

MIDDLE-SNAKE-TAMARAC RIVERS WATERSHED DISTRICT BUFFER ENFORCEMENT RULE
PURSUANT TO STATUTES SECTION 103F.48

Statutory authorization. This buffer enforcement rule is adopted pursuant to the authorization and policies contained in Minn. Stat. §103F.48, the Buffer Law, Minn. Stat. §103B.101, subdivision 12a, authority to issue penalty orders, and the Watershed District enabling legislation in Minn. Stat. chapter 103D.

1.0 Policy

It is the policy of the Board of Managers to:

- (a) Provide for riparian vegetated buffers and water quality practices to achieve the following purposes:
 - (1) Protect state water resources from erosion and runoff pollution;
 - (2) Stabilize soils, shores and banks; and
 - (3) Protect or provide riparian corridors.
- (b) Coordinate closely with the District's landowners, soil and water conservation districts and counties, and utilize local knowledge and data, to achieve the stated purposes in a collaborative, effective and cost- efficient manner.
- (c) Integrate District authorities under Minn. Stat. §§103D.341 and 103F.48 to provide for clear procedures to achieve the purposes of the rule.

2.0 Definitions

BWSR or board: Minnesota Board of Water and Soil Resources.

Buffer: An area consisting of perennial vegetation, excluding invasive plants and noxious weeds.

Buffer law: Minnesota Statutes §103F.48, as amended.

Commissioner: Commissioner of the Minnesota Department of Natural Resources.

Cultivation farming: Practices that disturb vegetation roots and soil structure, or involve vegetation cutting or harvesting that impairs the viability of perennial vegetation.

Drainage authority: The public body having jurisdiction over a drainage system under Minnesota Statutes chapter 103E.

MSTRWD or District: The Middle-Snake-Tamarac Rivers Watershed District.

Notice: Any notice or other communication to be provided herein shall be directed to the Landowner whose name and address appears on the County Property Taxes Records and listed as the taxpayer. Notice on said Landowner shall be considered sufficient notice to all those who may be considered a Landowner as defined in Section 2.1.7 of the BWSR's Model County Buffer Ordinance publication dated August 23, 2017.

NRCS: U.S. Department of Agriculture, Natural Resource Conservation Service.

Operator: A party other than a landowner that directly or indirectly controls the condition of riparian land subject to a buffer under the rule.

Person: Individual or entity.

Public drainage system: has the meaning given to "drainage system" in Minn. Stat. §103E.005, subd. 12.

Public water: As defined at Minnesota Statutes §103G.005, subdivision 15, and included within the public waters inventory as provided in Minnesota Statutes §103G.201.

Riparian protection: A water quality outcome for the adjacent waterbody equivalent to that which would be provided by the otherwise mandated buffer, from a facility or practice owned or operated by a municipal separate storm sewer system (MS4) permittee or subject to a maintenance commitment in favor of that permittee at least as stringent as that required by the MS4 general permit in effect.

Shoreland standards: Local shoreland standards as approved by the Commissioner or, absent such standards, the shoreland model standards and criteria adopted pursuant to Minnesota Statutes §103F.211.

Structure: An above-ground building or other improvement that has substantial features other than a surface.

SWCD: Soil and Water Conservation District.

Validation of Compliance: means a notice issued by SWCD that validates that a site is compliant and that the validation is good as long as all practices identified/documented continue to be in place and substantially in the condition identified at the time of issuance.

3.0 Data sharing/management

- 3.1 The District may enter into arrangements with an SWCD, a county, the BWSR and other parties with respect to the creation and maintenance of, and access to, data concerning buffers and alternative practices under this rule.
- 3.2 The District will manage all such data in accordance with the Minnesota Data Practices Act and any other applicable laws.

4.0 Vegetated Buffer Requirement

- 4.1 Except as subsection 4.3 or 4.4 may apply, a landowner must maintain a buffer on land that is adjacent to a waterbody identified and mapped on the buffer protection map established and maintained by the Commissioner pursuant to the buffer law.
 - 4.1.1 For a public water, the buffer must extend landward to the further of:
 - (a) a 50-foot average width and 30-foot minimum width; or
 - (b) the setback standard for the shore impact zone as identified in County shoreland ordinance and the state shoreland standards and criteria adopted by the Commissioner under Minnesota Statutes §103F.211.
 - 4.1.2 For public drainage systems established under chapter 103E, a 16.5-foot minimum width continuous buffer as provided in section 103E.021, subdivision 1. The buffer vegetation shall not impede future maintenance of the ditch.
 - 4.1.3 The buffer is measured from the top or crown of bank. Where there is no defined bank, measurement must be from the edge of the normal water level. Normal water level will be determined in accordance with BWSR guidance. For a public drainage system, the top or crown of bank will be determined in the same manner as for measuring the perennially vegetated strip under Minnesota Statutes §103E.021.
 - 4.1.4 A buffer may not be used for cultivation farming, but may be grazed, mowed, hayed or otherwise harvested, provided permanent growth of perennial vegetation is maintained.
- 4.2 The requirement of subsection 4.1

Applies to all public drainage ditches within the District's boundary for which it is the drainage authority; all public drainage ditches and public waters within the District's boundary that are not under the jurisdiction of County enforcement; and all public drainage ditches and public waters for which enforcement has been delegated to the District by a County.

- 4.3 The requirement of section 4.1 does not apply to land that is exempted from the water resources riparian protection requirements under Minn. Stat. §103F.48, subd. 5.
- 4.4 An owner of land that is used for cultivation farming may demonstrate compliance with subsection 4.1 by establishing and maintaining an alternative riparian water quality practice(s), or combination of structural, vegetative, and management practice(s) which provide water quality protection comparable to the water quality protection provided by a required buffer as defined in sections 4.1. The adequacy of any alternative practice allowed under this section shall be evaluated and approved by the SWCD based on: the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG); common alternative practices adopted and published by BWSR; practices based on local conditions approved by the SWCD that are consistent with the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG); or other practices adopted by BWSR.
- 4.4.1 An alternative practice may be approved by means of a validation of compliance issued by the SWCD. The approval must find that the proposed practice provides water quality protection comparable to the buffer protection of subsection 4.1.
- 4.4.2 A landowner may not rely on an alternative practice for compliance with subsection 4.1 unless the landowner holds an SWCD-issued validation of compliance for the alternative practice and the landowner has implemented the practice and is maintaining it as the validation stipulates.
- 4.5 A landowner or authorized agent or operator of a landowner may, or for the purpose of paragraph 4.4.2 must, submit an application for a validation of compliance to the SWCD pursuant to administrative procedures prescribed by the SWCD. The application may request: (a) a finding that a buffer satisfies subsection 4.1; (b) a determination as to the applicability of an exemption listed in subsection 4.3; or (c) approval of an alternative practice pursuant to subsection 4.4. An SWCD validation of compliance will be conclusive for the purpose of subsection 7.2. In making a finding of compliance with this rule for the purpose of subsection 7.1, the District will give substantial weight to an SWCD validation of compliance. Any District compliance determination contrary to the SWCD validation will rest on specific findings justifying the contrary determination.

5.0 Drainage System Acquisition and Compensation for Buffer

Nothing in this rule shall prevent the acquisition and compensation of grass buffers on public drainage systems pursuant to Minnesota Statutes chapter 103E.

6.0 Action for Noncompliance

- 6.1 When the SWCD observes potential noncompliance or receives a third party complaint from a private individual or entity, or from another public agency, it will consult with the District to determine the appropriate course of action to confirm compliance status. This may include communication with the landowner or his/her agents or operators, communication with the shoreland management authority, inspection or other appropriate steps necessary to verify the compliance status of the parcel. On the basis of this coordination, the SWCD may issue a notification of noncompliance to the District. If the SWCD does not transmit such a notification, the District will not pursue a compliance or enforcement action under Minnesota Statutes §103F.48 and paragraph 7.2, but may pursue such an action under the authority of Minnesota Statutes §103D.341 and paragraph 7.1. If the SWCD does issue such a notification, the SWCD must include, for consideration by the District, a list of corrective actions needed to come into compliance with the requirements of Minn. Stat. §103F.48; a recommended timeline for completing the corrective actions; and a standard by which the SWCD will judge compliance with the requirements of Minn. Stat. §103F.48 after the corrective actions are taken. The notification must also include identification of the landowner of record and any operator that, in its judgment, is a responsible party, along with identification of the parcel of record to which it pertains and the portion of that tract that is alleged to be noncompliant.
- 6.2 On receipt of an SWCD notification of noncompliance, or if acting solely under authority of Minnesota Statutes §103D.341, the District will issue a corrective action list and practical schedule for compliance to the landowner. The District may inspect the property and will consult with the SWCD, review available information and exercise its technical judgment to determine appropriate and sufficient corrective action and a practical schedule for such action. The District will maintain a record establishing the basis for the corrective action that it requires.
- 6.2.1 The District will issue the corrective action list and schedule to the landowner of record and to any operator that, in its judgment, is a responsible party. The landowner and any other named responsible party each may be the independent subject of enforcement liabilities under subsections 7.1 and 7.2. The District may deliver or transmit the list and schedule by any means reasonably determined to reach the responsible party or parties, and will document receipt. However, a failure to document receipt will not preclude the District from demonstrating receipt or knowledge in an enforcement proceeding under section 7.0.
- 6.2.2 The corrective action list and schedule will identify the parcel of record to which it pertains and the portion of that parcel that is alleged to be noncompliant. It will describe corrective actions to be taken, a schedule of intermediate or final dates for correction, a compliance standard against which it will judge the corrective action, and a statement that failure to respond to this list and schedule will result in an enforcement action. The District will provide a copy of the list and schedule to the BWSR.

- 6.2.3 At any time, a landowner may supply information to identify an additional responsible party, and any named responsible party may supply information as evidence that it is not responsible. In addition, at any time a responsible party may supply information in support of a request to modify a corrective action or the schedule for its performance. On the basis of any such submittal or at its own discretion, the District may modify the corrective action list or schedule, and deliver or transmit the modified list and schedule in accordance with paragraph 6.3.1, or may advise the responsible party or parties in writing that it is not pursuing further compliance action.
- 6.2.4 The corrective action list and schedule for compliance may be modified in accordance with subsection 6.2, to extend the compliance timeline for a modification that imposes a substantial new action or significantly accelerates the completion date for an action.
- 6.2.5 At any time after the District has issued the list and schedule, a landowner, or authorized or operator of a landowner, may request that the SWCD issue a validation of compliance with respect to property for which the list and schedule has been issued. On District receipt of the validation: (a) the list and schedule will be deemed withdrawn for the purpose of subsection 7.2, and the subject property will not be subject to enforcement under that subsection; and (b) the subject property will not be subject to enforcement under subsection 7.1 unless the District makes a contrary compliance determination under subsection 4.5.
- 6.2.6 A corrective action list and schedule is not considered a final decision subject to appeal. A responsible party objecting to a finding of noncompliance may apply for a validation of compliance under subsection 4.5. An objection to a finding of noncompliance, or to any specified corrective action or its schedule, is reserved to the responsible party and may be addressed in an enforcement proceeding under section 7.0.

7.0 Enforcement

- 7.1 Under authority of Minnesota Statutes §§103D.545 and 103D.551, the District may seek remedies for noncompliance with section 4.0 against any responsible party including but not limited to: (a) administrative compliance order; (b) administrative order requiring reimbursement of District compliance costs under Minnesota Statutes §103D.345 and/or an escrow for same; (c) district court remedy including injunction, restoration or abatement order, authorization for District entry and/or order for cost recovery; and (d) referral to county attorney for criminal misdemeanor prosecution.
- 7.2 The District may issue an administrative order imposing a monetary penalty against a landowner for noncompliance with the corrective action list and schedule, as provided

under paragraphs 7.2.1 and 7.2.2. The penalty will continue to accrue until the noncompliance is corrected as provided in the corrective action list and schedule.

7.2.1 The penalty for a landowner on a single parcel that previously has not received a corrective action list and schedule for compliance shall be:

- (a) \$0 for 11 months after issuance of the corrective action list and schedule or during the schedule issued for taking correction actions, whichever is greater;
- (b) \$50 per parcel per month for the first six (6) months (180 days) following the time period in (a); and
- (c) \$200 per parcel per month after six (6) months (180 days) following the time period in (b).

7.2.2 The penalty for a landowner on a single parcel that previously has received a corrective action list and schedule for compliance shall be:

- (a) \$50 per parcel per day for 180 days after issuance of the subsequent corrective action list and schedule; and
- (b) \$200 per parcel per day for after 180 days following the time period in (a).

7.3 The administrative order will state:

- i. The facts constituting a violation of the buffer requirements;
- ii. The statute and/or rule that has been violated;
- iii. Prior efforts to work with the landowner to resolve the violation;
- iv. For an administrative penalty order, the amount of the penalty to be imposed, the facts supporting the amount of the penalty, the date the penalty will begin to accrue, and the date when payment of the penalty is due; and
- v. The right of the responsible party to appeal the order.

A copy of the APO must be sent to the SWCD and BWSR.

7.4 An administrative order under subsection 7.1 or 7.2 will be issued after a compliance hearing before the District Board of Managers. The landowner and any other responsible parties will receive written notice at least two weeks in advance of the hearing with a statement of the facts alleged to constitute noncompliance and a copy or link to the written record on which District staff intends to rely, which may be supplemented at the hearing. A responsible party may be represented by counsel, may present and question witnesses, and may present evidence and testimony to the Board of Managers. The District will make a verbatim record of the hearing.

- 7.5 After a hearing noticed and held for consideration of an administrative penalty or other administrative order, the Board of Managers may issue findings and an order imposing any authorized remedy or remedies.
- 7.5.1 The amount of an administrative penalty will be based on considerations including the extent, gravity and willfulness of the noncompliance; its economic benefit to the responsible party; the extent of the responsible party's diligence in addressing it; any noncompliance history; the public costs incurred to address the noncompliance; and other factors as justice may require.
- 7.5.1 The Board of Managers findings and order will be delivered or transmitted to the landowner and other responsible parties. An administrative penalty order may be appealed to the BWSR in accordance with Minnesota Statutes §103F.48, subdivision 9, and will become final as provided therein. Other appellate relief may be sought pursuant to Minnesota Statutes §§103D.537 and .539. The District may enforce the order in accordance with Minnesota Statutes §116.072, subdivision 9, or otherwise as provided in Minnesota Statutes chapter 103D.
- 7.5.2 The Board of Managers may forgive an administrative penalty, or any part thereof, on the basis of diligent correction of noncompliance following issuance of the findings and order and such other factors as the Board finds relevant.
- 7.6 Absent a timely appeal pursuant to paragraph 7.5.2, an administrative penalty is due and payable to the District as specified in the administrative penalty order.
- 7.7 A landowner agent or operator may not remove or willfully degrade, wholly or partially, a riparian buffer or alternative practice, unless the agent or operator has obtained a signed statement from the landowner stating that written permission for the work has been granted by the District or that the buffer or alternative practice is not required as indicated in a validation of compliance issued by the SWCD. A prohibited action under this paragraph is a separate violation of this rule that is subject to remedies under both subsections 7.1 and 7.2.
- 7.8 Nothing within this rule diminishes or otherwise alters the District's authority under Minnesota Statutes, chapter 103E with respect to any public drainage system for which it is the drainage authority, or any buffer strip that is an element of that system, or under Minnesota Statutes chapter 103D regarding remedies for violations of District rules.

8.0 Effect of Rule

- 8.1 If any section, provision or portion of this rule is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the rule is not affected thereby.