

## 2022-2025 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 2022-2025 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 in response to 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 BWSR's plans to update the WCA rules 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. This rulemaking will be adjusted to accommodate any potential changes to statute that may occur in 2024.
- 2) Amendments that would improve outcomes relating to wetland replacement may also be considered.
- 3) Additional changes identified during the rulemaking process that will improve the efficiency, effectiveness, and/or outcomes of the rule may also be considered.

Not all statute changes from 2011-2017 will be addressed in this rulemaking. Some of the statute changes require additional program development work 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 support from individuals and organizations
- Fairness and consistency

# Process for Rule Development

BWSR will engage individuals and organizations with varying interests and perspectives, and provide opportunities to obtain information and provide input throughout the rule development process. All input will be reviewed and considered equally by BWSR. Decisions will be made in consideration of statutory requirements, the extent of BWSR's rulemaking authority, and the guiding principles listed above.

## Wetlands Advisory Committee

An advisory committee has been formed through which invited organizations may advise on the development of the rules, with such committee having neither voting nor decision-making authority, consistent with the guidance contained in the Minnesota Rulemaking Manual. This Wetlands Advisory 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.

## 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 incorporated into the materials presented at the WCA Rule Advisory Committee meetings. A primary focus of this effort was primarily to (1) vet ideas and recommendations originating from BWSR and (2) coordination with the U.S. Army Corps of Engineers. BWSR will continue to seek technical advice from local government staff and wetland consultants using various methods throughout the rulemaking process.

## Other interested Individuals, Organizations and Governments

BWSR will coordinate and consult with state and federal agencies. In addition, an e-mail list of interested individuals and organizations will be developed and used to share rulemaking information. BWSR will also provide opportunity throughout the rulemaking process, to meet directly with individuals, representatives or organizations with an interest in the WCA rules to obtain information and seek input.

## Tribal Government Consultation

BWSR will invite consultation and cooperate with each of the 11 federally recognized Tribal Nations that share geography with Minnesota in the development of the final draft rule. In addition to the e-mail distribution list used to share rulemaking information, BWSR will communicate and engage each Tribal Nation directly, to share information and allow opportunity for continuous input to be provided for consideration.

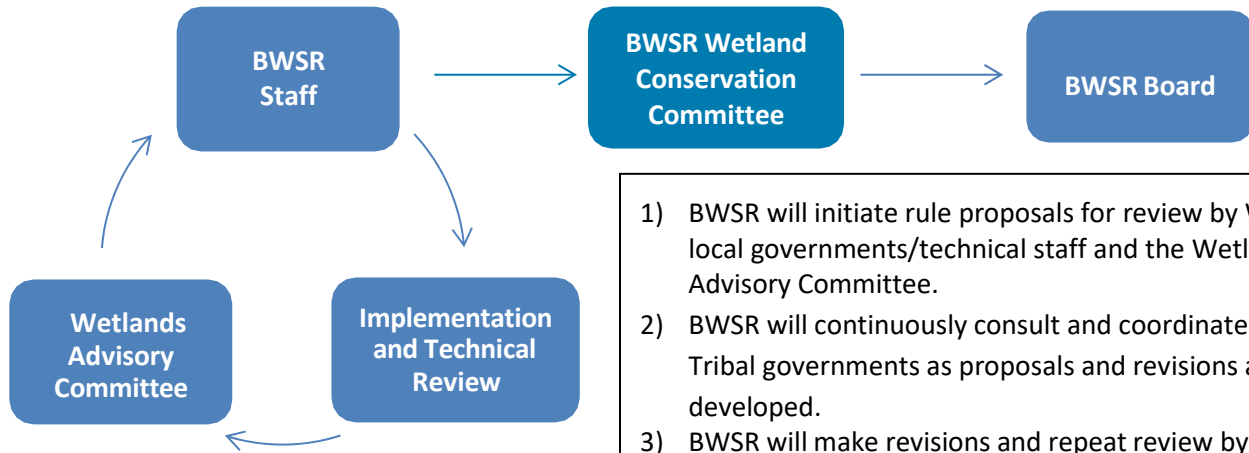
## BWSR Wetland Conservation Committee

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.

## Access to Information

Copies of presentations, proposals, and draft rule language will be posted on the BWSR website and interested individuals and organizations will be directly notified via e-mail when updates occur.

## Summary of Rule Development Process



\*Coordination with governmental agencies and other organizations will occur throughout the process.

- 1) BWSR will initiate rule proposals for review by WCA local governments/technical staff and the Wetlands Advisory Committee.
- 2) BWSR will continuously consult and coordinate with Tribal governments as proposals and revisions are developed.
- 3) BWSR will make revisions and repeat review by the Advisory Committee and technical staff as necessary.
- 4) BWSR will develop the final draft rule and SONAR for review by the BWSR Wetland Conservation Committee, which will make recommendation to the BWSR Board.

## General Timeline

Timeframe	Task
2015 - 2021	Program development work and interagency coordination related to rulemaking.
Jan.-March 2022	Second official comment period (January 18, 2022 to March 19, 2022).
Summer 2022 thru Spring 2024	Outreach to stakeholders, Wetlands Advisory Committee meetings, and interagency coordination. Invite consultation with Tribal Governments. Begin development of draft rule amendments.
April-June 2024	Develop and begin seeking internal input on initial draft of rule amendments.
June 2024	Board authorization and publishing of request for comments in State Register that expands the rulemaking scope to include the 2024 statute changes.
Summer 2024	Identify amendments to implement 2024 WCA statute changes and to address internal and external feedback. Incorporate into draft of the rule and develop draft SONAR.
Summer/Fall 2024	Stakeholder coordination and Wetlands Advisory Committee meetings to review the draft rule and SONAR. Consult and coordinate with Tribal Governments.
Fall 2024	Finalize draft rule and SONAR.
Fall 2024 (est. Dec.)	Seek Board authorization to adopt draft rule & SONAR and to issue Dual Notice of Intent to Adopt Rules.
Fall 2024	Publish notice and draft rules in the State Register. Communicate notice to Tribal Governments.
Winter 2025	Hearings held if 25 or more requests are received.
Winter 2025	<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).
Spring 2025	<b>If no hearing</b> , sign Order Adopting Rules (ex. 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 w/i 30 days unless extended by Chief ALJ.
Spring 2025	<b>If hearing</b> , BWSR Wetland Committee review and Board authorization to adopt rules. Submit Governor's Final Form.
Summer 2025	<b>If hearing</b> , sign Order Adopting Rules (ex. director) and submit to OAH. OAH files rules with Secretary of State. Publish Notice of Adoption in St. 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.

## **Future Rulemaking**

Certain items will be held for consideration in a future rulemaking effort. These items include the possible establishment of in-lieu fee wetland mitigation standards for use by the general public, the restoration and protection of streams and riparian buffers for wetland mitigation credits in the northeast, the identification and use of high priority areas for wetland mitigation, and the wetland bank application approval process. In addition, any of the 2024 statute changes that will necessitate substantial program development work will be held for a future rulemaking.