

## WCA Rule Advisory Committee - 6/26/08 Meeting Draft Enforcement Section

### 8420.0290 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.

Cease and desist orders may be issued when the enforcement authority has probable cause that an ~~impact drain, excavation, or fill activity~~ is being or has been conducted in a wetland and does not qualify for an exemption or a no-loss ~~determination~~ under parts [8420.0210](#) and [8420.0220](#) and is being or has been conducted without prior approval ~~of a replacement plan~~ by a local government unit under part [8420.0230](#) or involving a ~~determination decision~~ stayed by the board pursuant to part [8420.0250](#).

A cease and desist order must not be issued if the landowner has ~~and is complying with~~ a valid ~~replacement plan,~~ exemption, ~~or no-loss,~~ ~~or replacement plan determination from 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 provisions of part [8420.0250](#), or has sufficient evidence to support an exemption or no-loss determination.

The enforcement authority issuing a cease and desist order ~~must shall promptly~~ submit copies to the soil and water conservation district, local government unit, and Department of Natural Resources ~~within 10 days.~~

The enforcement authority ~~must shall~~ advise the landowner that the landowner's written application, if any, for an ~~replacement plan,~~ exemption, ~~or no-loss,~~ ~~or replacement plan determination,~~ should be made immediately to the local government unit and that whatever ~~impact drain, excavation, or fill work that~~ has been done may require restoration if the application for ~~replacement plan,~~ exemption, ~~or no-loss,~~ ~~or replacement plan determination~~ is denied or reversed on appeal.

~~The enforcement authority issuing a cease and desist order shall promptly submit copies to the soil and water conservation district, local government unit, and Department of Natural Resources.~~

If an application for an ~~replacement plan,~~ exemption, ~~or no-loss,~~ ~~or replacement plan determination~~ ~~approval~~ is triggered by a cease and desist order, the local government unit ~~must shall~~ make the ~~determination decision~~ in accordance with parts [8420.0210](#) to [8420.0230](#). ~~In cases where the cease and desist order has been issued to a local government unit, the determination of exemption or no-loss shall be made by the board.~~ If the ~~determination decision~~ is that the activity is exempt or ~~results in qualifies for~~ a no loss ~~of wetland~~, the decision maker ~~shall 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. If the application is denied, the decision-maker ~~shall must~~ immediately notify the soil and water conservation district, the enforcement authority, and the landowner.

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

#### Subp. 3. Restoration and replacement orders.

The enforcement authority ~~must shall~~ issue a restoration order or replacement order when:

A. the ~~impact drain, excavation, or fill~~ has already been completed when discovered, or after a cease and desist order has been issued and the landowner does not apply for a ~~replacement plan~~, exemption, ~~replacement plan~~, or no-loss ~~determination~~ within three weeks;

B. the local government unit grants the application but it is reversed on appeal; or

C. the local government unit denies the application.

Promptly upon being informed by the enforcement authority of the need, the soil and water conservation district staff person ~~must~~shall inspect the site and prepare a plan in consultation with the local government unit for restoring the site to its prealtered condition. Restoration ~~must~~shall be ordered unless the soil and water conservation district, with the concurrence of the technical evaluation panel and the enforcement authority, concludes that restoration is not possible or prudent. The soil and water conservation district ~~must~~shall 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. 3a. Contents of order.**

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

A. 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

B. submit a complete ~~replacement plan, exemption, or no-loss replacement plan~~ application to the local government unit.

If ~~an the replacement plan~~ application ~~submitted under item B~~ is denied, the landowner or responsible party ~~shall~~must restore the wetland as specified in the order.

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

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.

A certificate of satisfactory restoration or replacement may be issued with conditions that must be met in the future, such as, but not limited to, 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.

Failure to submit a complete application under item B within the time period specified in the restoration order, or as properly extended, will result in the landowner or responsible party having to comply with the order before an application under this chapter may be submitted, unless the local government unit and the enforcement authority agree otherwise or unless allowed under appeal.

### Subp. 3b. Enforcement authority orders.

If the soil and water conservation district, with the concurrence of the technical evaluation panel and the enforcement authority, determines that restoration will not restore all the loss caused by the ~~impact, drain, excavation, or fill activity~~, the enforcement authority may order a combination of restoration and replacement, or may order 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.

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

If, as part of a misdemeanor proceeding, the court orders restoration or replacement, the soil and water conservation district, with the concurrence of the technical evaluation panel and the enforcement authority, ~~must~~ shall 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 in subpart 4 and parts [8420.0500](#) to [8420.0630](#).

### Subp. 3c. ~~Appeals of replacement and restoration orders.~~

~~A landowner or responsible party may appeal the terms and conditions of a restoration or replacement order issued pursuant to subpart 3 to the board's executive director within 30 days of receipt of written notice by filing a written request for review and paying a nonrefundable filing fee to the board. The filing fee is \$200, or an amount otherwise determined by the board not to exceed \$1,000. If the written request is not submitted within 30 days, the restoration or replacement order becomes final. The executive director shall review the request and supporting evidence and render a decision within 60 days of the request for review. The executive director may stay the restoration or replacement order until the appeal is resolved.~~

***Subpart 3C will be incorporated into the appeals section. A sentence could possibly remain here to reference that section.***

### Subp. 4. 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 sufficient replacement has not been provided under an approved replacement plan, the local government unit ~~must~~ shall 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 an increased ratio is not required.

### Subp. 5. 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.

### ~~Subp. 6. Contractor's responsibility when work drains, excavates, or fills wetlands.~~

~~A. An agent or employee of another may not drain, excavate, or fill a wetland, wholly or partially, unless the agent or employee has:~~

~~(1) obtained a signed statement from the landowner stating that the wetland replacement plan required for the work has been obtained or that a replacement plan is not required; and~~

~~(2) mailed a copy of the statement to the local government unit with jurisdiction over the wetland.~~  
B. ~~Work in violation of this part is a misdemeanor.~~  
C. ~~The board shall develop a form to be distributed to contractor's associations, local government units, and soil and water conservation districts to comply with this part. The form must include:~~  
~~(1) a listing of the activities for which a replacement plan is required;~~  
~~(2) a description of the penalties for violating Minnesota Statutes, sections 103G.2212 to 103G.237;~~  
~~(3) the telephone number for information on the responsible local government unit;~~  
~~(4) a statement that national wetland inventory maps are on file with the soil and water conservation district office; and~~  
~~(5) spaces for a description of the work and the names, mailing addresses, and telephone numbers of the person authorizing the work and the agent or employee proposing to undertake it.~~

***Subpart 6 is proposed to be relocated, possibly to the applications section.***