

WCA PERMANENT RULE ADVISORY COMMITTEE

MnDOT Training and Conference Center
Shoreview, Minnesota

January 31, 2008

Meeting Notes

Committee Members:

Agriculture

Mn Corn Growers Association-

X Doug Albin

Warren Formo.

Mn Farm Bureau-

Chris Radatz

Staci Bohlen.

Mn Farmers Union-

Jim Tunheim

Thom Peterson.

Mn Soybean Growers Association-

X Lawrence Sukalski.

Mn Wheat Growers Association-

Bruce Kleven.

Business

Builders Association of Mn-

X Lisa Frenette

X Stephanie Berklund.

Builders Assoc. of the Twin Cities-

X Rick Packer

James Vagle.

Mn Association of Realtors-

Susan Dioury.

Mn Chamber of Commerce-

X Keith Hanson

Tony Kwilas.

Mn Forest Industries-

Wayne Brandt.

Utilities –

X Blake Francis.

Aggregate Ready-Mix Assoc. of Mn

Mike Caron

Fred Corrigan.

Environment/Conservation

Audubon Mn –

X Susan Solterman.

Izaak Walton League - Mn Division –

X Bill Barton

X Dell Erickson.

Mn Center for Env. Advocacy-

Janette Brimmer

Henry Van Offelen.

Mn Conservation Federation-

Gary Botzek.

Sierra Club - North Star Chapter-

X Mollie Dean

Local Government

Association of Mn Counties-

X Duanne Bakke

Harlan Madsen.

Metropolitan Inter-County Assoc.-

Keith Carlson.

Mn Assoc. of SWCD –

Sheila Vanney.

Mn Association of Townships –

X Dave Fricke

Dan Greensweig.

Mn Assoc. of Watershed Districts-

X Roger Lake.

Mn County Engineers Association –

X Doug Fischer

X Tom Tri.

Mn Rural Counties Caucus-

X Todd Beckel

X Wade Pavleck.

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Others

Mn Viewers Association-

X Jim Weideman.

Wetland Professionals Association-

X Allyz Kramer

Andi Moffat.

Minnesotans for Wetlands-

Mary Mueller.

Mn Assoc of Professional Soil Scientists

X Peter Miller

Kelly Bopray.

Federal Government

U. S. Army Corps of Engineers-

X Marita Valencia.

U.S. Fish and Wildlife Service-

X Tony Sullins.

USDA Natural Res. Cons. Service –

X Sid Cornelius.

State Government

Department of Agriculture-

Joe Martin.

Department of Natural Resources-

X Doug Norris

X Julie Ekman.

Department of Transportation –

Frank Pafko

X Sarma Straumanis

Pollution Control Agency-

X Dave Richfield.

Note: X = in attendance

Guests: Joe Tenley, McGhie and Betts; Rick Dahlman, DNR-Forestry; Kurt Deter, Rinke-
Noonan Law Firm; Colleen Allen, Wright SWCD; Paul Aasen, Mn Center for Env.
Advocacy; Kent Rodelius, Prinsco; Don Parmeter, American Property Rights Coalition;
Linda Runbeck, American Property Rights Coalition;

Staff: Dale Krystosek, Les Lemm, Jeremy Maul, Ken Powell, and Dave Weirens.

Dave Weirens called the meeting to order at 9:15 a.m.

All in attendance introduced themselves.

Mr. Weirens discussed a PowerPoint presentation that provided background information on the following:

- WCA Assessment;
- 2007 Statutory Amendments;
- 2007 Exempt Rule Amendments;
- WCA Rulemaking process, and Committee Structure; and
- WCA Rulemaking Goals and Considerations.

During this presentation, individuals in attendance raised the following:

- Asked if BWSR would be collecting data on exempt impacts by exemption category in the future;
- Commented that WCA originally included funding for restorations. Also, a lot of wetlands are restored outside the WCA regulatory process and this should be recognized.
- The need for BWSR to consider, or bring in the MPCA to discuss the NPDES General Permit in developing WCA rule amendments;
- If the permanent rule amendments would be consistent with the law and intent of the law; and
- To 3-hole punch handouts provided at future meetings.

Dell Erickson asked if a different word than exemption could be used. BWSR staff responded that this is word used in statute.

Marita Valencia asked if future draft rule documents could use different colors for different types of changes, perhaps red for substantive, and blue for formatting. BWSR staff said that we would try and accommodate this request.

Kurt Deter asked about indirect impacts, and how far the rule would go in addressing indirect impacts. BWSR staff responded that this is a difficult issue and would require significant discussion on how or what to do with this.

Rick Packer suggested that BWSR look into the issue of the conflict when one agency requires hydrologic modification, which runs counter the WCA regulations.

Dave Richfield asked about clarifying upland impacts as part of the WCA rule. Mr. Packer followed by stating the storm water regulations are presenting a paradigm shift in keeping water away from wetlands.

Draft Rule Review – Rule Organization.

Les Lemm reviewed and discussed the proposed rule re-organization that BWSR staff is proposing. The Technical Review Committee has reviewed the proposal, and supports it in concept, but will review it further.

Mr. Lemm stated that throughout the rulemaking process a conversion chart would be provided to find old rule references and sections, in the new rule.

Allyz Kramer said that this proposal should not be taken lightly.

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Doug Norris asked if the re-organization would be done at the end or as we go along in the rule development process. BWSR staff responded that it is difficult to do it at the end, and will be done as we go along.

Additional comments made during this discussion included: focus on language and content of the rule more than the order; and re-ordering the rule is a good thing and should be done. Just be clear where things are moved so they can be followed and so changes are transparent.

ACTION – BWSR staff will add a part for sequencing (.0225) under “Different Types of Projects.”

Draft Rule Review – Scope, LGU Duties, and Miscellaneous Sections.

Mr. Lemm reviewed the draft Scope, LGU Duties, and Miscellaneous Rule Sections. This section has been reviewed the Technical Review Committee.

Linda Runbeck stated that the term public value is very subjective. BWSR staff responded that this is the statutory language.

Mr. Deter asked if the changes are driven by statutory change. BWSR staff responded that some but not all of the changes are driven by statute.

Peter Miller asked if the change to the regulation of excavation would require a functional assessment of type 1 and 2 wetlands. BWSR staff responded that this might be required more than is the case under the current rule.

Colleen Allen offered that the change to excavation would help, especially with smaller reed canary grass choked wetlands.

Tom Tri said the change to excavation would affect use of the wildlife habitat exemption, get hit twice, once for the excavation and once for the fill.

Ms. Runbeck said that the increased subjectivity is not the way to go.

Sarma Straumanis said that excavation may not meet the definition of an impact, should perhaps be addressed as a no loss.

Doug Albin said that the current statute and rule is a compromise from the early days of WCA.

Ms. Valencia said that the proposed rule change would be more consistent with how the Corps regulates excavation.

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Ms. Kramer said that the change might make noxious weed control into an impact.

ACTION - BWSR staff said they would check with the Attorney General's Office and the wildlife habitat exemption regarding the proposed change to excavation.

Mr. Norris commented in 8420.0200 Determining Local Government Unit; Duties regarding use of the term impact or activity to identify which LGU should be administering WCA. The rule should use the location of the impact to determining the LGU.

ACTION – BWSR staff will compared the definitions of impact and activity, modify the draft rule to ensure appropriate use of these terms (especially in 8420.0200 Determining Local Government Unit; Duties), and redefine the term activity.

Lisa Frenette expressed concern over many overlapping LGU's, duplicate regulation. BWSR staff responded that there is not overlapping WCA regulation, but LGU's may have similar regulations they implement under their own authority.

Ms. Kramer asked if the WCA decision maker must be certified, under the proposal in 8420.0200, Subd. 2? BWSR staff responded, not necessarily.

Wade Pavleck said the proposal to require LGU staff to be certified would create a burden on LGU's, if this proposal goes forward, then maybe the State should take over the administration of WCA. Furthermore, it is the responsibility of the LGU to provide qualified staff.

Ms. Frenette asked if small LGU's would be able to afford qualified people? BWSR staff said that in a Legislative Auditors report issued last January, that BWSR was taken to task for our oversight of LGU's.

Doug Fischer asked how BWSR regulates the current trained staff requirement. BWSR staff responded that this only comes up as a result of a spot check or audit.

Dave Fricke suggested that this requirement may have a big impact on BWSR, and that LGU's are in a financial crisis, and consultant costs continue to increase.

Mr. Tri suggested that if there were new money for WCA LGU's that this would not be an issue.

Mr. Erickson said that requiring certification would add to the reliability and credibility of LGU decisions.

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Several other comments made during this discussion, included:

- If the applicant has a certified delineator, the LGU should also.
- Requiring a certified delineator would be an increased cost to the LGU, and those costs continue to rise creating a greater property tax burden.
- Deal with “renegade” LGUs through BWSR oversight, don’t require training.
- Do not include the certified delineator and training requirements in rule because rule is hard to change. Do it as guidance or policy instead.
- If a certified delineator is required for LGUs, have its own section in rule with more detail.
- More specific guidance on how to delegate WCA administration would be helpful.

ACTION – BWSR staff will bring the issue of LGU staff certification to the Board Wetland Committee and present two options: (1) leave this language in the rule, or (2) take the certification requirement out of the rule, but pursue the same requirement as Board policy after the rule is adopted.

Ms. Allen suggested that the listing of specific actions can be deleted under 8420.0200, Subd. 2, paragraph C, and in other places where this list occurs. Rick Dahlman suggested that the language in this paragraph is confusing and should be restated.

Mr. Fischer and Mr. Packer suggested that the following language in 8420.0200, Subd. 2, paragraph C should be deleted: “otherwise the local government unit has not sufficiently considered the technical evaluation panel report.”

ACTION - BWSR staff will delete the list of specific actions where appropriate throughout the rule, redraft 8420.0200, Subd. 2 to improve clarity, paragraph C and delete “otherwise the local government unit has not sufficiently considered the technical evaluation panel report.”

ACTION – BWSR staff will delete the word “wetland” where it appears in front of the word “impact” to reduce the length of the rule.

Dave Richfield suggested that PCA should be included on the TEP, particularly for decisions that involve stormwater inter-relationships, stormwater pretreatment, or wetlands connected to impaired waters.

Draft Rule Review – Noticing Sections.

Ken Powell reviewed the noticing section of the draft rule.

Ms. Allen stated that the list of applications could be deleted.

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It was suggested that the requirement to notice exemption and no loss applications is an option. BWSR staff said these sections of the rule will specify that applying for an LGU decision is optional, but if they do apply the proposal is to require the LGU to notice the decision.

The Committee engaged in a lengthy discussion over the last sentence under subpart 1, which is, “The local government may cite seasonal constraints as a basis for an incomplete application.” The proposal is to amend this sentence to read as follows: The local government unit may hold an application in abeyance or issue a conditional approval based on seasonal constraints

ACTION – BWSR staff, in subpart 1, will delete the list of specific actions and restate the last sentence to read, “The local government unit may hold an application in abeyance or issue a conditional approval based on seasonal constraints.”

ACTION – BWSR staff will amend Subpart 2, to specify that the LGU can require the applicant to send copies of applications to those required to receive them, or clarify this in the administrative manual. Also, Subpart 2 will be change “decision or decisions” to either “type of application” or “type of decision.”

Concern was expressed over deleting the language that specifically states that the LGU decision must be made in compliance with Mn Statutes 15.99 in subpart 3.

ACTION – BWSR staff will restore the following stricken sentence in subpart 3: The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99. Subpart 3, will also be amended to ensure the notice of decision is sent to the applicant and the applicant’s agent.

Draft Rule Review – Boundary or Type and TEP Procedures.

Dale Krystosek reviewed the boundary or type and TEP procedures sections of the draft rule.

Mr. Norris suggested that the first paragraph of 8420.0225 Wetland Boundary or Type Determinations be amended to include “and supplements” after “updates”, and modify the reference to the Eggers and Reed wetland typing system to state that it was signed by the Board and Corps, and to include “any modifications or updates approved by the Board and the Corps”.

ACTION – BWSR staff will amend 8420.0225 Wetland Boundary or Type Determinations to include “and supplements” after “updates”, and modify the reference to the Eggers and Reed wetland typing system to state that it was signed by the Board and Corps, and to include “any modifications or updates approved by the Board and the Corps”.

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ACTION – BWSR staff will consult with the Attorney General’s office regarding use of the Eggers and Reed Wetland typing system.

Mr. Norris expressed concern over the language in 8420.0240 Technical Evaluation Panel Procedures that states, “The purpose of the panel is to provide findings and recommendations to the local government unit.” He was concerned that the rule did not provide the authority granted to these panels in statute. BWSR staff agreed to discuss this issue further outside of this meeting due to time constraints.

Draft Rule Review – Exemption Reporting.

Mr. Weirens briefly discussed the Attorney General opinion that the WCA rule could not require a landowner to report exempt activity due to the conflict with another statutory provision that encourages landowners to contact the LGU. BWSR staff is exploring several options, and will discuss this further with the Attorney General’s Office.

Next Meeting.

The Committee set the next two meetings dates for February 28 and March 27, both at the MnDOT Training and Conference Center in Shoreview, Minnesota.

The meeting adjourned at 3:30 p.m.