



August 30, 2012

To: Affected State and Local Governments

Re: Wetland Conservation Act Alternative Emergency Standards – Effective Immediately

A Presidential Major Disaster was declared (FEMA, DR-4069) on July 6, 2012, for several counties and tribal lands in Minnesota due to damage resulting from severe storms and flooding during the period of June 14-21, 2012.

The Wetland Conservation Act (WCA) is established in Minnesota Statutes and implemented via Minnesota Rule Chapter 8420. Damage resulting from natural disasters can affect wetlands in ways not envisioned under normal circumstances, often requiring an immediate response to prevent further resource degradation and to protect public health, safety, and welfare. In these situations, it is prudent to deviate from the normal standards and procedures required by WCA to avoid delays for necessary emergency response or disaster recovery activities.

On August 24, 2012, Governor Dayton signed the disaster relief bills passed in a special session of the State Legislature. The disaster relief bills (House File 1 and 2) granted BWSR with the authority to establish alternative WCA procedures when needed to accomplish timely response within the DR-4069 area. The attached WCA Emergency Alternative Standards were approved by the BWSR Board on August 25, 2012, and are effective immediately according to the procedures and conditions below. It is important to note that these Alternative Standards represent relatively minor changes to WCA. The sequencing and replacement requirements are unchanged and the overall level of wetland protection remains the same. The standards do, however, allow some temporary flexibility in the timelines and procedures associated with performing emergency work that may affect wetlands.

The attached Alternative Standards may be used by local governments, as defined in M.S. 103G.005, for projects undertaken to address emergency situations or disaster recovery efforts funded wholly or in-part via the August 24th disaster relief bill. The standards are effective for Aitkin, Carlton, Lake, Pine, and St. Louis Counties through August 31, 2013.

Local governments may begin utilizing the Alternative Standards immediately on projects funded through the disaster relief bill. The applicable area, timeframes, procedures, and standards may be amended as deemed necessary by BWSR. Any amendments will be posted on the BWSR website and published in the State Register as soon as possible thereafter. For questions or general WCA assistance, contact your BWSR Wetland Specialist.

John Jaschke, Executive Director
Board of Water and Soil Resources

Date: 8/30/12

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WETLAND CONSERVATION ACT ALTERNATIVE EMERGENCY STANDARDS

Procedures and Conditions

The WCA Alternative Emergency Standards provide flexibility in the timelines for submitting applications and obtaining project approvals. However, this does not remove the need for communication and project coordination. In fact, the need for communication is even greater in the absence of a pre-project application review. The steps below are intended to help maintain adequate project communication and coordination while utilizing flexibility allowed under the the alternative standards.

1. Project Notification.

Prior to commencing the work, a project notification must be sent (preferably by e-mail) to the following:

- The WCA Technical Evaluation Panel (TEP). The TEP includes a staff person from BWSR, the WCA Local Government Unit (typically the County), the local Soil and Water Conservation District, and in some cases the DNR. Contact your LGU for assistance in notifying the TEP. For a WCA LGU directory, see the BWSR website at: <http://www.bwsr.state.mn.us/wetlands/index.html>. The BWSR TEP members for the affected counties are:
 - Carlton, Lake, Pine, & St. Louis Counties: Joan Weyandt, joan.weyandt@state.mn.mn, 218-723-4607.
 - Aitkin County: Keith Grow, keith.grow@state.mn.us, 218-828-6035.
- The DNR Regional Environmental Assessment Ecologist for threatened or endangered species review (Rian Reed, 1201 E Hwy 2, Grand Rapids, MN, 55744; rian.reed@state.mn.us, 218-999-7826). The DNR will respond only if threatened or endangered species are present and additional coordination or permits are required.
- The project manager for the U.S. Army Corps of Engineers, St. Paul District. For county-specific contact information, see: <http://www.mvp.usace.army.mil/regulatory/default.asp?pageid=1716>.
- For projects in or adjacent to trout streams, the DNR Area Fisheries Supervisor. Contact information for Area Fisheries Supervisors can be found at: <http://www.dnr.state.mn.us/areas/index.html>. For maps of designated trout streams: http://www.dnr.state.mn.us/fishing/trout_streams/northeast.html.
- For projects that may affect a site or resource of historic or archaeological significance, the Minnesota State Historic Preservation Office (SHPO). Contact information can be found on the SHPO website at: <http://www.mnhs.org/shpo/>.

The project notification must contain the following:

- ✓ Specific project location.
- ✓ A brief description of the project purpose and nature of the proposed work.
- ✓ A map or brief description of potential wetland impacts, to the extent known.
- ✓ Confirmation that the project is or will be receiving funding through the 2012 special session disaster relief bill.
- ✓ Any additional information that is available and relevant to the project.

2. Obtain Necessary Permits.

The WCA Alternative Emergency Standards apply only to WCA and do not eliminate the need for obtaining other permits or complying with other local, State, or federal government requirements.

3. Project Implementation and Coordination.

The WCA Alternative Emergency Standards allow for submittal of after-the-fact application materials when necessary for the emergency repair of infrastructure. To the extent the project timeline allows, project sponsors should obtain wetland-related information, including known or estimated wetland boundaries, prior to initiating the project. In those instances when complete information cannot be obtained prior to project initiation, the project sponsor should begin assembling site information and application materials as soon as possible. In all cases, the project sponsor must coordinate with the TEP in regards to the timelines and procedures used for identifying wetland boundaries and completing application materials. The project sponsor should communicate progress in completing the project with all required to receive notice under item #1 above.

4. Submittal of Complete WCA Application.

The WCA Alternative Emergency Standards do not change the requirements for submitting a complete wetland replacement plan or BWSR public transportation project application for qualifying road projects. In accordance with sections IV and V of the emergency standards (see below), a complete application must be submitted no later than 120 days after commencing the project. With the exception of the timeframe, the applicable noticing and submittal requirements of current MN Rule 8420 apply.

Alternative Standards

I. Wetland Boundary Determinations.

- A. As necessary to complete emergency repair work, wetland boundaries and corresponding impacts may be identified after-the-fact in a timeframe sufficient to meet the appropriate submittal requirements identified below.
- B. Flooding and other natural disasters can sometimes obscure wetland indicators, making wetland delineation difficult. In these circumstances, the best available information may be used to determine the wetland boundary, including both on-site and off-site methods as appropriate.
- C. Some areas that met wetland criteria prior to the flood event may have been converted to a non-wetland due to sediment, gravel, or other solid material deposited by floodwaters or other natural disasters. Provided these areas no longer meet wetland criteria, they shall not be considered jurisdictional wetlands under the Wetland Conservation Act. If wetland characteristics re-develop under normal circumstances in the future due to settling, removal of sediment, etc., the area could revert back to a jurisdictional wetland.

II. Temporary Impacts (No-Loss).

A. A temporary wetland impact necessary for the repair of infrastructure damaged by the emergency or disaster that is rectified by repairing, rehabilitating, or restoring the affected wetland will qualify for a no-loss when:

- 1) the physical characteristics of the affected wetland are restored to pre-project conditions sufficient to ensure that all pre-project functions are restored; and
- 2) the activity is completed and the physical characteristics of the wetland are restored within 18 months of the start of the activity, unless an extension is granted by the local government unit after consultation with the Technical Evaluation Panel.

The requirements of MN Rule 8420.0415, Item H, paragraphs (3) and (4) do not apply to a no-loss for purposes of emergency repair under this provision. Temporary impacts consistent with the above do not require an application or LGU approval, provided the impact site is restored to pre-impact conditions. Temporary stockpiles of debris or construction materials necessary for emergency repairs shall be considered temporary impacts and will not require wetland replacement under WCA when the area is restored to pre-project conditions in accordance with the above conditions.

III. Exemptions.

A. Wetlands filled by the deposition of sediment or debris resulting solely from the disaster are exempt from replacement requirements of WCA. This exemption applies in addition to the existing exemptions specified in MN Rule 8420.0420. Removal of debris or sediment is also exempt if accomplished consistent with Section II above.

IV. Wetland Replacement Plans.

A. For projects requiring a wetland replacement plan, the application, noticing, and decision procedures contained in MN Rule 8420.0255 do not apply provided that:

- 1) the purpose of the project is for the emergency repair of existing public or private infrastructure, such as buildings, roads, bridges, or water control works damaged by the natural disaster;
- 2) project impacts are minimized; and
- 3) a complete wetland replacement plan is submitted to the Local Government Unit within 120 days of commencing the emergency repair work. Upon submittal of the replacement plan, the procedures and timelines of MN Rule 8420.0255 will apply.

The Local Government Unit may extend the timeframe for submittal of the replacement plan with notice to the Technical Evaluation Panel.

V. Replacement for Public Transportation Projects.

A. For individual public road projects that impact wetlands for the emergency repair of a currently serviceable existing state, city, county, or town public road, when the need for the repair is a result of the natural disaster, MN Rule 8420.0544, Item D(2)(c) does not apply provided that:

- 1) the information required under MN Rule 8420.0544, Item D(2) is submitted within 120 days of commencing the emergency repair work.

BWSR may extend the timeframe for submittal of project information with notice to the Technical Evaluation Panel.