



January 14, 2010

Holly Kovarik, Administrator
Sauk River Watershed District
524 Fourth Street, South
Sauk Centre, MN 56378

RE: Sauk River Watershed District Revised Rules

Dear Ms. Kovarik:

We have completed our review of the proposed revisions to the rules of the Sauk River Watershed District. The versions of the proposed rules that have been reviewed were dated November 24, 2009 and were submitted to this office by correspondence dated December 14, 2009. The following advisory comments are provided pursuant to Minnesota Statutes Section 103D.341, Subd. 2 (b).

Section 3. Definitions, Shoreland: It might be appropriate to refer to Minn. Stat. §103F and/or Minn. Rules Chapter 6120 for further clarification on the extent of the shoreland district.

Section 3. Definitions, Wetland: Again it might be appropriate to refer to Minn. Stat. § 103G and/or Minn. Rule Chapter 8420 for further clarification of wetlands.

Section 3. Definitions: The district may also want to consider including definitions for floodplain, floodway, and flood fringe.

Section 5. Permit Requirements, Subd. 5., Deadlines for Action, c. and d.: Minn. Stat. § 15.99 requires that written notices for extension of time to an applicant include reasons for the extension and anticipated length of the extension.

Section 5. Permit Requirements, Subd. 10., Exemption: The rules should include a definition of hardship or reference the term defined in Minn. Stat. § 394.

Section 6. Appeals: The reference to Minn. Stat. 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 Minn. Stat. §§ 103D.535 and 103D.537.

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Holly Kovarik
January 14, 2010
Page 2

Section 11. Watershed District Notice and Discretionary Enforcement, Subd. 6., Discretionary Enforcement: If an activity does not require a district permit its 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.

Thank you for the opportunity to review the proposed revisions to the rules. We appreciate the efforts of the Sauk River Watershed District in furthering watershed management and look forward to receiving a copy of the final rules upon adoption.

Please find enclosed additional comments dated December 28, 2009 from Chief Engineer Al Kean. If you have any questions regarding these comments please feel free to contact me at (651) 297-4958 or by e-mail at travis.germundson@state.mn.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Travis Germundson', with a long horizontal flourish extending to the right.

Travis Germundson
Water Management Specialist

Enclosure

cc: Jim Kral, Sauk River WD Manager
Ray Bohn, MAWD
BWSR: John Jaschke, Dave Weirens, Al Kean, Ron Shelito, Jason Weinerman

Sauk River Watershed District Rules Update

Comments on 11-24-09 Draft Rules

Al Kean, Chief Engineer, BWSR

12-28-09

Section 2. Rule Adoption, h.: The reference to DNR should not include "Board". The reference to the BWSR should indicate "Executive Director of the Board of Water and Soil Resources".

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.
- **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.
- **Waterbody:** Although there is a separate definition for wetland, I wonder if the waterbody definition should include open water wetlands.

Section 4. Public Meetings, Hearings and Records

Subd. 2. Hearings.: The words "statue" should be "statute".

Subd. 3. Records.: The word "that" should be "the".

Section 5. Permit Requirements

Subd. 2. Administrative Review and Approval. a. iii.: Should the word "volume" be "rate"?

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".

Subd. 5. Deadlines for Action. a.: The use and meaning of "tolled" in the fifth line is not clear to me.

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 rule, and/or permit costs).

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?

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.

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”.

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.

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?

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 “permanence” doesn’t seem appropriate as stated. Maybe replace “permanence” with “longevity of erosion control”?

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.”.

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.

Subd. 3. Permit Required for Drainage Work.

a. and b.: What is the definition of “expanded”?

d.: This would seem to include municipal drainage systems as written.

e.: This requirement seems to duplicate the petition approval requirement in Section 103E.401 for an outlet into an established Chapter 103E drainage system.

f.: This requirement also seems to duplicate requirements in Chapter 103E.

Subd. 4. Standards.

b.: The phrase “with an elevation,” is unclear.

c.: The reference to unspecified MPCA guidance documents regarding maintenance of a stable outfall is unclear.

Section 10. Water Uses

Subd. 1. Purpose.: The phrase “preserve drainage capacity” could inhibit or preclude culvert sizing for peak flow control.

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.

Subd. 3. Standards. a.: This requirement would inhibit or preclude culvert sizing for peak flow control.

c.: The second sentence would seem to require vegetated buffers for all projects.

d.: This requirement does not appear to allow for participating adjacent landowners, or flowage easements.

f.: Suggest replacing the word “finished” with “design”, because finished elevations cannot be known until as-built surveys are complete.

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.

Subd. 4. Comment.: The reference to “political subdivision” would seem to omit state and federal agencies.

Subd. 5. Copy for District Files.: This is a substantial commitment to maintaining files for permits by other regulatory entities.

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 and Soil Resources, applicable Wetland Conservation Act local government units and the Corps of Engineers regarding wetland violations.