

WCA PERMANENT RULE ADVISORY COMMITTEE

MnDOT Training and Conference Center  
Shoreview, Minnesota

April 24, 2008

**Meeting Notes**

Committee Members:

**Agriculture**

Mn Corn Growers Association-

Doug Albin.

X Warren Formo.

Mn Farm Bureau-

Chris Radatz.

Staci Bohlen.

Mn Farmers Union-

X Jim Tunheim.

Thom Peterson.

Mn Soybean Growers Association-

X Lawrence Sukalski.

Mn Wheat Growers Association-

Bruce Kleven.

**Business**

Builders Association of Mn-

Lisa Frenette.

X Stephanie Berklund.

Builders Assoc. of the Twin Cities-

X Drew Budelis.

X James Vagle.

Mn Association of Realtors-

Susan Dioury.

Mn Chamber of Commerce-

Keith Hanson.

Tony Kwilas.

Mn Forest Industries-

X Wayne Brandt.

Utilities –

X Blake Francis.

Aggregate Ready-Mix Assoc. of Mn

Mike Caron.

Fred Corrigan.

**Environment/Conservation**

Audubon Mn –

Susan Solterman.

Izaak Walton League - Mn Division –

X Bill Barton.

X Dell Erickson.

Mn Center for Env. Advocacy-

X Janette Brimmer.

Henry Van Offelen.

Mn Conservation Federation-

Gary Botzek.

Sierra Club - North Star Chapter-

X Mollie Dean.

**Local Government**

Association of Mn Counties-

Duanne Bakke.

Harlan Madsen.

Metropolitan Inter-County Assoc.-

Keith Carlson.

Mn Assoc. of SWCD –

X Sheila Vanney.

Mn Association of Townships –

Dave Fricke.

Dan Greensweig.

Mn Assoc. of Watershed Districts-

X Roger Lake.

Mn County Engineers Association –

Doug Fischer.

X Tom Tri.

Mn Rural Counties Caucus-

X Todd Beckel.

X Wade Pavleck.

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**Others**

Mn Viewers Association-

Jim Weideman.

Wetland Professionals Association-

X Allyz Kramer.

Andi Moffat.

Minnesotans for Wetlands-

Mary Mueller.

X Mike Whitt.

Mn Assoc of Professional Soil Scientists

Peter Miller.

Kelly Bopray.

**Federal Government**

U. S. Army Corps of Engineers-

X Marita Valencia.

U.S. Fish and Wildlife Service-

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: Rick Dahlman, DNR-Forestry; Sam Ziegler, Mn Soybean Growers Association; Leonard Binstock, Agricultural Drainage Management Coalition; Casey Nelson, DNR-Forestry; Steve Commerford, Minnesota Soybean Growers Association; Chuck Lenthe, Oakwood Land Development; and Jeremy Geske, Farm Bureau.

Staff: Travis Germundson, John Jaschke, 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.

Review March 27, 2008 Meeting Notes.

Allyz Kramer asked about a comment made by Todd Beckel on page 3 of the minutes.

Exemption Reporting.

Dave Weirens reviewed the document, Exemptions: Application, Implementation, Estimates and Reporting.

Roger Lake commented that some of the proposals will miss some LGU's who should be reporting. Tom Tri asked how drainage exemption and drainage maintenance activities will be tracked when they do not impact a wetland. Ken Powell responded that guidance will be needed on the reporting, and that if there is no impact then the exemption does not apply.

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Mollie Dean stated that the rule does not increase the number of exemptions, the purpose of reporting is to collect data on those already determined by the LGU. Rick Dahlman asked if the reporting is only on exemption determinations? What about those that are noticed, for instance by a state agency? Bill Barton suggested that it is inconsistent and a disincentive to LGU's to conduct exemption determinations. Dale Krystosek responded that there is a balance between data that is already collected and what we ask for. Todd Beckel followed by expressing concerns over the high workload over requiring exemption determinations.

Bill Barton asked about DNR-Waters and if they document wetland activity. Julie Ekman responded by stating that there are no exemptions under the protected waters program, and that activity is tracked done via permits. Allyz Kramer followed by saying that if a project is permitted by DNR, and also needs a WCA or Corps approval, this is another way to track outside of DNR. Doug Norris said that most DNR regulated impacts require a permit and are tracked.

Leonard Binstock stated that the purpose of exemptions is to not regulate certain activities. Allyz Kramer followed by stating that there is a difference from regulated versus exempt, not regulated and exempt from replacement.

Les Lemm said that options A) and B) on page 3 are listed separately as new approaches, however, there was more support at LGU input meetings to requiring more scrutiny by cities than in more rural areas.

Steve Commerford asked if the options would require treating all exemptions the same. Dave Weirens responded that the purpose of the reporting requirement is to improve the data, therefore different methods to achieve this goal could be acceptable.

Janette Brimmer followed by saying she is interested in better data, requiring every farmer to report every exempt activity does not improve the data. Tom Tri asked about the drainage exemption that results in the loss of wetland area, function and value. Les Lemm responded that if a drainage activity results in the loss of wetland area, function and value then it could be reported.

Allyz Kramer said that if all exemptions must be LGU approved, then the connection to Minn. Stat. 15.99 should be severed. Wade Pavleck stated that requiring LGU's to approve all exemptions would result in an unfunded mandate, increase workload.

Wayne Brandt said that there would be a lot of opposition to requiring all exemptions be LGU approved, and that an alternative method, like the sampling that DNR-Forestry does. Janette Brimmer asked about the design of such a survey, and how to ensure the data is complete.

Mollie Dean said that surveys can be combined with other sources of data, especially if A) cannot be support due to opposition. Dale Krystosek stated the concern over B) due to accuracy of the data. Mollie Dean followed that option B) does not imply the LGU approves the exempt impact.

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Michael Whitt said there is more to wetland loss than just area, the program also needs to take into account function and value.

**ACTION.** John Jaschke suggested looking into the DNR Forestry assessment, and if this process might work for WCA.

**ACTION.** Doug Norris suggested different requirements in different pre-settlement wetland areas.

**ACTION.** Sheila Vanney offered doing a trial/pilot project in a certain number of LGU's. Dale Krystosek followed by stating he did a version of this during the WCA Assessment.

Janette Brimmer said that there are a lot of reasons to support B), A) is hard to do, we should not let perfect get in the way of doing good, a check off form can minimize the burden on the LGU, use pictures on back of form to educate and assist landowners.

Wade Pavleck asked if C) could realistically be done. Dave Weirens responded that we have more work to fully understand how C) could be done.

Bill Barton said the CWAMMS project is one way to get wetland change data. Doug Norris agreed, DNR enforcement flyovers are another way, also some LGU's currently require all exemptions to be approved. Wayne Brandt commented that we need to determine if we want data or information.

Dave Richfield said that something like C) should be pursued in or out of the rule, the question of pursuing A) or B) should be deferred until C) is conducted. PCA would be interested in participating and possibly providing funding for such a study.

Steve Commerford asked who would design the analysis, and if the analysis would be conducted differently in different parts of the state.

Drew Budelis asked why something should be done if it is unenforceable. Janette Brimmer said that she disagrees that B) would be unenforceable.

Les Lemm commented that the goal is getting better data, there is a continuum of doing nothing to fully regulating exemptions, we need to find the middle ground, be useful and accurate.

#### Draft Rule Review – Replacement.

Les Lemm led the discussion of the second part of the Draft Replacement Section.

Janette Brimmer suggested that the rule should require more than a surety bond, a letter of credit is the best way to go, as a way to protect against bankruptcy.

Tom Tri asked which option is consistent with the MOU. Dale Krystosek responded Option #2. Tom Tri expressed concern over being inconsistent with the Corps. Michael Whitt commented that option #2 does not meet the goal of regulatory simplification, which could create problems.

Jeremy Maul stated that not in advance replacement should require financial assurance in all cases. Les Lemm explained what in advance replacement is defined as. Dale Krystosek discussed that the BWSR/Corps MOU reflects temporal loss of wetland functions.

Todd Beckel asked about temporal gain. Dale Krystosek and Marita Valencia stated that creating wetlands in advance of an impact avoids penalties. Allyz Kramer followed by stating there is no benefit of extra credits by being in advance.

Todd Beckel and Wade Pavleck expressed concerns over increasing regulatory requirements. Dale Krystosek said there are ways around increased mitigation ratios. Les Lemm followed by stating that one answer is increased wetland banking which should be increasingly used under the rule changes being discussed.

Janette Brimmer asked how the financial security would be drawn on. Les Lemm said this would be a determination by the LGU that the mitigation was not developed in accordance with the replacement plan. Janette Brimmer followed by saying she did not know if the security would be enough. Chuck Lenthe agreed that the security would not be enough to guarantee replacement.

Doug Norris said the security should be enough build the replacement wetland with a penalty.

Dave Weirens asked what the technical committee said about this. Les Lemm said they wanted simple up front ratios, and there was disagreement over the concept of temporal loss. Marita Valencia said that financial assurance is not simple.

Janette Brimmer asked again how the financial security would be drawn on. Ken Powell said the monitoring would address when the money could be accessed.

Dale Krystosek said that option #2 pushes people to banking and addresses temporal loss. Allyz Kramer said that going with option #1 would be more complicated.

Janette Brimmer said there is a conflict over how to ensure the money covers the work. Les Lemm responded that the purpose is to pay for the work when the responsible party is gone. Dale Krystosek commented that the financial security could be construed to be an in lieu fee.

**ACTION.** Janette Brimmer offered to write financial security language and send it BWSR staff.

Tom Tri asked if BWSR will require financial assurance for the road program. Dale Krystosek said that the road program is banking and in advance.

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Wade Pavleck said the financial assurance should not be required for in advance, make it voluntary, this adds to the bureaucracy. Janette Brimmer responded that this is one way to get more banking. Tom Tri suggested that financial assurance is only needed in certain circumstances. Drew Budelis said there should be a lower ratio for using banking.

Jeremy Maul said that part of the reason for financial assurance is the difficulty in receiving monitoring reports. Allyz Kramer said that the onus should be put on the LGU to get the reports. Doug Norris followed that this option is easier than other enforcement mechanisms.

Janette Brimmer asked if LGU's know that they can require financial assurance. Dale Krystosek responded by saying that we should look into how often it is being used. Janette Brimmer followed by stating that LGU's are reluctant to require this unless the rule requires it. Drew Budelis followed by stating that LGU's are reluctant to invoke the letter of credit due to the difficulty of doing so.

Chuck Lenthe stated that once the letter of credit is invoked, it makes the LGU responsible. Dave Weirens responded that one option would be to clearly specify that LGU's may require financial assurance. Drew Budelis suggested that it would be more helpful to talk to the city administrators than environmental managers to understand the issues around financial assurance.

Janette Brimmer followed with by stating that the current tools need to be used correctly, more work on the permit, and not allow people to hide behind the corporate veil.

Allyz Kramer said that banking avoids these problems. Siting criteria is a problem in the metro area, the new federal guidance places a preference for banking over project specific mitigation.

Dell Erickson stated that the goal is compliance, what happens when there is non-compliance, financial assurance keeps the applicant on the hook. Ken Powell followed by stating that this issue almost needs to be discussed with monitoring, as both are focused on compliance.

**ACTION.** Define a problem statement regarding financial assurance and monitoring.

Mike Whitt commented, regarding wetland replacement siting and in-place, that WCA is built on a watershed basis.

Janette Brimmer asked about the addition of "major" on page 2. Jeremy Maul responded that this is a clarification as the current rule defines watershed to mean major watershed.

Dave Richfield asked about water quality scenarios and, and the concern about the impact of moving wetlands from one watershed to another. Steve Commerford followed by asking about the role wetlands play in methyl mercury.

Bill Barton asked about the role wetlands play in flood water management.

Wade Pavleck stated that the watershed approach is not in the best interests of the state, replacement should be conducted through centralized banking. Les Lemm asked if he meant allowing impacts in the greater than 80% area to be replaced in the less than 50%. Wade Pavleck responded by saying people don't generally care where.

**ACTION.** Doug Norris suggested clarifying #3 on page one by inserting the minimum ratios of 1:1 and 2:1.

Bill Barton asked about the ability to replace from one bank service area to another. Les Lemm responded by showing a flow chart he made to show the complexity of replacement siting.

Tom Tri stated that he opposed the language in red on page three regarding the price of credits. Chuck Lenthe stated that a person can build their own credits as another option. Les Lemm stated that the purpose is to avoid going to the cheapest location where the credits are poor quality. Tom Tri then stated that this language actually protects the northern counties that have lower land values.

**ACTION.** Doug Norris suggested modifying the red language on page 3 to read, "the price of wetland credits is not sufficient reason to determine .....".

Janette Brimmer asked about the text box on the top of page 5. Les Lemm commented that it is okay to keep the replacement ratio table, with more mitigation options. Tom Tri stated that all 80% counties would be opposed to the option in the text box on page 5.

Janette Brimmer asked what the problem with the table is. Les Lemm responded that landowners find the table confusing, and that LGU staff think there is a better way.

Allyz Kramer followed by saying that it would be possible to reduce the bulk of the replacement ratio table, but should not go back to the old table, it would be possible to eliminate the in advance adjustment, but location is important. Michael Whitt stated that the table is current Corps policy. Dale Krystosek stated that the development of the table was driven more by BWSR than the Corps.

Chuck Lenthe asked if it would be possible to eliminate the table and raise ratios across the board? Doug Norris responded by saying the table should be retained. Dave Weirens said that other options may be out there, should discuss the table component by component. Tom Tri said that a lot of business groups would be opposed to eliminating the table. Doug Norris said that the credit actions need to be considered, and how they apply to the overall wetland replacement area.

**ACTION.** Doug Norris suggested that Subp. 4 be modified to state that all actions taken to produce wetland replacement credit should be designated for replacement ....., Sarma Straumanis suggested changing the name of Subp. 4 to more accurately reflect the topic it addresses.

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Steve Commerford asked what is meant by best management practices. Jeremy Maul responded by stating that the current rule defines these.

**ACTION.** Rick Dahlman suggested adding “and latest edition” where appropriate when referring to specific documents or standards.

Steve Commerford asked how far out from the wetland area do BMP’s have to be used. Jeremy Maul said only as far as they relate to the impact area.

**ACTION.** Allyz Kramer suggested re-instating the following in C. on Page 7: (1) “as determined by the technical evaluation panel (TEP)”, but modify to be “when recommended by the TEP”; and (2) to reinstate “that would defeat the re-vegetation goal of the replacement plan”, but change “goal” to “standard”. In this same section, Doug Norris suggested adding the rule reference for the requirements for the vegetative establishment and management plan.

Wade Pavleck suggested deleting the entire piece on TEPs, as TEP recommendations cause problems.

Drew Budelis asked what native, noninvasive has to do with wetlands? Allyz Kramer responded by saying the kind of vegetation used makes a critical difference in the wetland.

James Vagle suggested the buffer width should be locally determined. Janette Brimmer asked if the required width should change based on purpose – water quality, habitat, etc. Drew Budelis followed by stating that there should be an LGU determination. Janette Brimmer suggested that the width could be different for different wetland types. Jeremy Maul asked if this should be simplified by going with a single number?

Rick Dahlman offered the forestry BMP requires a 50 foot width that increases as the slope increases.

Tom Tri observed that developers are looking to minimize the width due to land costs. Dave Richfield said that there is no single right answer to be protective.

Steve Commerford asked why buffers are required? Tom Tri responded by saying to protect the wetland. Leonard Binstock asked why the numbers are different. Doug Norris said this was originally due to land values. Janette Brimmer suggest that the minimum width should be 50 foot everywhere.

Bill Barton said there is a precedent in ditch law, 1 rod strip, however, this is for water quality purposes only.

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**ACTION.** Tom Tri suggested the buffer width should be flexible, allowing for different widths depending on the slop of the land.

**ACTION.** Change “possible” to “practical or feasible” in Subp. 3 on page 8.

**ACTION.** Modify Subp. 3 C. to change goals to “standards” .

Dave Weirens informed the Committee that the next meeting is scheduled for May 22, 2008.

The meeting adjourned at 3:10 p.m.