



Mississippi River Corridor Critical Area (MRCCA) Rulemaking Project Work Group Member Handout

Minnesota Department of Natural Resources (DNR)

March 31, 2010



Overview of Rulemaking Process and Timeline

The rulemaking process is governed by Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400. Specific guidance with respect to the MRCCA is provided in MN Statutes, Section 116G.15 & MN Laws of 2009, Chapter 172, Article 2, Section 5(e). Below is a short summary of the main parts of the process and the timeline for developing and adopting rules:

LGU Notification. As required in 2009 law, the DNR provided 30-day advance notice to local government units (LGUs) within the MRCCA that rulemaking would commence. The LGUs were notified by letter on November 13, 2009. The DNR met with LGUs that administer plans and ordinances within the MRCCA in January and February 2010.

Request for Comments (RFC). The RFC solicits comments on the subject of the rulemaking, is required by statute, and is intended to allow interested parties a chance to provide input. Comments received during this time period are not part of the public hearing record. For this project, the DNR published the RFC in the December 14, 2009 State Register, issued a press release, and mailed it to the MRCCA Rulemaking Project stakeholder mailing list and listserv. The comment period ended March 22, 2010. The DNR will review and consider the comments received.

Proposed Rules. The DNR will begin to write the draft MRCCA rules based on initial comments received and feedback from meetings with LGUs. Work groups, DNR division representatives, and other agencies will provide ongoing input, particularly on proposed districts and standards. The Revisor of Statutes will review the draft rules and edit, as necessary, for form and style.

Statement of Need and Reasonableness (SONAR). The DNR is required to demonstrate that the rules are needed and reasonable. As defined in statute, "Needed" means that the issues cannot be addressed and the purpose of the rules cannot be achieved through other means. "Reasonable" means that a proposed requirement is a reasonable solution to an issue. The justification will be documented in the SONAR. Along with an analysis of each rule requirement, the SONAR also sets out the DNR's statutory authority for the rules, identifies potentially affected parties, and discusses impacts and costs to LGUs and small businesses.

Notice of Intent to Adopt Rules. When the DNR has finished writing the rules, it will publish a Notice of Intent to Adopt Rules in the State Register, along with the proposed rules. The DNR will also mail the Notice and proposed rules to interested persons, certain legislative committees and legislators

as required by law, and other parties identified in the Additional Notice Plan that the DNR is currently developing.

30-Day Comment Period. After the Notice of Intent is published, there is a 30-day comment period, during which interested persons can submit written comments on the proposed rules. Persons can also request a public hearing during this time.

Rules Hearing. If 25 individuals request a hearing, the DNR will be required to hold a hearing on the rules before an Administrative Law Judge (ALJ). Timeframes for comment and rebuttal will be established by the ALJ pursuant to MN Statutes, Chapter 14.

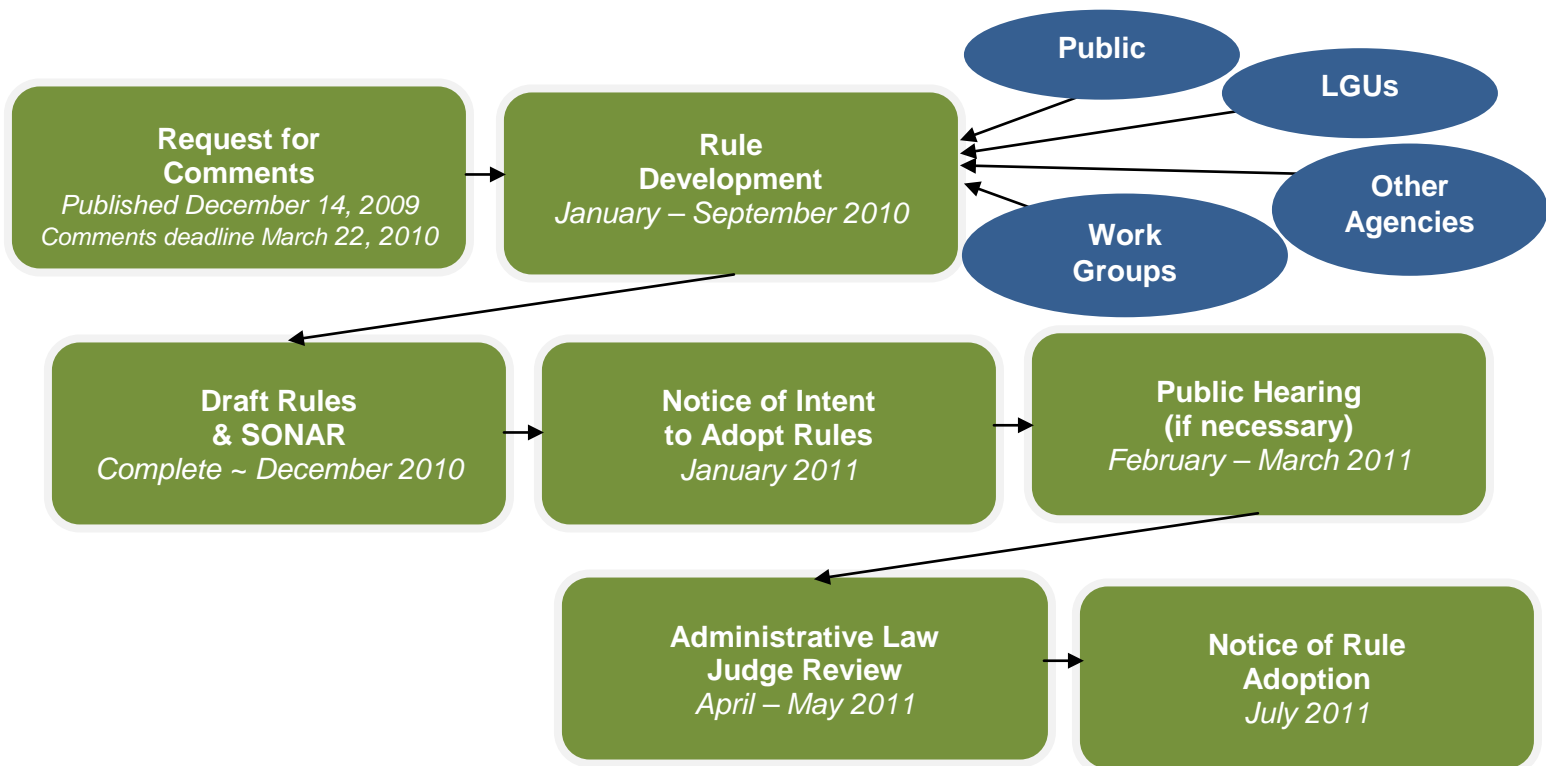
Review by Administrative Law Judge. An ALJ will review the proposed rules and other documents from the rulemaking. The ALJ will assess whether the DNR has statutory authority for the rules, has shown the rules to be needed and reasonable, has given proper notice of the proposed rules, and has complied with all other requirements. The procedures and timeframes vary depending on whether a hearing is held.

Governor Veto. After the rules are adopted, the Governor has 14 days to veto all or severable portions of the rules. If no action is taken, they become effective.

Notice of Adoption. After the Governor's review period, the DNR will publish a Notice of Adoption in the State Register.

Effective Date. The rules become effective as provided in MN Statutes, Chapter 14, which is expected to be within five days of the publication in the State Register.

Timeline. The DNR plans to complete the draft rules around January 2011. The formal part of rulemaking, from publishing the Notice of Intent to Adopt Rules until the date the rules become effective, can range from several months (no hearing) to six months (hearing).



Role of the Work Groups

- **Input, not decision making.** The role of the work group is to provide input to the DNR on the establishment of new districts and the development of standards and criteria for each district. The DNR will look to work group members for feedback and expertise in developing these regulations. The work group does not have voting authority on what will go in the rules. The DNR Commissioner makes the final decisions on the content of the draft rules. However, input from the work groups will inform and influence the rule content. The DNR hopes work group members will represent their own and constituent views fairly, and will actively participate in the process.
- **Identify issues and ideas.** The DNR will look to work group members to identify issues and concerns, and to provide ideas and information to enhance rulemaking.
- **Express your ideas/interests.** Each member was appointed so that at a variety of interests, viewpoints, and geographic perspectives are present. We encourage you to communicate with others within and outside of the work groups, so that a broad base of perspectives is expressed.
- **Reasonable comments and suggestions.** The DNR will carefully consider all comments and suggestions about the rules. Suggestions will be most useful if they are supported in the same manner as the justification the DNR must use to show the need for and reasonableness of proposed rule requirements as provided below.

Regulatory Analysis

Minnesota Statutes, section 14.131, sets out seven factors that an agency must analyze and include in the SONAR when it adopts rules. The DNR may look to work group members as appropriate and as time allows for advice and information as we analyze these factors:

- 1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- 2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- 3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- 4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;
- 5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals;
- 6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals; and
- 7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

Local Government Impact

Minnesota Statutes, section 14.131, requires the agency to evaluate and include in the SONAR the fiscal impacts and benefits of proposed rules on local governments. As part of this, the DNR must consult with the Department of Minnesota Management and Budget (MMB). The DNR is also working directly with each of the 30 local governments within the MRCCA to obtain this information, but may look to work group members for additional information.

Cost to Small Businesses and Small Cities

Minnesota Statutes, section 14.127, requires the agency to determine whether, in order to comply with proposed rules during the first year after they become effective, any small business or small city would have to spend over \$25,000. A small business is defined as a business (either for profit or nonprofit) with less than 50 full-time employees. A small city is defined as a city with less than ten full-time employees. The DNR will look to work group members for feedback about the cost of compliance for small businesses and cities.

Performance-Based Rules

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards “that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.” The DNR will look to work group members for advice and information on how we can achieve this. Specifically:

- Are there any special situations that we should consider in developing the rules?
- Are there any ways to reduce the burdens of the rules?
- Any other insights on how to improve the rules?

Additional Notice

When the DNR publishes the proposed rules and the Notice of Intent to Adopt Rules, we also must “provide additional notification to persons or classes of persons who might be affected by the proposed rule.” The DNR will look for assistance from work group members in identifying all interested persons to let them know about and provide input on the rules. This includes both likely supporters and opponents of the rules.

Questions? Contact:

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