



# WCA Rule Updates

MACPZA Annual Conference

October 9, 2009



# WCA Rule Updates

## Agenda

- Review Significant Rule Changes
- Other WCA Program Changes
- Rule Implementation Efforts



# WCA Updates

***New rule went in to effect***

***August 8!***

- Powerpoints used in July New Rule Training on BWSR website:

<http://www.bwsr.state.mn.us/training/index.html#wcaPowerpoints>



# Goals of Permanent Rulemaking

- Consistent with purpose of WCA.
- Simplify.
- Implementable.
- Clarify.
- Tangible result.
- Improve accountability.



# Other Rulemaking Considerations

1. LGU workload.
2. Limit unintended consequences.
3. Balance public costs and benefits.
4. Stakeholder support.
5. Consistency with Federal Mitigation Rule.



# Significant Issues/Proposed Changes to WCA Rule

- Rule format and order.
- Scope, No-Loss, and Exemption Framework.
- Administrative procedures & reporting.
- Wetland replacement standards, buffers, & ratios.
- Replacement crediting system.
- Actions eligible for credit.
- Replacement wetland monitoring & construction standards.
- Wetland planning.
- Enforcement & Appeals



# Rule Format and Order

- 1) Purpose, Scope and Definitions
- 2) Local Government Unit Duties and Procedures
- 3) Application Procedures
- 4) Boundary or Type, No-Loss, & Exemption Standards
- 5) Wetland Replacement
- 6) Wetland Banking
- 7) Inspection & Monitoring of Replacement Wetlands
- 8) Wetland Planning
- 9) Enforcement, Appeals, and Compensation
- 10) Activities Under DNR Authority



# Scope, No-Loss, and Exemption Framework

## Issue:

- The exempt Rule does not logically and understandably distinguish between wetlands and activities in wetlands that are addressed in the scope of the regulations, what is considered to be a no-loss, and what is exempt from replacement.





# Scope, No-Loss, and Exemption Framework (Cont'd)

## Solution:

- Exemptions: Defined as wetland impacts that are exempt from replacement (8420.0420).
- No-Loss: Defined as activities that do not impact wetlands or result in a permanent loss of wetland functions (8420.0415).
- Scope: Specifies the wetlands and activities that are “non-jurisdictional” to WCA (8420.0105).



# State Agency Coordination (8420.0200, Subp. 1C)

- Subp. 1C: “...state agencies must coordinate with LGUs that would otherwise have jurisdiction, according to items A and B, when conducting or making decisions on activities in wetlands.”
- **For example: For state road projects, trails, and mining projects that are approved by a state agency, the agency must coordinate with local governments.**



# LGU Delegation (8420.0200, Subp. 1E)

- “Implementation of this chapter and the act may be delegated... to a SWCD or other governmental entity by the passage of resolutions by both parties.”
- “The delegation becomes effective when resolutions have been passed by both parties, or on a date specified in the resolutions, whichever is later.”
- “Both parties must provide a copy of the resolution and a description of the applicable geographic area to BWSR, the DNR, and the SWCD within 15 business days of adoption of the resolution.”



*EXAMPLE of resolution where LGU delegates WCA implementation authority to another government entity*

**A RESOLUTION REGARDING THE ADMINISTRATION OF THE WETLAND ACT OF 1991**

**WHEREAS**, the Minnesota Wetland Conservation Act of 1991 (WCA) requires local governmental units (LGUs) to implement this law by adopting the rules and regulations promulgated by the Board of Water and Soil Resources (BWSR) pertaining to wetland draining, filling and excavation; and

**WHEREAS**, the BWSR is requesting notification of an LGU's decision adopting or excepting administrative responsibility for another LGU in accordance with Minn. Rules part 8420.0260, item A; which requires each local government unit of the State to acknowledge in writing to the (BWSR) that it is assuming its responsibilities under the Wetland Conservation Act; and

**WHEREAS**, the LGU is responsible for following the WCA rules as stated in 8420.0200, Determining Local Government Unit Duties;

**NOW, THEREFORE, BE IT RESOLVED BY THE**  **that it hereby designates** the administrative responsibility as the LGU to  **as delegated by**  **for the WCA within the legal boundaries of**  **as of**  **within the guidelines as set forth by the WCA rules.**

**ADOPTED:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**ATTESTED:** \_\_\_\_\_ **BY:** \_\_\_\_\_

# Resolution Delegating WCA

See BWSR Website



# Resolution Accepting WCA Delegation

See BWSR Website

*EXAMPLE of resolution accepting WCA delegation from an LGU*

**A RESOLUTION REGARDING THE ADMINISTRATION  
OF THE WETLAND ACT OF 1991**

**WHEREAS**, the Minnesota Wetland Conservation Act of 1991 (WCA) requires local governmental units (LGUs) to implement this law by adopting the rules and regulations promulgated by the Board of Water and Soil Resources (BWSR) pertaining to wetland draining, filling and excavation; and

**WHEREAS**, the BWSR is requesting notification of an LGU's decision adopting or excepting administrative responsibility for another LGU in accordance with Minn. Rules part 8420.0260, item A; which requires each local government unit of the State to acknowledge in writing to the board that it is assuming its responsibilities under the Wetland Conservation Act; and

**WHEREAS**, the LGU is responsible for following the WCA rules as stated in 8420.0200, Determining Local Government Unit Duties;

**NOW, THEREFORE, BE IT RESOLVED THAT THE**   
as delegated by  hereby **accepts** the administrative  
responsibility as the LGU for the WCA within the legal boundaries of   
as of  within the guidelines as set forth by the WCA rules.

**ADOPTED:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**ATTESTED:** \_\_\_\_\_

**BY:** \_\_\_\_\_



# Delegation of Decision-Making Authority to Staff

(8420.0200, Subp. 2C)

- Subp. 2C: “The LGU may, through resolution, rule, or ordinance, place decision-making authority with staff according to procedures it establishes.”
- **Board minutes, position descriptions, or “the way we’ve always done it” do not constitute formal delegation of authority from a legal perspective.**





# Resolution Delegating Authority to Staff

See BWSR Website

## A RESOLUTION REGARDING THE ADMINISTRATION OF THE WETLAND CONSERVATION ACT

{ LGU NAME }

Resolution No. \_\_\_\_\_

**WHEREAS**, the { County Name } is authorized by Minnesota Administrative Rules Part 8420.0200, Subpart 2, to delegate certain functions with regard to implementation of the Wetland Conservation Act, including decision authority for exemption, no loss, wetland boundary and type, replacement plan, and wetland banking determinations with its staff.

**THEREFORE; BE IT RESOLVED** by the Board of Commissioners of the { County Name } that decision authority for exemption, no loss, wetland boundary and type, sequencing determinations, replacement plan, and wetland banking determinations are placed with the { Position Title } { Staff Name }.

Dated: \_\_\_\_\_

{ COUNTY NAME }

By: \_\_\_\_\_  
Chair of the Board of Commissioners

Resolution No. \_\_\_\_\_: Offered by Commissioner \_\_\_\_\_,  
seconded by Commissioner \_\_\_\_\_, adopted by a vote of  
\_\_\_\_\_ at the regular meeting of the Board of Commissioners of the  
{ County Name } on { Date }.

\_\_\_\_\_  
{ Staff Name }  
{ Position Title }



# Annual Reporting

(8420.0200, Subp. 2I)

- **A separate report must be submitted for each LGU.**
- **Calendar year 2010 will be the first year of mandatory reporting.**
- Using a spreadsheet to track activities throughout the year will simplify reporting and significantly reduce the time needed to complete the report.





**Minnesota Board of Water and Soil Resources  
Wetland Conservation Act 2008 Annual Reporting Form  
Implementation Activities Information**

Local Government Unit (LGU): \_\_\_\_\_

County (if different than above): \_\_\_\_\_

Name and Title of Person Completing Report: \_\_\_\_\_

**NOTE:** Completion of this report is required for all of Minnesota's LGUs that receive WCA funding through the Natural Resources Block Grant, and must be received by the BWSR St. Paul office on or before February 1, 2009. Completion of this report is strongly encouraged for all other LGUs. See the **accompanying guidance** for additional details on selected questions.

1. Number of **landowners** for which wetland related technical assistance was provided during the calendar year: \_\_\_\_\_

2. **Number of applications** that were:

Type of Application	# Approved	# Denied	# Withdrawn
A. Replacement Plan:			
B. Exemption:			
C. No-Loss:			
D. Boundary or Type:			

3. Number of **replacement plans approved** that included replacing impacts by the following methods:

A. Wetland Banking: \_\_\_\_\_

B. Project Specific Replacement: \_\_\_\_\_

C. Combination of Wetland Banking and Project Specific Replacement: \_\_\_\_\_

4. Acres of wetland to be **impacted** via an approved replacement plan: \_\_\_\_\_

5. For approved replacement plans, list the **project specific replacement** approved in the following categories:

Action Eligible for Credit	NWC	PVC
A. Restoration of completely drained wetland areas.		
B. Restoration of partially drained wetland areas.		
C. Exceptional natural resource value projects.		
D. Restoration of farmed wetlands.		
E. Upland buffer areas.		
F. Wetlands previously restored via conservation easements.		
G. Restoration of wetland vegetation.		
H. Wetlands established via mineral extraction site reclamation.		
I. Water quality treatment areas.		
J. Wetland creations.		
<b>TOTAL:</b>		

# Annual Reporting Form

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# Annual Reporting Form

Page 2

6. Number of **exemption determinations** approved and acres of wetland impact for each category. (Provide best estimate for acreages that are not easily quantified.)

Type of Exemption	Number of Exemption Determinations	Acres of Wetland Permanently Impacted*
A. Agricultural Activities		
B. Drainage		
C. Federal Approvals		
D. Wetland Restoration		
E. Incidental Wetlands		
F. Utilities; Public Works		
G. Forestry		
H. De Minimis		
I. Wildlife Habitat		
TOTAL:		

\* See WCA reporting guidance.

7. For project specific **replacement wetlands**, list the number of the following completed or received this reporting year:

A. Construction Sites Inspected	B. Corrective Actions Ordered	C. Monitoring Reports Received	D. Findings of Satisfactory Replacement

8. Number of potential violation sites investigated: \_\_\_\_\_
9. Number of **enforcement actions** that were taken **under local ordinances** and/or that did not result in DNR-issued cease and desist, restoration, or replacement orders (including informal resolution of violations): \_\_\_\_\_
10. Number of **local appeals** heard: \_\_\_\_\_
11. Does the LGU have a **certified delineator** available (excluding BWSR or SWCD)?
- A. On staff: \_\_\_\_\_
- B. On call (i.e. consultant): \_\_\_\_\_
- C. Not at all: \_\_\_\_\_
12. For LGU staff responsible for implementing WCA, please provide the following for **WCA/wetland training attended** this reporting year (attach additional if necessary):

Name and Date of Training Session Attended	Sponsoring Organization	# of Days

13. **Optional:** Please provide information regarding unusual circumstances, time spent on enforcement or major violations, banking application reviews, known exempt activity for which a formal decision was not made, additional detail or clarification of above data, or any other information or comments you would like to share. \_\_\_\_\_



# WCA and MN Statute 15.99

- “Notices and LGU decisions made under this chapter must be in compliance with MN Statutes, section 15.99.”
- **FAILURE TO COMPLY WITH 15.99 IS THE MOST COMMON MISTAKE BY LGUs!**



# General Application Requirements

## (8420.0305)

- New rule part specifies the general information that must be provided for ALL applications.
- Information specific to the different application types is provided in subsequent parts and must be provided in addition to the general requirements.



# Replacement Plan Applications

(8420.0330)

- A landowner must not impact a wetland under an approved replacement plan until submittal of the following, to the satisfaction of the LGU:
  - Financial assurance for project-specific replacement that is not in advance.
  - **Evidence that deed restrictions have been recorded.**
  - Confirmation that any bank credits proposed for use have been withdrawn from the bank by BWSR.



# Noticing (8420.0255)

NEW - Applications for wetland boundary must be noticed to those required to receive notice (i.e. TEP, DNR, applicant, etc.)

- Same as for replacement plans.
- Noticing is NOT required for exemption or no loss applications.





# Replacement Credit

(8420.0526)

NEW – Only one type of wetland credit.

- New Wetland Credit and Public Value Credit will only be deposited for replacement and banking plans approved under the prior rule.
- These and existing bank credits will be converted to “replacement credit” by BWSR staff.



# Banking

## (8420.0700)

Establishment and use of wetland bank credits is more attractive under the new rule.

- Lower replacement ratios when using bank credits.
- Lower credit (from 100% to 75%) for created wetlands.
- Increased emphasis on ecological consistency/sustainability.





# Joint Enforcement procedures memo regarding CDOs and ICRs.



- Information & Education
- Ecological Resources
- Enforcement
- Fish & Wildlife
- Forestry
- Lands & Minerals
- Management Resources
- Parks & Recreation
- Trails & Walkways
- Waters



## MEMO

Division of Enforcement

**Date:** June 12, 2009

**To:** WCA Local Government Units and Soil and Water Conservation Districts

**From:** CAPT John Hunt, DNR Enforcement  
Les Lemm, BWSR WCA Coordinator

**Phone:** 651-259-5040

**Subject:** Wetland Conservation Act Violations

Beginning in April of 2009, the DNR Division of Enforcement began to use a different procedure in the handling of wetland, public waters and aquatic plant management violations.

In the past, a Cease and Desist Order (CDO) was issued for the above violations, whether the violation was in progress or not. Concerns were raised about this process as part of the WCA rule revision, and subsequently procedural changes were implemented.

Officers responding to potential violations that are not in progress and not likely to continue will no longer issue a CDO. The responding officer will complete an initial case report (ICR) and forward it to the Water Resource Enforcement Officer (WREO) for their area. The WREO will then forward it to the Local Government Unit (LGU) and members of the Technical Evaluation Panel (TEP).

Communication will be an extremely important part of this process, not only with the enforcement officer, but with the landowner and members of the TEP as well. For an LGU, the first step after being informed of a potential violation through receipt of an ICR will be to determine whether the project has received prior approval or qualifies for an exemption. This should include communication with the landowner to inform them of the potential violation and give them the opportunity to provide supporting information and/or apply for LGU approval. BWSR will develop a form letter template for LGUs to use in this regard. Once the status of the project has been determined (previously approved, exempt, violation), the LGU can e-mail the WREO and the TEP to close the case or indicate what the next action will be (after-the-fact application, restoration/replacement order, etc.).

Each LGU will need to implement an internal process for tracking and handling these cases. When a CDO is issued to a landowner, it includes information regarding timelines for applying for exemptions etc. In those instances when an ICR is completed rather than

*We are committed to serve the people of Minnesota by protecting natural resources, the environment and public safety through quality education and law enforcement.*



# Initial Case Report (ICR)

- Officers responding to potential violations that are not in progress and not likely to continue will no longer issue a CDO. The responding officer will complete an ICR and forward it... to the LGU and members of the TEP.
- This only applies to “old” work that has been completed and is not likely to resume.



# Initial Complaint Reports (Cont'd)

- **Communication is important!**
- For an LGU, the first step is be to determine whether the project has received prior approval or qualifies for an exemption. Inform the landowner of the potential violation and give them the opportunity to provide information and/or apply for approval.
- Once the status of the project has been determined, the LGU, WREO, and TEP to close the case or indicate what the next action will be.



# Initial Complaint Reports (Cont'd)

- Change: For “old” violations, the LGU is only determining if enforcement is needed prior to the officer taking action. **This should not be a change.**
- Purpose: Avoid the public perception that DNR Enforcement is doing one thing and the LGU another. Get on the same page before initiating enforcement action.
- Communication: Get to know your WREO and determine the best way to **work together** in your area!



# Appeals Fees

- **Effective August 1<sup>st</sup>, 2009, the fee charged for appeals to BWSR will be increased from \$200 to \$500.**



# Rule Implementation

## Guidance/Fact Sheets:

- Preservation Credit.
- Exceptional Natural Resource Value Credit.
- Public Waters Waivers from DNR to LGUs.
- Training Requirements for LGU Staff.
- Financial Assurance.



# Rule Implementation

## Guidance/Fact Sheets: (cont.)

- **Cropping History/Farmed Wetlands Credit Eligibility.**
- **Ecological Suitability and Sustainability.**
- **Public Transportation Projects.**
- **Agricultural Landowner Info Packet.**
- **Wetland Planning.**



# Rule Implementation

## Training:

- **Construction Inspection, Certification, and Monitoring.**
- **Enforcement.**
- **Deposit of Banking Credits.**
- **Sequencing.**
- **Determining an Application Complete/Incomplete**





# Rule Implementation

## Other/Ongoing Tasks:

- Update Forms.
- 2004-2008 Mn Wetland Report – Feb. 2010.
- BWSR-NRCS Memorandum of Understanding.
- Wetland Banking Software Development.



# Rule Implementation

## Other/Ongoing Tasks: (cont.)

- Administrative Penalty Order Implementation.
- Exemption Estimate Study.
- Wetland Crediting and Use under a DNR Permit to Mine.



# WCA Rule Updates

## Questions ?

- Dave Weirens, Land and Water Section Mgr  
651-297-3432 , [david.weirens@state.mn.us](mailto:david.weirens@state.mn.us)

OR

- Les Lemm, WCA Coordinator  
651-26-6057, [les.lemm@state.mn.us](mailto:les.lemm@state.mn.us)