

ADMC

Agricultural Drainage Management Coalition

A Public, Private
Partnership Improving
America's Water
Quality, Wildlife
Habitat and
Agronomics Through
Drainage Water
Management

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Proposed Amendments Relating to Wetland Conservation:
Public Hearing, St. Paul, MN

To: Judge Mihalchick and BWSR Staff

Agricultural Drainage Management Coalition (ADMC) represents rural contractors, land owners, farm producers, agricultural suppliers and manufacturers. Agriculture is one of Minnesota's largest industries and needs the ability to operate competitively with producers in other states. Rules that are repetitive and unburden some leave Minnesota producers at a disadvantage.

There are several areas that ADMC recommends changes: See Attachment named ADMC Concerns Relating to Proposed WCA Rules

Sincerely,

Leonard Binstock

Leonard Binstock, Exec. Dir.



ADMC Concerns Relating to Proposed WCA Rules

1: Local Government Units.

A.

24.9 ~~B. C.~~ The local government unit may, through resolution, rule, or ordinance,
24.10 ~~place the decision~~ decision-making authority for exemption, no-loss, wetland boundary
24.11 ~~and type, replacement plan, and wetland banking determinations~~ with local government
24.12 ~~unit staff~~ according to procedures it establishes. For final determinations decisions made
24.13 by staff, the local government unit must establish a local appeal process that includes a
24.14 an evidentiary public hearing before appointed or elected officials. ~~The determination of~~
24.15 ~~staff becomes final if not appealed to the local government unit within 30 days after the~~
24.16 ~~date on which the decision is mailed to those required to receive notice of the decision.~~
24.17 ~~Notwithstanding the time frames of Minnesota Statutes, section 15.99, or any other law to~~
24.18 ~~the contrary, the local government unit must make a ruling within 30 days from the date of~~
24.19 ~~the filing of the appeal, unless the appellant and local government unit mutually agree, in~~
24.20 ~~writing, to an extension of time beyond the 30 days. Appeal of a final determination made~~
24.21 ~~by staff may be made by the landowner, by any of those required to receive notice of the~~
24.22 ~~decision, or by 100 residents of the county in which a majority of the wetland is located.~~

Argument:

It is our view that the proposed rule changes would allow local government units too much leeway to empower total decision making authority with staff; specifically on issues where the decision making authority should remain with the board. Adding a level of bureaucracy to the process would be costly, time consuming and would add an unnecessary level of separation between the local government unit and the people that they serve.

Our recommendation would be to revert this section back to the original language as follows:

The local government unit may place the decision authority for exemption, no loss, wetland boundary and type, replacement plan, and wetland banking determinations with local government unit staff according to the procedures it establishes. For final determinations made by staff, the local government unit must establish a local appeal process that includes a public hearing before appointed or elected officials.

B.

30.5 Subp. 2. Determination of complete application. If, within 15 business days of
30.6 receipt of an application, the local government unit finds that an application is incomplete,
30.7 the local government unit must notify the applicant and list in writing what items or
30.8 information is missing. Parts 8420.0305 to 8420.0330 must be the basis for determining a
30.9 complete application. The local government unit may determine an application incomplete
30.10 when seasonal constraints prevent on-site review and verification of the application,
30.11 provided the notification to the applicant includes a date, no later than the average start

30.12 to the growing season, when the application will be considered complete. When an
30.13 application contains a previously approved wetland boundary for which the approval
30.14 remains valid, the wetland boundary may not serve as the basis for determining an
30.15 application incomplete.

Argument

The proposed rule changes would allow a local government unit and their staff the ability to permanently delay projects through use of the vague concept of "seasonal constraint" preventing on-site review. A determination of these applications should be able to be performed within 15 business days of receipt of an application with or without an on-site review. Many high quality resources are available to local government units and their staff, including aerial photographs and farming history that should allow for verification of the application at any time of the year regardless of seasonal constraints. Punishing the applicant because of circumstances beyond their control is unfair and unnecessary.

Therefore it is our recommendation that Subpoint 2: Determination of complete application, be amended by removing the following lines.

The local government unit may determine an application incomplete when seasonal constraints prevent on-site review and verification of the application, provided the notification to the applicant includes a date, no later than the average start to the growing season, when the application will be considered complete.

C.

31.13 Subp. 4. **Decision.** The local government unit's decision must be based on the
31.14 standards and procedures required by this chapter and on the technical evaluation
31.15 panel's findings and recommendation, when provided. The local government unit must consider
31.16 and include in its record of decision the technical evaluation panel's recommendation,
31.17 when provided, to approve, modify, or deny the application. The local government
31.18 unit must also consider any comments received from those required to receive notice.
31.19 The local government unit's decision must be made in compliance with the time period
31.20 prescribed by Minnesota Statutes, section 15.99, which, on the effective date of this part,
31.21 generally requires a decision in 60 days. The local government unit may make on-site
31.22 exemption and no-loss decisions if the decisions are noticed according to subpart 5 and
31.23 project details are provided sufficient to document eligibility. The local government
31.24 unit's decision is valid for three years or as otherwise specified in the local government
32.1 unit's decision. The local government unit may extend its decision 32.1 with the
32.2 concurrence
32.2 of the technical evaluation panel.

Argument

The local government unit should be required to consider the technical panel's recommendations. Any decision should be based on the findings of the technical panel and the opinions of other experts.

Therefore we would recommend amending subpoint 4 by striking the following sentence:

The local government unit must also consider any comments received from those required to receive notice.

D.

34.16 B. The landowner applying for a no-loss is responsible for submitting the proof
34.17 necessary to show qualification for the claim. The local government unit may require that
34.18 a wetland delineation report or functional assessment be submitted if the local
government
34.19 unit determines that the report or assessment is necessary to make a decision on the
34.20 no-loss application. This part also applies to applications requesting a decision on
whether
34.21 an activity or wetland falls within the scope of this chapter.

Argument

The landowner is already REQUIRED to submit proof of qualification for the No-Loss claim. After the landowner submits this proof, to require any additional reports or assessments adds an unnecessary burden onto the landowner.

E.

8420.0410 NO-LOSS AND EXEMPTION CONDITIONS.

43.10 A person conducting an activity in a wetland under no-loss in part 8420.0415 or an
43.11 exemption in part 8420.0420 must ensure that:
43.12 A. appropriate erosion control measures are taken to prevent sedimentation
43.13 of the wetland or of any receiving waters;
43.14 B. the activity does not block fish activity in a watercourse, except when
43.15 done purposely to prevent movement of undesirable fish species in accordance with a
43.16 recommendation from the commissioner; and
43.17 C. the activity is conducted in compliance with all other applicable federal,
43.18 state, and local requirements, including best management practices according to the
43.19 documents referenced in part 8420.0112, items L, M, and N, and water resource
protection
43.20 requirements established under Minnesota Statutes, chapter 103H.

Argument

An exemption should be added for agricultural activities and drainage that meet the requirements of 8420.0420 Subp. 2 or 3.

F.

48.21 G. impacts resulting from agricultural activities that are subject to federal farm
48.22 program restrictions that meet minimum state standards under this chapter and
Minnesota
48.23 Statutes, sections 103A.202 and 103B.3355, and that have been approved by the board,
48.24 the commissioners of natural resources and agriculture, and the Pollution Control Agency.

48.25 An exemption under this item is not valid until such approval is obtained. If approved, 48.26 the conditions and standards shall be noticed by the board to local government units and published in the State Register. The conditions and standards 49.1 take effect 30 days 49.2 after publication and remain in effect unless superseded by subsequent statute, rule, or 49.3 notice in the State Register. Upon taking effect, this exemption only applies to impacts on 49.4 agricultural land annually enrolled in the federal Farm Program that are not beyond what is:

Argument

It is important that these agencies meet in a timely manner to discuss and vote on approval of these exemptions. Therefore, we would like to add the following sentence, following Pollution Control Agency in "G." **The above referenced agencies must meet within 90 days after enactment of these rules.**

G.

52.3 Subp. 4. **Federal approvals.** A replacement plan is not required for impacts 52.4 authorized under section 404 of the federal Clean Water Act, United States Code, title 52.5 33, section 1344, or section 10 of the Rivers and Harbors Act of 1899, United States 52.6 Code, title 33, section 403, and regulations that meet minimum state standards under this 52.7 chapter and that have been approved by the board, the Department of Agriculture, the 52.8 Department of Natural Resources, and the Pollution Control Agency. This exemption is 52.9 not valid until such approval is obtained. If approved, the conditions and standards shall 52.10 be noticed by the board to local government units and published in the State Register. The 52.11 exemption takes effect 30 days after publication and remains in effect unless superseded 52.12 by subsequent statute, rule, or notice in the State Register.

Argument

It is important that these agencies meet in a timely manner to discuss and vote on approval of these exemptions. Therefore, we would like to add the following sentence, following Pollution Control Agency in "G." **The above referenced agencies must meet within 90 days after enactment of these rules.**