

TO: Administrative Law Judge Steve M. Mihalchick  
FROM: The Association of MN Counties  
RE: Proposed Permanent Rules Relating to Wetland Conservation  
DATE: 5/11/09

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09 MAY 12 AM 8:29  
ADMINISTRATIVE  
HEARINGS

Honorable Judge Mihalchick,

Please consider the following comments from the Association of Minnesota Counties concerning the Proposed Permanent Rules Relating to Wetland Conservation, specifically pertaining to the requirements of Local Government Unit (LGU) approval of all exemptions and landowner notification of exempt activities. AMC adopted a position at the annual conference in December of 2008 that states that we would oppose any WCA rule changes that would result in requiring landowners to report exemptions.

Although, the above mentioned items are not in the proposed rule, proponents believe these requirements would provide more accurate data on exempt wetland impacts and provide additional protection for wetland resources. We believe these requirements should not be incorporated into the current rule for the following reasons:

- 1) There will be an increase to the LGU's workload.
- 2) These requirements would not carry a penalty for non-compliance, thus be unenforceable.
- 3) These requirements may be less effective in rural or agricultural areas.
- 4) Landowners lack the technical expertise to be aware of that they are in a wetland.
- 5) Landowners would not be aware of these requirements.
- 6) It is contrary to the original intent of the Wetland Conservation Act (WCA).
- 7) The cost of implementation would not justify the benefits obtained.
- 8) The data collected would not be justifiable and consistent.
- 9) These requirements would require a statute change to implement since currently exempt projects would then require a permit.


Currently, landowners are not required to seek LGU approval, let alone submit an application, prior to undertaking an activity that qualifies for an exemption. These facts are outlined in several areas of the proposed rule, which are as follows:

- **8420.0305, Item C**, "A landowner may seek advice from the local government unit regarding the applicability of a no-loss or exemption, the adequacy of sequencing arguments and alternatives, or other interpretations of this chapter without submitting an application."
- **8420.0320, Item A**, "A landowner intending to impact a wetland without replacement, claiming exemption under part 8420.0420, may apply to the local government unit for an exemption decision...An exemption may apply whether or not the local government unit has made an exemption decision. If the landowner requests an exemption decision, then the local government unit must make one."

- **8420.0420, Subpart 1, Item A**, "...An impact is exempt from replacement if it qualifies for any one of the exemptions...Persons proposing to conduct an exempt activity are encouraged to contact the local government unit to verify eligibility for an exemption..."

For the above outlined reasons, we must go on record to oppose the inclusion of any such mandates that would require LGU approval of all exemptions and landowner notification of exempt activities. AMC membership thanks you for this opportunity to provide comment on the proposed rules.

Sincerely,

A handwritten signature in cursive script that reads "James A. Mulder". The signature is written in black ink and is positioned above the printed name and title.

James A. Mulder  
Executive Director