

THE Auger



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The Newsletter of the Minnesota Association of Professional Soil Scientists

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President's Message

by James Arndt

As the new incoming president of MAPSS, I would like to thank everyone for their efforts and interest in assisting MAPSS through their dues, attendance at meetings, involvement on committees, and general promotion of the Profession of Soil Science. I would also like to extend our gratitude to outgoing members of the executive board. Gary Elsner and Norm Mofjeld have dedicated many hours to MAPSS. Their regular input will be missed. However, several new members have "stepped up to the plate." I would like to formally acknowledge and welcome Charlie Saari and Daniel Comeau as the incoming President-elect and Secretary. I look forward to working with them this coming year.

It's well into February, and I have been thinking about this, my first President's message. Many exciting, positive things are happening in our profession. We are getting more visibility and credibility with time, and practitioners of soil science in Minnesota are increasingly being relied upon to provide data, opinions, and interpretations that address critical land-use issues. Much, if not most, of our work involves the health, safety, and welfare of the general public. More often we are working as peers with multidisciplinary teams composed of other licensed professionals: engineers, planners, architects, geologists, even lawyers. Our profession is becoming more technologically oriented, forcing more attention on continuing education as well as

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Parting Thoughts

by Gary Elsner

Now that my 3 years on the Executive Committee has ended, I thought I should take a moment to jot down a few of my thoughts and observations. First, I want to say thanks to the members of the organization for your vote of confidence in electing me. Second, I want to say thanks to all the executive committee members who were there during my term and to the other MAPSS members who have volunteered their time and effort to keep the organization functioning. My personal goal for the organization

when I was elected was to establish policies and procedures for the organization, which would allow us to function more efficiently and with as much consistency between administrations as possible. To that end, we now have a Standard Operating Procedures document for the organization. We also moved our mailing data into a database and have started to use electronic accounting. My challenge to those who follow me is to build on this momentum to keep the organization

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The Auger is made up of volunteered articles from the MAPSS membership. If you would like to contribute, please contact me at the following:

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addressing liability issues when things go wrong. The Profession of Soil Science is maturing, and no doubt deserves the importance conferred upon it by the requirement of licensure that our organization has worked so hard to make a reality.

However, challenges are on the horizon as well. As a professional organization, our involvement in professional and civic responsibilities is complex. Determining the correct balance between the costs and benefits of our involvement in legislative and professional affairs is difficult. Our involvement in licensure and the Senate File 83 process that resulted in wetland regulation simplification and proposed Wetland Delineator Certification has, for all of the challenges, successes, and disappointments, afforded us the opportunity to experience the legislative process in action and to have an impact on that process. We have learned many things. If we are to progress and mature as a licensed profession, it is apparent that we must continue to be involved. This involvement needs to come not only from our elected Association representatives but from our membership as well. We all need to be familiar with issues that directly, and sometimes indirectly, impact our profession. We can accomplish this goal by maintaining our involvement with representation on the Board of Licensure (the Board of AELSLAGID), the Joint Professional Committee (JPC), and our own professional and executive committees. I would like our membership to be aware that, as a small organization, the MAPSS membership voted during the

Winter Meeting to discontinue support for a lobbyist for this year due to lack of funds. Thus we will have to find alternative methods to "speak" to our legislators regarding issues of importance to our profession.

The need already exists. We are faced with another legislative issue that directly involves our profession. Under proposed new law, a sales tax similar to that presently levied on certain goods would be levied on services as well. This "sea change" in taxation has many implications for Licensed Professions in general and the Profession of Soil Science in particular. Several professional organizations have examined the proposed law and have provided comments arguing against its passage. The MAPSS Executive Board will be examining this issue during its next meeting, and will also formally comment on the proposed bill. The issues are examined in an accompanying article in this issue of the Auger, along with the recommendation that individual members of MAPSS provide responses to their appropriate legislators. I would recommend that our membership take this opportunity to individually support their profession by educating themselves on the sales tax issue, and then responding, either via letter or e-mail, to their appropriate legislators. The procedures are summarized in the accompanying article.

I am looking forward to the upcoming year as MAPSS president. If any member has comments or issues that they want myself or the MAPSS Executive Committee to consider, I can be reached via e-mail at jarndt@petersonenv.com.

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moving forward. The Executive Committee has as many issues on their plate as there have been at any time in our history. To succeed, they are going to need the continued support and assistance of the entire membership.

On a separate note, I want to touch on an issue, which seems to have been the focus of our organization for over 5 years (actually, the organization was formed almost 30 years ago specifically to address this issue). The issue is of course, Licensing. For me, soil science has been my profession for almost 20 years. In the early 90's, it appeared that my profession was on the road to extinction. A lot has happened to detour us from that road, some by coincidence, some by luck and mostly due to the hard work of our members.

Licensing was already a reality by the time I was elected, so my term focused on dealing with the

changes that resulted. Over the past 3 years I have been surprised by the number of members who continue to question whether or not licensing, and all the associated problems were worth it. I believe it was worth it and I believe that without it we may find ourselves right back on the road to extinction. If you still not as convinced as I am, take time consider where we might be today, if we hadn't seized the opportunity to become licensed.

I would like to close with a statement made by Dr. Dennis Keeny of Iowa State University at a Soil Science Department Seminar I attended on January 24th. Dr. Keeny was referring to the progress SSSA has made in Washington DC on behalf of soil scientists, but it also applies to what happened to soil science practice in Georgia and to the challenges we are facing with the wetlands and tax on services issues this legislative session. He said: "It only takes a stroke of the pen and all the hard work is gone".

Wetland Regulations, They Are A Changing.

by Kelly Bopray

Many MAPSS members deal with wetlands and hydric soils on a daily basis. But even then it seems like the regulations and rules that cover wetlands change faster than the seasons. I thought an article on some of the most recent changes would be useful and of interest to the members.

First at the Federal level, many of you may have heard something about the Supreme Court Ruling SWANCC vs. Corps of Engineers (COE) in early January. The case revolved around a consortium of cities plan to build a solid waste landfill on a site were wetland and deepwater habitats had developed in an abandon sand and gravel pit. The COE denied the permit and it was appealed through the court system all the way to the Supreme Court. The Supreme Court ruled in favor of SWANCC and in doing so struck down the "migratory bird rule, of the commerce clause" to the Clean Water Act. This rule was used to extend COE jurisdiction to isolated wetlands based on their importance to migratory birds and the importance of hunting and birding to interstate commerce. The effect of the ruling is that the COE does not have jurisdiction over isolated wetland anymore. It is important to note that the Court did not over turn other rulings that affirmed the COE jurisdiction over navigable waters and adjacent, tributary or wetland with significant nexus to navigable water.

Future Agency guidance and court ruling will be needed to define adjacent, tributary and significant nexus. Here in Minnesota, this ruling may not have a lot of effect because the Wetland Conservation Act will still have jurisdiction over all wetlands in the state. In some neighboring states, which relied mainly on the COE for protection of wetland, the isolated wetlands may now be fair game for conversion to other uses. Preliminary estimates suggest that this ruling could effect from 30% to 79% of total wetland acreage in various states. Conservation groups have vowed to go to Congress to have this wetland protection restored. Others have said the court ruling has put the protection of isolated wetlands in the hands of the states and outside of the federal government's reach.

Additional information can be found on the inter-

net. A few of the site I've reference include: www.supremecourtus.gov/opinions/00pdf/99-1178.pdf and www.aswm.org

At about the same time as the Supreme Court limited the COE jurisdiction, the COE issued the final "Tulloch" rule regulating excavation in wetlands. More information on this rule can be found at www.epa.gov/owow/wetlands/dredgedmat/tullochf.html

The wetland regulations in the state of hockey (i.e. Minnesota) have also changed over the past year. There were extensive changes to the Wetland Conservation Act (WCA) and the Dept. of Natural Resources (DNR) Protected Waters rules that went into effect at various times in 2000. Many of the changes were to make the two programs more similar.

The DNR rules have been changed to allow wetland impacts, after meeting WCA like sequencing and mitigation requirements. The DNR however might not be inclined to be as flexible with sequencing for a "public water" as a local unit of government dealing with a WCA regulated wetlands. The DNR will be looking at reclassifying the wetlands on its list of "public waters" and potentially even demoting some basins to WCA wetlands.

The changes in WCA ranged from the benign to covert efforts to push local policy. Some examples that are noteworthy are:

- Excavation in semi-permanently to permanently flooded areas of Type 3,4,5 wetlands will now require mitigation at the same rate as a fill impact.
- Storm water ponds can only receive public value credits for replacement if the local unit of government has an approved, funded and implemented stormwater management plan which provided for maintenance of the stormwater ponds to meet performance criteria established by the Board of Water and Soil Resources.
- Mitigation plans that use native vegetation in the wetland and buffer areas are required to have a vegetation management plan which specifies maintenance activities such as mowing and herbicide treatments for several years after the vegetation is planted and ground cover established.

There were numerous other small changes that may effect specific projects or implementation of WCA that I can't go into here. Be prepared this spring to see a 13 page joint notification form for wetland projects. And as the world turns, the next meeting to discuss further changes to state wetland regulations including the wetland delineator certification program was held February 21, 2001, just a few days after this went to press.

Wetland Delineator Certification Program Update

by Kelly Bopray

The Following document presents the Wetland Delineator Certification Program proposed to the Minnesota State Legislature to fulfill the requirements of Senate File 83. This effort is the result of cooperation between several stakeholder groups, including MAPSS. However, this document is a proposed plan that satisfies the Senate File 83 requirement. In order for delineator certification to become a reality, the plan must be accepted by the legislature and funded.

A Plan for the Certification of Wetland Delineators in Minnesota

Senate File 83 (Chapter 382, Minnesota Laws of 2000) required the Board of Water and Soil Resources (BWSR), in consultation with the Minnesota Association of Professional Soil Scientists (MAPSS), the University of Minnesota (UM), and the Wetland Delineators Association (WDA) to submit a plan for a professional delineator certification program to the legislature by January 15, 2001.

Representatives of the aforementioned groups and individuals from state and federal agencies, local units of government and private consulting firms met several times during 2000. Staff from the BWSR chaired the meetings. The following text reflects the views of the participants and the process used to reach the recommendations which are at the end of this report.

Benefits of delineator certification

- A wetland delineator certification program would provide stability to the implementation of the Wetland Conservation Act and other wetland regulations by formally recognizing individuals uniquely qualified to perform wetland delineations.
- The regulatory process should be more efficient in that wetland delineation and typing determinations should be less frequently questioned.
- Consumers will be protected by knowing that delineations will be conducted by qualified persons operating under a code of ethics.
- The environment will be better served in that the jurisdictional boundaries of wetlands may be more precisely delineated.

- The practice of wetland delineation will be recognized as a distinct skill with economic value in the marketplace.
- Wetland delineators will have the responsibility to maintain and enhance their skills.

Comparison to other certification programs

Delineator certification programs of the U.S. Army Corps of Engineers and State of New Hampshire were reviewed. The Minnesota program for the certification of individuals involved with individual sewage treatment systems (ISTS) was also reviewed for its applicability to wetlands. This proposal reflects many aspects of those programs.

General nature of the proposed certification program

- With respect to all aspects of delineator certification, no distinction is made between public and private sector delineators.
- Certification will apply only to delineation. However, because wetland regulations often require that a wetland be classified by type (Circular 39 or Cowardin, et al.), it is expected that a certified wetland delineator be competent in wetland typing.
- Certification is required for practitioners from other states who delineate wetlands in Minnesota.
- A wetland delineator certification program would establish appropriate standards for education, experience, and performance for persons completing delineations.
- Delineator certification should become mandatory on July 1, 2004, after a three-year (voluntary) phase-in period. The effect of this is that, except for exempt persons or projects, after July 1, 2004, wetland delineations may be performed only by certified delineators.
- Exemptions: wetlands may be delineated without certification:
 - by individual landowners for projects on their property, and
 - for projects non-regulatory in nature such as wetland inventories.

Peer review committee

A code of conduct and ethics agreement must be developed as part of a compliance program. Compliance includes complaints, sanctions, probation, decertification, and the associated protocols and procedures, which will be developed during rulemaking. The BWSR will chair an enforcement/ethics committee

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with other members nominated by MAPSS, WDA, UM, and representatives of local units of government, private sector delineators, and state and federal agencies. This committee will also evaluate applications and associated documentation concerning training and experience.

Applicability to federal agencies and regulations

Endorsement of delineator certification will be sought from federal agencies by use of memoranda of agreement. The memoranda will address participation of federal staff in the planning and conduct of training and the applicability of delineator certification to federal regulations. The BWSR will assume responsibility for this task.

Implementation of delineator certification

Administrative tasks, including training, and budget estimates are provided in *Attachment A*. It must be noted that without funding a delineator certification program cannot be initiated. The parties to this report do not exist in sufficient numbers to make this program self-supporting. Regarding a location for the program, the BWSR office in St. Paul is the first choice. Other options discussed included contracting with a private vendor. The BWSR is a preferred location due to its involvement with many aspects of wetland management and regulation. Training is major component of delineator certification, both in terms of initial certification and continuing education. All parties agreed that a major effort should be made to develop a cadre of in-state trainers from among public and private sector professionals. In addition, the University of Minnesota was urged to add to its offerings a course applicable to wetland delineation.

Specific elements of certification

Education, training, and experience requirements are summarized in Attachment B. Considerable discussion occurred during the development of these elements. As written, they reflect a balance between stringent requirements which could exclude most delineators currently practicing and minimal standards that would not screen out incompetent practitioners.

Enactment of the certification program

- The program would be authorized by legislation in 2001. That legislation

would frame the basic principles, establish guidelines for the voluntary (phase I) program, and authorize the BWSR to make appropriate amendments to the rules of the Wetland Conservation Act.

- Rule amendments must be completed and in effect by July 1, 2004.

Recommendation

Finding that the establishment of a wetland delineator certification program is in the public interest and would further the management and protection of wetlands, it is the recommendation of the undersigned parties that legislation and an associated appropriation be pursued during the 2001 legislative session.

[Note: The following breakdown is a summary of proposed Phase I and Phase II implementations. For detailed information, contact BWSR]

Phase 1 (Voluntary)

Date: 3 years in duration, beginning July 1, 2001

Education and Training: One of the following needed plus experience before exam can be taken:

- Broad coursework or
- A 4-5 day delineation course

Experience: 3 years (2 years with masters or Ph.D. degree in a related field)

Written Examination: Yes

Type of Examination: Basic

Field examination: No

Ethics Agreement: Yes

Compliance with Sanctions and other enforcement actions: No

References: Yes (Names only, letters not needed)

Continuing Education Required to Maintain Certification: Yes

Phase II (Mandatory)

Date: Beginning July 2, 2004

Education and Training: Both of the following plus experience needed before exam can be taken:

- Broad coursework and
- A 4-5 day delineation course or equivalent training

Experience: 3-years (2 years with Masters or PhD degree in a related field)

Written Examination: Yes

Type of Examination: Comprehensive

Field Examination: No

Ethics Agreement: Yes

Compliance with Sanctions and other Enforcement Actions: Yes

References: Yes (Names only, letters not needed)

Continuing Education Required to Maintain Certification: Yes

Opinion: The Proposed Minnesota “Tax on Services”

by Jim Arndt

Several members who have concerns regarding a tax on services proposed in the Governor's new budget have contacted the MAPSS Executive Committee requesting a position/response. The following information is provided as the opinion of one member of the Executive Board, and does not represent a formal MAPSS position at this time. The Executive Committee will be considering this issue at the next meeting. However, our membership needs to be aware that a tax on services would directly impact members who are practicing within the private sector. If you have comments or opinions regarding MAPSS taking a formal position, please contact Jim Arndt via e-mail (jarndt@petersonenv.com), by snail mail at 1355 Mendota Heights Road, Suite 100, Mendota Heights, Minnesota 55120 or by phone (651.905.6127). I would also appreciate being copied with e-mails and letters sent to individual legislators.

The Governor's Office and the Department of Revenue have been advocating the replacement of local school taxes with a major change in state policy – a sales tax on “business services.” While many citizens have generally favored an increase in state support for schools, and business groups have urged a reduction in business property taxes, the substitution of a sales tax on business services has united virtually all of business in opposition. Geoscience and Soil Science services, as well as many of the services of businesses that employ licensed Soil Scientists and Geoscientists, (e.g. computer services, legal and accounting services) would be subject to sales tax.

There are several reasons that a tax on services may be ill conceived.

An Untested Experiment. Only two states, Hawaii and South Dakota currently impose a sales tax on services. Florida attempted a broad-based sales tax, and then repealed it a year after its inception.

Implementation Problems. State revenue officials have indicated that out-of-state providers will be taxed when providing services in Minnesota, and that Minnesota service providers would not be taxed when working outside of Minnesota. However, it is very likely that tracking individual projects and locations will be difficult and complicated. Many small out-of-state businesses would likely not pay the tax voluntarily. A considerable “gray area”

would exist that would require refinement to determine (1) if a tax is applicable, and/or (2) which portion of a tax is applicable. For example, would office work (e.g. air photo interpretation, soil survey assessments) performed in Minnesota on out of state projects be taxed? How would a multi-state project with Minnesota components be handled?

Out of state firms will have a competitive advantage. Firms operating in Minnesota will see secondary service providers such as legal and accounting services pass on their own service tax. However, out of state providers doing business in Minnesota will not operate under this burden. Minnesota businesses will likely have to increase their costs well above those of their out-of-state competitors, or face erosion in their fees and profits.

A Record Keeping Nightmare. Record keeping will be dramatically magnified in order to accurately track tax requirements. Each firm will have to identify whether or not a particular sale is taxable, keep track of tax numbers, and would, in many cases, have to consider which elements of the sale actually are taxable. If clients negotiate adjustments on projects, how would the tax be handled?

Sales tax on services will not be offset by lower property taxes. An examination of the actual savings suggests that the property tax savings would in no way offset the far greater expenses associated with taxing billed services.

Legislative leaders have been cool to the idea of a tax on services because they recognize the implementation and competitiveness problems. Because of the importance for this legislation to affect virtually all professions, licensed and otherwise, each member should familiarize themselves with the issues involved with taxing services, and then write or contact their legislators. It is easy to determine an individual legislator by accessing the following web page: <http://www2.pioneerplanet.com/precinct/>. All that is needed is an address in Minnesota, and the database will provide all applicable legislators. To manually identify your legislator, call 651.296.2146, provide your home address, and you will be given the names of your respective Senator and Representative.

If you are interested in providing input to your legislators on the subject you can do so by e-mail. E-mails for all state legislators are the same, as follows: rep.firstname.lastname@house.leg.state.mn.us or sen.firstname.lastname@sen.leg.state.mn.us. Under the subject portion of the e-mail, indicate either your support or non-support for the sales tax on services.

2001 MAPSS Summer Tour

by Terry Bovee

The annual MAPSS Summer Tour will be held in the Nicollet County area this year. Hosts Norm Kuhlman, Terry Bovee and Doug Miller will be organizing the event. The tour will include review of the city of St. Peter's wellhead protection efforts, soil and geologic highlights adjacent to the Minnesota River, an overview of the Swan Lake Restoration Project, the recently completed Department of Natural Resource sand and gravel exploration and inventory project, and a update on the Minnesota River CREP program. As always, there are many things to see and do on a summer tour so there may be a few 'extras' on this tour. The hosts plan to keep your "bus time" to a minimum, and optimize the "field time" portions of the day. A business meeting and supper will conclude the day.

Actual dates for the tour have yet to be decided but sometime in late July or early August is most likely. There are plenty of overnight facilities available in the area, including state parks and private campgrounds. Details of the Summer Tour will be in the next newsletter. For now MAPSS invites you to keep your thoughts on the Summer Tour and plan on joining us for a great time.

Greetings from the new Editor ~

I am pleased to be able to serve MAPSS as the new editor of *The Auger*. Many thanks to David Bauer for serving as Editor over the past two years. He did an outstanding job and I hope to continue his high standards. Feel free to submit articles or opinion letters for future issues; this is your newsletter.

Feedback on content, presentation and format would be appreciated.

Regards, David Kelley

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Congratulations

Governor Jesse Ventura has announced the appointment of MAPSS member **Dawn Tracy** to the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design. Dawn replaces Jim Balogh as a representative of geoscientists for a four-year term expiring on January 5, 2004. Best of luck, Dawn, in your new endeavor.

Position Vacancy:

Executive Assistant for MAPSS

The MAPSS Executive Committee is still searching for an Executive Assistant to assist them in their task of serving the various needs of the MAPSS membership.

Duties:

1. Represent MAPSS at the AELSLAGID Board meetings and Geoscience section meetings, and at the Joint Professional Committee (JPC) meetings.
2. Report activities to the Executive Committee as needed and at Executive, Annual or Summer meetings.
3. Review the MN State Register and Legislative updates weekly for issues of importance to MAPSS.

Other duties may be negotiated as needed or feasible (webmaster, newsletter editor, etc.)

This is a paid position (salary negotiable) and a chance to serve your colleagues in MAPSS and the profession of soil science/geoscience in Minnesota. If interested, please contact the current MAPSS President, Jim Arndt, for further information.



MAPSS Newsletter (David Kelley)
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