



Regulation of Aquatic Resource Impacts

Reference Guide Sections 2 and 3

March 2014



Regulation of Aquatic Resource Impacts

(Reference Guide Sections 2 and 3)

Overview

Programs, Responsibilities, and Points of Contact

- Corps of Engineers
- MPCA
- MnDNR
- BWSR

Agencies Involved in Regulating Aquatic Resource Impacts in Minnesota

U.S. Army Corps of Engineers

Clean Water Act Section 404

Section 10 of the Rivers and Harbors Act

Minnesota Pollution Control Agency

Clean Water Act Section 401

Minnesota Department of Natural Resources

Public Waters

Water Appropriations

Invasive Species

Rare Species

Minnesota Board of Water and Soil Resources and Local
Government Units

Wetland Conservation Act

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Section 404 of the Clean Water Act

A section 404 permit is required for the *discharge of dredged or fill material* into waters of the United States

The decision making process is focused on balancing environmental protection and economic development



Section 404 of the Clean Water Act

Dredged Material: material that is excavated or dredged from a water of the U.S.

Fill Material: material placed in a water of the U.S. that has the effect of:

- 1) replacing any portion of a water of the U.S. with dry land or;
- 2) changing the bottom elevation of any portion of a water of the U.S.

Section 404 of the Clean Water Act



March 2014

Section 404 of the Clean Water Act

Waters of the United States are defined in our regulations at 33 CFR 328 and include.....

- Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce.....
- All interstate waters including interstate wetlands
- All other waters the use, degradation or destruction of which could affect interstate or foreign commerce
- All impoundments of waters of the United States
- Tributaries of waters (as defined above)
- The territorial seas
- Wetlands adjacent to waters (other than waters that are themselves wetlands)

http://www.mvp.usace.army.mil/Missions/Regulatory.aspx

ST. PAUL DISTRICT

US Army Corps of Engineers

Search St. Paul District

HOME > MISSIONS > REGULATORY

Regulatory Branch

- Regulatory Home
- Public Notices
- Special Public Notices
- Mitigation
- Permit Process & FAQ
- Boundary Map & Contact
- Regulatory Actions
- Compliance & Enforcement
- Projects & Studies
- Delineation & Jurisdictional Determination Guidance
- Additional Information
- Customer Survey

Wetland Plant Book

Wetland Plants & Plant Communities of Minnesota & Wisconsin (3rd Ed.)

This book was recently moved to the Corps of Engineers digital library.

Regulatory News

Corps of Engineers, partners nearly complete with PolyMet environmental impact statement

About Our Regulatory & Permits Office

District regulatory offices are now open

The mission of the Corps of Engineers' Regulatory Program is to protect the nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the nation's waters, including wetlands.

The Corps' Regulatory Programs includes Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. The St. Paul District's regulatory jurisdiction covers the states of Minnesota and Wisconsin.

Under Section 10, a Corps permit is required to do any work in, over or under a 'Navigable Water of the U.S.' Waterbodies have been designated as 'Navigable Waters of the U.S.' based on their past, present or potential use for transportation for interstate commerce.

Under Section 404, a Corps permit is required for the discharge of dredged or fill material into waters of the U.S. Many waterbodies and wetlands in the nation are waters of the U.S. and are subject to the Corps' Section 404 regulatory authority.

Recent Public Notices

2013-03866-MMJ
LETTER OF PERMISSION: The proposed Main Stem Bassett Creek Restoration Project would involve bank stabilization and native vegetation restoration activities along selected areas of an approximately 15,000 linear foot portion of Bassett Creek.
Date of Expiration: 10/27/2013

2012-04681-MTS
PUBLIC NOTICE: The applicant proposes to fill and eliminate an existing (man-made) diversion channel, create a new

Contact Information

- District Headquarters
- Minnesota
- Wisconsin

Joint Permit Applications

Wisconsin
Wisconsin Department of Natural Resources

Minnesota
MN Joint Application Form.pdf
MN Joint Application Form.doc

For Section 10 Waters go to:
Application for Department of the Army Permit

If you need immediate assistance, please contact the St. Paul District at (800) 290-5847 ext. 5525 or 651-290-5525.

Email: mvp-reg-inquiry@usace.army.mil



HOME > MISSIONS > REGULATORY

Regulatory Branch

- Regulatory Home
- Public Notices
- Special Public Notices
- Mitigation
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- Boundary Map & Contact
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Contact Information

- District Headquarters
- Minnesota
 - Contact phone numbers listed by county (PDF)
 - Minnesota

Field Office Address

Field Office	Address
Bemidji Field Office	4111 Technology Drive NW Suite 295 Bemidji, MN 56601 2108-444-6381
Brainerd Field Office	10867 East Gull Lake Dr. NW Brainerd, MN 56401 651-290-5760
LaCrescent Field Office	1114 South Oak Street La Crescent, MN 55947-1338 651-290-5903
Two Harbors Field Office	1554 Hwy 2, Suite 2 Two Harbors, MN 55616 651-290-5692

- Wisconsin

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Corps Permit Staff - Minnesota Counties

<i>County</i>	<i>Phone</i>	<i>Servicing Office</i>	<i>Contact PM for County</i>
Aitkin	65 1-290-5766	Brainerd MN	Email PM for Aitkin Co
All Saint Croix River	65 1-290-5367	Saint Paul MN	Email PM for St Croix River
Anoka	65 1-290-56 42	Saint Paul MN	Email PM for Anoka Co
Becker	65 1-290-5766	Brainerd MN	Email PM for Becker Co
Beltrami	65 1-290-5338	Bemidji MN	Email PM for Beltrami Co
Benton	65 1-290-5286	Saint Paul MN	Email PM for Benton Co
Big Stone	65 1-290-5286	Saint Paul MN	Email PM for Big Stone Co
Blue Earth	65 1-290-5396	Saint Paul MN	Email PM for Blue Earth Co
Brown	65 1-290-5396	Saint Paul MN	Email PM for Brown Co
Carlton	65 1-290-5694	Two Harbors MN	Email PM for Carlton Co
Carver	65 1-290-5363	Saint Paul MN	Email PM for Carver Co
Cass	65 1-290-5766	Brainerd MN	Email PM for Cass Co
Chippewa	65 1-290-5280	Saint Paul MN	Email PM for Chippewa Co
Chisago	65 1-290-5367	Saint Paul MN	Email PM for Chisago Co
Clay	65 1-290-5357	Brainerd MN	Email PM for Clay Co
Clearwater	65 1-290-5339	Bemidji MN	Email PM for Clearwater Co
Cook	65 1-290-5693	Two Harbors MN	Email PM for Cook Co
Cottonwood	65 1-290-5396	Saint Paul MN	Email PM for Cottonwood Co
Crow Wing	65 1-290-5766	Brainerd MN	Email PM for Crow Wing Co
Dakota	65 1-290-5358	Saint Paul MN	Email PM for Dakota Co
Dodge	65 1-290-5358	Saint Paul MN	Email PM for Dodge Co
Douglas	65 1-290-5286	Saint Paul MN	Email PM for Douglas Co
Faribault	65 1-290-5396	Saint Paul MN	Email PM for Faribault Co
Fillmore	65 1-290-5902	La Crescent MN	Email PM for Fillmore Co
Freeborn	65 1-290-5358	Saint Paul MN	Email PM for Freeborn Co
Goodhue	65 1-290-5358	Saint Paul MN	Email PM for Goodhue Co
Grant	65 1-290-5286	Saint Paul MN	Email PM for Grant Co
Hennepin	65 1-290-5363	Saint Paul MN	Email PM for Hennepin Co
Houston	65 1-290-5902	La Crescent MN	Email PM for Houston Co
Hubbard	65 1-290-5339	Bemidji MN	Email PM for Hubbard Co
Isanti	65 1-290-5367	Saint Paul MN	Email PM for Isanti Co
Itasca	65 1-290-5338	Bemidji MN	Email PM for Itasca Co
Jackson	65 1-290-5396	Saint Paul MN	Email PM for Jackson Co
Kanabec	65 1-290-5367	Saint Paul MN	Email PM for Kanabec Co
Kandiyohi	65 1-290-59 75	Saint Paul MN	Email PM for Kandiyohi Co
Kittson	65 1-290-5337	Bemidji MN	Email PM for Kittson Co
Koochiching	65 1-290-5337	Bemidji MN	Email PM for Koochiching Co
Lac Qui Parle	65 1-290-5280	Saint Paul MN	Email PM for Lac Qui Parle Co
Lake	65 1-290-5693	Two Harbors MN	Email PM for Lake Co

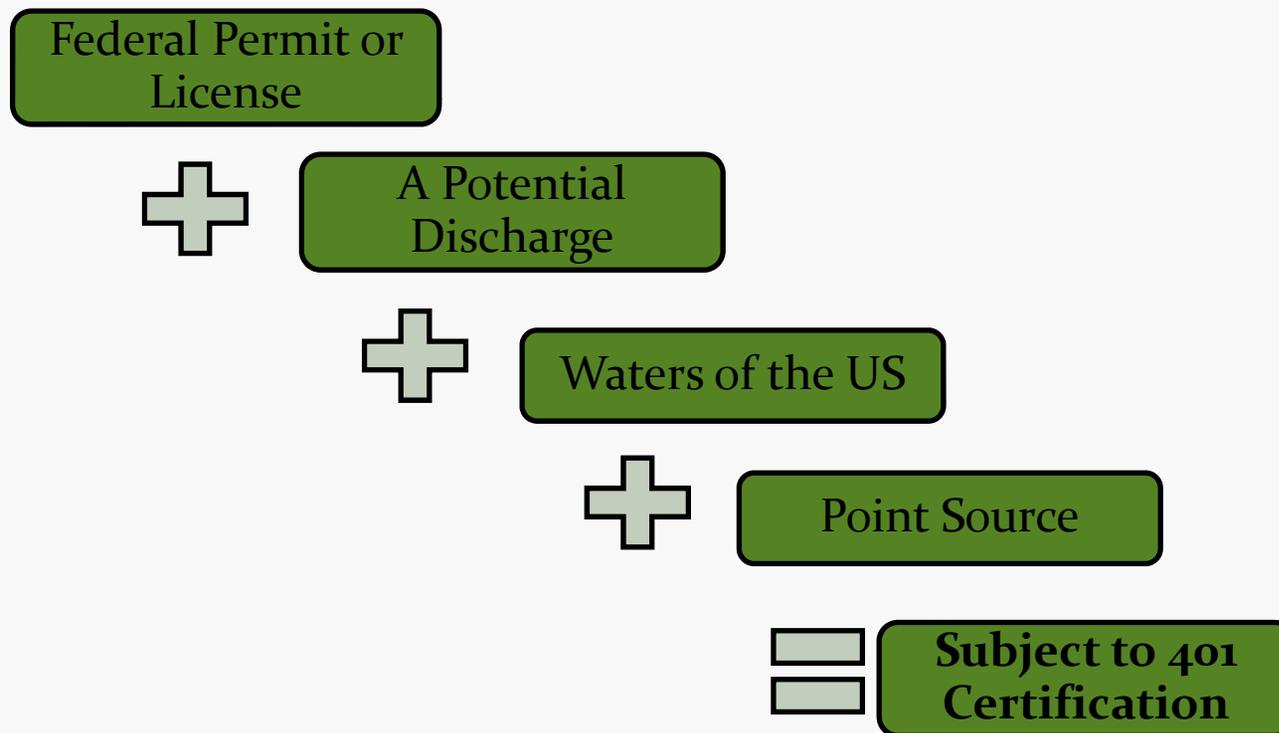
Section 401 of the Clean Water Act

- Gives States and Tribes authority to ensure that projects needing a federal permit do not harm state water quality standards
- By placing conditions on a federal permit

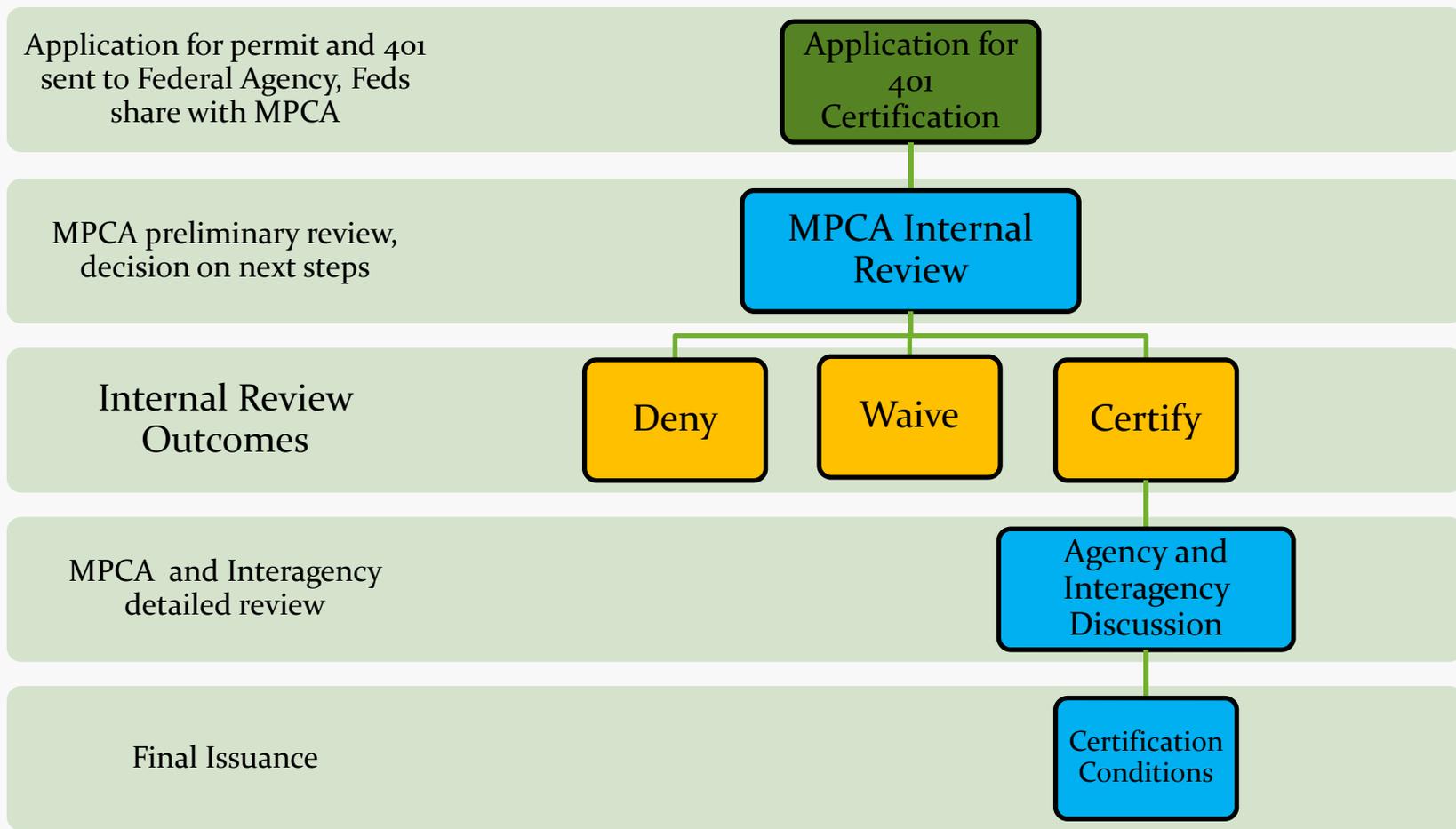


Section 401 of the Clean Water Act

When Does a Project Need a 401 Certification?



Section 401 of the Clean Water Act





Agency Contact Information

MPCA Section 401 Water Quality Certification

Staff: Jim Brist, Bill Wilde

Supervisor: Catherine Neuschler

Manager: Bill Sierks

Director: Dave Benke

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Wetland Conservation Act

Water Appropriation Permits

- Applies to 'Waters of the State'
- Permit required when pumping over 10,000 gal/day or one million gallons/yr
- General Permit GP 97-0005 for construction dewatering - typically applied for by contractor
 - Requires 5 day notice to DNR
 - Requires volume reporting
 - Not valid on designated infested waters without infested waters permit
- Individual permit will be required if the conditions of GP1997-0005 can not be met

Public Waters Work Permit

- Applies only to 'Public Waters' (PWI)
- Public Waters are a **subset** of 'Waters of the State'
- Formerly known as 'Protected Waters'
- Defined by Ordinary High Water elevation (OHW)
- Maps identify locations (color ones now exist)
- DNR has ability to 'waive' jurisdiction to WCA (LGU)

Public Waters Work Permit

Permit Required?

- Yes - when project has the potential to change the course, current or cross-section of the 'Public Water'
- That means 'within the OHW'
- Through agreement with the LGU, the DNR can waive its jurisdiction of wetland fringe areas to WCA process



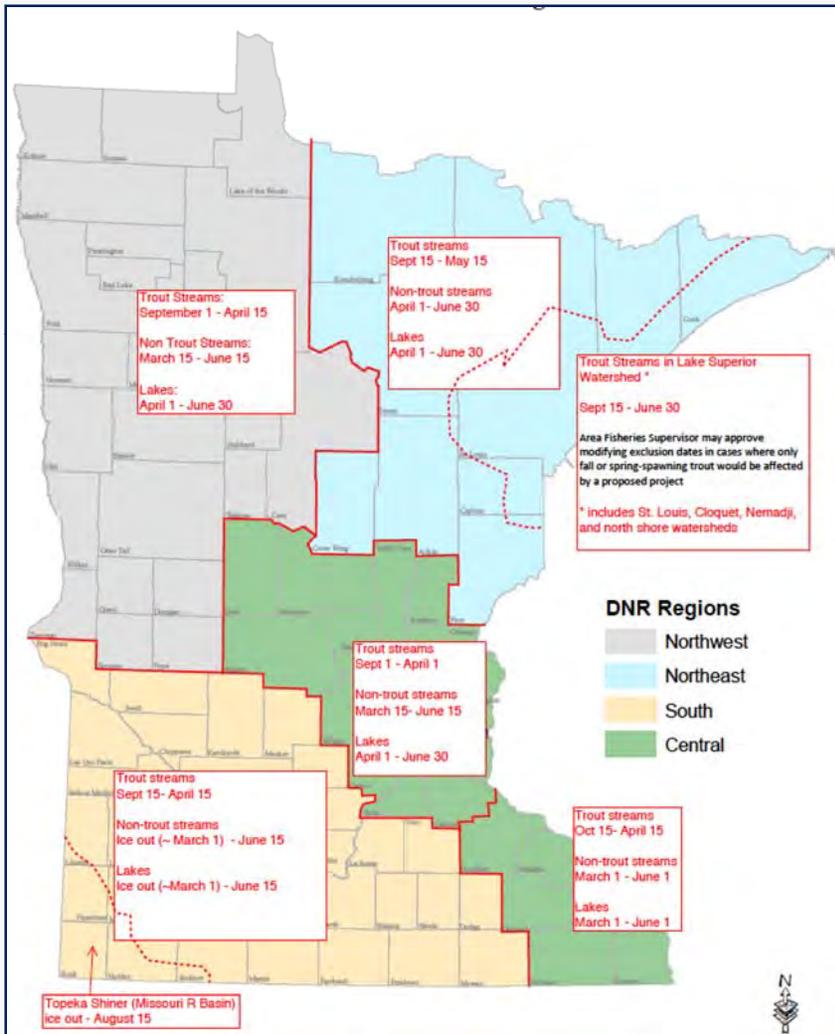
Public Waters Work Permit

Projects shall be approved per Mn Rules 6115.0231,
in part if:

Design shall not be detrimental to public values, including but not limited to fish and wildlife habitat, navigation, water supply, water quality, or storm water retention. (permanent design)

Adequate precautions are planned during and after construction to prevent silt, soil, and other suspended particles from being discharged off site (temporary impacts)

Public Waters Work Permit



March 2014

Be aware that work may be limited: Such as by Fish Spawning and Migration dates

Invasive Species

Minnesota has several state laws intended to minimize the introduction or spread of invasive species of wild animal, insect, and terrestrial or aquatic plants in the state.

These laws apply to construction activities, thus you should be familiar with them.

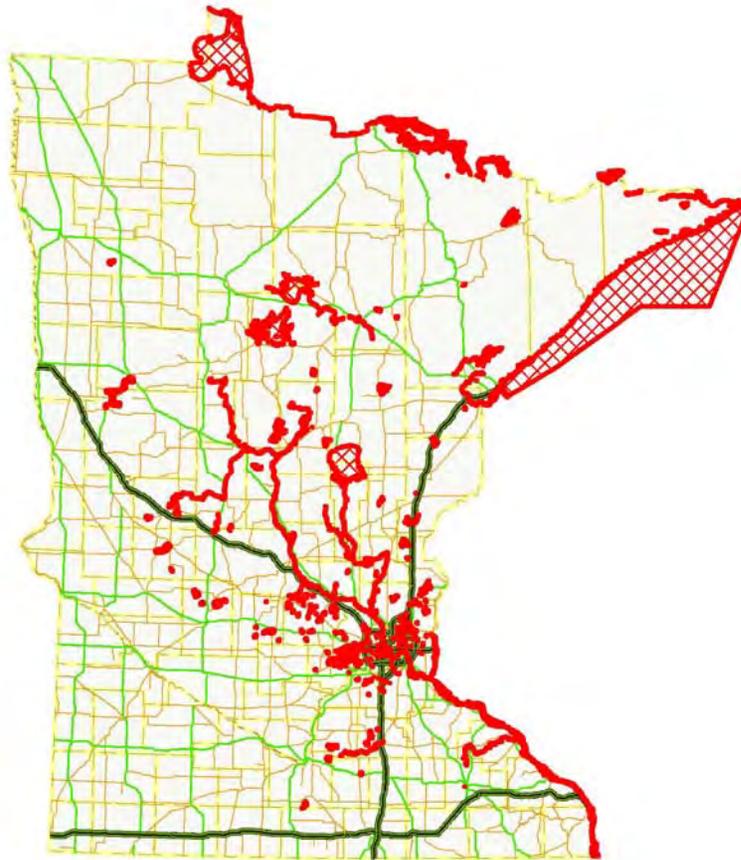
<http://www.dnr.state.mn.us/invasives/index.html>

Contact the appropriate Regional Invasive Species Specialist:

<http://www.dnr.state.mn.us/invasives/contacts.html>

Aquatic Invasive Species

They are not everywhere, but we'd like to keep it that way



Designated infested waters in red (2012)

Aquatic Invasive Species

Prior to transportation along roads into or out of any worksite, or between water bodies within a project area, all equipment must be free of any aquatic plants, water, and prohibited invasive species.

Drain all water from equipment where water may be trapped, such as tanks, pumps, hoses, silt curtains, and water-retaining components of boats/barges, and,

Remove all visible aquatic remnants (plants, seeds, and animals). Removal of mud & soil is not required, though is encouraged as a Best Practice.

(this should be familiar to all boat owners)

Aquatic Invasive Species

On Designated Infested Waters

- higher level of protection is needed -

All equipment that has been in contact with *designated infested waters greater than 24hrs* must be treated to remove and kill invasive species present in those waters prior to re-use on another waterbody or transporting on public roads.

Best Practices for Preventing the Spread of AIS:

http://files.dnr.state.mn.us/eco/invasives/infested_waters.pdf

Aquatic Invasive Species

DNR permits are not valid for work in waters that are designated as infested waters

- Unless accompanied by an Infested Waters permit or written notification from the Department that an Infested Waters permit is not required.
- There is no exception for pre-existing permits

For a current list of designated infested waters, see:

http://files.dnr.state.mn.us/eco/invasives/infested_waters.pdf

Aquatic Invasive Species

On site treatment for infested waters

Remove: by hand scraping or powerwashing all accessible areas
and

Kill: Prohibited Aquatic Invasive Species in non-accessible areas using:

Hot water (minimum 140°F) for ten seconds

for Zebra mussels, Quagga mussels, New Zealand mudsnails, faucet snails) **OR**

Air dry

Spiny waterfleas -air dry for a minimum of 2 days

New Zealand mudsnails – air dry for a minimum of 7days

Zebra or Quagga mussels, faucet snails – air dry for a minimum of 21 days) **OR**

Freezing temperatures

Zebra mussels: expose to continuous temperature below 32°F for 2 days,

Crush

Crush rock, concrete, or other debris by running it through a crushing plant to kill prohibited species.

Aquatic Invasive Species

Off site treatment for infested waters

With specific conditions, the DNR will allow transportation of equipment off site in order to complete final treatment at a differing location. This is a 'one-way pass' to allow transport to a storage area or disposal facility.

The Driver must have permission form

http://www.dnr.state.mn.us/invasives/ais_transport.html

Treatment must then be completed off-site prior to re-use in or adjacent to water.

Rare Species

How to know what is in your project area?

Rare features are identified by a search of the Natural Heritage Information System (NHIS)

The Natural Heritage Information System provides information on Minnesota's rare plants, animals, native plant communities, and other rare features.

This is typically conducted during MEPA, though for smaller projects a request form may be found here:

<http://www.dnr.state.mn.us/nhnrp/nhis.html>

Rare Species

- Where listed species, native plant communities or sites of biodiversity significance are present nearby, though not directly impacted, precautions may be required to ensure protection and/or enhancement of the area.
- Three most common restrictions:
 - **Vegetation Protection:** Use MnDOT Standard Specifications #2572 for Protection and Restoration of Vegetation.
 - **Reptiles and Amphibians:** Restrictions of erosion control products (no welded plastic mesh blanket).
 - **Native Mussel populations:** Survey, relocate, or mitigate.

Rare Species

For species that could be directly impacted, surveys may be required to identify presence and numbers prior to special permit determination (takings, relocation and/or mitigation).



March 2014

Rare Species

When a 'taking' permit is proposed in connection with a project, the request must identify the following.

- nature of the project
- location
- species and number of individuals that would be taken

Before a permit can be issued, the project proposer is asked to explore project alternatives, including other locations or designs, which would avoid or minimize a species taking.

Preliminary Review

Review your project area with public data:

DNR Data Deli (public GIS Info) can provide general info on the need for designs to accommodate rare features.

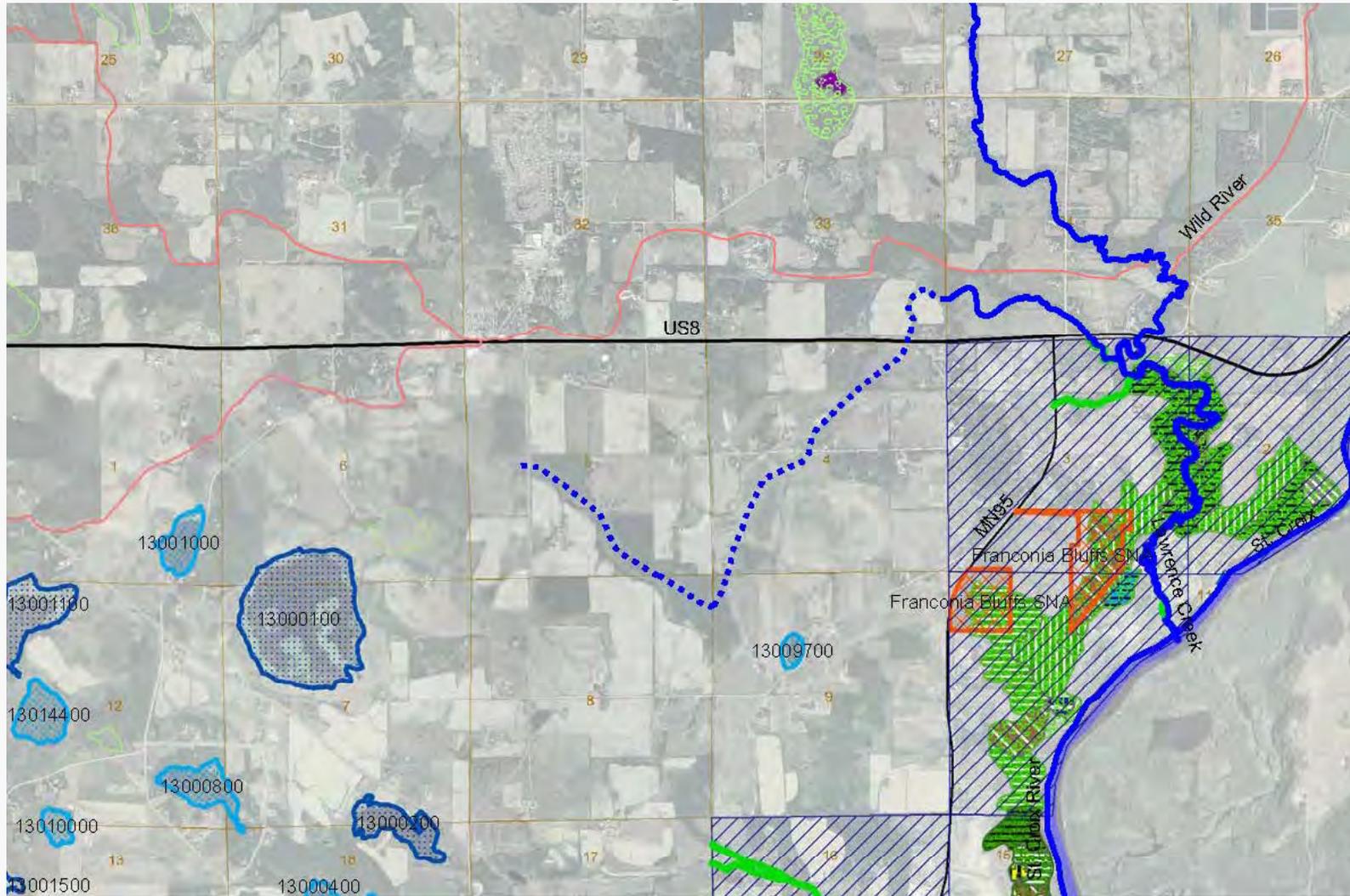
Areas with rare species likely:

- Scientific and Natural Areas
- Wildlife Management Areas (state and fed)
- State Parks
- MBS Native Plant Communities
- MBS Sites of Biodiversity Significance
- MBS Railroad Rights-of-Way Prairies

Preliminary Review

- Add other layers for a wider view of potential design concerns, such as
 - Public Waters Inventory Maps
 - Trout streams
 - PLS sections with Trout Streams
 - FEMA (flood zone) layers
 - Minnesota Trails (water, state, and snowmobile)
 - Other state lands (forestry, etc)

Preliminary Review



March 2014

Preliminary Review

Preliminary review, on your own and/or with annual meetings can help identify likely for design parameters, mitigating options to include, and construction limitations

- fish passage
- navigation
- flood constraints
- mitigation requirements
- Invasive species protocols
- Rare species protection

Thus increasing your confidence the project will not be slowed when it comes time for permit submission

MnDNR Contact

For MnDOT Projects

Peter Leete
Phone 651-366-3634
Peter.leete@state.mn.us

Local Area Hydrologist

http://files.dnr.state.mn.us/waters/dow_area_staff.pdf

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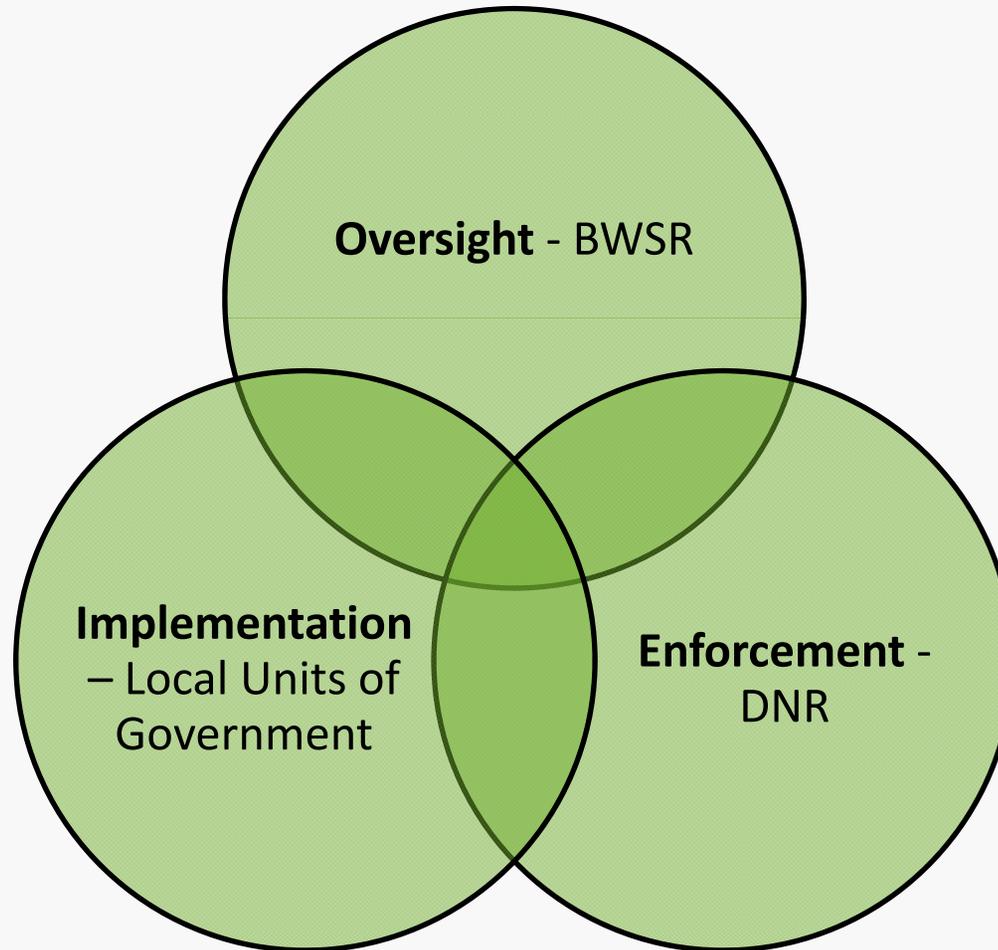
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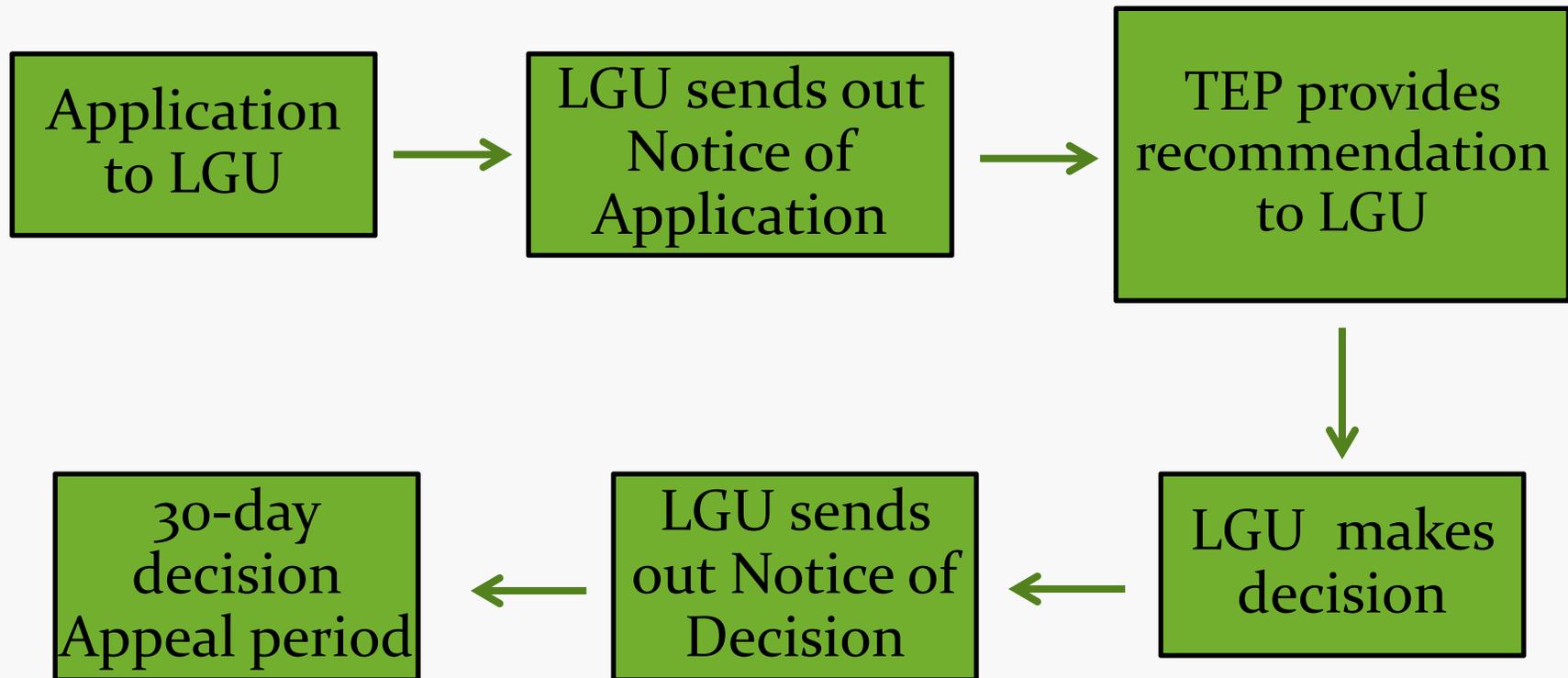
Wetland Conservation Act



Key Aspects of the Program

- **Local Decisions – State Oversight & Coordination**
- **Technical Evaluation Panel (TEP)** advises on most decisions.

Typical Regulatory Decision Process



WCA Jurisdiction in a nutshell



WCA jurisdiction dependent upon the nature of the wetland potentially being impacted and the type of activity proposed.

Mitigation requirement dependent upon the nature of the wetland potentially being impacted and the type of activity proposed.

In other words....

Some wetlands do not fall under WCA jurisdiction (e.g. created wetlands).

Some activities in wetlands do not fall under WCA jurisdiction (e.g. row cropping).

Some wetlands are exempt from mitigation if impacted (e.g. cropped wetlands meeting certain criteria).

Some activities that impact wetlands are exempt from mitigation (e.g. drainage maintenance).

In other other words....

WCA jurisdiction and mitigation requirements are complicated!