

Environmental Services Draft Rule Comments

Sauk River Watershed District

January 26, 2010

Overall conclusions:

Given the fact that such a large amount of the Sauk River watershed area lies within Stearns County, it would seem that the most cost effective means of obtaining adequate resource protections would be to undertake one of the following options:

1. Align the stormwater and erosion control requirements of the SRWD Rules with those of Stearns County's existing requirements, and work out agreements to prevent duplication. Also, align the drainage and water uses requirements of the SRWD with those of WCA and DNR Waters as much as possible, and again work with local enforcers to prevent duplication of efforts.
2. Assign all of the SRWD duties to a SRWD employee who is dedicated to maintaining communication with other local enforcers to prevent duplication of efforts and who is well versed in all existing permit requirements.

Section 3 Definitions

Resort- defer to Minnesota Statutes Chapter 103F.227

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 *and when approved by the commissioner.*" [MN Rules 6120.3900 subp 15]

a. The wetland definition is vague – is it intended to be more or less inclusive than WCA and Public Waters Wetlands?

Section 5 Permit Requirements

Permit costs are unclear.

Subd. 1 (f) What type of permit request warrants a site inspection? How are actual costs determined?

Subd. 2 (b) "Reasonable costs" are unclear.

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 zoning, septic systems, watershed district review..." Perhaps this should be changed?

(a) last sentence – include "business" before "days, ie. Within 15 business days.

Subd. 6 Based on past experiences with similar financial guarantees and financial sureties, the following are recommended.

- 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.

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?

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).

Subd. 3 (a) What is the duration of the 2, 10, & 100-year storm event? Is it 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.

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 requirement, 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.

Section 9 Drainage

Subd. (1) fifth line. "All land may be reasonably used to dispose of surface water." is unclear.

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?
- 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.
- c. What is a public drainage system right-of-way?
- d. How are properties assessed for diverting water into a public 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?
- e. The manipulation of a public drainage system would also require DNR Waters approval.

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 recommend that a statement be used such as “permits or authorization from other federal, state, and local government agencies may be required.”

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.

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.