

# Fact Sheet

## Agricultural Wetland Determinations, Permits, and Regulations

### In Minnesota there are 3 main laws<sup>1</sup> that affect agricultural wetland activities:

Clean Water Act (CWA): Work within wetlands may require a permit from the U. S. Army Corps of Engineers (COE) regardless of any other approvals obtained.

Wetland Conservation Act (WCA): Local Governmental Units (LGU) regulate wetland draining and filling activities on all wetlands not covered by the DNR's Public Waters Work Permit Program.

Wetland Conservation provisions of the 1996 farm bill: Land users who alter wetlands for agricultural purposes lose eligibility for USDA farm benefits.

### Actions authorized under one law do not guarantee approval under the other laws.

To determine if a permit is required under the Clean Water Act and/or the Wetland Conservation Act, land users should complete the Permit Application Package. This package is available from the local Soil and Water Conservation District or these web sites<sup>2</sup>. For proposed drainage, filling, excavating or land clearing activities, the COE and LGU's may require an accurate wetland determination as part of the Permit Application Package. Wetland determinations greater than 5 years old may not be accepted as accurate by the COE or LGU.

### To obtain an updated agricultural wetland determination land users have 4 options:

1. Request NRCS to complete a certified wetland determination by signing a CPA-038 form. Wetland determinations completed after July 3, 1996 are valid indefinitely for USDA purposes if the land remains in agricultural use and for up to 5 years for Clean Water Act purposes.
2. Request the Corps of Engineers to complete a wetland determination. The St. Paul District office has indicated it may take 6-8 weeks for their staff to complete a wetland determination. The COE is responsible for reviewing NRCS wetland determinations that exceed 5 years old.
3. Hire a private consultant to complete a wetland determination. Private consultants are available to conduct wetland determinations. Consultant's determinations will be reviewed for quality and accuracy.
4. Request a wetland determination from the local Soil and Water Conservation District.

Note: All of the above options may result in the addition or subtraction of wetland(s) from any previous USDA wetland determination.

Once a wetland determination has been accepted by the COE or LGU, the project will be evaluated under the applicable laws and regulations. Projects may be exempt, require a permit, require mitigation, or may be denied. If a COE permit is required, NRCS will defer making an exemption determination until the USDA program participant notifies NRCS of the Corps permit decision. LGU decisions will be coordinated with the COE and NRCS.

It is NRCS policy to rely on existing USDA wetland determinations when evaluating proposals unless the landowner provides a written request for a certified determination.

<sup>1</sup> The Minnesota DNR regulates all Public Waters and Public Water Wetlands that are identified on DNR Public Waters Inventory Maps. If there is a question about whether an activity would affect a DNR regulated water body, contact the local DNR area hydrologist or submit a Permit Application Package to the DNR as directed on the application.

<sup>2</sup> BWSR: [www.bwsr.state.mn.us](http://www.bwsr.state.mn.us)  
Phone: 651-296-3767  
DNR: [www.dnr.state.mn.us](http://www.dnr.state.mn.us)  
Phone: 651-296-4800

COE: [www.mvp.usace.army.mil](http://www.mvp.usace.army.mil)  
Phone: 651-290-5375