

WCA PERMANENT RULE ADVISORY COMMITTEE

MnDOT Training and Conference Center
Shoreview, Minnesota

September 25, 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-

Lawrence Sukalski.

Mn Wheat Growers Association-

X Bruce Kleven.

Business

Builders Association of Mn-

X Lisa Frenette

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-

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.

WCA Permanent Rule Advisory Committee
September 25, 2008

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 –

X 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: Rick Dahlman, DNR-Forestry; Kent Rodelius, Prinsco/Minnesota Land Improvement Contractors Association; and Don Parmeter, American Property Rights Coalition.

Staff: Les Lemm, Jeremy Maul, Ken Powell and Dave Weirens.

Dave Weirens called the meeting to order at 8:45 a.m. He stated that the agenda identifies agenda items and times, and that the agenda will be followed.

Review September 11, 2008 Meeting Notes.

Dave Weirens reviewed the September 11, 2008 meeting notes.

Review Consolidated Draft Rule – Exemption Standards.

Restored Wetlands Exemption. (page 24)

Les Lemm led the review of this rule section, that continued on page 24 from the September 11 meeting.

Matt Norton asked how creation works with the restored wetland exemption on page 24. Allyz Kramer followed by asking if creation should even be in this exemption.

ACTION. A under Restored wetlands exemption needs to be clarified, possibly by deleting creation and created where these words appear in the draft rule language. Another option is to format the exemption into bullets or subparagraphs.

ACTION. Doug Norris suggested looking at statute and requiring the wetland to be returned to its pre-restoration/created condition.

Les Lemm suggested making the same changes to A and B.

Keith Carlson asked about incidental wetlands. Les Lemm responded that parts were moved to Scope and parts to No-Loss.

Utilities; Public Works Exemption (page 25)

Allyz Kramer asked about a definition of “significantly modifies”, and if it can be affect more than 0.5 acre. Les Lemm suggested this could be addressed via guidance.

Tom Tri asked about the process for no-loss versus exemptions.

Les Lemm referred to recent Attorney General’s Advice on state regulation of interstate pipelines.

Matt Norton stated that maintenance activities can affect different soil layers in the wetland.

ACTION. BWSR should develop guidance on significantly modifies.

Forestry (page 25)

Rick Dahlman stated that there is a difference between a temporary crossing and temporary impact. Les Lemm suggested additional guidance can address this issue.

ACTION. Matt Norton suggested adding “solely” before constructed “and primarily used” after.

De minimus (page 26)

Rick Dahlman asked about references to wetland types, and specifically cedar swamps.. Les Lemm responded that it is covered under coniferous swamps, and also discussed Attorney General guidance on use of wetland types.

Doug Norris asked if BWSR would go for a statute change on wetland types. Dave Weirens responded not just for that issue.

ACTION. Sarma Straumanis suggested listing the geographic area before listing other language in the exemption.

Matt Norton asked where the 20 square feet came from. Dave Weirens responded that it came up during the 2007 legislative session.

Rick Dahlman asked if the exemption is per project and not per wetland.

ACTION. Add language that the exemption applies to a project, not individual wetlands within a project area.

Keith Carlson asked what is the affect of not using Circular 39. Dale Krystosek responded that the rule will probably be brought back due to Attorney General advice.

Allyz Kramer asked about Isanti County. Dave Weirens responded that the language would not change even though Isanti County is in the 11-county metro area, there was no change in the De minimus for 80% counties in this area.

ACTION. Change language to metro area and strike Isanti County as there is no change in the application of the exemption.

Wildife Habitat (page 27).

Matt Norton stated that native should be retained. Drew Budelis countered by stating the native should not be required. Several committee members disagreed with this statement. Les Lemm stated that natives can be slow to stabilize spoil banks.

ACTION. Add “Board approved seed mix”.

Keith Carlson asked what is the affect of wetland types. Davae Weirens responded that the rule will probably be brought back due to Attorney General advice.

Review Consolidated Draft Rule – Wetland Banking.

Establishing a Wetland Bank Site

Les Lemm reported that Doug Norris had suggested a complete restructuring of the banking section. A draft of this was distributed and served as the basis of the Committee’s review.

Lisa Frenette asked that substantive changes from the August 21 draft be identified.

ACTION. Post the new draft language on the BWSR website.

Allyz Kramer asked if the purpose language from the August 21 version should be kept. Doug Norris responded that this is generally not appropriate rule language. Matt Norton followed by stating that when there is a lack of clarity that a purpose statement can help ensure intent. Sarma Straumanis agreed.

ACTION. Retain the purpose statement from the August 21 draft in the final rule.

ACTION. The principles of wetland banking also should be retained in the final rule draft.

Dave Weirens asked about use of certified versus approved. Les Lemm responded that certified refers to the credits, not the plan.

Mollie Dean observed that the language is in a passive voice – who is doing what?

Matt Norton stated that changes in the language allow the LGU to deny the landowners intention to restore wetlands? Les Lemm responded only for banking. Matt Norton continued by expressing concern over this language. Dave Weirens responded that this is rule language, and that the banking rules allow replacement in one jurisdiction to be replaced in another.

Dave Richfield stated the PCA's concern over moving wetland functions and damaging watersheds.

Rick Dahlman stated that the language in subd. 2 implies BWSR approval.

Matt Norton asked if there is an appeal , when counties tell landowners they cannot sell to public entities. Les Lemm stated that LGU's have more authority than specified in the rule via rule or ordinance.

ACTION. Matt Norton suggested deleting LGU authority to restrict banking.

ACTION. BWSR should have authority to approve an LGU plan that restricts banking, and/or ask Attorney General if BWSR has authority to limit LGU authority to restrict banking.

Marita Valencia asked if there will still be two parts to the application after the new rule is adopted. Les Lemm responded yes, although Part A is really a preapplication.

ACTION. Modify the second sentence of subp 3 to add the following at the beginning: "The LGU must send copies of the".

ACTION. Subp. 3 should lay out the steps, including parts A and B of the application.

Allyz Kramer asked if subp. 4 is necessary. Les Lemm responded that it is when applicants wants to develop more credits than are necessary for a specific project.

Doug Norris stated that the second sentence is new to the draft rule.

Keith Carlson asked why the easement requirement does not apply to state land.

ACTION. The Attorney General should be consulted if an easement can be required on state land.

Deposit Procedures.

Allyz Kramer asked, regarding deposit procedures, subp. 1 if banking projects have to start after 5 years. Tom Tri followed by asking why a project should be allowed to go on for 15 years. He continued by stating that it should be known after 5 years if the replacement will be successful. He concluded by stating that the rule does not reference a Corps sign off.

ACTION. Doug Norris suggested switching subps. 1 and 2.

Drew Budelis asked if the 15% initial deposit is in statute. Les Lemm responded that it is not. Drew Budelis followed by stating that the percentage deposits in the rule should line up with the credit release schedule. Les Lemm responded that the schedule will vary depending on the action eligible for credit.

ACTION. Sarma Straumanis suggested a new subp. that addresses the allocation of credits, not deposit.

Keith Carlson stated that the allocation determines the timeline for deposit. Mollie Dean suggested calling this deposit of credit application.

ACTION. The second to last sentence in subp. 2 B. should be modified to add “according to performance standards” and before recommending certification.

ACTION. The last line in subp. 2B and D. should be moved up to A, in this subp.

Monitoring and Corrective Actions.

Allyz Kramer asked who would follow up if BWSR found a problem at a bank site. Les Lemm responded that it would be the bank account holder, and ultimately the landowner.

Allyz Kramer asked what severally means in Subp. 2 under Monitoring and Corrective Actions. Matt Norton responded that BWSR can go after either the landowner or banking applicant.

Drew Budelis asked if credits are deposited, and the site is found to be not up to standards, that the sale of credits can stop.

Keith Carlson asked if the fee title owner is always a party to a corrective action. Jeremy mau responded yes.

Doug Norris asked how the easement conditions are enforced. Les Lemm said that BWSR will contact the LGU for assistance.

Keith Carlson suggested that the more appropriate party to go after for corrective action is the owner of the credits.

Keith Carlson asked how often the bank account holder and landowner are separate. Marita Valencia responded that the federal regulations only speak about the bank sponsor.

Matt Norton asked what is the role of the LGU. Doug Norris followed by asking about the intent of the LGU in banking. Les Lemm responded that the rule should clarify who is responsible when, and what to do if the LGU approves bad projects.

Withdrawals and Transfers.

ACTION. Add a sentence about the closure of bank accounts.

Keith Carlson asked what is meant by regulatory entity? Les Lemm responded that it means NRCS and the Corps.

ACTION. Doug Norris suggested clarifying when information/forms should be sent to the board versus the Board's bank administrator.

Bank Account Administration.

ACTION. Keith Carlson suggested that the subp. 1 under Bank Account Administration ask for an email address.

Matt Norton asked about GIS and shape file data requirements. Dale Krystosek responded that survey data is provided as part of the application which can be used to generate a shape file.

Drew Budelis asked if the fee is assessed five times. Les Lemm reviewed the application of the bank fees.

Review Consolidated Draft Rule – Inspection and Monitoring.

Dale Krystosek led the review of this rule section.

Replacement Wetland Construction Certification. (page 10)

ACTION. A statement should be added to the purpose subp. that states the purpose is to ensure that replacement wetlands are constructed according to an approved plan.

ACTION. “Or banking” should be added to replacement plan throughout this part.

Allyz Kramer asked if BWSR would be providing additional training to LGU's on these requirements.

ACTION. Tom Tri suggested adding a reference to BWSR or MnDOT approved seed mixes.

Rick Dahlamn observed that subp. 3 makes no reference to the approval of changes to the replacement plan as discussed under subp. 2(f).

Drew Budelis asked about the LGU “may” release a portion of the financial assurance. The rule does not say what amount may be released.

ACTION. Include a financial assurance release schedule in LGU approval of plans.

Replacement Wetland Monitoring. (page 11)

Doug Norris asked if the LGU can prepare a monitoring report without the agreement of the applicant (under Replacement Wetland Monitoring subp. 2A).

Rick Dahlman asked about the LGU being more restrictive. Les Lemm responded that WCA does not give authority that some LGU’s may want to implement.

ACTION. Modify Replacement Wetland Monitoring subp. 2A to specify at the request of the applicant, the agreement must be in writing and signed by both parties.

Drew Budelis stated, regarding Replacement Wetland Monitoring subp. 3, that B and C are not needed, when A allows forever. There should be an annual notification.

Matt Norton said he is opposed to capping the monitoring period at 2 or 3 years. Drew Budelis followed by stating that there will be a point when you will know of a project is going to work or not going to work.

Marita Valencia said the Corps is keeping 5 years as the default. Tom Tri followed by stating that some project managers use 7 years for forested sites.

Tom Tri said that within 5 years the success or lack thereof should be known. Matt Norton expressed concern over having too short of a monitoring period.

Keith Carlson asked if these requirements applied to both project specific and banking. Les Lemm said yes.

ACTION. Change “semi” in subp. 1 on page 12 to “biennial” or “every other year”.

ACTION. Doug Norris suggested deleting “description of restoration” in items 3 and 4 on page 12, and replacing them with “replacement”.

ACTION. Item six on page 12 should specify that the measurement should be down to a tenth of an acre or square foot.

WCA Permanent Rule Advisory Committee
September 25, 2008

Drew Budelis stated concern over “subsequent information request by local governments as provided for in item 9 on page 12. Allyz Kramer suggested allowing reasonable LGU requests.

Local Government Unit Monitoring Responsibilities. (page 13)

Matt Norton asked if subp. 1 A is limiting. Allyz Kramer responded by stating that the evaluation and any response must be based on the plan.

Drew Budelis asked if item 4 on page 13 should refer to project specific replacement, as banking is voluntary.

Matt Norton asked if there is authority for others than SWCD’s to write restoration orders. Les Lemm responded that the rule will be clarifying the other LGU’s may draft the orders under the direction of the SWCD.

Dave Weirens stated that the wetland planning section would be placed at the end of the agenda for the October 23 meeting, and that comments are welcome.

The meeting adjourned at 3:40 p.m.