



Executive Order 12-04

Supporting and strengthening implementation of the state's wetland policy

Business and Industry Sector Meeting

Minnesota Chamber of Commerce, St. Paul, MN

Meeting Notes

September 24, 2012

Dave Weirens began the meeting by asking everyone in attendance to introduce themselves. He then reviewed the origination of Executive Order 12-04, its contents, and the process that is being used to comply with it. Mark Lindquist led the discussion of the Order's issues. The discussion of these issues is summarized below.

Issue #1: De minimis Exemption.

- Mining projects far exceed de minimis amounts, making consideration of this impractical.
- Forestry activities typically meet the forestry exemption and do not use the de minimis exemption.
- Land development has been on the decline over the last 5 years, and developers generally know how to work with local governments.
- It was noted that there are a lot of categories in de minimis which creates complexity.
- Simplification would be a good thing and should make compliance easier to achieve.
- Data is a concern, mandatory reporting of no loss and de minimis would be opposed.
- Local governments need to advertise that they have staff available to assist and help individuals through the process.

Issue #2: Alignment of Pre-Settlement Zones on Watershed Boundaries.

This issue was discussed concurrently with Issue #5 (see below).

Issue #3: Consistent Review, Approval and Implementation.

- PCA's Rule 7050.0186 (Wetland Standards and Mitigation within the Water Quality Rule) does not include a de minimis and addresses these issues on a case by case basis, which results in inconsistency as to when de minimis will be applied to a project/impact.
- PCA's Clean Water Act Section 401 certification is a big issue; PCA imposes their own conditions with no timeframe (technically not a permit) and they typically show up at the 11th hour. Timeframes are further delayed if the Corps and PCA disagree over 401 conditions.
- Need for BWSR and DNR to work with PCA in an effort to make the program more efficient and improve overall coordination. State agencies need to be on the same page.
- PCA needs to be at the table at the beginning (should be a member of the technical evaluation panel).
- Time duration associated with 401 certification creates problems associated with keeping the record open particularly with the US Army Corps of Engineers.
- Why do we need three different agencies dealing with the same issue?

- Decision making process is not clear.
- Are processes simultaneous or sequential? There will be more involvement by the PCA and Environmental Protection Agency, there needs to be a way to coordinate roles.
- Better organization among the agencies (one stop shopping).
- Interagency wetland discussions need to take place at a higher level (not staff level) so decisions and changes can be made
- Consistency can be an issue in the metro area.
- County issues with wetland mitigation banking include loss of property tax base, loss of control over land use and concern that these lands may go tax forfeit.
- Local decision making process good overall, the problem occurs with large projects involving multiple jurisdictions (too many players at the table).
- Lack of consistency among local governments particularly watershed districts in the seven-county metro area.
- Existing wetland restoration plans need to be coordinated.
- Need a clear path to follow for replacement siting in order to meet budget and schedules.

Issue #4: Adequacy of Wetland Bank Program Funding.

No comments were made on this issue.

Issue #5: Costs and Benefits of Wetland Mitigation Targeted to Specific Watershed.

- The WCA rules encourage the mining industry to go to Lake of the Woods or Koochiching Counties for wetland replacement.
- Need to allow more opportunities where replacement can be achieved at a ratio of 1:1 (outside watershed, and bank service area) along with incentives.
- Counties are concerned about loss of tax base that results from wetland mitigation/banking.
- Need for flexibility in where mitigation can be provided.
- Should have a statewide goal for wetland restoration opportunities beyond the bank service area where the impact occurred (i.e. for greater than 80% areas to Red River, Minn. River basins, etc.).
- Nonproductive agricultural lands should be targeted for replacement.
- Incentives should be created for wetland mitigation to occur in low wetland areas for the ecological benefit.
- The State needs to put political pressure on the Corps to make the process more efficient.
- Finding a suitable site for replacement is a concern when limited to particular areas, which is also an economic issue.
- Higher land costs are not necessarily a deal killer, especially when the restoration methods are less costly.
- An in lieu fee banking program is needed.
- Banking on a larger scale should be encouraged, easier for monitoring and tracking.
- Liability (i.e. replacement obligation is extinguished when wetland bank credits are purchased) issues are a concern and may not be adequately addressed in the application/easement agreement.
- The State should have one system in place, move towards a watershed basin approach (like the Corps) and do away with the presettlement zone concept altogether.
- When is enough enough regarding wetland restoration (What's the number?).

Issue #6: Strategic Use of Funding Sources to Achieve Continued Restoration of Drained Wetlands.

- Look into School Trust and Tax Forfeited Lands for replacement opportunities (issues are timber management and revenue generating requirements).

Other.

- Move away from wetland type restrictions (adds cost and time constraints).
- Be brave and bold in the approach.
- Agricultural issues need to be addressed (political issue).