

Minnesota's Wetland Conservation Act — County Denial Upheld.

In Carda v. Kanabec County, Minnesota Court of Appeals, (A06-2300, November 13, 2007) <http://www.mncourts.gov/opinions/coa/current/opa062300-1113.htm> , Kanabec County's denial of the applicant's wetland replacement plan application under the Wetland Conservation Act was upheld.

The applicant argued that Kanabec County did not approve or deny the application within 60 days as required by Minnesota Statute § 15.99. The Court of Appeals held that the County's letter informing the applicant that it could not "accept" his application (because the Minnesota Department of Natural Resources ("DNR") had already issued a restoration order) was a denial for purposes of Minnesota Statute § 15.99.

Minnesota's Wetland Conservation Act regulates wetland draining and filling activities on all wetlands not covered by the DNR's Public Waters Work Permit Program. In addition, work in a wetland usually requires a permit from the United States Army Corps of Engineers regardless of whether other state, local, or U.S. Department of Agriculture Natural Resources Conservation Service permits are required. The Wetland Conservation Act requires persons proposing to impact an applicable wetland by draining, excavating, or filling to first, attempt to avoid the impact; second, attempt to minimize the impact; and finally, replace any impacted area with another wetland of at least equal function and value. Minnesota Rule 8420.0102. The Wetland Conservation Act is administered by local government units with oversight provided by the Board of Water and Soil Resources ("BOWSR").

Enforcement of the act is provided by DNR conservation officers and other peace officers. BOWSR has enforced wetland regulations through civil and criminal actions. In 2007, the Minnesota Legislature authorized BOWSR to issue administrative penalty orders. With this authority BOWSR may seek penalties of up to \$10,000 and order corrective actions.

Hessian & McKasy's Environmental Law Practice Group has extensive experience securing development and environmental permits and helping clients through the maze of regulatory requirements in a cost effective manner. We defend clients who face cease and desist orders or penalty demands from the EPA or state environmental agencies. We also work with clients to develop auditing and environmental management programs to prevent or minimize potential violations.

Please feel free to contact Joseph Maternowski, Chair of the Environmental Law Attorney Practice Group at jmaternowski@hessianmckasy.com or (612) 746-5754 for more information regarding the issues discussed here.