

Thank you for the opportunity to comment on the proposed rules that affect wetland regulation. This testimony is on behalf of the Wetlands and Water Committee of the North Star Chapter of the Sierra Club.

There are many positive proposals in the rule change document. This comment concerns how the proposed rule does **not** meet the requirements of the law concerning reporting of exemption activity.

There is a great need for accurate data on the use of exemptions

- The goal of the original Wetlands Conservation Act is to have no net loss of quantity or quality of wetlands in Minnesota. It is impossible to know the true status of loss of wetlands unless exempt activity is reported on.
- The 2001-2003 Minnesota Wetland Report approved by the BWSR Board shows a **net loss of 5821 acres**. This is the last year for which a report is available. Since *some* Local Government Units (LGU) do require reporting of exemption use, *some* data is available. This limited data points to the need for gathering information on all uses of exemptions.
- During the multi-year process to identify ideas for bettering wetland law, all parties, even those opposed to gathering exemption data, often pointed out the lack of credible loss data on which to base our proposals.

Here is what the new law, SF 2096, passed on May 7, 2007, states about exemption reporting:

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.

(subdivision 2 is the drainage exemption, subdivision 6 is the utilities exemption, subdivision 9 is the *de minimus* exemption)

Here is what is included in the proposed rule regarding exemption reporting on page 25 like 25.21; 8420.0200 Subpart 2 I:

- Each LGU must report annually to BWSR of its wetland activity
- The report that the LGU must complete has more detail on exemption activity

From this you see that the data on exemption reporting is not at all complete. These two provisions do not provide the data that can give a true picture of wetland quantity in Minnesota and therefore does not meet the intent of the law.

On November 20, 2008, at its regularly scheduled meeting, the BWSR Wetland Committee voted to include the following provision in the rule. Board Chair Randy Kramer stated his support for the proposal also.

Landowners who choose not to seek local government unit approval of an exemption must, prior to impacting a wetland, report the exempt activity to the board using a website or other methods developed by the board. The report must provide information required by the board, including the name and contact information of the landowner, the location of the activity by township, range, and section, the exemption being claimed, and the amount of wetland impact in square feet. Information collected regarding exemptions serves the purpose of gathering data on use of exemptions.

This statement meets the intent of the new law.

On December 16, 2008, at a specially scheduled meeting, the BWSR Wetland Committee voted to remove this provision. Board Chair Randy Kramer said that he still supported the inclusion of the language. A letter from the Minnesota Rural Counties Caucus was presented that stated the opposition of its board to the proposed rule. The reasons it opposed the rule are:

- The cost to the LGU. However, note that the proposed rule required no activity on the part of the LGU; the report would be web-based and completed by the landowner.
- The completion of the report requires technical expertise that landowners do not possess. We feel that a landowner can provide his name, location, square feet impacted. The landowner needs to understand what exemption being claimed in order to proceed with any work with certainty that s/he is, in fact, carrying out an exempt activity.

David Weirens of BWSR has stated that the Attorney General's office has given them a ruling during a phone conversation that the rule cannot require a landowner to report exempt activity. However, when a FOIA request was done to the Attorney General office, they stated "the Office has no data responsive to your request." (letter to William Barton dated March 6, 2009, from Thomas K. Overton, Assistant Attorney General.)

As explained by David Weirens, the current law, in section 103.2241 subd.11 states:

Persons proposing to conduct an exempt activity are encouraged to contact the local government unit or the local government unit's designee for advice on minimizing wetland impacts.

The argument is that persons are only *encouraged* to contact the LGU and therefore there cannot be a provision *requiring* to contact the LGU. However the provision encourages contact for advice on minimizing wetland impacts and does not pertain to requiring wetland reporting. So section 103.2241 subd. 11 does not actually limit BWSR in promulgating a rule on exemption reporting. It is difficult to challenge an Attorney General ruling that has no documentation, even what question was asked of them.

It is the position of the Sierra Club that the rule wording as proposed and agreed to by the BWSR Wetland Committee on November 20, 2008, be restored to the rules. The exact wording is on page 2 of this document.

As a last statement, we would like to see “exemption” retained everywhere it appears in 8420.0900 (page 115, line 23). The use of the word does *not* imply a regulation on exemptions; this section of the rule would only be used if there is good reason to believe that a landowner does not, in fact, have an exemption and is doing an action that most likely needs a replacement plan. So “exemption” *needs* to be there.

Mollie Dean
4138 Wentworth Ave
Minneapolis MN 55409

612-825-2771