

COMMENTS TO RULES

MN BOARD OF WATER & SOIL RESOURCES	
Agency Comments	Comments
<p>Section 3. Definitions, Shoreland: It might be appropriate to refer to <u>Minn. Stat.</u> § 103F and/or Minn. Rules Chapter 6120 for further clarification on the extent of the shoreland district.</p>	<p>BWSR Comment suggests reference to Statutes 103F.205 and/or Rules 6120.2500. The language in our rule is verbatim from 6120.</p>
<p>Section 3. Definitions, Wetland: Again, it might be appropriate to refer to <u>Minn. Stat.</u> § 103G and/or Minn. Rule Chapter 8420 for further clarification of wetlands.</p>	<p>BWSR comments regarding reference to statutes 103G.005 or rules 8420.0111. The rule definition follows the language contained in 103G.005, subd. 19 and rules 8420.0111, subp. 72. Direct reference to those provisions would be inappropriate since the rule definition is intended to include public waters wetlands and wetland conservation act wetlands. The references suggested only apply to wetland conservation act wetlands. The definition included is consistent with accepted technical definitions of wetlands found in state and federal rules and statutes.</p>
<p>Section 3. Definitions: The district may also want to consider including definitions for floodplain, floodway, and flood fringe.</p>	<p>BWSR suggests inclusion of definitions of floodplain, floodway and flood fringe. Since none of the rules or regulated activities are based on proximity to the floodplain, we do not see a need to include these additional definitions.</p>
<p>Section 5. Permit Requirements, Subd. 5., Deadlines for Action, c. and d.: <u>Minn. Stat.</u> § 15.99 requires that written notices for extension of time to an application include reasons for the extension and anticipated length of the extension.</p>	<p>BWSR comments regarding the specific requirements of statutes section 15.99 (ie. 15.99(f) requires reasons for extensions and anticipated length of extension to be included in notice). This section of the rules is not intended to be a guide to statute 15.99. Rather, it is intended to be a general articulation of the deadlines of action and the manner in which the District will consider permit applications in relation to the requirements of 15.99. No changes are necessary.</p>
<p>Section 5. Permit Requirements, Subd. 10., Exemption: The rules should include a definition of hardship or reference the term defined in <u>Minn. Stat.</u> § 394.</p>	<p>BWSR comment regarding the definition of hardship. This description of undue hardship is taken from statutes 462.357, subd. 6(2).</p>
<p>Section 6. Appeals: The reference to <u>Minn. Stat.</u> § 103D.539 is a request for informal resolution of disputes with the dispute resolution committee of the BWSR and not an appeal. Procedures for appeals are cited under <u>Minn. Stat.</u> §§ 103D.535 and 103D.537.</p>	<p>BWSR comment drawing the distinction between watershed appeals under 103D.535, legal challenges to rule decisions under 103D.537 and dispute resolution under 103D.539. The suggested language changes should highlight the distinction.</p>

<p>Section 11. Watershed District Notice and Discretionary Enforcement, Subd. 6., Discretionary Enforcement: If an activity does not require a district permit it's unclear as to what authority the watershed district would have in enforcement of a third party permit unless such authority is clearly provided in statute. The watershed district attorney should be consulted regarding the watershed district's authority to regulate third party permits.</p>	<p>BWSR Comment regarding authority to enforce third party permits. After researching the district's express statutory authority we concur with BWSR that the authority to make the violation of a third party permit an enforceable violation of the rules is unclear. To remedy this issue but still retain the intent of assuring compliance with third party permits, this section has been revised to include the issuance of a general permit to the public for activities not individually regulated by the District that still require a third party permit. The conditions of the general permit include full compliance with the conditions of the third party permit.</p>
<p>AL KEAN, CHIEF ENGINEER, BWSR</p>	
<p>Section 2. Rule Adoption, h.: The reference to the BWSR should indicate "Executive Director of the Board of Water and Soil Resources".</p>	<p>BWSR correction comments.</p>
<p>Section 3. Definitions: Drain Tile System and Open Ditch: It might be appropriate to refer to MN Statutes Chapter 103E publicly administered systems, as well as private systems, if both are to fall under the jurisdiction of these rules. Note that Chapter 103E drainage systems can serve urban areas, as well as agricultural land.</p>	<p>BWSR comment regarding drain tile and open ditches and interplay of statutes 103E. We are not recommending getting into too much detail on these distinctions because they do not play a significant role in activities requiring a permit.</p>
<p>Section 3. Definitions: Public Drainage System: Chapter 103E drainage systems are not publicly owned, but are administered by a public drainage authority. Urban stormwater systems typically are publicly owned.</p>	<p>BWSR comment on correct legal status of ownership of public drainage systems.</p>
<p>Section 3. Definitions: Waterbody: Although there is a separate definition for wetland, I wonder if the waterbody definition should include open water wetlands.</p>	<p>BWSR comment regarding whether wetlands should be included in definition of waterbody. Because wetlands are separately defined by their technical characteristics, there is no need to include them here. Throughout the rules waterbodies and wetlands are referenced individually.</p>
<p>Section 4. Public Meetings, Hearings and Records: Subd. 2. Hearings: The words "statue" should be "statute".</p>	<p>BWSR comment correction.</p>
<p>Section 4. Public Meetings, Hearings and Records: Subd. 3. Records: The word "that" should be "the".</p>	<p>BWSR comment correction.</p>

<p>Section 5. Permit Requirements: Subd. 2. Administrative Review and Approval. a.iii.: Should the word “volume” be “rate”?</p>	<p>BWSR comment rate vs. volume.</p>
<p>Section 5. Permit Requirements: Subd. 4. Conditions: The phrase “to the extent possible” could be read to ignore what is reasonable and practical. Suggest changing to “to the extent reasonably possible”.</p>	<p>BWSR comment whether this should read reasonably possible. We assume our conditions to be reasonable. If not, the applicant should appeal. By including this phrase the District is indicating the possibility of giving the permittee relief when factors make it impossible to meet the conditions.</p>
<p>Section 5. Permit Requirements: Subd. 5. Deadlines for Action. a.: The use and meaning of “tolled” in the fifth line is not clear to me.</p>	<p>BWSR comment regarding the definition of the word “tolled.” Tolled is a technical word. The word “suspended” will accomplish the same meaning and is probably more readily understood.</p>
<p>Section 5. Permit Requirements: Subd. 10. Exemption.: The phrase “an exemption from the provisions of these rules” would seem to indicate both the permit requirement and the associated fee. However, this subdivision seems to indicate that a permit is still required. It’s not clear what the exemption includes (all potentially applicable rule requirements, some provisions of the rule, and/or permit costs).</p>	<p>BWSR comment regarding use of exemption and whether it includes permitted activities, fees or both. The remainder of the subdivision makes clear that we are talking about giving an exception to compliance with certain rule provisions or performance standards. The word change should help clarify the rule.</p>
<p>Section 7. Stormwater Subd. 2. Permit Required for Certain Development and Redevelopment., d.: It’s my understanding that the impervious surface limits in the Shoreland Rules are being adopted for all property in the watershed district. Correct?</p>	<p>BWSR comment regarding application of impervious surface standards for property within shoreland to all properties discharging to a waterbody or wetland. The impervious standards in state law are written to protect only public waters, not all waterbodies and wetlands as those terms are defined in these rules. The District found that the detrimental impacts from impervious surface runoff are not limited to public waters, but affect all waters. Therefore the application of the impervious standards is expanded by this rule.</p>
<p>Section 7. Stormwater Subd. 3. Standards. a.: The requirement in regard to the 7.2 inch snow melt critical storm event may be unclear to many readers. Is this requirement clarified in an appendix? It appears to be based on the SCS/NRCS 100-yr., 10-day runoff.</p>	<p>BWSR comment regarding the source of the snowmelt requirement.</p>
<p>Section 8. Erosion Control Subd. 1. Purpose.: The indication of “to the greatest extent possible” does not seem to consider cost and practicability. Maybe “reasonably” should be added before “possible”.</p>	<p>BWSR Comment related to cost and practicality. The addition of the word “reasonably” should clarify.</p>

<p>Section 8. Erosion Control Subd. 2. Permit and Plan Required for Certain Land Disturbing Activity.: The requirement of a permit for 200 square feet and greater would include all projects for which an MPCA NPDES Construction Stormwater Permit is required. This appears to be duplication of permitting, rather than filling a permitting gap as indicated in the purpose for these rules.</p>	<p>BWSR comment regarding duplication of permitting for project that will also require NPDES construction stormwater permits. This rule is intended to cover smaller, otherwise unregulated activities which the District has found to damage water resources by their cumulative impacts. The gap this fills is for smaller projects in close proximity to water resources. In section 11 of the rules a general permit is issued to members of the public for activities requiring an NPDES or similar permit. The District will defer to the requirements of the third party permit after review and comment. The District will reserve the right to enforce the requirements of the third party permit as a condition of its general permit.</p>
<p>Section 8. Erosion Control Subd. 3. Agricultural/Horticultural Exemption.: Does the last sentence indicate that a permit is required for agricultural activities in a public road right-of-way or road ditch?</p>	<p>BWSR comment regarding the inclusion of this provision as a re-capture of the ag exemption. This provision seeks to remedy an ongoing and unregulated prohibited practice in the District – cultivation and planting in road ditches. Erosion, soil loss and nutrient transport resulting from this practice has a detrimental impact on water resources within the District.</p>
<p>Section 8. Erosion Control Subd. 4. Standards.: The indication of “to the greatest extent possible” in the second sentence and in item “a.” does not seem to consider cost. Maybe “reasonably” should be added before “possible”. d.: The correlation of “bio-fabrics” to “performance” doesn’t see appropriate as stated. Maybe replace “performance” with “longevity of erosion control”?</p>	<p>BWSR Comment related to cost and practicality. The addition of the word “reasonably” should clarify.</p> <p>BWSR comment regarding whether erosion control methods can be considered permanent. The revised language should clarify.</p>
<p>Section 9. Drainage Subd. 1. Purpose.: I wonder if the stated purpose “to preserve drainage capacity” might preclude implementation of culvert sizing to control peak flows and associated erosion potential. This might be better stated “to maintain adequate drainage”. I’m not sure what is meant by “All land may be reasonably used to dispose of surface water.”</p>	<p>BWSR Comment related to retention of waters on drainage systems in a manner that does not reduce beneficial drainage. The language revision better reflects the intent of the District and leaves open the possibility that drainage may be modified for various management purposes.</p>

<p>Section 9. Drainage Subd. 2. Exemptions. I'm not clear about the definition of the term "expansion". Is this term meant to include both drainage system capacity and area? Under Chapter 103E, flattening ditch side slopes to reduce sloughing and erosion can be considered a repair, however, this can increase/improve system capacity if not limited by culverts or bridges at road crossings.</p>	<p>BWSR Comment regarding what is meant by expansion. The term expansion was chosen and included to acknowledge that some repair and maintenance activities can expand or increase the volume, rate and timing of flow as well as facilitate enlargement of the area drained. "Expansion, expand or expanded" as related to drainage include improvements and repairs that increase the volume, rate and timing of flow or facilitate enlargement of the area drained.</p>
<p>Section 9. Drainage Subd. 3. Permit Required for Drainage Work. a. and b.: What is the definition of "expanded"?</p>	<p>BWSR Comment regarding what is meant by expansion. The term expansion was chosen and included to acknowledge that some repair and maintenance activities can expand or increase the volume, rate and timing of flow as well as facilitate enlargement of the area drained. "Expansion, expand or expanded" as related to drainage include improvements and repairs that increase the volume, rate and timing of flow or facilitate enlargement of the area drained.</p>
<p>Section 9. Drainage Subd. 3. Permit Required for Drainage Work. d.: This would seem to include municipal drainage systems as written.</p>	<p>BWSR comment regarding whether this provision applies to municipal drainage systems. This provision is limit to the rights of way of public drainage systems as that term is defined in the rules. This provision as written does not apply to municipal storm water systems, except to the extent that the municipality is utilizing a public drainage system as an outlet for stormwater.</p>
<p>Section 9. Drainage Subd. 3. Permit Required for Drainage Work. e.: This requirement seems to duplicate the petition approval requirement in Section 103E.401 for an outlet into an established Chapter 103E drainage system.</p>	<p>BWSR comment regarding consistency with statutes 103E.401. The provision does duplicate the statute requirement. However, the District is not the drainage authority for all drainage systems within its boundary. The District's experience is that not consistent standard is followed for section 103.401 for Drainage Authorities within the District. The rule is necessary to ensure uniform standards and management of drainage and diversions of water.</p>
<p>Section 9. Drainage Subd. 3. Permit Required for Drainage Work. f.: This requirement also seems to duplicate requirements in Chapter 103E.</p>	<p>BWSR comment regarding consistency with statutes 103E. There is no explicit prohibition on the listed activities in the drainage code. As a result, several inadequate crossings, degraded outlets and other manipulations occur within the systems. This rule seeks to prevent these activities occurring without oversight from the District. It also gives teeth to the enforcement process.</p>

<p>Section 9. Drainage Subd. 4. Standards. b.: The phrase “with an elevation,” is unclear.</p>	<p>BWSR comment on clarity. The word revisions clarify.</p>
<p>Section 9. Drainage Subd. 4. Standards. c.: The reference to unspecified MPCA guidance documents regarding maintenance of a stable outfall is unclear.</p>	<p>BWSR comment regarding unspecified MPCA guidance documents.</p>
<p>Section 10. Water Uses Subd. 1. Purpose.: The phrase “preserve drainage capacity” could inhibit or preclude culvert sizing for peak flow control.</p>	<p>BWSR comment related to retention of waters on drainage systems in a manner that does not reduce beneficial drainage. The language revision better reflects the intent of the District and leaves open the possibility that drainage may be modified for various management purposes.</p>
<p>Section 10. Water Uses Subd. 2. Permit and Plan Required for Water Uses.: b.: This requirement would seem to duplicate the DNR Public Waters Work Permit requirements for work in public waters.</p>	<p>BWSR comment regarding duplication of regulation with DNR public waters works permits. For some projects there could be duplication with DNR permitting. However, the rule is necessary to ensure consistency with the District’s management objectives which are different from those of DNR.</p>
<p>Section 10. Water Uses Subd. 3. Standards.: a.: This requirement would inhibit or preclude culvert sizing for peak flow control.</p>	<p>BWSR comment regarding whether this would inhibit or preclude culvert sizing as a means of water management. Nothing in this rule would prevent the sizing of culverts for such a purpose. A permit would, however, be required.</p>
<p>Section 10. Water Uses Subd. 3. Standards.: c.: The second sentence would seem to require vegetative buffers for all projects.</p>	<p>BWSR comment regarding whether this requires vegetated buffers for all projects. Where practical, vegetated buffers will be incorporated into such projects.</p>
<p>Section 10. Water Uses Subd. 3. Standards.: d.: This requirement does not appear to allow for participating adjacent landowners, or flowage easements.</p>	<p>BWSR comment regarding whether the language would inhibit or prevent either participation of adjacent landowners or use of easement to account for impacts of project. The suggested language change should clarify. A project proponent may demonstrate that it has acquired necessary easements or other interests to address project impacts. Adjacent landowners may join as joint applicants on a project that will impact only their property.</p>

<p>Section 10. Water Uses Subd. 3. Standards.: f.: Suggest replacing the word “finished” with “design”, because finished elevations cannot be known until as-built surveys are complete.</p>	<p>BWSR suggested correction.</p>
<p>Section 11. Watershed District Notice and Discretionary Enforcement. Although I don’t know if other watershed districts have similar requirements, this section seems to create additional workload for other regulatory entities and permit applicants, as well as substantial workload for the watershed district.</p>	<p>BWSR Comment regarding authority to enforce third party permits. After researching the district’s express statutory authority we concur with BWSR that the authority to make the violation of a third party permit an enforceable violation of the rules is unclear. To remedy this issue but still retain the intent of assuring compliance with third party permits, this section has been revised to include the issuance of a general permit to the public for activities not individually regulated by the District that still require a third party permit. The conditions of the general permit include full compliance with the conditions of the third party permit.</p> <p>Further BWSR comment regarding administrative burdens and District workload. This provision reflects the inter-agency/inter-governmental coordination that is already occurring in the District. District staff does not anticipate substantial additional burden.</p>
<p>Section 11. Watershed District Notice and Discretionary Enforcement. Subd. 4. Comment.: The reference to “political subdivision” would seem to omit state and federal agencies.</p>	<p>BWSR suggested correction.</p>
<p>Section 11. Watershed District Notice and Discretionary Enforcement. Subd. 5. Copy for District Files.: This is a substantial commitment to maintaining files for permits by other regulatory entities.</p>	<p>BWSR comment regarding administrative burden. The intent was not to create a large document management requirement. The language is suggested to be changed so that only the permit itself is maintained. Other documentation may be maintained in the District’s discretion or according to a document retention plan.</p> <p>BWSR suggested correction.</p>
<p>Section 13. Enforcement Subd. 2. Notification Regarding Violations.: It would seem that this provision should include the potential for notification to the Board of Water & Soil Resources, applicable Wetland Conservation Act local government units and the Corps of Engineers regarding wetland violations.</p>	<p>BWSR comment regarding the inclusion and/or exclusion of state and federal regulatory agency. The suggested language changes should clarify.</p>

WESTWOOD PROFESSIONAL SERVICES

How are existing permits addressed/handled?	
How are permits terminated?	
How are subdivision registrations addressed/handled?	
How are “approved plans” revised?	
Because the District requires Construction Plans and Specifications for some of the permits, the permits will not be applied for until plans and specs are complete and final.	
Section 5. Subd. 1.e. - The District states “drawings or plans are not required to be prepared by an engineer, “however, some of the items the District is requiring will need to be prepared by a licensed engineer per MN Statute Chapter 326.	WPS Comment regarding application of statute 326 prohibiting the practice of engineering without state certification. The rule is not intended to encourage violation of the law. The District anticipates that most activities will not require engineered plans and specifications which would trigger the requirements of statute 326. The District, aided by its engineer, during review of applications will have to determine whether a licensed engineer is required to certify plans and specification.
Section 5. Subd. 1.f. - What triggers a site inspection? Also, it is stated in the SONAR that the inspection fee will be based on a schedule to be included in the permit application form. We request to see this schedule.	WPS comment. The need for site inspections will be determined based on the complexity of the project as recommended by the District’s engineer. The District will develop and adopt a fee schedule to identify the fee. The current language reflects the statutory authority to charge a fee for inspections.
Section 5. Subd. 2.b. - Is there a cap on the amount the District can charge for their consultant’s technical analysis? Also, will a schedule be provided as there will be for Subd. 1.f. above?	WPS Comment. The statute does not place a cap on the assessment of costs. The driving factor derived from case law is whether the costs are reasonable. The District will adopt a fee schedule for such costs.
Section 5. Subd. 2.c. - If the application does not deem the District Administrator’s conditions added to the approval as reasonable, what are the applicant’s options?	WPS comment regarding reasonableness of conditions. An applicant may appeal the reasonableness of conditions by appeal or dispute resolution processes under section 6 of the rules.

<p>Section 5. Subd. 3.b. - Does the applicant or a representative need to be present for a permit renewal as well?</p>	<p>WPS comment regarding whether the applicant must be present for a permit renewal. This provision is placed in the rules to give applicants notice to be present for the Board’s review of the original permit. Under these rules the District does not renew permits, it extends the original permit. Attendance of the applicant for an extension is specifically not addressed because the circumstances of the extension will influence whether the applicant should be present. See section 5, subd. 10.</p>
<p>Section 5. Subd. 4.c. - I am unsure what exactly this condition means to the applicant. Does it mean that an applicant will be subjected to two fines if something happens? Isn’t this Double Jeopardy? Also, this reads as if this would apply to even a building permit.</p>	<p>WPS comment regarding the purpose and meaning of this provision. This provision is intended to reinforce the requirement of compliance with other permits and the incorporation of those permits requirements as conditions of the District’s permit. The applicant could be subject to multiple enforcement actions. The language could be deleted with affecting the operation or intent of the rules. Staff recommends deletion.</p>
<p>Section 5. Subd. 5.c. - Minnesota Statutes Section 15.99 Subd. 2(a) requires the District to approve or deny a permit within 60-days or the permit is approved. If the District feels the permitted activity is unlawful the District should extend the review time appropriately.</p>	<p>WPS comment regarding application of statute 15.99 and extending review time. Without applicant consent, the District may only extend the time for decision to 120days. The statute allows for suspension of the time line or for additional time if other approvals are required or if environmental review is occurring. If the District runs against its timeline, or if the District finds that the activity is not lawful, it should deny the application and give findings to support the denial.</p>
<p>Section 5. Subd. 6.a. - Will the District add language that sureties/bonds/letters-of-credit/etc. can be held by one level of government, yet apply to multi-levels. For example, some cities and counties also require these items, and usually for more than just the storm water improvements. Will the District add language to allow these other, and often larger, LOCs to suffice?</p>	<p>WPS Comment. The District, where appropriate, will require its own surety. It may, where appropriate, accept the placement of other security with another unit of government. Staff does not recommend specifying this process since each application will have to be considered on its merits and some investigation will have to occur to ensure alternative security is sufficient to cover the District’s concerns.</p>
<p>Section 5. Subd. 8. - How are plans “approved”?</p>	<p>WPS comments regarding how plans are approved. Plans are reviewed by District staff for consistency with the rules standards. District staff does not validate the correctness of plans and is relying on representations of the applicant. What is referred to in this provision are the plans that formed the basis of the originally approved permit. If those plans have not changed, then the administrator can approve the assignment or transfer.</p>

<p>Section 5. Subd. 8. - Plans change often, and the SWPPP is a “living breathing document”. How is this addressed in this Subdivision? Example: If the project is underway and a revision is needed, how will the District address the change? How do we modify “approved plans”?</p>	<p>WPS comment regarding changes in plans with specific reference to SWPPPs. First it is unlikely that a project requiring a SWPPP will also require a District permit. If such a project does require a District permit, modifications to the SWPPP are expected but do not change the overall plan of development for the project. The District may retain its discretion in determining whether a change in the project is such a departure from the facts upon which original permit approval was granted to warrant to new permit.</p>
<p>Section 5. Subd. 9. - Some projects are phased over 10-years. Yearly renewals for a development like this will likely result in missed renewals. How would this be handled? Could there be a no time limit option for projects which are guaranteed to last multiple years?</p>	<p>WPS Comment regarding long term project and phases. For such projects the District would expect permitting for each phase in order to ensure the permit and permit conditions remain current with various regulatory requirements and the Watershed Management Plan.</p>
<p>Section 5. Subd. 9. - Please elaborate on “additional conditions”. Would the District please give examples?</p>	<p>WPS comment requesting examples of additional conditions. Each project possesses its own unique conditions which influence District resources. Additionally, conditions change over time as regulatory requirements change. The provision reserves to the District the opportunity to modify permit conditions to address these requirements.</p>
<p>Section 7. Subd. 3. - There is no mention of land-locked basins here, however, there is in Appendix A. Which is correct?</p>	<p>WPS comment regarding reference to land locked basins in appendix A.</p>
<p>Section 8. Subd. 1. - Please add the word “downstream” prior to “erosion and sediment control measures” in the section sentence. On large projects, the plans will often show all the BMPs needed for the entire site even though the site is phased and the current work does not impact the area a half mile away. Adding the word “downstream” still requires the BMPs to be installed before specific work starts but still allows for BMPs to be installed as needed.</p>	<p>WPS wants to add the “downstream” here.</p>
<p>Section 8. Subd. 4. - There is no mention of dewatering plans and specs here, however, they are required in Appendix A. Which is correct? Also, the contractor usually furnishes these items as they will determine the best way to accomplish the dewatering with the equipment they have. This means we would need to complete plans and specs, then bid, and then actually award the project prior to submitted the District’s permit. This creates havoc with timing and rescheduling.</p>	<p>WPS comment regarding the mention of de-watering plans in appendix A. The comment suggests a disconnect in the timing of permitting and the letting and bidding of contracts.</p>

<p>Section 8. Subd. 4. - It is not mentioned here, however, Appendix A states that the applicant shall provide documentation that they have “applied for a NPDES” permit. There is a discrepancy between the 7-day lead time of the NPDES permit and the 60-120-day lead time of the SRWD permit. We request that the District address this.</p>	<p>WPC comment regarding documentation of NPDES permitting and the timing of District and PCA permit applications.</p>
<p>Section 9. The first sentence in the SONAR regarding this Section states that this Section is because of agricultural land. “Agricultural” is not mentioned in the actual Section until approximately halfway through. We request that the Section be clearly marked it is for agricultural land.</p>	<p>WPS comment requesting clarification up front that this section applies only to agricultural drainage. This section does not apply only to agricultural land. It may apply to drainage from developed property which makes use of traditionally agricultural drainage infrastructure. The SONAR accurately reflects the purpose of this rule.</p>
<p>Section 9. Subd. 3. - Without the above clarification, it is difficult to determine if a residential or commercial project would trigger any of these.</p>	<p>WPS comment regarding application of this rule to residential and commercial project. As written the rules would apply to such projects.</p>
<p>Section 9. Subd. 4.a. - How far downstream will the study need to show? The cost of modeling multiple downstream channels and structures would be very expensive and goes against the SONAR’s claim of “These standards are reasonable because they can be implemented with minimal cost. . .”</p>	<p>WPS comment regarding extent of study. The study would need to reasonably show the existence of adequate capacity. Because each project is different, it is impossible to set a hard standard for analysis.</p>
<p>ENVIRONMENTAL SERVICES</p>	
<p>Section 3. Definitions Resort - defer to Minnesota Statutes Chapter 103F.227</p>	<p>SCES comment regarding use of resort definition from statute 103F.227. The language of the statute is directed at public waters. These rules take a broader view. The suggested language modification brings the definition more in line with language of the statute while still preserving the broader definition intended by the rules.</p>
<p>Section 3. Definitions Shoreland - differs from DNR definition in that it leaves out the italicized words: “The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides which extend landward from the waters for lesser distances <i>and when approved by the commissioner.</i>” [MN Rules 6120.3900 subp 15]</p>	<p>SCES comment regarding use of statute and rule definitions of shoreland. See comment above.</p>
<p>Section 3. Definitions a. The wetland definition is vague - it is intended to be more or less inclusive than WCA and Public Waters Wetlands?</p>	<p>SCES comment regarding definition of wetland. See comment above.</p>

<p>Section 5. Permit Requirements. Permit costs are unclear.</p>	<p>SCES comment regarding clarity of permit costs. The permit costs listed here are taken directly from statute. The District will develop and adopt a fee schedule to identify the fees</p>
<p>Section 5. Permit Requirements. Subd. 1 (f) - What type of permit request warrants a site inspection? How are actual costs determined?</p>	<p>SCES comment regarding site inspections and costs. See comment above.</p>
<p>Section 5. Permit Requirements. Subd. 2 (b) - “Reasonable costs” are unclear.</p>	<p>SCES comment on costs. See comment above.</p>
<p>Section 5. Permit Requirements. Subd. 5. - The District will seek to approve or deny a permit application within 60 days after receipt of a complete application and full payment of fees” is not as strict as MN Statute 15.99 requiring that “an agency must approve or deny within 60 days a written request relating to rezoning, septic systems, watershed district review...” Perhaps this should be changed?</p>	<p>SCES comment regarding use of work “seek”. This word is used to identify the District’s goal of quickly processing applications. Statute 15.99 does allow for extensions under several circumstances. See comment above.</p>
<p>Section 5. Permit Requirements. (a) last sentence - include “business” before “days,” ie. Within 15 business days.</p>	<p>Staff correction based on SCES comment.</p>
<p>Section 5. Permit Requirements. Subd. 6. - Based on past experiences with similar financial guarantees and financial sureties, the following are recommended.</p> <ul style="list-style-type: none"> •Establish sureties that do not have an expiration date, but that automatically renew until the district releases it. •Require that the portion of the surety held for grading and stormwater management facilities be released only after the design engineer has signed off that as-built conditions meet design guidelines •Duplication in financial guarantees should be avoided. 	<p>SCES comment regarding sureties: Establish sureties that do not have an expiration date, but that automatically renew until the district releases it; Require that the portion of the surety held for grading and stormwater management facilities be released only after the design engineer has signed off that as-built conditions meet design guidelines; Duplication in financial guarantees should be avoided. Concur with comments from SCES. There is no need, however to adjust rule language. See comments below.</p>
<p>Section 5. Permit Requirements. Subd. 10. - Since exemptions are “analogous to a variance,” perhaps the language should be changed from “undue hardship” to “practical difficulty” to be more consistent with recent legislative changes on variances?</p>	<p>SCES comment regarding hardship vs. practical difficulty language. See comment above.</p>
<p>Section 7. Stormwater. We recommend entering into an agreement between the District and the Environmental Services Department to administer and enforce one set of rules (most restrictive).</p>	<p>SCES comment regarding an agreement between the District and the County for enforcement of most restrictive rules. Such an agreement is contemplated by section 12 of the rules.</p>

<p>Section 7. Stormwater. Subd. 3(a) - What is the duration of the 2, 10 & 100-year storm event? It is over a 1, 2, 3, 6, 12 or 24 hour period? Also, how does one go about measuring the 7.2 inch snow melt critical storm event? What water content is allotted to the snow? What rate of melting is used? (b) How do you establish the baseline for the 80% & 50% removal of TSS and TP.</p>	<p>SCES comment regarding the source of the snowmelt requirement.</p>
<p>Section 8. Erosion Control. Subd. 2 - It appears that the minimum requirements for a SRWD permit are far more restrictive than any jurisdiction (county, township, or city) within Stearns County. As it states in the Stearns County Zoning Ordinance 7.5.1, all land disturbing activities, whether or not a permit is required, shall be subject to certain erosion and sediment control performance standards. For projects where county permits are required (construction site permits, shoreland alterations, variances, etc.), performance standards for erosion and sediment controls become a condition of the issued permit. Projects or disturbance activities that do not need to get a county permit are not exempt from erosion control standards, however, environmental services staff does not take action unless a complaint is received or staff is made aware of a potential water quality concern. Are road projects, feedlot projects and septic system all going to need an erosion control permit? By requiring a scoping meeting, completion of an application, submittal of an erosion and sediment control plan, and the staff time required to process the application and conduct the necessary inspections (if necessary) for all potential land disturbing activities that fit within these guidelines, these rules are far more restrictive than Stearns County rules. Permit required when within 500 feet of any waterbody, drainage way, water basin, or wetland. First of all, this is contradictory to the 1000 foot and 300 foot language of the state shoreland rules. It would appear that the intent would be all inclusive of any public waters lake/wetland, or any area of concentrated flow. Under this rule structure, however, in order for a landowner to be truly sure that work is or is not occurring within 500 feet of a wetland, he/she would have to pay to have a wetland delineation/determination done within a 500 foot radius of the project area. As it relates to Subd. 2 and the 200 square foot/within 500 foot requirements, on average there are about 900 permits issued every year within the Sauk River Watershed District. Most, if not all, would exceed the 200 square foot of disturbing activity. Although the 900 permits is watershed district-wide, it is estimated that at least 2/3 of these permits would lie within 500 feet of a water body, drainage way, water basin or wetland which equates to almost 600 permits.</p>	<p>SCES comment regarding imposition of erosion control standards within Stearns County. The challenge to these rules is that they have to be the best fit for five counties. The District has chosen a class of activities occurring in close proximity to water resources.</p>
<p>Section 9. Drainage Subd. (1) fifth line. “All land may be reasonably used to dispose of surface water” is unclear.</p>	<p>SCES comment seeking clarification of this statement. This is an articulation of the reasonable use rule. It is also articulated in statute 103D.515. The intent is to ensure that nothing in these rules is intended to interfere with reasonable use laws between private parties.</p>

<p>Section 9. Drainage, Subd. 3: a. The definition of “open private ditch” does not correspond to the public waters definitions and classifications of tributaries, trout streams, and scenic rivers. So it also appears that this is meant to be all inclusive. How enforceable would it be if a developer did not pull a permit because an intermittent stream was not classified by state statute definition of public waters, and began working?</p>	<p>SCES comment regarding definition of private ditch vs. other watercourses within the District. This portion of the rule is focused on drainage and drainage infrastructure. The use of natural watercourse as outlets for drainage are otherwise regulated. The scenario offered in the comment would trigger a stormwater permit requirement.</p>
<p>Section 9. Drainage, Subd. 3: b. Authorization is already required by WCA, for drainage work on any diameter tile system, because nearly all of this land meets the definition of a wetland.</p>	<p>SCES comment regarding application of WCA to drainage activities. The suggestion that WCA regulates all drainage is incorrect. WCA is only triggered if a jurisdictional wetland is impacted. This part of the rule gets at the volume of drainage when a system is installed or expanded to require such a large diameter.</p>
<p>Section 9. Drainage, Subd. 3: d. What is a public drainage system right-of-way?</p>	<p>SCES comment regarding the definition of drainage system right of way. The right of way of a drainage system includes the extent of the system itself, as well as any additional area either acquired or for which damages were paid in any proceeding to establish or improve the system.</p>
<p>Section 9. Drainage, Subd. 3: d. How are properties assessed for diverting water into a <u>public</u> drainage system, such as tile lines connected to public water tributaries? Does this apply or does it only apply to public ditch systems with assessment studies?</p>	<p>SCES comment regarding how properties are assessed. Please refer to statutes chapter 103E for the determination of benefitted properties. See the definition of public drainage system.</p>
<p>Section 9. Drainage, Subd. 3: e. The manipulation of a public drainage system would also require DNR Waters approval.</p>	<p>SCES comment regarding manipulations of public drainage systems requiring DNR permits. Manipulation of a public drainage system would only require a DNR permit if the drainage system was also a public water.</p>
<p>Section 10. Water Uses, Subd 2 (a)-(d) The activities listed in this section all require permits from other entities, be it WCA enforcement officials or DNR Waters. All efforts currently being regulated should not be duplicated, and that permits required by other entities not be listed as conditions of SRWD permits. It is recommended that a statement be used such as “permits or authorization from other federal, state, and local government agencies may be required.”</p>	<p>SCES comment regarding other regulation of these activities. The activities listed are not always regulated by other entities and are not always regulated for the same purposes as these rules require.</p>

<p>Section 11. Watershed District Notice and Discretionary Enforcement, Subd. 2 (b) MN Rules Chapter 7070 was repealed in 1997. The most applicable rule may be Minnesota Rules, Chapter 7050. NPDES permits are referenced in this part. One could interpret that all NPDES permits (Industrial, Municipal, Feedlot, Construction Stormwater) should be submitted to the watershed district for review and comment. If the District is only looking to review and comment on projects that require coverage under the NPDES Construction Stormwater Permit, this should be specified.</p>	<p>SCES comment regarding scope of District review of NPDES permits. The District seeks to review any permit authorizing or regulating the discharge of pollutants to water resources. This includes all NPDES permits, not just stormwater permits.</p>
<p>Section 11. Watershed District Notice and Discretionary Enforcement, Subd. 2 (g) The District wants to be given an opportunity to approve applications for shoreland development within the watershed. If so, how much time is required for review? Can we still meet our 15/60 rule requirements? The District is currently notified about these applications and have an option to comment.</p>	<p>SCES comment regarding District approval of shoreland permits. This is an incorrect reading of the rule. The District only seeks to review and comment such applications as is the current practice.</p>
<p>CENTRAL MINNESOTA BUILDERS ASSOCIATION</p>	
<p>Subd. 5. Deadlines for Action. As written, the language describing the 60 day period to approve/deny a permit application is not clear, nor concise on the process to extend, plus the applicant’s approval to extend that period. We ask the District to clarify the language.</p>	<p>CMBA comment regarding the specific requirement of statute 15.99. See comments above. No change is necessary.</p>
<p>Subd. 6. Performance Surety. Applicants are already submitting surety to local units of governments; ask that language be added that the same surety would, if required, extend to the District.</p>	<p>CMBA comment regarding combined surety. See comment above.</p>
<p>Subd. 8. Expiration of District Permits. Phased development and building is prevalent in our industry; sometimes over multiple construction seasons. A permit valid for only 12 months is not realistic and we ask the District to extend the initial permit period.</p>	<p>CMBA comment regarding 12 month period for permits and long term projects. See comment above.</p>

<p>Subd. 11. Watershed Notice and Discretionary Enforcement. The District is requiring notice of, and an opportunity to comment on, any environmental review required by Minnesota law; all NPDES permits...approval of any application for PUD within the watershed; and the approval of any application for shoreland development... including variance requests, conditional use permits, and other permit requests. The process for comment and the timeline for that comment are not well defined. “As soon as practical” is not definitive. Request the District to further define the process and timeline.</p>	<p>CMBA comment regarding timing of review and comment. Nothing in the timing the District’s review and comment is determinative of the issuance or denial of a permit by another regulatory entity. The District is merely seeking, in its coordinate function, the opportunity to review and comment on the application. No more definite timing requirements is necessary.</p>
<p>Process and Timelines. Request that the District strive to define and streamline processes and turnaround times for all aspects of these Rules.</p>	
<p>KAY COOK</p>	
<p>When referring to ‘waterbody’ I’m hoping that aquifers fall into that category. While WHP isn’t a big part of the management plan I’d like the District to keep it in mind.</p>	
<p>I didn’t see a reference to subwatersheds.I think they might be synonymous with utility districts? Since there are 9 or 10 subwatersheds laid out I am hoping that there is still the living concept in the office.</p>	
<p>On page 5 there is wording such that public hearing ‘may be’ recorded; shouldn’t that be ‘must’?</p>	
<p>Page 6 c states that \$10 charge for application. Does that cover cost of checking over the application?</p>	
<p>On page 8 f I liked the ‘not less than \$35’, good idea.</p>	
<p>On page 9 there is reference to Performance Surety ‘may’ be - I would like ‘would’</p>	
<p>Under standards part c - are the numbers sufficient?</p>	
<p>On page 12 subd 3 ag/horticulture. I don’t think any plowed land should be exempt from erosion consideration</p>	

<p>Page 14 - I don't think any drainage should go into surface water. Practice in this area is that drain tile leads from tiled farm land and stormwater from impervious surfaces go into surface water.</p>	
<p>Under inspections I would have liked to read that there could be unscheduled inspections. Page 15 I think</p>	
<p>Page 14 e 'upon completion' isn't as specific as I'd like to see. Perhaps 30 days after end of work or something. My concern is that something on a project is left undone to prevent the 'upon completion' part from going into effect for an inappropriate amount of time.</p>	
<p>In section 11 should 'watershed' be capitalized as there are several watersheds within the SRCL. I don't think that's what you meant.</p>	