



December 18, 2024

Mr. Lewis Brockette  
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Dear Mr. Brockette:

The Valley Branch Watershed District (VBWD) is the Local Government Unit responsible for administering the Minnesota Wetland Conservation Act (WCA) throughout the VBWD. This letter provides feedback in response to the preliminary draft WCA rule.

- 8420.0100 **Purpose.** Please provide a reference for determination of wetland quality and biological diversity, and values identified in A.- D. of this subpart.
- 8420.0111 **Definitions.**
  - Subpart. 26. **Fill.** – Please consider adding fences or fencing to the description of what fill does not include. This is a common question from applicants and would be helpful to provide clarification. Suggested edit highlighted in red as follows: Fill does not include posts and pilings for linear projects such as bridges, elevated walkways, **fences**, or powerline structures, or structures traditionally built on pilings such as docks and boathouses.
  - Subpart. 51. **Permanently and semipermanently flooded area of a wetland.**
    - Please consider switching “aquatic” and “terrestrial” around to read: ...commonly the point where the natural vegetation changes from predominantly **terrestrial** to predominantly **aquatic**.
    - Note that the terms terrestrial and aquatic are also used in the definition of a wetland (Subpart. 72). Further clarification of the definition for permanently and semipermanently flooded would be helpful, such as a dominance of obligate vegetation species, since terrestrial and aquatic are very generalized terms and are being used to define two different boundaries.

- Please consider also using the Cowardin descriptions based on the persistence of surface water. Permanently Flooded- Water covers the substrate throughout the year in all years. Semipermanently Flooded- Surface water persists throughout the growing season in most years. When surface water is absent, the water table is usually at or very near the land surface.
- Subpart 52. **Plant community**. Changing the definition of Plant community from the Eggers & Reed community types to the DNR Native Plant Community (NPC) Classification omits plant communities that are not native. The reason for the change shows that the DNR NPC classification system is more complete. We would identify the DNR NPC classification as more specific and detailed: however, it only classifies native plant communities. Therefore, non-native plant communities will not be included in the definition of Plant community under Subpart 52. Also, are these WCA changes consistent with the USACE policies? Will the USACE continue to use Eggers & Reed?
- Subpart. 64. **Shoreland or shoreland wetland protection zone**. B. (1) Please provide clarification that a public water basin does not include a public water wetland (W). Also, there are some public water basins (P) that are not public water wetlands that are less than ten acres in size within municipalities. Should these be excluded when identifying the shoreland or shoreland wetland protection zone?
- Subpart. 72. **Wetlands, a wetland, the wetland, or wetland area**. D. Please provide clarification of the surface water depth for deepwater aquatic habitats. The proposed language refers to the meaning given in the 1987 Corps manual. The Corps manual defines deepwater habitat as the mean water depth exceeding 6.6 feet. BWSR's 2024 statute change summary refers to deepwater habitat as greater than 8.2 feet based on Classification of Wetlands and Deepwater Habitats of the United States" (adapted from Cowardin et al., 1979) in the Effect of Change description: [2024 Statute Change Summary 6-18-24.pdf](#). We have been using 8.2 feet in recent years, although we cannot find reference to the date this was changed. Are we back to using 6.6 feet?
- 8420.0420 **Exemption standards**.
  - Subpart 4 **Federal approvals**. Please consider updating this subpart with information in the guidance and policy documents referencing that the steps to validate this exemption have been completed. [Wetland WCA Federal Approvals Exemption for Utilities.pdf](#) and [Memorandum](#)

[of Understanding Regarding Implementation of the Federal Approval Exemption under WCA](#)

- Subpart 6 **Utilities**. Is the applicant required to notify the LGU, similar to the Federal Approvals exemption? What is the difference between Subpart 4 and 6 now?
- 8420.0330 **Replacement Plan Applications**. Subpart. 3 **Application contents**. Will the Joint Application Form be revised at the same time as the updated rules are in place? Note that there are several items in this list that are not included in the current Joint Application Form, specifically, (5) information known to the applicant or readily available concerning the special considerations criteria in part 8420.0515 and (6) a list of all other known local, state, and federal permits and approvals required for the activity.
- 8420.0522 **Replacement standards**. Subpart 1. **General requirement**. H. Provide a reference for determination of wetland functions and values listed in A.- G. of this subpart.
- 8420.0522 Subpart 4. **Replacement ratios**. Will impacts to non-public water deepwater habitat have the same replacement requirements as wetland impacts? How will that be tracked for replacement credits? Will HGM classifications be used, or will deepwater have its own category?
- 8420.0522 Subpart 7. **Siting of replacement**.
  - C. (2) Removal of the statement: “The cost of replacement credits alone is not sufficient reason to conclude that reasonable, practicable, or environmentally beneficial replacement opportunities are not available.”
    - Note that the VBWD and many metro LGUs have their own replacement siting sequencing that prioritizes local replacement, including opportunities for project-specific replacement.
  - The Bank Service Area (BSA) map is proposed to be removed. The reason for the change is due to online availability of better and more current information. However, knowing that BWSR is planning to make some changes to the BSA boundaries, we request that BWSR provide details of the proposed revised BSA map to LGUs for planning purposes during this rulemaking process. For example, the southern portion of BSA 6 is proposed to change to BSA 7, which affects all of VBWD.

- **8420.0526 Actions eligible for credit.**
  - Subpart 2 C. This appears to provide a higher amount of credit for upland buffer vegetation restoration for protection of rare natural communities than the current typical percentages for ENRV crediting to establish native vegetation in a wetland to protect a rare natural community. If this proposed 50% crediting for upland buffer is allowed, then we would suggest increasing the current percentages for ENRV crediting to match. For example, ENRV crediting for establishment of native vegetation within wetland areas that protect rare natural communities is often only 12.5% to 25%. It doesn't make sense to provide higher wetland crediting in upland areas than in wetland areas for the same credit actions.
  - Please consider adding actions for wetland restoration in coordination with stream bank mitigation.
- **8420.0528 Subpart. 3. Design considerations.** C. measures should be taken to manage hydrologic bounce such that the wetlands' function, value, and sustainability are maintained. The reason for the change is listed as replacing outdated guidance with an implementable standard. What is the implementable standard? VBWD rules include hydrology guidelines that were developed from the outdated guidance document. Will new standards be developed by BWSR?
- **8420.0810 Subpart 4 Timing and duration of monitoring.** The way this is written assumes that five growing seasons is sufficient for restoration. Note that some monitoring plans are planned for more than five growing seasons to achieve restoration goals. Especially if the site includes restoration of forested wetland communities which typically require longer timeframes. Monitoring may also be planned to occur every other year for communities that take longer to establish. We would recommend referring to the approved monitoring plan, similar to the way Subpart. 5 was re-written for monitoring reports.
- **8420.0900 Enforcement procedures.** Please consider including procedures for the LGU and SWCD to collaborate with the landowner to achieve voluntary restoration in lieu of cease and desist, restoration, and replacement orders.
- **8420.0705 Establishing a wetland bank site.** Subpart 3 **Application procedures.** Should there be a statement added to these timelines to document that Section 15.99 statute timelines are not applicable to this section?

Thank you for offering an opportunity to comment on the draft WCA rule. Please contact us if you have any questions or need clarification on these comments.

Sincerely,



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