



Minnesota Department of Transportation

Metropolitan District
Waters Edge
1500 West County Road B-2
Roseville, MN 55113-3174

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**ADMINISTRATIVE
HEARINGS**

May 13, 2009

Honorable Judge Steve M. Mihalchick
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
St. Paul, MN 55164-0620

RE: Wetland Conservation Act Rule Revision

Dear Honorable Judge Steve M. Mihalchick:

Mn/DOT Metro Water Resources Engineering has the following comments on the Wetland Conservation Act Rule Revision.

Our comment is regarding 8420.0544, page 85, lines 85.4 to 85.6, where the following language has been deleted: "Part 8420.0543, item A, subitem (6), does not apply to replacement completed using wetland banking credits established by an applicant who submitted a complete wetland banking application to a local government unit by April 1, 1996." We believe that the language in this item should be re-instated and applied to Part 8420.0544, item B.

The rationale given in the SONAR for deletion of this sentence (page 46, Item A, second to the last sentence) is that the language "pertains to applications submitted by April 1, 1996 and is no longer relevant." We disagree with this statement and believe that it is relevant for the following reasons.

The purpose of this sentence was to allow wetland bank credits from a wetland bank plan submitted by the cited date to be used without regard to the siting restrictions of current item A, subitem (6). The August 1993 version of Chapter 8420.0540, Subpart 5 allowed wetland credits for transportation projects to be replaced statewide without any restrictions. The June 1996 version of Chapter 8420.0540, Subpart 5 placed restrictions in less than 50% areas and the seven-county metropolitan area, however Subpart 3 included a statement that "the exceptions in Subpart 5 do not apply to replacement completed using wetland banking credits established by a person who submitted a complete banking application to a local government unit by April 1, 1996".

Prior to 1996, the use of wetland bank credits for transportation projects was not geographically restricted. Prior to 1996, Mn/DOT's Metro Division purchased a number of out state wetland bank credits for the purpose of using them to replace impacts in the

seven-county metropolitan area. Mn/DOT follows the proper mitigation ratios for both BWSR and the Army Corps of Engineers wetland impacts. Mn/DOT invested funds in these pre April 1, 1996 credits and believes that we should be able to use those credits as we were allowed to do under the June 1996 Rule. Currently, Mn/DOT Metro District has a balance of 77 acres in Aitkin County and 20 acres in Waseca County that we would like to use up. Mn/DOT purchased these wetland credits from private bankers, so these credits are available in the wetland bank. If the language is not reinstated in the Rules, then we will not be able to use these credits.

If you have any questions, please contact me at 651-234-7520 or Sarma Straumanis at 651-366-3626.

Sincerely,



Beth D. Neuendorf, PE

Mn/DOT Metro District Water Resources Engineer

cc Frank Pafko, Director, Mn/DOT Office of Environmental Services
Sarma Straumanis, Mn/DOT Office of Environmental Services
David Weirens, 520 Lafayette Road North, St. Paul, MN 55155
Les Lemm, 520 Lafayette Road North, St. Paul, MN 55155

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DATE: 5-13-09
TO: JUDGE STEVE MIHALCHICK FAX NO.: 651-361-7936
LOCATION: OFFICE OF ADMINISTRATIVE HEARINGS
FROM: BETH NEVENDORF PHONE: 651-234-7520
LOCATION: MN/DOT
MESSAGE: COMMENTS ATTACHED ON WETLAND
CONSERVATION ACT RULE REVISION

IF YOU HAVE PROBLEMS WITH THIS TRANSMISSION, PLEASE CALL THE PERSON LISTED ABOVE.