

18 December 2024

Les Lemm, Wetlands Section Manager
Minnesota Board of Water and Soil Resources
520 Lafayette Road North
St. Paul, MN 55155

Dear Les,

Thank you for the opportunity to review and comment on the proposed rulemaking regarding the Wetland Conservation Act (MR 8420).

My comments are based on the November 12, 2024 draft version of the Wetland Conservation Act (WCA) rule from <https://bwsr.state.mn.us/sites/default/files/2024-11/WCA%20Rule%20Amendments%2011-12-24%20Preliminary%20Draft.pdf>.



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Citation	Comment	Page
MR 8420	Is there an ability for the Army Corps of Engineers to delegate wetland authority to BWSR (similar to EPA's delegation of Clean Water Act permitting to MPCA) so Minnesota wetland regulation is not tied to the ebb and flow of federal WOTUS definitions?	-
MR 8420	Throughout the rule, Cowardin is removed as a tool for characterizing wetlands and it is replaced by Hydrogeomorphic Method (HGM). Training on the HGM method must be provided by BWSR as soon as possible so wetland professionals are ready to implement the new provisions of rule.	-
8420.0111	Add a definition of "replacement credit."	16
8420.0255	Subp. 4 C: New language specifies the period can be lengthened, but not shortened. Could an LGU stipulate the period for a boundary and type decision be shorter (e.g., 3 years)?	32
8420.0420	The Utilities exemptions (Subd. 6) are essential for public utilities to get work done and places an undue burden on public utilities if the exemptions do not apply to all wetlands (1).	50
8420.0420	The definition of WOTUS is always changing. It is likely fewer wetlands will be eligible for this exemption in the future, which will be problematic for public utilities.	50
8420.0420	The "or" currently at the end of Subp. 6 A (1) (b) is essential and should remain.	50
8420.0420	The language from statute (103G.2241 subd 6 (2)) is missing from the proposed rule. This would place an undue burden on public utilities (e.g., MS4s).	50
8420.0420	The addition of the second sentence of Subp. 6 A (2) is different from statute (103G.2241 Subd. 6 (3)). This would unnecessarily burden public utilities.	50
8420.0522	Support changes related to removing "upland" from buffer designations. I worked on a wetland bank where a buffer comprised of wetland made good sense for the resource. Glad to see credit can be given in such cases.	66
8420.0522	Recommend reaching out specifically to current bank owners, providing resources to educate them about the proposed changes in Subp. 7B and their implications, as well as inviting them to comment on the proposed rule revisions.	66
8420.0526	Recommend adding "or banking credit" (Subp. 1A). Banking credit is defined in 8420.0111, but currently "replacement credit" is not. If they are different, include both where applicable.	76
8420.0526	Under Subp. 2A, is it possible to have a low value wetland adjacent to the high value wetland adjacent to a replacement wetland? If so, "upland" should be removed from the 3 rd sentence.	76
8420.0526	Support the addition of Subp. 2B (1) and (2).	77

8420.0526	Under Subp. 2C, the increase in credit to 50% should be for any buffer areas “restored, established or preserved,” not only restored buffers.	77
8420.0526	Under Subp. 2C (2), remove the word “restored.” This subpart does not apply exclusively to restored wetlands.	77
8420.0526	Under Subp. 4A (1) is confusing. It seems there is something missing after the first comma.	78
8420.0526	Add language to provide an option for areas to be uncultivated due to leaving the area fallow at the request of the TEP to determine if a natural seed bank suitable for wetland restoration exists. (Suggest adding it after “grasses or legumes”)	78
8420.0705	Is BWSR is going to be drafting a bank-specific timeline/deadlines? Or are these the final ones? If they will be drafting separate deadlines through another process, a less specific process should be included here.	89
8420.0705	B (2): The NOA form includes all necessary people. Do they need to be called out in the first sentence?	90
8420.0705	B (2): This specifies a NOA comment period of 60 days. The TEP has 90 days to provide findings. Under this language, if a TEP member waits for the TEP to convene and/or issue findings and finds they dissent, it appears they would lose their opportunity to comment. A TEP member should be able to still comment after the 60 day period if they dissent and would like their comments to be considered in the final decision.	90
8420.0705	B (2): Typically, the TEP needs to convene and issue findings in the same timeframe as the NOA comment period. The issue resolves if the comment period of 60 days (from the 2 nd sentence) is changed to 90 days.	90
8420.0705	B (4): Change to “The applicant and the local government unit may agree in writing to further extend the decision timeline beyond the initial 60-day extension.”	90
8420.0705	B (7): Change to “A notice of decision must be sent within ten days of a decision on the banking plan application , on a form provided by the board.”	90
8420.0705	BWSR is requested to develop and post guidance and examples of the banking timeline process. Include multiple scenarios from actual examples, at least a few of which involved substantive revisions to the banking plan.	91
8420.0800	One use of “certifies” was removed from this part, but several others (e.g, title, Subp. 1, Subp. 3 title, last sentence of Subp. 3) remain. Support the removal of “certification” language. The language should be consistent.	101
8420.0810	It seems the verbiage in Subp. 4 A should be changed from “construction certification” since the verbiage is changed in 8420.0800, Subp. 3.	103
8420.0900	In most cases, proposed the current rule revisions are less prescriptive than what currently exists. This is proposing something more prescriptive. Is it warranted? Or will it unnecessarily restrict the ability to be flexible?	115

Please contact me if you have questions or need additional information.

Thank you,

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