

Soil Loss Rulemaking Project – Advisory Group Meeting

Tuesday, February 20, 2018, 1:00 – 3:00 pm

MPCA, Room 2-A, St. Paul

Attendees: Scott Refsland, MCPZA/Renville County, Steve Schmidt, MPCA-Watersheds, Thom Petersen, MN Farmers' Union, Amber Glaeser, MN Farm Bureau, Bruce Kleven, MN Corn Growers, Brian Martinson, Southern MN Beet Sugar Cooperative, Jennifer Bergquam, AMC; phone: Michelle Stindtman, MASWCD/ Faribault County, Tyler Knutson, MASWCD/ Yellow Medicine Co., BWSR staff: David Weirens, Tom Gile, Suzanne Rhees

Meeting Notes

Project Background: Dave Weirens provided some background on the changes in statute that led to this rulemaking effort (PDF of powerpoint attached).

Questions and Discussion

- Why was the original statute set up as “encouragement” to counties to adopt ordinances?
- Was the new legislation part of a policy bill? Were hearings held? [not as far as BWSR staff are aware]
- Need to understand the intent and interpretation of the legislation
- Must counties all adopt soil loss ordinances? A – no, the legislation just provides for a local complaint-driven process.
- Photos can be misleading – erosion is not a one-time event.
- Where do cost-share funds come from? Without cost-share, the statute is ineffective.
- Can any passer-by complain? No, only affected landowners, etc.

Local Background: Tom Gile summarized previous cases: there have been less than half a dozen instances of soil loss complaints since the change in statute. A few were specific to non-agricultural activity (i.e., NPDES). In other cases, the site was determined not to be in exceedance or the landowner agreed to remedy the situation with cost share funds. In the counties with existing ordinances, about one case per year would typically occur. Most landowners are not “bad actors” and want to correct excessive soil loss.

Discussion on enforcement options:

Question on why proceeding under county attorney’s authority is treated as a “criminal” proceeding: A: Since the 1950s, counties and townships have had the authority to treat violations of local ordinances and regulations as misdemeanors under their state enabling laws (§397.37). These provisions also apply to shoreland ordinances, for example.

- Q – can “failure to act” be penalized? For example, if a county chooses not to refer a complaint to BWSR?
- Concern that the statute takes away local government authority.
- BWSR would prefer to have counties exert local control.
- Would a resolution by a county not to enforce the soil loss requirement be needed?

- If counties “opt out” of enforcement, who would be responsible for notifying the landowner of a complaint?
 - AMC would advise counties to opt out.
 - “Local government” includes SWCDs – a county could direct the SWCD to take any action.
 - Don’t local officials need to respond?
 - Yes, but if no local ordinance, they could just direct the complaint to BWSR.
- Request that BWSR share the original revisor’s draft of the proposed legislation.
- If so few complaints have come in to date, why bother with rulemaking? A – an enforcement method is needed as a backup for local action, and the law requires that we outline the process.
- Why did counties not enact ordinances in the past? A – soil erosion became a particular issue in Southeast Minnesota, and the original statute was authored by Rep. Elton Redalen (represented Fillmore and Mower counties; later served as Commissioner of Agriculture under Gov. Arne Carlson). One goal was to avoid lawsuits by prescribing explicit criteria for complaints.

Next meeting to be scheduled in mid- to late April.