

## Off-Highway Vehicles and Wetlands: 2004 Changes

In 2003, the Minnesota Legislature banned the use of off-highway vehicles (OHV), or all-terrain vehicles, on certain types of wetlands. The 2004 Legislature removed portions of that broad ban and added new restrictions on where OHVs can travel. The following summarizes the new law ([Laws 2004, ch. 255](#), § 6, coded in [Minn. Stat. § 84.773](#)).

### *OHVs are banned in calcareous fens*

The 2004 law prohibits OHV operation in calcareous fens. Calcareous fens are a rare type of wetland in Minnesota; they are fed by groundwater, highly alkaline, and have low dissolved oxygen. The state has approximately 137 of them.

### *OHV operation still banned in certain wetlands*

The 2003 law had banned OHV operation in specific types of wetlands, as defined by the U.S. Fish and Wildlife Service: shallow marshes (type 3), deep marshes (type 4), shallow open water (type 5), and bogs (type 8). The 2004 law eliminated these specific references to types of wetlands. Another law ([Minnesota Statutes, section 103G.505](#), subdivision 15a, applicable to unfrozen public waters) continues to ban OHV operation in types 3, 4, and 5 wetlands, but that section does not cover type 8 wetlands.

### *New provisions governing OHV operation*

The 2004 law added new stipulations (in subdivision 2) that a person driving an OHV in a wetland must not operate the vehicle in a way that:

- willfully, wantonly, or recklessly disregards the safety of people or property;
- carelessly upsets the natural and ecological balance of a wetland; or
- affects more than the minimum amount of wetlands as allowed by [Minnesota Statutes, section 103G.2241](#), subdivision 9, which is approximately 400 square feet of a wetland or more, unless
  - the wetland activity is already exempt under [section 103G.2241](#), for a variety of activities, mainly agricultural; or
  - existing statutory requirements for replacement and repair are followed, with local government having approval rights. These requirements are in [Minnesota Statutes, section 103G.222](#), subdivision 1(b), and [section 103G.2242](#) and rules.

The 2004 law did not change the ban on OHV operation in unfrozen public waters, state parks, scientific and natural areas, or wildlife management areas.

### *Private owners may access their land*

The 2004 law also authorized the commissioner of the Department of Natural Resources to issue a permit for up to ten years to exempt private landowners or leaseholders from the law, which would allow them to access their land with an OHV when they have to cross state land to do so.

*Summary*

In summary, the new law does not differentiate between public and private wetlands in restricting OHV operation. From formerly excluding OHV travel in certain wetland types, the above conditions of subdivision 2 will now apply. The new law is an attempt to rely less on a rider's knowledge of various wetland types and make the rider more cautious of traveling on any wetland.

**For more information:** Contact legislative analyst John Helland at 651-296-5039.

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