



## Drain Maintenance Fact Sheet

### Remaining eligible for USDA Benefits

USDA Natural Resources Conservation Service - North Dakota

April 2008

Wetland conservation provisions of the 1985 Food Security Act, as amended, allow drainage systems in place prior to December 23 1985, the date of the passage of the Act, to be maintained. Drainage systems include ditches, tile drain pipe, wetland fill, level ditches and pumps.

- Maintenance of existing drainage ditches allows for sediment removal, but ditches may not be deepened or widened beyond dimensions in place as of December 23, 1985.
- Maintenance of tile systems allows tile to be fixed as long as the depth and size of the tile are not deepened or increased beyond what was in place as of December 23, 1985.
- Drainage maintenance is not allowed on some lands that were not used to produce an agricultural commodity for a 5-year period. These lands may be considered abandoned. Abandoned drainage systems may not be maintained.
- Plans for new drainage or modification of existing drainage should be reviewed by NRCS before doing the work.

Areas identified on a Certified Wetland Determination as Prior Converted (PC) or Non-wetland (NW) are exempt from wetland conservation provisions of the Act.

Areas identified on a Certified Wetland Determination as Farmed Wetlands (FW) may be maintained to their original scope and effect.

Culverts affecting wetlands may not be lowered or re-sized to increase the effect of drainage.

Farmed Wetlands pumped before December 23, 1985 must be maintained with the same pump rate and during the same calendar period each year.

Trees may be cut from wetlands, however, stumps must remain. Stump removal makes production possible, and violates the Act. Trees small enough to be removed with normal tillage equipment may be removed.

### **Other risks to eligibility for USDA participants**

Actions by someone other than a landowner or renter that impacts a wetland can cause a landowner and renter have a converted wetland and a potential violation. Examples:

- A township board installing a replacement culvert deeper than the original pipe may cause a converted wetland on adjacent land.
- Rebuilding a road by excavating the road ditch deeper diverting water away from a wetland could cause a converted wetland.
- A buyer or renter acquires land with a converted wetland (this applies even if the conversion is not identified by USDA until many years later) that was partially drained as of Dec. 23, 1985. The USDA participant extends and deepens the ditch, completely draining the wetland in 1995. The land is sold/rented and the wetland is cropped by the new owner/renter. USDA is made aware of the converted wetland in 2007. The new owner/renter has a potential violation since an agricultural commodity was produced on a converted wetland. The previous owner that converted the wetland in 1995 also has a potential violation.

**How to stay in compliance**

- If you are not certain what the extent of drainage was in 1985, request a scope and effect determination from NRCS before maintaining a drainage ditch.
- Before installing a new drainage ditch, request a determination from NRCS whether or not it will be in compliance.
- Before installing tile drain, provide NRCS with a copy of the design and request a determination. Notify NRCS of any changes in the plan before installation, and request a new determination if the plan is revised.
- If you acquired land since Dec. 23, 1985 and do not know what the extent of drainage was on that date, request a Certified Wetland Determination from NRCS.
- Be aware that wetland determinations done by the NRCS prior to July 1996 are not adequate for compliance determinations. Only NRCS Certified Wetland Determinations dated July 1996 or later can be used reliably.

**US Army Corps of Engineers 404 permit:** In many cases constructed drains do not meet the wetland juridical requirements by the United States Army Corps of Engineers (COE). If drain maintenance is conducted in or adjacent to a natural water course a 404 permit may be needed if spoil material is to be placed in the wetland. The COE will need to complete a jurisdictional determination. The COE may use the NRCS wetland determination to make their jurisdictional determination. For more information contact the COE at 701-255-0015.

**County Water Resource Board permit:** County water resource boards have jurisdiction over drainage issues within the county. Contact the local water resource board prior to completing any maintenance or manipulation in natural drainage courses or to a wetland with greater than 80 acres of drainage.

**US Fish and Wildlife Service:** Contact the FWS office having jurisdiction in your county to determine if planned maintenance may impact FWS easement wetlands.

**Where to get help:** Contact your local NRCS office for a certified wetland determination or more information regarding the wetland conservation provisions of the 1985 Food Security Act, as amended.