



## TOPICS

**November 2008**

### **Amended Rules Tighten Minnesota Wetland Regulations – More Changes Likely in 2009**

The biggest change in Minnesota Wetland Conservation Act (WCA) Rules since 1996 took effect in August 2007, and there's more to come. Because the rule changes address wetland replacement requirements, they are likely to impact the cost, design, or timeline of many land development projects.

The amendments were prompted by a sense that "No Net Loss" of wetlands was not being achieved. Governor Pawlenty asked for closer alignment with the No Net Loss principle. The "emergency rules" that took effect in August 2007 last for two years. In August 2009, they will be replaced by formal "permanent rules."



#### **Amended Rules Currently in Effect**

The key features of the emergency rules fall into three categories, as outlined below:

##### *Exemptions*

- Wetland exemptions have been revised, but the revisions apply mostly to agricultural land uses rather than land development.
- The wetland fill allowed without replacement has decreased, especially within shorelands.
- The incidental wetland exemption remains intact.

##### *Appeals*

- Fees for filing appeals of WCA decisions have increased.
- Applicants can now appeal local staff decisions to local government boards or councils.
- More wetland fill approvals will likely include conditions that prohibit the start of construction until the 30-day appeal period is over.

##### *Wetland Replacement*

- Off-site wetland replacement location sequencing has become more complex.
- Stormwater ponds are no longer eligible for Public Value Credit (PVC) wetland replacement.
- Buffers adjacent to New Wetland Credit (NWC) are still eligible for PVC.
- Water quality treatment areas (e.g., ponds, rain gardens, infiltration areas) are now eligible for NWC if certain strict criteria are met.
- Most wetland replacement plans now require either 2.25 to 1 or 2.5 to 1 wetland replacement.
- Wetland replacement type classification is based strictly on plant community type.

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## New Permanent Rules Forthcoming in 2009

The Board of Soil and Water Resources has been working with committees on new permanent rules. The state will accept public comments on the proposed rules, probably between December 2008 and March 2009. Additional revisions under consideration for the new rules include:

- A requirement for cash surety or letter of credit for project-specific wetland replacement projects. (Many local governments already require surety, but the state does not mandate it.)
- Big changes in wetland replacement credit allotments, including possible elimination of Public Value Credit and use of a one-credit system.
- Regulation of wetland excavation in Type 1, 2, 6, and 7 wetlands unless the applicant shows that the excavation will improve wetland functions.
- Changing the first-priority wetland replacement location from on-site to within the subwatershed, effectively making nearby wetland banks easier to use.

The winter and spring months will bring more clarification on how your next land development project might be impacted by these changes. Keep in mind that the new rules will affect applications you may intend to file in the near future.



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