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CC:
John Jaske
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Corrected 05/05/09 comments regarding Proposed Amendments to Rules Relating to Wetland Conservation: Minnesota Rules Chapter 8420 made by William Barton representing the Minnesota Division of the Izaak Walton League of America.

Minnesota has decided to protect wetlands based on their functional value (103B.3355) while allowing destructive activities where avoidance of activity is not feasible and prudent (103A.201 Subd. 2 b.) The Board of Water and Soil Resources (BWSR) derives its authority from 103B.3355 (c).

The lack of exemption use reporting in the rules invites abuse.

For comparison I like to think of the current BWSR exemption reporting rules, rules that will not change with the draft rules before us, to a banker's accounting rules – thinking of BWSR as the State's banker for wetlands. This is the kind of banker who will fail in bankruptcy and cause innocent people irreparable harm. The BWSR bank does not bother to keep track of its assets – at least it hasn't reported them for the last six years. The BWSR bank does not want to require it's big customers to report exemption use as now required by the State law (Minn. Stat. 103G.2241, Subd. 11(d)). The BWSR bank doesn't want to be bothered to count the change, just the big bills and transactions. I ask you, how many viable banks do not bother to count every penny? How many corporations? How many government bodies? How many of these entities are not held accountable for their assets on a regular basis?

Exemption Reporting Benefits to Industry and Investors

Public Relations

One benefit of Wetland exemption reporting for industry is the value of having independent, verifiable data to present to the public to demonstrate appropriate environmental stewardship. Taking air emissions for example, General Motors issues its *Corporate Responsibility and Sustainability Report*, which makes use of the Toxic Release Inventory (TRI) data and the Canadian National Pollutant Release Inventory to support its environmental achievements. Such reporting also allows for inclusion of standardized reporting data into environmental management systems (EMS), providing the necessary information to achieve and disseminate their environmental achievements. Using data from a verified, standard methodology as proposed under the reporting rule gives credibility when claiming environmental improvements. Hamilton (1995) and Konar and Cohen (1997) are two examples of empirical studies that have investigated how the TRI has affected firm behavior and stock market valuation. Hamilton (1995) finds a stock price return of -0.03% due to TRI release. Firms that experienced the largest drop in their stock prices also reacted by reducing their reported emissions most in subsequent years.

Standardization

Once investment in institutional knowledge and systems to report exemptions are made, the cost of reporting should fall and the accuracy of the accounting should improve. A standardized reporting program will also allow for facilities to benchmark themselves against similar activities to understand better their relative standing within their industry.

Potential Cost Savings

Mandatory reporting of wetland exemption could illuminate previously unmeasured wasteful processes, yielding cost-saving conservation measures that would offset some of the costs associated with the reporting. Again citing air emissions experience, Acushnet Rubber Company, Inc. saves approximately \$100,000 annually after eliminating use of the potential carcinogen trichloroethylene, identified using TRI, from its facility as part of

its EMS (EPA, 2007). Under a mandatory reporting rule for wetlands exemption, users may discover they could feasibly find cost and wetland saving options technologies such as avoidance, on-site mitigation, and efficient banking opportunities which are a greater benefit to all.

Data Valuable to Service Industries

In addition to the benefits for the users being monitored, the data can be valuable to companies doing business with exemption using firms. Firms have sold pollution-prevention technologies to customers found using TRI data (Pew, 2008). In addition, insurance companies may find these data valuable in assessing risk. In general, improved information lowers search and transaction costs for providers of mitigation products and services.

Reducing Uncertainty: Benefits to all Stakeholders

Reducing uncertainty in wetlands exemption use estimates is an underlying benefit that increases benefits to all stakeholders. Policy development, direct action by the public and consumers, standardization, and reliable data for firms, shareholders and service industries to use in decision-making all require certainty in exemption estimates in order to make environmentally sound and cost-effective decisions. Increased certainty in exemption estimates facilitates the comparison across avoidance and mitigation options, companies and sectors where different data or approaches have been used. Some exemption users covered under a rule are more uncertain than others because of the nature of the exemption use (single project site versus area activity for example) and the lack of basic data collection (i.e., the amount of exemption at each farm or forest). Finalizing mandatory exemption reporting will increase the certainty of exemption loss due to increased information about each type of loss and may spur additional research into types that are not as well understood or documented.

In addition, increased certainty in exemption estimates increase the probability that commitments to avoidance and mitigation have been credibly met. This allows for a stable wetland banking market, whether voluntary or mandatory, and reinforces the credibility of a banking credit. Without increased certainty within a sector, company or a

specific project, the banking credit produced may be considered risky and not trade for full value. Increasing the certainty of each mitigation credit benefits the buyer, the seller, and the overall market place.

BWSR's own reporting with incomplete data shows a loss of WCA wetlands. Minnesota needs better reporting of exemption use to maintain its' wetlands.

Reporting via a simple form or thru a website by landowners is a reasonable approach that will not burden local government units. The Minnesota Division of the IWLA has taken a stronger position asking that all exemptions require a qualifying determination. (MN Division IWLA 2008) I agree that even this position is reasonable as the State of Minnesota is giving away a public resource with every exemption use.

I am personally extremely upset that the BWSR wetlands committee and stakeholders group were told on numerous occasions "we have a ruling from the Attorney General's office" that requiring reporting might not be legal. When asked to document this "ruling" I was told it was private information. A data practices act request to the Attorney General's office and BWSR produced no reference to any ruling by the Attorney General's office. (Letter dated March 6, 2009 from Thomas Overton, Assistant Attorney General, State of Minnesota Office of the Attorney General to William Barton)

I believe the deletion of the rule requiring reporting of exempt wetland activities by the wetlands committee does not follow the intent of the 2008 Minn.Stat. 103G.2241 Subd. 11 (d). The draft rules do not follow legislative direction on this subject and should be revised to include mandatory reporting of exemption use.

One argument I have heard against reporting is that the definition of exemption from regulation includes reporting. I disagree with this interpretation. Reporting is not regulation. I find no rule or statute that includes reporting in the description of an exemption or definition of exemption. In fact, I was unable to find a definition of the terms exempt or exemption in the definitions of Chapter 8420 rules or 103G statutes. This should be remedied by the rules or statute so that the meaning is clear for all.

The proposed change to Enforcement Procedures Subd. 5 Restoration and Replacement Orders removing the DNR from decisions does not seem wise or well supported.

As a participant in the BWSR stakeholder meetings, I was told on two occasions by the facilitator of the meetings that the purpose of the rulemaking was not water quality. The first of the public values listed in statute for wetlands is water quality. (103B.3355 (a) (1)) Many of our waters are impaired. Some are impaired as a result of the destruction of essentially all of the wetlands in a watershed. The destruction of wetlands in our watersheds, overall loss in quantity and quality of our waters and wetlands are not consequences of development that we need to accept. We can do a better job of accounting for and evaluating our wetlands and make this work for all Minnesotans.

Respectfully,

William Barton
Director At Large
Minnesota Division Izaak Walton League of America

References

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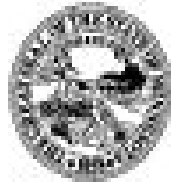
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March 6, 2009

Mr. William Barton
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Dear Mr. Barton:

This Office has received your data practices request dated February 24, 2009. You request inspection of "any and all descriptions of opinions given and/or any and all correspondence relating to opinions of the Minnesota Attorney General's Office or Minnesota Revisor of Statutes and/or] the Minnesota Board of [Water and] Soil ... Resources regarding ... rulemaking and ... [Minn. Stat. §] 103G.2241, subd. 11(d) [2008]." The statutory provision was enacted as Minn. Laws 2007, ch. 57, art. 1, § 127 and reads as follows:

(d) The board shall develop rules that address the application and implementation of exemptions and that provide for estimates and reporting of exempt wetland impacts, including those in section 103G.2241, subdivisions 2, 6, and 9.

Please note that while matters subject to the attorney-client privilege are not public and cannot be disclosed by this Office, Minn. Stat. § 13.393 (2008), this office has no data responsive to your request.

Very truly yours,

THOMAS K. OVERTON
Assistant Attorney General

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AG 01401110-01

MINNESOTA DIVISION
IZAAK WALTON LEAGUE OF AMERICA
RESOLUTION
“IMPLEMENTATION AND REPORTING OF EXEMPT
WETLAND IMPACTS”

PASSED UNANIMOUSLY AT THE ANNUAL MEETING OF THE MINNESOTA
DIVISION BOARD OF DIRECTORS ON APRIL 27, 2008 AT RED WING,
MINNESOTA

WHEREAS Minnesota has not required reporting of exempt wetland impacts so does not have a complete accounting of wetland losses from exempt wetland impacts.

WHEREAS although voluntary reporting is incomplete, the current accounting of wetland losses from exempt wetland impacts indicates that Minnesota is losing approximately 500 acres of WCA wetlands a year.

WHEREAS the intent of Minnesota’s Wetland Conservation Act is to:

- A. achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;
- B. increase the quantity, quality, and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;
- C. avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of wetlands; and
- D. replace wetland values where avoidance of activity is not feasible and prudent.

STAT AUTH: MS s [14.06](#); [103B.101](#); [103B.3355](#); [103G.2242](#)

HIST: 18 SR 274; 22 SR 1877; 25 SR 152; 27 SR 135 *Current as of 08/14/07*

WHEREAS the Legislature has directed the Board of Soil and Water Resources (BWSR) to develop reporting of exempt wetland impacts but mandated no timeline and no specifics.

WHEREAS, Referring to the Board of Soil and Water Resources (BWSR), Minnesota Senate File 1131 Sec. 127 Subd. 11 Exemption conditions (d) states:

“The board shall develop rules that address the application and implementation of exemptions and that provide for estimates and reporting of exempt wetland impacts, including those in section 103G.2241, subdivisions 2, 6, and 9.”

(This provides for estimates and reporting of exempt wetland impacts, including the drainage, utilities/public works, and de-minimus exemptions.)

WHEREAS there is no provision in statute that requires data be collected by Local Government Units (LGU).

WHEREAS the BWSR core functions center around the administration and planning of soil, water, and wetland conservation with an emphasis on local priorities, not statewide sustainable priorities.

THEREFORE BE IT RESOLVED that the Minnesota Division of the Izaak Walton League of America recommends and endorses requiring landowners to apply to the LGU and receive approval of all exemptions before conducting exempt activity and that this be required in permanent rules to be developed by BWSR in the 2007-2009 permanent rulemaking to be completed and approved by the BWSR board by December 2008.

AND THEREFORE BE IT ALSO RESOLVED that costs to the LGU of review and reporting of all exempt wetlands activities to BWSR be identified so that state funding may be provided to support complete and accurate reporting of exempt wetland activities.

PASSED UNANIMOUSLY AT THE ANNUAL MEETING OF THE IZAAK
WALTON LEAGUE OF AMERICA MINNESOTA DIVISION BOARD OF
DIRECTORS ON APRIL 27, 2008 AT RED WING, MINNESOTA