

# Wetlands and Conservation Compliance

**WHAT EVERY WISCONSIN FARMER NEEDS TO KNOW**



**W**etland conservation has been an integral part of Wisconsin agriculture since the passage of the Food Security Act of 1985. High rates of wetland conversion and increased national awareness of the environmental benefits associated with wetlands prompted Congress to enact the legislation.

Historically, many acres of high quality wetlands had been perceived as wasted space and were converted to other uses considered to be more beneficial. It is estimated that by the early 1980s, only about 5.3 million acres of Wisconsin's original 10 million acres still existed. However, thanks to wetland-related programs, Wisconsin continues to make progress in restoring its wetlands. The state is currently restoring wetlands at a greater rate than loss is occurring.

This document is intended to cover United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) wetland determinations only. It is not intended to cover all possible situations, but can be used as a quick reference to familiarize yourself with USDA wetland compliance provisions.



*Helping People Help the Land.*

# Farm Bill Wetland Provisions (Swampbuster)

Swampbuster is a conservation compliance provision that was introduced in the 1985 Farm Bill to discourage the production of agricultural commodities on converted wetlands. The rule requires that people who convert wetlands to allow production of agricultural commodities will be ineligible for USDA benefits until the functions of the converted wetlands are mitigated or restored.

## Maintaining USDA Program Eligibility

To maintain eligibility, participants must certify that they have not produced crops on converted wetlands after December 23, 1985, and that they did not convert a wetland to make agricultural production possible after November 28, 1990.

Any activity that alters natural wetlands, making possible the production of an agricultural commodity or forage crop, is prohibited. These activities may include:

- Filling
- Draining (surface ditching or subsurface tiling)
- Land leveling
- Clearing woody vegetation where stumps are removed
- Diverting run-off water from a wetland (i.e. building a diversion)

In most cases, drainage systems and other conversions that existed prior to December 23, 1985, can be maintained to the extent they existed at that time. See your local NRCS office for details.

### **If Swampbuster is violated, USDA farm program benefits may be lost.**

Participants who plant a crop on wetlands that were converted between December 23, 1985, and November 28, 1990, will not be eligible for certain benefits any year a crop is planted. After November 28, 1990, participants who have altered the wetland to make crop production possible will not be eligible for benefits until the previous functions are restored or mitigated. Please note that ineligibility applies to all **current and future participants** associated with the wetland.

NRCS wetland determinations are conducted to implement the wetland conservation provisions of the Food Security Act of 1985. The determinations/delineations may not be valid for identifying the extent of the U.S. Army Corps of Engineers' (COE) Clean Water Act jurisdiction for wetland sites. The Wisconsin Department of Natural Resources (WDNR) also regulates wetland activities in Wisconsin, utilizing state specific rules and criteria.

If you intend to conduct any activity that constitutes a discharge of dredged or fill material into wetlands or other waters, you should request a jurisdictional determination from the local office of the WDNR and the COE prior to starting the work.

## What Are Wetlands?

A wetland is an area of land that exhibits the following three criteria. All three criteria must be present for an area to be considered a wetland:

1. Predominance of hydric soils (soils formed under wet conditions).
2. Prevalence of hydrophytic vegetation (vegetation adapted to wet soil conditions).
3. Inundation or saturation by surface or groundwater (hydrology) enough to support hydrophytic vegetation.

Although the term "wetland" brings to mind areas of shallow water, cattails, and landing ducks, most of our wetlands are forested wetlands or cropped wetlands that only hold surface water temporarily, but are seasonally saturated.

## Why Protect Wetlands?

Concerns over wetland losses, and the resulting environmental health issues, prompted Congress to enact legislation to protect them and maintain their beneficial functions.

Wetland functions include:

- Improving water quality
- Flood control
- Sediment control
- Nutrient cycling
- Maintaining critical wildlife habitat
- Recharging groundwater

## Variations And Exemptions To Swampbuster Provisions

Numerous variations and exemptions have been included in the wetland conservation provisions. Work with your local NRCS office to determine if they apply to your farm.

### **Prior Converted (PC):**

A wetland converted prior to December 23, 1985, on which an agricultural commodity was produced at least once prior to this date, and as of this date, did not support woody vegetation. No restrictions on use.

### **Artificial Wetlands (AW):**

Wetland areas created due to the activities of man. No restrictions on use.

### **Minimal Effect:**

May be granted when NRCS determines that the wetland conversion activity only minimally impacts wetland functions.

### **Mitigation (Offsetting Losses):**

Compensation through wetland restoration, enhancement, or creation for wetland functions that are lost on a converted wetland. Mitigation areas are generally located on the same property as the converted wetland and often require a greater ratio of restored wetland to converted wetland acres. Plan must be implemented within 12 months.

### **Scope and Effect:**

In some cases, drainage may be maintained as it existed prior to December 23, 1985. No added drainage may be achieved after this date.

### **Non-Agricultural Activities:**

Swampbuster does not regulate non-agricultural activities, such as road or home site construction.



## Wetland Determinations

It is the landowner's or program participant's responsibility to contact USDA if he or she plans to do any type of work in wet areas. The best way is to go to the local USDA Service Center to review any existing wetland determinations and fill out an AD-1026 form at the Farm Service Agency (FSA) office if a new determination is needed.

Most wetland determinations completed prior to July 3, 1996, are not considered "certified", and therefore are not valid for determining compliance with the provisions.

NRCS will determine if a producer's land has wetlands that are subject to the swampbuster provisions. The agency maintains lists of soils and plants typically found in wetlands. Along with assessing the hydrology of the area, NRCS uses this list to conduct wetland determinations. These determinations stay in effect as long as the land is used for agricultural purposes or until the producer requests a review.

If you disagree with the NRCS determination, you will be provided the opportunity to appeal the determination before it becomes final.

All wetlands, including AWs and wetlands converted for non-agricultural activities, fall under U. S. Army Corps of Engineers' (COE) jurisdiction under Section 404 of the Clean Water Act. Contact the COE and WDNR before conducting any planned activities in or around potential wetlands.

## Frequently Asked Questions

### ***Is there a minimum wetland size exemption?***

No. If a site meets wetland criteria, regardless of its size, it is subject to Swampbuster requirements.

### ***Can I clear trees from a wetland area?***

Normal timber harvesting practices are generally not affected by Swampbuster if the site remains in timber production and cut stumps remain intact at ground level. Land clearing on a wetland involving stump grinding or stump removal making production possible is prohibited.

*Note: Suppression of woody regrowth on cleared wetlands may lead to a Swampbuster violation after the stumps rot away making production possible.*

### ***Can I install subsurface drain tile or surface drainage ditches on an existing crop field?***

In most cases, drainage systems that existed prior to December 23, 1985, can be maintained. Before installing or maintaining any drainage system, you should contact NRCS. Installing any drainage system in or adjacent to a regulated wetland is prohibited.

*Note: Fields determined by NRCS to be PC cropland are exempt from USDA wetland compliance regulations. After confirming the PC determination, planned activities can be completed without further delay, as long as adjacent wetland areas are unaffected.*

### ***Are old creek channels wetlands?***

In most case, yes. Old creek channels (oxbow sloughs) separated from the original stream meet wetland criteria and are subject to wetland regulations. If you plan to manipulate any old channel, you should contact NRCS to request a certified wetland determination.

### ***When purchasing or renting a farm, what questions should be asked about wetlands?***

Have certified wetland determinations been completed? What types of wetlands are present and what are the restrictions? Are there any wetland conversions that occurred on the property after December 23, 1985? If there are converted wetlands, what options are available to resolve the situation?

### ***What types of wetlands could be present on my property?***

Wetlands occur in many different forms and on a wide range of land uses. They commonly occur in wooded areas, pastures, hayfields, cropland, and odd areas around the farm. An example of a cropland wetland type is Farmed Wetlands (FW). These cropland areas were manipulated and planted prior to December 23, 1985, but still meet wetland criteria. They can continue to be farmed as long as no additional manipulation is conducted, such as adding additional surface or subsurface drainage, and the area is not abandoned. NRCS can assist you to determine what wetland determinations have been completed on your property and if a certified wetland determination might be needed.



## How to Contact NRCS

To get more information about wetlands, contact your local NRCS office. Look in the phone book under "U. S. Government, Department of Agriculture" or access the Wisconsin NRCS website at [www.wi.nrcs.usda.gov](http://www.wi.nrcs.usda.gov) and click on "Contact Us."