

Mr. Chairman, members of the interim agricultural committee. Members of the board of soil classifiers would like to thank this committee and legislative council for their work on this legislation during the interim session. There has been significant changes to this legislation over the past two years that we feel will clarify and strengthen the law that has been in existence since 1973, protecting the soils and landscapes of North Dakota for its citizens.

The Board requests the section of Century Code 46-36.1 related to private entity exemptions be eliminated. Because of the long standing registration of soil classifiers in the state, North Dakota is in the unique position to assure the public that all soil related activities, including wetland identification, are done by qualified, experienced individuals that have passed the necessary requirements to become a certified soil classifier.

Allowing an exemption for private entities to identify hydric soils as part of wetland delineation will significantly reduce the level of knowledge and experience of individuals undertaking this activity. A “**basic understanding**” of hydric soils may be adequate for identifying artificial wetlands, such as those encountered in DOT highway projects, but would not be adequate for identifying complex soil-landscape interactions related to wetlands in agricultural settings.

Since there is no state regulation of wetland delineators, many individuals doing wetland identification only take a single 40 hour course. Of this 40 hours, usually only about 8 hours are dedicated to hydric soils. Depending on weather conditions, this course may or may not include field training and observing soils in the field. Upon completion of the training, an **optional** examination, which does **not** require a passing score is given. In many cases, the delineators do not have adequate experience working with soils and landscapes found in North Dakota. In contrast, Professional Soil Classifiers must be a college of soil curriculum graduate, have 3 years of work experience in North Dakota, as well as pass a rigorous two part written and field testing procedure.

Some examples of questions received by registered soil classifiers from individuals after they have taking a basic wetland delineation course are:

- (1) I’m standing in a depression where there is standing water with hydrophytic vegetation but there are no hydric indicators, is it a wetland,
- (2) You have indicated on the CORP of Engineers form that the soil is hydric but you have not checked any of the indicator boxes,
- (3) I’m not confident with upland vegetation, what is the difference between crested wheatgrass or western wheatgrass,
- (4) You indicated on the Corp of Engineers form the site being non hydric, but this area is listed on the NRCS soil survey as a hydric map unit, how is this possible?

The wetland delineation course apparently does **not** give enough training and experience to be able to accurately answer these questions. As indicated in the publication, Field Indicators of Hydric Soils in the United States, “there are some hydric soils that lack any of the currently listed indicators”. North Dakota

has soils that would be considered problematic soils and may not have visible hydric indicators. Another issue is the use of a published soil survey to make determinations, published soil surveys were never meant to be used to make onsite interpretation, such as wetland determination.

Allowing a private entity exemption for the identification of hydric soils greatly increases the potential for errors and mistakes in the field. This may not be as important when dealing with artificial and created wetlands, such as those found along highway ditches, but mistakes could have serious consequences and cost farmers thousands of dollars when dealing with wetlands in agricultural settings and farm programs. In many cases, individuals identifying wetlands in agricultural situations do not have native vegetation to rely on and the determination is made primarily by the identification of soil properties alone. In addition, often the hydrology has been modified by surface or tile drains and the hydric soil is the only reliable indicator of the wetland boundary.

The revised language in the law includes the statement:

The individual's employer takes legal responsibility for the work and determinations of the individual ...

By including this statement, it is obvious the people requesting an exemption for private entities realize that qualifications for hydric soil identification will be diluted. If the individuals conducting the actual work are qualified, such a statement should not be necessary. Additionally, the proposed revised language in the law will make it difficult for the board to administer the law. Will all wetland delineators have to be approved by the board? Will the board review their training and qualifications?

An exemption for private entities is in direct contrast to the original intent of the law that registered soil classifiers in the state in 1973. The law in its present form has served the people of North Dakota well and continues to do so. We respectfully request any language related to **private entity** exemptions be eliminated.

In conclusion, it very important that soils work be completed by knowledgeable individuals so that accuracy is maintained, both for the agricultural producer's and the general public's benefit.