

WCA PERMANENT RULE ADVISORY COMMITTEE

MnDOT Training and Conference Center
Shoreview, Minnesota

September 11, 2008

Meeting Notes

Committee Members:

Agriculture

Mn Corn Growers Association-

Doug Albin

Warren Formo.

Mn Farm Bureau-

Chris Radatz

Staci Bohlen.

Mn Farmers Union-

Jim Tunheim

Thom Peterson.

Mn Soybean Growers Association-

Lawrence Sukalski.

Mn Wheat Growers Association-

Bruce Kleven.

Business

Builders Association of Mn-

Lisa Frenette

Stephanie Berklund.

Builders Assoc. of the Twin Cities-

X Drew Budelis

James Vagle.

Mn Association of Realtors-

Susan Dioury.

Mn Chamber of Commerce-

Keith Hanson

Tony Kwilas.

Mn Forest Industries-

Wayne Brandt.

Utilities –

Blake Francis.

Aggregate Ready-Mix Assoc. of Mn

Mike Caron

Fred Corrigan.

Environment/Conservation

Audubon Mn –

Susan Solterman.

Izaak Walton League - Mn Division –

Bill Barton

Dell Erickson.

Mn Center for Env. Advocacy-

X Matt Norton

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.-

X Keith Carlson.

Mn Assoc. of SWCD –

Sheila Vanney.

Mn Association of Townships –

Dave Fricke

X 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

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.

Mike Whitt.

Mn Assoc of Professional Soil Scientists

Peter Miller

X 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 –

Sid Cornelius.

State Government

Department of Agriculture-

Joe Martin.

Department of Natural Resources-

X Doug Norris

Julie Ekman.

Department of Transportation –

Frank Pafko

X Sarma Straumanis

Pollution Control Agency-

X Dave Richfield.

Note: X = in attendance

Guests: Leonard Binstock, Agricultural Drainage Management Coalition; Kent Rodelius, Prinsco/Minnesota Land Improvement Contractors Association; Ron Harnack, Red River Water Management Board; and Don Parmeter, 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.

Review June 26, 2008 Meeting Notes.

Dave Weirens reviewed the August 29, 2008 meeting notes. Allyz Kramer asked what will happen with the incidental wetland exemption. Dave Weirens said that BWSR staff will review the discussion from the August meeting, as well as the discussion that previously occurred, along with comments in deciding what to do with this exemption.

Consolidated Draft Rule Review.

Leonard Binstock asked how LGU ordinances (page 7-Other Local Government Unit Wetland Rules and Ordinances) interact with federal regulations. Dave Weirens responded that they are separate regulations under separate legal authority, and the language states existing authority. Ron Harnack said if the language does not do anything, than it should be deleted.

ACTION. Delete Other Local Government Unit Wetland Rules and Ordinances on page 7.

Doug Norris stated that this provision is worthwhile to keep. Drew Budelis said that this is an encouragement, which is not appropriate for a rule.

Tom Tri followed by stating that road authorities can have problems with exemptions.

Dale Krystosek stated that the adoption of local rules and ordinances requires a public process.

Ron Harnack asked if H on page 6 covered the issue of local ordinances. Dave Weirens said the data reported is a separate issue from local regulatory authority.

Ron Harnack stated that D on page 7 could create a conflict putting a landowner in jeopardy. Dave Weirens said that this was discussed at the last meeting and a solution is to make a direct reference to a provision in Minn. Stat. 15.99.

Ron Harnack asked about the word “determine” in B(7) on page 12 and if a different word would be better. Les Lemm agreed and stated this was discussed on August 29.

Replacement Plan Applications (page 14)

Les Lemm began by stating that subd. 1 and 2 could be combined.

Doug Norris asked if type under Subd. 3, A (1) means wetland or project.

ACTION. Les Lemm said this is meant to be wetland, and should be modified to insert this word.

Sarma Straumanis asked if this list also satisfies Corps requirements.

Ron Harnack stated that Subd. 3, A, (7) is repeated on page 16. Les Lemm responded that this is only for replacement plans.

Ron Harnack asked about the 500 foot requirement for re-noticing (A-page 10), and suggested this be the same minor watershed. Kelly Bopray asked how site is defined. Les Lemm suggested that landscape setting be used instead of distance. The issue is a new timeframe that comes along with a new notice. Tom Tri said that it is easy to identify the sub-watershed, and the flexibility would be good.

ACTION. Doug Norris suggested adding “identifying any” before hydric soils and “that may be present” in A(3) on page 14)

ACTION. Ron Harnack suggested deleting stream, river or other watercourse from A(4) on page 14.

ACTION. Drew Budelis suggested rewriting A(4) on page 14 as follows: a map showing the locations of any surface inlets or outlets, natural or otherwise, draining into or out of the wetland and the distance and direction to the inlets or outlets. The map should also show if the wetland is within the shoreland wetland protection zone or floodplain.

Mollie Dean stated that item (8) on page 15 is not clear enough, information from sequencing determinations should be pulled into this item.

ACTION. Item B. (8) on page 15 and Item A. (7) will ask for the same information.

Ron Harnack asked to clarify if the signed statement was part of the same form.

Sarma Straumanis asked when banking is referred to. Les Lemm responded that there is a section for banking, and section for project specific replacement.

Marita Valencia asked if a federal page would still be part of the application.

ACTION. Matt Norton asked about the reference of “established benchmark” in B. (7) and suggested changing this to “mean sea level” (delete established benchmark).

ACTION. Mollie Dean suggested changing “finalized” to “completed” in item B. (9).

ACTION. Doug Norris suggested modifying item B. (10)(a) by deleting “a signed statement confirming that”, and “of a wetland”.

Todd Beckel asked about the prohibition of using public funds as provided for in B. (10)(d) on page 16. Dave Weirens responded that this only applies to conservation funds.

Ron Harnack asked if B. (10)(e) on page 16 limits public funds for mitigation sites.

ACTION. B. (10)(e) on page 16 should be modified to allow pay back, or written approval from the individual or organization that provided the funding.

ACTION. Les Lemm stated that staff are proposing to delete B. (13).

Keith Carlson asked where C on page 16 came from. Les Lemm stated that this came from the agricultural activities exemption.

Mollie Dean stated that B. (10)(c) cannot be known as exemptions do not require LGU approval. Les Lemm stated that aerial photographs can be used to verify activity on the land.

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Ron Harnack asked if the deed is only required for wetland creations. Les Lemm responded that the deed restriction is for all project specific replacement. Ken Powell added that (C) above documents approval which is related to the deed restriction.

Mollie Dean asked when it is determined how much replacement is needed. Les Lemm responded that this is identified in the replacement plan.

Leonard Binstock asked about item 6 on page 16 and what constitutes necessary repairs and revegetation and when do they have to be completed. Dale Krystosek responded that the replacement plan governs necessary repairs.

ACTION. Item 6 on page 16 should include a reference to the monitoring provisions of the rule.

Dave Weirens responded that BWSR is working on the time period for management of replacement sites.

Contractor's Notification Responsibility (page 17)

Matt Norton stated that a contractor may not cover everything that an agent or employee may do. It may be better to use agent in this section.

Todd Beckel asked how this provision works with the exemptions. Les Lemm responded that the notice requirement applies regardless of any LGU approvals.

Leonard Binstock stated that projects are being split up, does everybody involved in a project have to complete the form, who is the primary contractor? Matt Norton responded that the accountability is with the person responsible for the project.

Leonard Binstock followed by saying that it may not be an individual, or a sole proprietorship. Tom Tri stated that the goal is to go after unscrupulous operators.

ACTION. Add "or landowners agent" after contractor on page 17.

Boundary or Type (page 17)

Doug Norris asked about the 1987 Manual and if updates are approved by the Board. Les Lemm responded that no, these are technical documents.

ACTION. Ron Harnack stated that updates and supplements should be Board approved, regional supplements are a major change.

Allyz Kramer said that people are already using one supplement, and another is on the way.

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Ron Harnack stated that the NRCS has similar provisions. Marita Valencia stated that the MOA between the Corps and NRCS has been rescinded.

Ron Harnack stated that statute changes are anticipated due to the wetland typing changes. Keith Carlson asked if that meant using the central column on pages 17-18 of the draft rule.

Allyz Kramer stated that statute still refers to the Cowardin and Circular 39 typing systems.

No-Loss and Exemption Conditions (page 18)

Leonard Binstock asked about sediment and erosion control, tiling issues. Les Lemm responded by asking what is changing. Kelly Bopray asked if the area is being farmed already, where is the protection? Leonard Binstock responded that the solution is not applying erosion control requirements in a farming area, drainage is exempt from section 404 of the Clean Water Act.

ACTION. Ron Harnack suggested eliminating the no-loss language relating to excavation. Doug Norris suggested keeping these provisions.

Ron Harnack asked if the best management practices provisions apply to no-losses. Les Lemm responded that they can apply in a farmed wetland situation.

ACTION. Doug Norris stated that there are times when it is desirable to block fish activity, add, “except when the purpose is to block the movement of undesirable fish as determined by the commissioner of natural resources”.

No-Loss Criteria (page 19)

Keith Carlson stated that maintenance of stormwater ponds could be prohibited by rule. Les Lemm stated that this could occur if the stormwater pond received credit as wetland.

Keith Carlson stated that F. on page 19 is contrary to B. Les Lemm responded that an option is to treat excavation the same, wherever it occurs.

ACTION. Ron Harnack suggested deleting “agricultural drainage” from B. (2).

Doug Norris stated that B. (5) is redundant with A. Dave Weirens said that each lettered item is separate.

ACTION. Doug Norris suggested adding “where the goal is to repair the wetland” after areas in B(1). Ron Harnack suggested adding this language and deleting B (1-5).

ACTION. Add “enhance or restore a wetland” after “will” in D. on page 19.

ACTION. Keith Carlson suggested deleting all of B.

ACTION. Several members suggested deleting “sediment or” and/or adding “resulting from human activity” in C. on page 19.

Doug Norris asked about water level management to improve wetland function. Ron Harnack replied that water level management can be good for wildlife. Allyz Kramer asked what affect this will have on other wetland functions.

Les Lemm suggested that D on page 29 should be the same as B(1) to only regulate drain, fill, or conversion to a non wetland.

Matt Norton suggested that beaver dams should be governed by a 25 year time period, similar to the time period for drainage. Todd Beckel stated that he would prefer to avoid timelines, due to concerns over claims. Dale Krystosek stated that a timeline would provide certainty to LGU’s.

Les Lemm asked when beaver dams become part of the landscape. Doug Norris asked if beaver dams are really a no-loss.

Ron Harnack stated that sediment removal is in conflict with drainage maintenance requirements. He went to ask how human activity is defined without regard to drainage.

Doug Norris stated that DNR-Forestry prefers to keep the existing exemption as is.

Mollie Dean asked if LGU’s are required to report no-losses. Les Lemm responded yes, to report number but not acres.

Ron Harnack asked why I(2) discusses LGU decision for no-losses. Ken Powell responded that the 6-month timeline requires it. Ron Harnack followed by stating why not make the timeline 12 months and get rid of the extension.

ACTION. Dan Greensweig suggested the landowner or landowner’s agent providing financial assurance.

Kent Rodelius asked what is appropriate sufficient financial assurance, as this relates to timelines, etc. Les Lemm responded that this depends on the project.

Exemption Standards (page 20)

Allyz Kramer asked about calcareous fens that are not identified by the commissioner of DNR.

Ron Harnack asked about the impact of removing the last part of the scope of exemption standards. Les Lemm responded that this is confusing and unnecessary.

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Allyz Kramer asked how to handle when there are multiple owners of a wetland. Les Lemm responded the 5% language may apply under de minimis, and under B.

Matt Norton asked why drain, fill and excavate is being changed to impact. Les Lemm responded to this question.

ACTION. Drew Budelis suggested breaking up C. on page 21 for readability.

Agricultural Activities (page 21)

Ron Harnack suggested keeping the wetland classification table. He continued by observing that approved is changed to certified under C on page 22.

Matt Norton asked why bottomland hardwood is being deleted. Les Lemm responded that this is not a change but due to the new typing system.

ACTION. Leonard Binstock suggested a time limit, such as 90 days prior to rule adoption in G, or 90 days after passage of a new farm bill, on page 22. Ron Harnack agreed with this suggestion.

ACTION. Ron Harnack suggested deleting the language that states the exemption is not valid language. Doug Norris stated that this language should be retained.

Allyz Kramer suggested changing the meeting times to 8:30 a.m. to 3:30 p.m.

The meeting adjourned at 3:08 p.m.