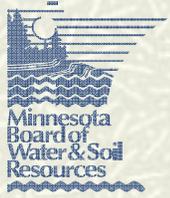


Performance Standards Example

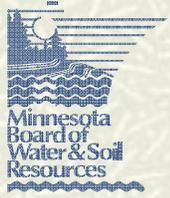
Upland Buffer:

The plant community in the buffer area will be subject to the following success criteria:

- *Year -1: A minimum of 5 seeded species shall have germinated. One seeded species shall be dominant and no perennial invasive specie shall be dominant by the end of Year – 1.*
- *Year – 2: The plant community shall include 8 or more perennial species of native grasses and forbs with 2 seeded perennial species dominating by the end of Year-2.*
- *Year – 3: The plant community shall include 15 or more species of native grasses and forbs and achieve approximately 80 percent or greater canopy coverage by the end of Year-3.*
- *Year – 5: The plant community shall include 15 or more species of native grasses and forbs and achieve approximately 90 percent or greater canopy coverage by the end of Year -5.*

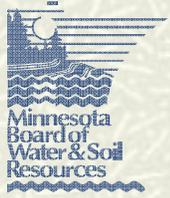


**See BWSR website for examples
of monitoring reports and
performance standards.**



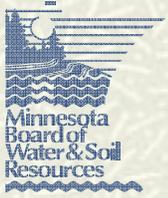
Subp. 4. Combined banking and project-specific replacement.

Which came first, the chicken or the egg?



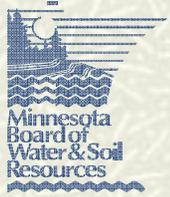
Combined banking and project-specific replacement.

- # When a banking plan applicant wishes to use a portion of the credits generated from a banking project for project-specific replacement, **the banking plan must identify the project-specific impact and the amount of credits to be used according to a corresponding replacement plan.**
- # The credits must meet the [wetland replacement requirements] and the approved replacement plan, and be deducted before deposit of any credits into the state wetland bank.



8420.0725 CERTIFICATION AND DEPOSIT OF CREDITS.

- # Certification of credits by the LGU is requested by the banking plan applicant and may occur at any time during the monitoring period. **The certification must be based on the findings and recommendation of the TEP...**
- # After the initial deposit, the remaining credits proposed for banking are eligible for **deposit in accordance with the credit release schedule and performance standards** included in the approved banking plan, subject to review by the TEP and certification by the LGU.
- # If the approved specifications are not being met, full credit will not be allocated.

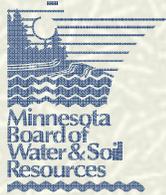


8420.0745

WITHDRAWALS AND TRANSFERS

- Subp. 4. Reporting credit transactions. Upon the sale, use, or transfer of credits, **the owner of the account must immediately report the transaction to the board's banking administrator** on withdrawal or transfer forms provided by the board and include a copy of the bill of sale when applicable.

- **The board shall complete the accounting transactions and send a notice of credit withdrawal to the LGU, the account holder, and the applicant.**



“Part A” of the application will be revised and made applicable to banking and project-specific.

Scoping is increasingly important to address the “watershed approach” concepts covered earlier.

The topo survey for Part A can be waived until the forms are changed.

For LGU Use Only	
Project Name: _____	Project Identification No.: _____

Minnesota Wetland Bank Plan Application

PART A: WETLAND BANK SCOPING DOCUMENT

GENERAL INSTRUCTIONS TO APPLICANTS

To seek approval for the establishment of a wetland bank, applicants must complete and submit both Part A (*Scoping Document*) and Part B (*Bank Plan Supplement*) of this application package. An approved wetland bank application does not guarantee the success of a wetland bank project, nor does it guarantee how many wetland credits will result from the project. Approval of both Part A and Part B constitutes an approved Wetland Bank Plan Application.

Instructions for completing a Wetland Bank Application and how to submit it for review can be obtained from the BWSR web site at www.bwsr.state.mn.us

1. LANDOWNER INFORMATION:

Name: _____	Phone: _____
Complete Mailing Address: _____	
City, State and Zip Code: _____	E-mail Address: _____

1A. APPLICANT: (If different from landowner)

Name: _____	Company: _____
Complete Mailing Address: _____	
City, State and Zip Code: _____	E-mail Address: _____

2. PROJECT INFORMATION:

Project Name: _____		County: _____	
Watershed (Name or #): _____	Township Name: _____	Parcel ID # (if known): _____	
1/4 Section: _____	Section #: _____	Township #: _____	Range #: _____

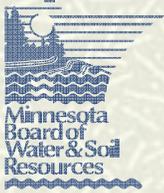
Attach a simple site locator map. If needed, include on the map written directions to the site from a known location or landmark, and provide distances from known locations. Label the sheet "Site Locator Map".

3. TYPE OF PROPERTY INTEREST HELD BY APPLICANT: (Include Evidence of Ownership or Property Rights)

(Check one): Fee Simple (Owned) Easement Contract for Deed Other (Please describe): _____

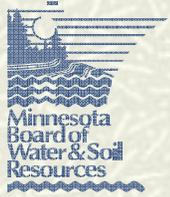
4. OTHER PROPERTY INTERESTS: List any other holders of interest in the real property on which the proposed wetland bank and access easement(s) will be located (e.g. spouses, mortgagees, fee owners, easement holders, mineral rights, utilities, etc.).

If there are other property interests on the proposed bank property, would these holders consent to subordinate their property interest to the required conservation easement restrictions? Yes No Not Applicable



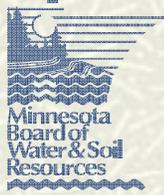
Section VII

INSPECTION AND MONITORING OF REPLACEMENT WETLANDS



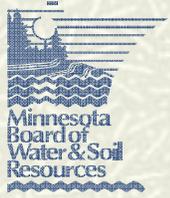
Inspection and Monitoring

- # This section applies to both project-specific replacement and banking.
- # Why the changes and increased emphasis on monitoring?
 - Improve communication and certainty.
 - Catch problems early when there is a realistic chance of fixing them.
 - Reduce time and expense spent on problems that could have been identified earlier.
 - Improve the quality of replacement wetlands.



8420.0800 REPLACEMENT WETLAND CONSTRUCTION CERTIFICATION

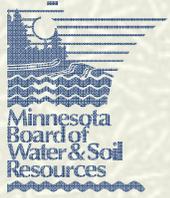
- # Subp. 1:
- # The LGU must certify the initial construction of replacement wetlands before replacement wetland monitoring begins.
- # The LGU may require a preconstruction meeting before replacement wetland construction begins and may inspect the replacement wetland at any time during construction.



Subp. 2

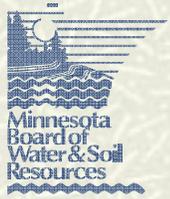
Construction As-Built Documentation

- # “Upon completion of initial construction or restoration activities, the landowner must provide the LGU with as-built information that documents compliance with the approved replacement plan.”
- # The rule specifies what information needs to be provided (8420.0800, Subp. 2).

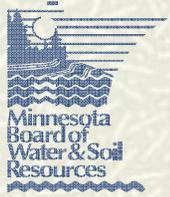


Subp. 3. Construction inspection and certification

- 1) Upon receipt of as-built documentation from the landowner, the LGU must inspect the replacement wetland to determine whether the as-built conditions comply with the construction specifications...
- 2) If the LGU determines that the construction is not in compliance with the approved plan, it must promptly notify the landowner of the deficiencies and actions required to gain compliance.
- 3) When the LGU certifies that the construction specifications have been met, the LGU must notify the applicant and TEP.

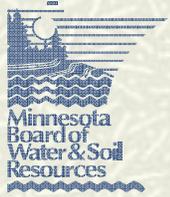


8420.0810 REPLACEMENT WETLAND MONITORING



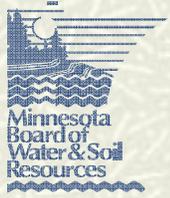
Subp. 3. Duration of monitoring

- Monitoring may, at the discretion of the LGU, begin upon construction certification, but **must begin no later than the first full growing season following construction certification.**
- **Monitoring must continue for five full growing seasons** or until the LGU determines, with the concurrence of the TEP, that the replacement is successful, but in no case may the determination be made before the end of the third full growing season.



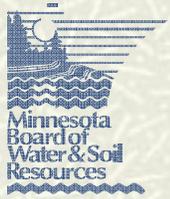
Monitoring Requirements

- For project-specific replacement plans, if the LGU determines that, at any time during the monitoring period and based on the recommendation of the TEP, the goals of the approved replacement plan have not been achieved, and will not be achieved with more time, **the LGU must pursue one or more corrective actions** identified in part 8420.0820, subpart 1.



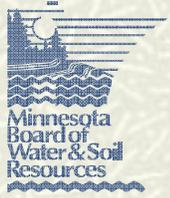
Subp. 4. Monitoring reports.

- # “...the applicant must submit annual monitoring reports...”
- # The applicant must submit the annual report to the appropriate LGU (and banking administrator for banks) on a date determined by the LGU, but no later than Dec. 31.
- # **The LGU must ensure that copies of the monitoring report are distributed to the TEP.**



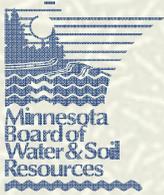
8420.0820 LGU MONITORING RESPONSIBILITIES.

- If the landowner fails to submit the annual report associated with a project-specific replacement plan, the LGU must either pursue enforcement actions or prepare the annual report for the applicant. (Potential enforcement actions are listed in Subp. 1B)
- LGU may charge fees for preparing the report or use any financial assurance provided.



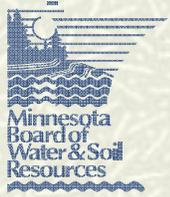
LGU MONITORING RESPONSIBILITIES (Cont'd)

- # The LGU must provide written notification to the applicant when the replacement has been certified as successful and the monitoring requirements have been fulfilled.
- # **is a rule requirement and required reporting item!**
- # If the reported numbers of replacement plans vs. certified sites don't match up, that's a red flag that WCA is not being properly implemented.



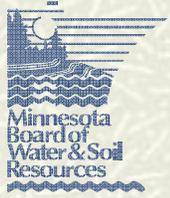
Section VIII

WETLAND PLANNING



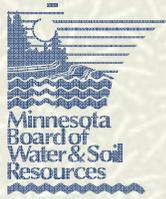
8420.0830 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS

- The goal of a CWPMP is to maintain and improve the quality, quantity, and biological diversity of wetland resources within watersheds through **the prioritization of existing wetlands and the strategic selection of replacement sites.**
- The purpose of developing a plan is to provide a framework to make wetland impact and replacement **decisions that meet state standards and locally identified goals** and support the sustainability or improvement of wetland resources in watersheds.



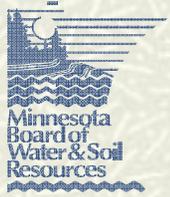
Subp. 3. Plan area.

- # To the extent practical and feasible, the **CWPMP should be based on watershed boundaries.**
- # Local governments should consider joint planning efforts for those watersheds that cross political boundaries.



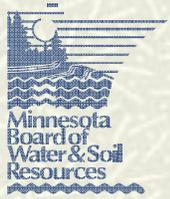
Plan content

- # **The CWPMP must include the establishment of watershed goals** based on an analysis of the existing ecological conditions of the plan area and the development of corresponding goals for maintaining and improving those conditions.
- # The ecological condition of the plan area should be based on **inventories of historic and existing wetland resources, including identification of degraded wetlands, existing high-quality wetlands, and immediate and long-term resource needs within the plan area.**



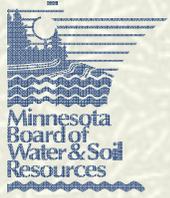
Plan content (Cont'd)

- # **The plan must include an inventory and prioritization of replacement sites...**
- # **Provide a framework from which replacement actions and locations will provide the greatest value to the public based on the ecological needs of the watershed. Priority should be given to naturally self-sustaining replacement that best achieves watershed goals and improves the ecological condition of the watershed.**
- # **The plan must include strategies for the promotion and establishment of high-priority replacement sites that best meet the goals of the plan.**



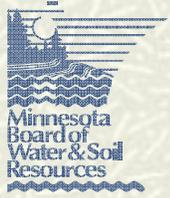
Plan content (Cont'd)

- # The plan must include a provision for **periodic assessment of the effectiveness of the plan**, and the LGU's implementation of it, in achieving plan goals.
- # Updates to previously approved plans must include an **analysis of the effectiveness of the previous plan**, including the identification of barriers to achieving identified goals and development of strategies to overcome them.



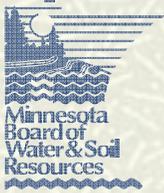
Length of plan, approval process.

- # The plan development, review, and approval process has been clarified (Subp. 6).
- # The plan must specify the period covered by the plan (at least 5 years but not more than 10 years from the date the board approves the plan) Subp. 8).
- # A process for “minor” amendments to approved plans is also included.



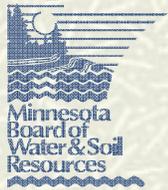
8420.0840 WETLAND PRESERVATION AREAS.

- # Clarification of process for use with greater ties to wetland planning.
- # Clarification: Subp. 8. Reimbursement of unpaid taxes. **A county or watershed district with an approved wetland preservation area shall be reimbursed for lost tax revenue according to Minnesota Statutes, section 275.295.**



Section IX

ENFORCEMENT, APPEALS, AND COMPENSATION



Joint Enforcement procedures memo regarding CDOs and ICRs.



Information & Education
Ecological Resources
Enforcement
Fish & Wildlife
Forestry
Lands & Minerals
Management Resources
Parks & Recreation
Trails & Walkways
Waters



MEMO

Division of Enforcement

Date: June 12, 2009
To: WCA Local Government Units and Soil and Water Conservation Districts
From: CAPT John Hunt, DNR Enforcement
Les Lemm, BWSR WCA Coordinator
Phone: 651-259-5040
Subject: Wetland Conservation Act Violations

Beginning in April of 2009, the DNR Division of Enforcement began to use a different procedure in the handling of wetland, public waters and aquatic plant management violations.

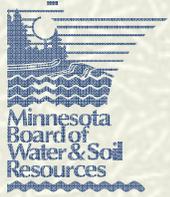
In the past, a Cease and Desist Order (CDO) was issued for the above violations, whether the violation was in progress or not. Concerns were raised about this process as part of the WCA rule revision, and subsequently procedural changes were implemented.

Officers responding to potential violations that are not in progress and not likely to continue will no longer issue a CDO. The responding officer will complete an initial case report (ICR) and forward it to the Water Resource Enforcement Officer (WREO) for their area. The WREO will then forward it to the Local Government Unit (LGU) and members of the Technical Evaluation Panel (TEP).

Communication will be an extremely important part of this process, not only with the enforcement officer, but with the landowner and members of the TEP as well. For an LGU, the first step after being informed of a potential violation through receipt of an ICR will be to determine whether the project has received prior approval or qualifies for an exemption. This should include communication with the landowner to inform them of the potential violation and give them the opportunity to provide supporting information and/or apply for LGU approval. BWSR will develop a form letter template for LGUs to use in this regard. Once the status of the project has been determined (previously approved, exempt, violation), the LGU can e-mail the WREO and the TEP to close the case or indicate what the next action will be (after-the-fact application, restoration/replacement order, etc.).

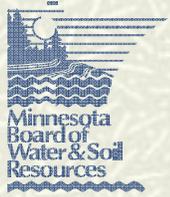
Each LGU will need to implement an internal process for tracking and handling these cases. When a CDO is issued to a landowner, it includes information regarding timelines for applying for exemptions etc. In those instances when an ICR is completed rather than

We are committed to serve the people of Minnesota by protecting natural resources, the environment and public safety through quality education and law enforcement.



Initial Case Report (ICR)

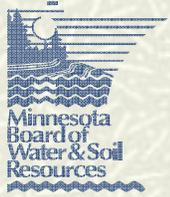
- Officers responding to potential violations that are not in progress and not likely to continue will no longer issue a CDO. The responding officer will complete an ICR and forward it... to the LGU and members of the TEP.
- This only applies to “old” work that has been completed and is not likely to resume.



Initial Complaint Reports (Cont'd)

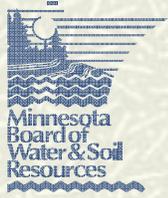
■ **Communication is important!**

- For an LGU, the first step is be to determine whether the project has received prior approval or qualifies for an exemption. Inform the landowner of the potential violation and give them the opportunity to provide information and/or apply for approval.
- Once the status of the project has been determined, the LGU, WREO, and TEP to close the case or indicate what the next action will be.



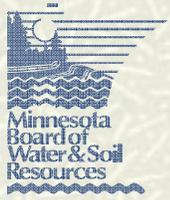
Initial Complaint Reports (Cont'd)

- # Change: For “old” violations, the LGU is only determining if enforcement is needed prior to the officer taking action. **This should not be a change.**
- # Purpose: Avoid the public perception that DNR Enforcement is doing one thing and the LGU another. Get on the same page before initiating enforcement action.
- # Communication: Get to know your WREO and determine the best way to **work together** in your area!



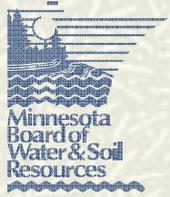
Subp. 3. Restoration orders.

- Promptly upon being informed... of the need, a SWCD staff person must inspect the site and prepare a plan **in consultation with the LGU and the enforcement authority** for restoring the site to its prealtered condition.
- The SWCD may request assistance from the LGU or TEP in inspecting the site and preparing the plan.
- Restoration must be ordered unless the TEP concludes that restoration is not possible or prudent.



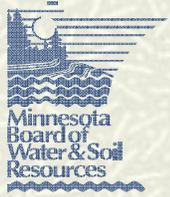
ENFORCEMENT PROCEDURES (Cont'd)

- **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.**



APPEALS

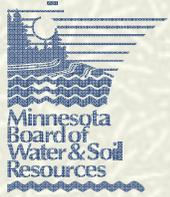
- This part consolidates appeals language from several locations in the following order:
 - 1) Appeal of replacement and restoration orders to the board.
 - 2) Appeal of LGU staff decisions.
 - 3) Appeal of LGU decisions to the board.
 - 4) Board appeal procedures.
 - 5) Appeal of board decisions.



APPEALS (Cont'd)

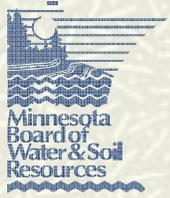
For appeals to BWSR:

- **The timeframe for appeal may be extended beyond 30 days with written concurrence of the parties involved.**
- **Within 30 days of the grant of the appeal... the LGU must forward to the board the written record on which it based its decision. The board must forward one copy of the record to each of the parties to the appeal.**



Appeals of LGU Decisions to BWSR

- # The board must base its review on the record and the argument presented to the board by the parties. However, if:
 - the LGU did not consider fundamental information, such as aerial photographs, soil maps, or wetland maps, or did not make formal findings contemporaneously with its decision;
 - if there is not accurate verbatim transcript of the proceedings;
 - if the proceedings were not fairly conducted; or
 - if the record is otherwise incomplete or deficient,
- # the board may remand the matter or receive additional evidence.
- # **Properly document your decisions!**



Appeals Fees

Effective August 1st, 2009, the fee charged for appeals to BWSR will be increased from \$200 to \$500.