



Executive Order 12-04

Supporting and strengthening implementation of the state's wetland policy

Core Stakeholder Meeting #1

Bunker Hills Regional Park, Andover, MN

Meeting Notes

September 19, 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 began the discussion of the Order's issues by surveying those in attendance on their priority issues to discuss, these are:

Issue #1: De minimis Exemption;

Issue #3: Consistent Review, Approval and Implementation; and

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

The other issues contained in the Order will be discussed if there is time. The discussion of these three issues is summarized below.

Issue #1: De minimis Exemption.

- There is just no way to accurately track de minimis or non-regulatory wetland gains. The sentiment is that we should do a better job at tracking both.
- Department of Natural Resources (DNR) is working on wetland change report, which should be completed by the end of the year and available in early 2013. The report will show wetland loss and gain in 3 year intervals but will not capture data specific to the de minimis exemption. Some questioned the value looking into de minimis changes until data is available.
- It is questionable whether the distinctions (wetland type and location) are worth the complexity. There may be some value in different de minimis considerations, but they are not always worth the complexities in administration.
- WCA should shift the focus from wetland type to location. Specifically, riparian areas have greater value.
- To gain more understanding and compliance from the general public, WCA processes should be simplified. Currently, de minimis can't be explained to landowners. It would be a stronger law if landowners could understand it.
- Local wetland plans allow locals to determine which wetlands are the most important, and could be used to determine de minimis. Some counties don't have cedar/tamarack wetlands but may have other wetlands that are important to them.

- Flexibility in the de minimis is needed so that LGUs have the ability to negotiate with landowners/project sponsors to reduce project impacts. When de minimis is too small (e.g. 20 sq. ft.), there is no opportunity to negotiate reduced impacts.
- A major overhaul (i.e. start over) to the de minimis should be considered vs. minor tweaks. Such an overhaul should take into consideration the goals of the exemption, i.e. “what should this really accomplish?” Unintended consequences keep arising from these piecemeal changes.
- The State needs to honor past agreements that have been made regarding WCA (i.e. the 10,000 sq. ft. provision in de minimis exemption).
- The de minimis amounts are not too large. For example, we could fill 5 acres of wetlands a year and it would take ¼ million years to fill all of the privately held wetlands in Koochiching County (and we are *not* filling 5 acres of wetlands a year).
- The shoreland provisions are an issue for local governments which adds complexity. Valuable time is wasted processing replacement plans for small impacts (e.g. 150 sq. ft.) that could be better spend on more important issues or larger projects.

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

- Adjusting pre-settlement zones should not be explored without guidance and a full understanding of potential implications. Avoid unintended consequences such as making it more complex.

Issue #3: Consistent Review, Approval and Implementation.

- Need to recognize all interests in the regulatory process collectively vs. pitting one against another. Get all the competing goals on the table.
- There is a difference between the regulations and how they are implemented.
- Are regulations being implemented sequentially or simultaneously; separably or coordinated?
- Regulations can change from time to time, and from person to person due to policies and guidance.
- State Assumption of 404 should be explored, to identify the benefits, costs, and complexity of such a move. One problem is that the federal government has not provided funding for program implementation by states.
- A problem with assumption is that it doesn’t eliminate the need to apply two separate laws. Have the U.S. Army Corps of Engineers certify the State Wetland Conservation Act (WCA) program to accomplish the goals of 404 but under one program. This would address state federal coordination issues without Assumption.
- PCA Clean Water Act Section 401 certification adds a third layer to the process. The State needs to figure out how to do this more efficiently.
- Better coordination between State and Federal agencies is critical.
- Need consistency and coordination among all programs (creates added expenses to local governments and applicants).
- The law itself is unfair and does not take into account local circumstances.
- Critical service projects (hospitals, airports, etc.,) and economic development should not be held up because of inconsistencies between the State and Federal government. This is an issue in northern areas where everything is wet and dry land is hard to come by.
- The Corps needs to do a better job on answering questions/issuing permits in a timely manner. We work well with WCA, and then the Corps comes in later and gives a different answer.

- DNR administration of WCA under a permit to mine needs to be consistent with WCA implementation by local governments. The locals have no control over these projects and it is becoming a big problem. There are questions as to whether DNR is implementing WCA siting requirements, not letting local governments know if and when decisions will be made on project proposals, what kind of accounting mechanism DNR uses and if it is different than BWSR, the TEP process, and whether the DNR actually wants local comments or will just approve whatever is proposed..
- Locals should be involved in mitigation site selection. The locals know the sites better than Corps or DNR staff from out of the area, but our comments get ignored. Local input should be taken seriously. That conversation needs to start up-front and early, as the locals can help find good sites that will have better chances of being successful and providing multiple benefits.

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.

- More flexibility for replacement siting should be allowed (change in wetland replacement siting requirements to allow more flexibility). Impacts should be able to be replaced outside 80% pre-settlement areas, from an ecological standpoint and without a replacement ratio penalty. It doesn't make sense to restore a farm in an area where everything else is already wetland. Land prices may be higher in the south and west, but construction costs may be lower.
- Scientific principles still need to be in place and should form the basis of the law – but some flexibility makes sense.
- Public value should be key and applied by looking at the entire state as a whole, regardless of lines on the map. Instead of putting wetlands in areas where there are already lots of them, put them where they can better benefit endangered species and other important resources.
- Consider the unintended consequences of mitigation siting. For example, you may provide an opportunity for development or mining in one area, but you take away a family farm in another area that may not have many to begin with.
- High land values create issues for targeting wetland mitigation in agricultural areas.
- There are millions of dollars being spent on wetland mitigation. There should be a way to use that money to do projects strategically, where they are needed.
- Create a centralized system (i.e. State Bank) administered by BWSR for all mitigation projects. Everyone could pay a fee to BWSR for mitigation and BWSR would manage the program and find the sites. Priority areas for establishing wetland can be identified by the State (perhaps via an "In lieu fee program").
- Incorporate State conservation plans (Duck plan, Wetland Plan, etc.,) for use in targeting and funding for wetland mitigation.

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

- Voluntary wetland restoration needs to be accounted for when considering the no net loss goal.
- Wetland restoration projects (i.e. DU projects) are being held up because of permitting requirements and processes. This adds delays and increased costs to do *good* projects.
- Wetland restorations done for regulatory purposes needs to be coordinated with the needs of the State and with voluntary conservation programs whenever possible.