

Mowing & Haying in the State Right of Way Stakeholder Group

Arden Hill Training Center

1900 County Road I West, Shoreview, MN

October 18, 2017 from 9:00 a.m. to 1:30 p.m.

Stakeholder attendees: Cole Rupprecht, Erin Rupp, Wayne Sandberg, Dan Macswain, Emily Murray, Eran Sandquist, Joe Pignato, Cori Calhoun, Nancy Daubenberger, Don Arnosti, Craig McDonnel, Captain Casey Maegher, Dan Whitney, Annalee Garlets, Thom Petersen

Participating by phone:

Angie Forseth – MnDOT Chief Counsel's office

MnDOT District 8 – John Huseby

Welcome, approval of meeting notes and other housekeeping

Charlie Petersen welcomed attendees to the meeting.

Approval of meeting notes

The group approved the meeting notes from the previous meeting, with the addition of the priority areas chart being included as an appendix. The group agreed to put a draft version of meeting notes on website prior to meeting approval.

Stakeholder information on project website

The group discussed how to identify the stakeholder group on the website. Stakeholders agreed to have their name, the name of the group they represent, and email address publically posted.

Letter from MnDOT regarding Executive Order 16-07

At the last meeting, there was a request to spell out in writing the connections between this work and Gov. Executive Order 16-07. Nancy shared a letter drafted by MnDOT discussing how this group intersects with several others. Erin Rupp shared about the EO16-07 Governor's Citizen Committee on Pollinator Health (GCCPH). They work to protect pollinators along roadsides, using an interagency team and a citizen team. Citizen team is charged with coming up with recommendations to the Governor and feedback for interagency team. Erin highlighted that the Mow/Hay group's charge is separate from the GCCPH. Erin and Dan have provided updates on Mowing and Haying group with the Governor's committee. Recommendations that come out of the mow/hay group need to be in line with the executive order.

The group discussed the MnDOT letter and ultimately determined no changes were needed. MnDOT staff clarified for the stakeholders that when MnDOT makes any kind of change/recommendation to the commissioner, they have to take into consideration all laws/rules/executive orders if there's a potential impact. That's why we have lots of folks from MnDOT attending the stakeholder meeting. It is crucial that whatever the stakeholder group comes up with complies with all relevant legal requirements.

Requests for presentations/information

A stakeholder submitted a list of questions, including requests for information from over ten pollinator groups. There is a need to balance the presentations to the stakeholder group with the limited timeline and need for a product from the stakeholder group by February 1st, 2018.

Members of the group were asked to write on post it notes:

- 2-3 things that other members of stakeholder group need to know?
- 2-3 things that you want information on?

Sarah Small and Charlie Petersen from Minnesota Management & Budget gathered the ideas from stakeholders and found the following key areas of interest:

The stakeholder group was asked to review the ideas and areas of interest to the group. The group affirmed their support for Sarah Small and Charlie Petersen as neutral parties to help guide the process of selecting presenters and information to share with the group based on this exercise.

Identifying other state's efforts

Nancy provided a printed handout (excel spreadsheet) about permitting in other states. Nancy also compiled a document summarizing policies and guidance on mowing and haying from other states. Nancy highlighted that Iowa said they've been across the board with various mowing practices – now they do a minimal amount of mowing from a resource standpoint. Missouri mows a 30 foot strip 3 times per year. Ohio leaves it up to the districts with guidance for different roadside zones, such as shoulder, safety recovery zone, and transition zone. South Dakota doesn't require a permit on non-interstate highway, and has different mowing dates based on where you are in the state.

Nancy is happy to follow up with specific states if the group has questions.

There was a discussion of MnDOT's' mowing practices, including sharing that MnDOT mows brush at an early stage of life before it requires costly timber cutters. In District 6, Wild Parsnip is taking over. Need to mow every 3-4 years before July 1st to catch it early. It is a concern for farmers, as wild parsnip will choke out some of the positive vegetation. Late season mowing is

about snow control – if snow makes it to the in-slope, MnDOT wants it to blow across the roadway, and they remove vegetation in the in slope for that reason.

Questions and answers

Question: A stakeholder called Dakotas to see what they do – how does enforcement work? What is the recourse? Seems to be a root of the issue in MN.

Question: Mowing can both control and spread noxious weeds –did we hear anything from other states about how private parties are helping to prevent/be aware of the spread of noxious weeds?

Answer: No, did not see anything on that. Tina from MnDOT shared that the Minnesota Department of Agriculture’s noxious weed law says individuals need a permit prior to transporting. May be a recommendation this group could make to MDA, as the enforcement of moving of weeds falls on MDA.

Question: How can we use this process to help prevent spread of noxious weeds? Do we educate private mower/hayers about noxious weeds?

Answer: This is a great lead in to the permitting practices. Item number nine on the back of the Mowing and Haying Permit discusses the need to clean mowing equipment to prevent the spread of noxious weeds.

Overview of the current permit process

Joe Pignato gave a presentation on the current permitting process. He noted that they use an environmental map to determine if there’s an environmental concern regarding the area of the requested permit.

Question: How does it work when people are mowing beyond what’s adjacent to their own land.

Answer: Before the end of February, individuals can only apply for permits to mow the right of way adjacent to their land. After March 1st, individuals can apply for permits beyond what is adjacent to their own land.

Question: Do applicants have more information beyond what’s available in the paragraph regarding protection of plantings, native vegetation, etc.?

Answer: Expect that folks would call with questions on this topic.

Deposit depends on district. If MnDOT has to fix whatever damage was done by the permit holder, they will keep the deposit or a portion of it. If the damage is more than the deposit, MnDOT can bill/go after the remaining amount if needed.

Question: Is this the process before or after the change?

Answer: No big change has occurred in the permit process, just small changes, this is the process we had last year. We only give permits to mow/hay during the month of August.

Question: A stakeholder noted they've observed wet conditions when MnDOT and others are mowing, leading to things like skidding tractors. That results in opening the ground to allow noxious weeds to come in. Where in the permit do you talk about the need to leave the ground unscarred?

Answer: Hold on this question. We're discussing lay of the land now. What's happening now – see "standard conditions of permit" basic requirements #2. Districts can add in additional provisions.

Question: How are machines being cleaned? Seems difficult.

Answer: Often the cleaning is minimal on adjacent properties. Ask that people do the best they can. MnDOT will do spot checks, MnDOT is not an enforcement agency.

Question: A stakeholder commented that anyone can mow and hay. After March 1st – you may get permit applications from commercial operators. Highlighting that the system is permissive and allows non-adjacent landowners to do it with possible quality concerns.

Answer: if permittees don't mow/hay correctly, MnDOT won't issue another permit in future years to that individual. We rely on a lot of self-monitoring.

Question: How many commercial ditch haying operations are there? How many out of state?

Answer: Unsure of the number. Bales need to be for permittees own purpose, not to sell for profit. When there are droughts in other states, we get out of state requests. We don't track out of state requests, but it does happen.

Comment: This year, hay prices are low – it's not a moneymaker right now.

Comment: It was noted that MnDOT conducts a determination of authority related to permits, as in some easement purchases that are older, landowners maintain the right to vegetation. In newer ones, this isn't the case, MnDOT owns vegetation.

Question:

How much time is being spent on this by MnDOT staff? (Including Tina's review) Do staff have to drive out to inspect an area prior to giving a permit? This year, we had an increase in the number of permits issued – how'd that go in terms of staffing?

Answer: Tina's group has two weeks to review a permit. Permit people have access to the environmental map, send to Tina's team if a concern. Will be four people in the future to review permits for environmental concerns. MnDOT does not drive out to review sites – they rely on the environmental polygon map, plus google earth street view. MnDOT has a video log with pictures of road/roadside annually, which is another tool that's used to assess. There might only be 500 feet out of 2 miles that need a closer look. MnDOT might ask farmer not to mow that 500 feet so they can re-assess when flowers are out. This year Tina reviewed all

mowing permits that fell in green polygons. Districts would send to Tina and she got about 45 permits to review, and only a handful were denied based on her review.

Question: Number 5 under safety – MnDOT can restrict mowing/haying due to safety concerns. What's an example of this and when would it happen?

Answer: MnDOT doesn't always know months in advance where/when exactly construction or other projects will begin. If it turns out there's a project, mowing/haying may not be allowed to occur. Another example is that we don't want to have people mowing during Labor Day weekend traffic.

Question: How do you communicate to farmers with an increase in permits? Example: Farmer was mad because he got a permit, and MnDOT mowed it before the farmer could. Is there a communication between MnDOT and farmer in this case?

Answer: MnDOT will do a safety and noxious weeds cut/mow as needed. Some areas can't wait until August.

Question:

Is there information given to a farmer about the safety cut for MnDOT?

Answer: Typically MnDOT runs through that information with permittees when they apply. State statute allows top cuts for safety.

Question: A stakeholder inquired regarding enforcement of Right of Way mowing/haying. Is someone policing this? Is anyone looking at the statute and enforcing this?

Answer: This year there was a moratorium on enforcement and permitting from legislature. MnDOT has Roadway Regulation Supervisors who are supposed to ensure things are mowed correctly on the right of way. When the Roadway Regulation Supervisors see illegal activity they try to verbally hand them the regulation and let them know they can't do that. They can't be out patrolling 24/7. Because of State Statute 160.2715, the Roadway Regulation Supervisors have to contact MN State Patrol to come witness illegal cutting of hay and catch them in the act. Odds are low that people will be caught. MnDOT does not have the authority write a fine or ticket.

Question: Polygon map indicates where people shouldn't mow. What about signs on the ground indicating where mowing is not permitted so citizens who see illegal mowing can call it in? (Example: Scenic byways/native planting signs.) Is there a consistent policy about whether what's in the polygon is available to the travelling public?

Answer: There is a need to be careful because some of the wildflowers are sensitive, and MnDOT would not want to advertise their location. Any current signage is from the 1980s/1990s. MnDOT stopped putting up wildflower route signs because they got stolen. There's a high cost to put in/take out signposts. Additionally, having too many signs on the road way can lack effectiveness.

Review and discussion of permit process

The stakeholder group reviewed the scope and interests documents, which were used as the boundaries for the permit process conversation. The group walked through the steps of the permitting process, and identified key areas for discussion in the future. This conversation focused on gaining a shared understanding of the current reality of the permitting process.

Charlie used posters of the permitting process documents, and walked the group through identifying potential areas for further discussion using the following codes:

Green – MnDOT

Purple – Rule

Red – Statute

Brown – Other

Please see the appendixes for a description of areas identified for further discussion.

Key items from the conversation not captured in the documents included:

Counties expressed concern over deposits and asked the group to try to avoid deposits whenever possible. Instead of deposits, if individuals don't follow the rules or mow/hay appropriately, MnDOT shouldn't issue a permit the following year. Support from county representatives in the group to not require a deposit.

Question: After March 1st, can people apply to for a permit to NOT mow the ROW? Could adjacent landowners accept responsibility to control noxious weeds but not mow beyond that?

Answer: For the easements MnDOT has, permits are issued to perform work. MnDOT does not issue a permit to do nothing in our right of way. The Highway Sponsorship Program will be an option for those who want to maintain/foster habitat in ROW. MnDOT can enter an agreement with a private property owner to do this as per new legislation passed in the 2017 session, Statute 160.801.

Question: Does highway sponsorship take priority over MH permit?

Answer: If a formal Sponsorship agreement is in place, we would not issue a permit to mow and hay in that specific location. However, if an individual would seek a sponsorship agreement for an area that has been historically mowed for purposes of haying, that is not a likely location for MnDOT to go into a sponsorship agreement. We might ask the requestor to consider another location.

Question: The people who mow lawn in front of home are different than a person who is mowing hay. Is there a possible exclusion for these homeowners/churches/businesses? (Mowing vs haying)

Answer: Hope to address this with this group, and have a discussion about a potentially different type of permit.

The group discussed how August 1-31 dates came to be. It correlates to dates for each region identified in the Farm Bill to allow for a nesting period for grassland birds. The dates vary by

state/region. These dates have been in Minnesota Statute since approximately 1985 by a unanimous vote to protect and enhance roadside habitat.

Question: Why is there a deadline of 8/31? Why not into September?

Answers/Discussion:

- Allows residual cover to grow up for nesting season.
- Little regrowth opportunity when you mow in August.
- Earlier mowing allows more regrowth and fall flowers for pollinators/honeybees, milkweed regrowth for monarchs.
- A few members voiced support for proposing a change to state statute that would move the start date to 7/15 vs 8/1.
- We're barely dipping our toe into – different species have different needs for habitat. What if we did every other year mowing? One side of the road each year.

The group brainstormed ideas related to mowing alternate sides of the road each year. They also wondered whether the back slope/clear zone area could be mowed earlier and then the rest later, and whether the ditch is a more valuable piece of habitat in some areas of the state.

Question: For folks doing the mowing, what does the august date mean?

Answer: Quality of forage –hay is lower quality for animals later in the Summer/Fall.

Question: If we moved the date forward two weeks, would that help/hinder with noxious weeds?

Answer: It is weed specific.

Question: If we moved the date forward would it help with quality of feed?

Answer: Yes.

The group discussed that Iowa allows individuals to take a 15 foot cut at any point for safety at any time. Farmer's equipment is 16 feet wide.

Question: If there were no dates, what are the perfect dates to cut?

Answer: First cut early June before it goes to seed. One more end of July/early August. (Varies across the state – Southern MN may get 3 cuts.)

Question: If we were to divide the state into regions – South can pull 3 cuts, North can pull 2- where's the line?

Answer: It comes down to the weather that year. This year, it was opposite – North harvested first, then South this year.