

## 2022-2024 Wetland Conservation Act Rulemaking

The Minnesota Board of Water and Soil Resources (BWSR) is responsible for promulgation of the Wetland Conservation Act (WCA) rules (MN Rules Chapter 8420). The current WCA rule was adopted in 2019. The 2022-2024 WCA rulemaking is a continuation of the process initiated on October 9, 2015, when a request for comments was published in the State Register. A new notice was published on January 18, 2022 that serves as the renewal of the rulemaking process. All comments received as a result of the 2015 notice are part of the rulemaking record and will be considered along with comments received in response to the 2022 notice. This document summarizes the agency's plans to update the WCA rules, including the rule development process and an approximate timeline of events.

### Scope

- 1) The primary goal of this rulemaking is to reconcile the rule with most of the statute changes from 2011, 2012, 2015, and 2017.
- 2) Amendments that would improve outcomes relating to wetland replacement may also be considered.
- 3) Other changes identified by staff during the rulemaking process that will improve the efficiency, effectiveness, and/or outcomes of the rule may also be considered.

Note that not all statute changes from 2011-2017 will be addressed in this rulemaking. Some of the statute changes require additional program development work to occur prior to incorporation into rule and will be addressed in a future rulemaking effort. For the current WCA rule and a complete list of 2011-2017 WCA-related statute changes, see the WCA Rulemaking page on the BWSR website at: <https://bwsr.state.mn.us/current-wca-rulemaking>

### Guiding Principles

To the extent possible, proposed rule changes should be consistent with the following guiding principles:

- Consistency with statutory intent and the purpose of WCA
- Simplification and clarification
- Implementable
- Have a tangible result or outcome
- Improve accountability
- Minimize negative impacts to LGU workload
- Limit unintended consequences
- Balance public costs and benefits
- Seek stakeholder support
- Fairness and consistency

## **Process for Rule Development**

Development of the WCA rule amendments will follow a similar process as used for the 2009 WCA rule. The agency will engage stakeholders with varying interests and perspectives, and will provide opportunities for all interested individuals and organizations to obtain information and provide input on the proposed rules throughout the rule development process. All input will be reviewed and considered equally by the agency. Decisions will be made in consideration of statutory requirements, the extent of BWSR's rulemaking authority, and the guiding principles listed above.

### **BWSR Wetlands Staff**

BWSR wetlands staff will develop and propose specific rule requirements, processes, and language to implement rulemaking priorities. Staff will also be responsible for presenting and interacting with the Wetlands Advisory Committee and technical staff, including the consideration and vetting of comments/recommendations and the development of appropriate modifications and responses. BWSR staff will also serve as a source of information regarding implementation of the current rule, including issues raised by landowners, local governments, and others throughout the implementation process.

### **Wetlands Advisory Committee**

The rulemaking process will provide a forum for invited organizations to provide input and advice on proposed rule changes by establishing a Wetlands Advisory Committee. Consistent with guidance from the Minnesota Rulemaking Manual, the role of the Advisory Committee is to advise the agency on the development of the rules; the Committee will not have voting or decision-making authority. The Committee will include representatives from statewide groups and organizations with an interest in the WCA rules, and they will be expected to share information with their partner organizations. Membership will largely follow the organizations invited to participate in the 2022 Clean Water Act Section 404 Assumption report development and other past initiatives consistent with Minn. Stat. § 103B.101, Subd. 16. The Committee will include representation from the following sectors: Agriculture, Environment/Natural Resources, Local Governments, Business and Industry, and Wetland Professionals. State and federal government staff may also be invited to participate and/or assist in presenting specific topics at select Committee meetings, however, the primary mechanism for involving state and federal governments is described below.

### **Implementation and Technical Review**

In 2017, BWSR organized a group of local government staff and wetland consultants who work directly with WCA implementation and compliance to seek their input on rule topics. The results of these discussions will be presented during the Wetlands Advisory Committee meetings. A primary focus of this effort was to vet ideas and recommendations originating from BWSR Wetlands staff and coordination with the U.S. Army Corps of Engineers. BWSR will continue to seek technical advice from local government staff and wetland consultants throughout the rulemaking process.

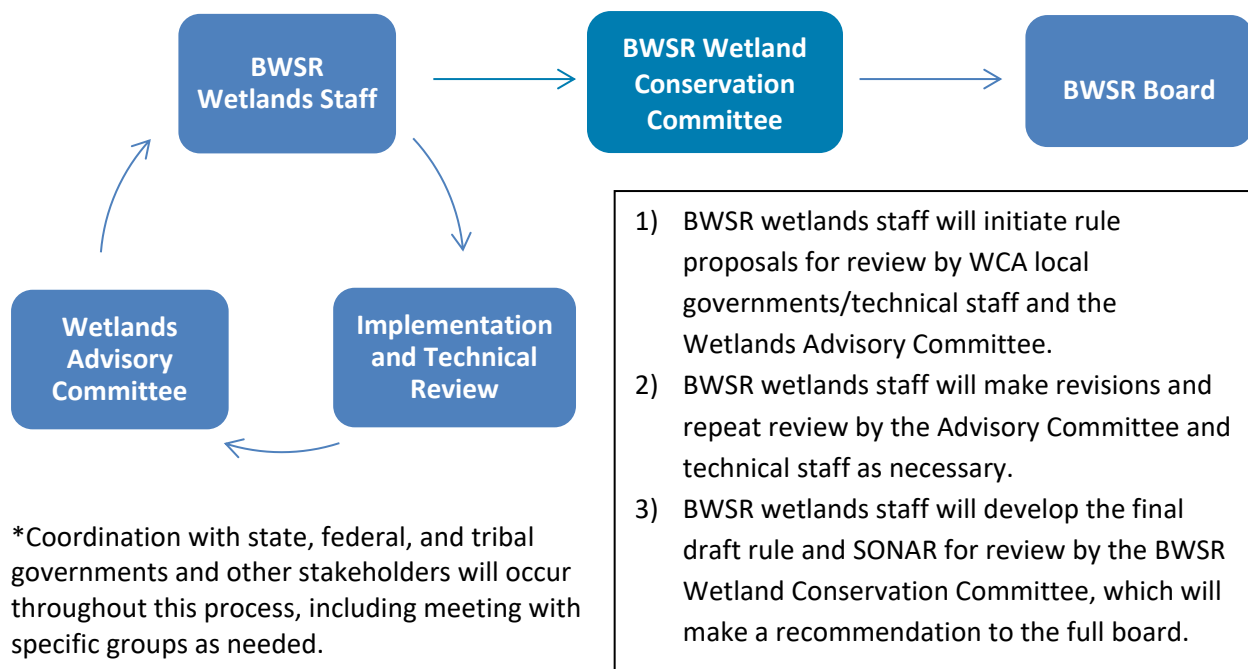
## Other Stakeholders and Governments

Coordination with state, federal, and tribal governments will primarily occur outside of Wetlands Advisory Committee meetings, both through formal meetings and ad hoc discussions. In addition, a larger e-mail list of interested stakeholders will be used to share all relevant rulemaking information and provide direct access to agency staff to ask questions and provide input on the proposed rules. BWSR staff will solicit interested individuals and groups for inclusion on the list through direct e-mail to other contact lists and posting on the agency website. Finally, BWSR staff will be available to meet directly with individuals or groups with interest in the WCA rules or a specific rulemaking topic as needed throughout the rulemaking process.

## BWSR Wetland Conservation Committee

The Wetland Conservation Committee of the BWSR Board will meet periodically to receive updates, review rulemaking information and progress, advise on specific issues, and make a recommendation to the full Board regarding adoption of the final draft rule.

## Summary of Rule Development Process



\*Coordination with state, federal, and tribal governments and other stakeholders will occur throughout this process, including meeting with specific groups as needed.

## Access to Information

Copies of presentations, proposals, and draft rule language will be posted on the BWSR website and interested stakeholders will be directly notified via e-mail when updates occur. BWSR staff will also be available to discuss and answer questions about all rulemaking-related information and proposals.

## General Timeline

Timeframe	Task
2015 - 2021	Program development work and interagency coordination related to rulemaking and statute changes.
Jan.-March 2022	Second official comment period (January 18, 2022 to March 19, 2022).
Summer/Fall 2022	Outreach to stakeholders, WCA Rule Advisory Committee meetings, and interagency coordination. Develop draft rule amendments and SONAR.
Winter 2023	WCA Advisory Committee Meetings to review final draft rule and SONAR.
Winter/Spring 2023	Finalize draft rule and SONAR.
May-June 2023	Seek Board authorization to adopt draft rule & SONAR, and to issue Dual Notice of Intent to Adopt Rules.
Summer 2023	Publish notice and draft rules in the State Register.
Late Summer 2023	Hearings held if 25 or more requests are received.
Fall 2023	<b>If no hearing</b> , schedule Wetland Conservation Committee and Board consideration of final rule and SONAR. Submit Governor's Final Form. <b>If hearing</b> , post hearing comment period, agency response, and report to Administrative Law Judge (ALJ).
Fall 2023	<b>If no hearing</b> , sign Order Adopting Rules (executive director) and submit to OAH. OAH files rules with Secretary of State. Publish Notice of Adoption in St. Register. <b>If hearing</b> , ALJ report completed within 30 days unless extended by Chief ALJ.
Winter 2023/2024	<b>If hearing</b> , BWSR Wetland Committee review and Board authorization to adopt rules. Submit Governor's Final Form.
Winter/Spring 2024	<b>If hearing</b> , sign Order Adopting Rules (executive director) and submit to OAH. OAH files rules with Secretary of State. Publish Notice of Adoption in State Register.

Note: The above timeline is approximate and is not a comprehensive list of rulemaking requirements or related meetings. It can and will be amended to address or accommodate issues and needs identified during the rulemaking process. It does, however, roughly identify a likely timeframe and order of activities as currently expected.