

USE OF E-MAIL FOR NOTIFICATIONS AND THE WETLAND CONSERVATION ACT

The use of e-mail for official notifications under WCA could be problematic because the use of e-mail is not expressly stated in WCA statutes. BWSR attempted to allow for the use of e-mail with a rule change, however, that may not be sufficient. BWSR may seek statutory revisions, or further rule changes, to allow for the use of e-mail.

The WCA statutes state "mailed" for all notifications and the rules state "sent" for some items and "mailed" for others. The instances where "sent" is used could be argued, although probably unsuccessfully in consideration of case law, that e-mail would be satisfactory. Having evidence of the person receiving the e-mail could possibly strengthen the argument for satisfactory compliance with the intent of the law. However, the language in the WCA rules for the filing of appeals is based on a mailed notice of decision, so if decisions were e-mailed it could be an issue under an appeal or in litigation.

This summary is provided for general information purposes only. LGU staff members and others should consult with their legal counsel for specific advice on the use of e-mail in any particular circumstance. This summary is not a rule of the Board of Water and Soil Resources ("BWSR") and is not binding on BWSR or any other party.